
COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY,
as lessor

AND

DUNKIRK POWER LLC,
as lessee

AGENCY LEASE AGREEMENT

Dated as of April 25, 2008

(2008 Dunkirk Power LLC Project)

AGENCY LEASE AGREEMENT

THIS AGENCY LEASE AGREEMENT, made and entered into as of the 25th day of April, 2008 (this "Agreement"), is by and between COUNTY OF CHAUTAUQUA INDUSTRIAL DEVELOPMENT AGENCY (the "Agency"), a corporate governmental agency constituting a body corporate and politic and a public benefit corporation of the State of New York, duly organized and existing under the laws of the State of New York, with an office at 200 Harrison Street, Jamestown, New York 14701, and DUNKIRK POWER LLC (the "Company"), a limited liability company organized and existing 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, with an office c/o NRG Energy, Inc., 211 Carnegie Center, Princeton, New Jersey 08540.

RECITALS:

1. 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, construction, reconstruction, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities including industrial pollution control facilities and 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.
2. Pursuant to and in accordance with the provisions of the Enabling Act, the Agency was established by Chapter 71 of the 1972 Laws of New York, as amended, for the benefit of the County of Chautauqua and the inhabitants thereof.
3. To accomplish the purposes of the Act, the Agency has previously entered into negotiations with the Company with respect to the acquisition of a leasehold interest in a parcel of land, the renovation of existing structures and the acquisition and installation of equipment, all as more particularly described in and defined as the "Project" in Exhibit D annexed hereto, and the sublease of the Project Facility (as hereinafter defined) to the Company for manufacturing and industrial purposes, such Project Facility is located at 100 Point Drive North, Dunkirk, New York.

4. On April 25, 2008, the Agency adopted an inducement resolution, which resolution authorized the Company to proceed with the Project and authorized the execution and delivery of this Agreement.

5. The Agency, based upon representations and warranties of the Company contained in this Agreement and the information contained in the application of the Company and other material heretofore submitted by or on behalf of the Company to the Agency, hereby finds and determines that the acquisition of a leasehold interest in the Project Facility by the Agency and the leasing thereof to the Company is reasonably necessary to accomplish the purposes of the Act, in that the Agency's participation in the Project is necessary to maintain the operation of the Project Facility in Chautauqua County and to preserve the competitive position of the Company in its industry and to prevent the closing and dismantling of the Project Facility so as to preserve permanent, private sector jobs associated with the Project Facility.

6. The Company has proceeded with the Project pursuant to the said inducement resolution.

7. The Company will provide or cause to be provided the funds necessary to complete the Project subject to the terms hereof.

8. The real property constituting a part of the Project Facility is currently owned by the Company and will be leased to the Agency concurrently with the execution of this Agreement.

9. The parties wish to set forth their relationship which will enable the continuation, completion and operation of the Project Facility, in furtherance of the corporate and public purposes of the Agency.

NOW, THEREFORE, in consideration of the premises and the respective representations and agreements hereinafter contained, the parties agree as follows:

ARTICLE I

DEFINITIONS

The following terms shall have the following meanings in this Agreement:

"Act" shall mean, collectively, the Enabling Act (as defined in the First Recital clause), and Chapter 71 of the 1972 Laws of New York, as amended from time to time.

"Additional Rent" shall mean PILOT payments, Impositions, utility bills relative to the Project Facility, insurance premiums or other sums paid by the Agency on behalf of the Project Facility.

"Agency" shall mean County of Chautauqua Industrial Development Agency, a public benefit corporation organized under Article 18-A of the General Municipal Law of the State with an office at 200 Harrison Street, Jamestown, New York 14701, and its successors or assigns.

"Agreement" shall mean this Agency Lease Agreement between the Agency and the Company and shall include any and all amendments hereafter made.

"Agency's Reserved Rights" means collectively:

(a) the right of the Agency in its own behalf to receive all opinions of counsel, reports, financial statements, certificates, insurance policies or insurance binders or certificates, or other notices or communications required to be delivered to the Agency under this Agreement;

(b) the right of the Agency to grant or withhold any consents or approvals required of the Agency under this Agreement;

(c) the right of the Agency to enforce on its own behalf the obligation of the Company to complete the Project as contemplated hereby;

(d) the right of the Agency to enforce or otherwise exercise in its own behalf all agreements of the Company with respect to ensuring that the Project Facility shall, during the term hereof, constitute a qualified "project" as defined in and as contemplated by the Act;

(e) the right of the Agency to amend with the Company this Agreement or the PILOT, and the right of the Agency to enforce, receive amounts payable under or otherwise exercise its rights or remedies under this Agreement, the PILOT, or the Environmental Compliance Agreement;

(f) the right of the Agency in its own behalf to declare an Event of Default under Section 16.1 of this Agreement or the PILOT, and to exercise its remedies hereunder or thereunder;

(g) the right of the Agency as to any of the above, exercisable with respect to any subtenant(s) and any other sublessees; and

(h) the right of the Agency to receive any monies due to it for its own account, or that of its members, directors, officers, employees and/or agents, or that of any of the Tax Districts.

"Application for Tax Exemption" shall mean the Industrial Development Agency's Application for Real Property Tax Exemption required under Section 412-a of the New York Real Property Tax Law.

"Assessor" shall mean the assessor for the City.

"City" shall mean the City of Dunkirk, New York.

"Company" shall mean Dunkirk Power LLC, a limited liability company organized and existing 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, together with its successors and permitted assigns hereunder.

"Company Lease Agreement" shall mean that certain Company Lease Agreement, dated as of the date hereof, by and between the Company, as lessor, and the Agency, as lessee, and any amendments or modifications thereto, pursuant to which a leasehold interest in and control of the Project Facility is delivered by the Company to the Agency.

"County" shall mean the County of Chautauqua, New York.

"Current Capacity" shall have the meaning specified in Section 4.5 hereof.

"Eligible Sublessee(s)" shall mean such sublessees as are eligible for tax abatement pursuant to the Agency's eligibility policy in effect from time to time, as determined by the Agency in its sole and absolute discretion.

"Environmental Compliance Agreement" shall mean that certain Environmental Compliance and Indemnification Agreement, dated as of the date hereof, from the Company to the Agency, and shall include any and all amendments hereafter made.

"Equipment" shall mean the "Equipment" as described and defined in Exhibit D annexed hereto, provided that for purposes of Section 5.7 of this Agreement, the term "Equipment" shall have the meaning set forth in such section.

"Event of Default" shall have the meaning specified in Article XVI hereof.

"Exempt Property" shall mean only tangible personal property transferred to or acquired from time to time by the Agency in accordance with Section 3.1 or Section 5.2(g) of this Agreement which is acquired, on or before the completion date for the Project as set forth in Section 5.4 of this Agreement, for incorporation in the Project Facility or for use in connection therewith.

"Expiration Date" shall mean the earliest of (i) December 31, 2028; or (ii) termination of this Agreement by the Agency as provided for in Article XVI hereof.

"Facility" shall have the meaning ascribed to that term in Exhibit D annexed hereto.

"GAAP" shall mean shall mean generally accepted accounting principles in the United States of America as in effect from time to time as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and the elements and pronouncements of the Financial Accounting Standards Board which are applicable to the circumstances as of the date of determination consistently applied.

"Impositions" shall mean any special assessments, such as user charges, fire protection, water, utility or sewer charges, or other governmental charges customarily charged to all users on a nondiscriminatory basis, but excluding the PILOT Payments and Real Estate Taxes.

"Investment" shall have the meaning specified in Section 5.14(a) hereof.

"Permitted Exceptions" shall mean conditions of title to which the leasehold interest shall be subject (and subject to which the Company shall take title upon conveyance of the Project Facility to the Company under Article II hereof) as set forth in Exhibit C annexed hereto.

"PILOT" shall mean the Agreement for Payment in Lieu of Real Estate Taxes, dated as of the date hereof, between the Agency and the Company providing for payments in lieu of Real Estate Taxes (other than Impositions) with regard to the Project Facility.

"Premises" shall have the meaning ascribed to that term in Exhibit D annexed hereto.

"Project" shall have the meaning ascribed to that term in Exhibit D annexed hereto.

"Project Facility" shall have the meaning ascribed to that term in Exhibit D annexed hereto, and shall include all replacements, improvements, substitutions and additions thereto, acquired, constructed and installed as provided in this Agreement.

"Project Supervisor" shall mean the person or persons appointed in accordance with Section 5.2 hereof.

"Real Estate Taxes" shall mean all general levy real estate taxes levied against the Project Facility by the City, County and School District.

"Sales Taxes" shall mean any tax(es) imposed by Article 28 of the New York Tax Law, as the same may be amended from time to time.

"School District" shall mean Dunkirk City School District.

"SEORA" shall mean, collectively, the State Environmental Quality Review Act of New York, as amended, together with regulations promulgated thereunder.

"Special Assessments" shall have the meaning specified in Section 8.2 hereof.

"State" shall mean the State of New York.

"Tax District(s)" shall mean, individually or collectively, as the context may require, the County, the City and the School District.

"Taxable Status Date" shall mean May 1, 2008.

ARTICLE II

DEMISE; PREMISES; TERM

2.1 Demise.

(a) The Agency hereby leases to the Company, and the Company hereby hires from the Agency, the Project Facility for the stated term for the rents, covenants and conditions set forth herein, subject only to the Permitted Exceptions.

(b) The Company and the Agency acknowledge that the Project Facility and the 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 Agreement, including, without limitation, (i) the Company's obligation to acquire, renovate, 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 Agreement.

2.2 Description of Project Leased. The leased Project Facility is that described in Article I of this Agreement and as more fully described on the Exhibits hereto.

2.3 Term. The Project Facility is leased for a term which shall commence on the date hereof and shall end on the Expiration Date, unless this Agreement shall sooner terminate pursuant to any of the terms, covenants or conditions of this Agreement or pursuant to law.

2.4 Mandatory Termination. At the expiration of the term hereof or any extension thereof by mutual written agreement, or as otherwise provided in Article XVI hereof, this Agreement and the Company Lease Agreement shall automatically expire without any further action by the parties hereto, and the parties shall confirm in writing the termination of their respective leasehold interests in the Project Facility under the Company Lease Agreement and this Agreement. The Company hereby irrevocably designates the Agency as its attorney-in-fact, coupled with an interest, solely for the purpose of executing, delivering and recording terminations of lease together with any other documents therewith and to take such other and further actions in accordance with this Agreement as shall be reasonably necessary to confirm the termination of the Agency's leasehold interest in the Project Facility; provided that the Agency shall not execute any documents or take any action in such capacity unless the Company shall fail to do so within ten (10) days after written request therefor. Notwithstanding any such expiration or termination of this Agreement, the Company's obligations pursuant to Sections 5.14, 5.15, 8.1, 9.1, 18.1, 18.2, 18.3, 18.4, 18.5 and 19.2 and any other provisions hereof which by their terms survive the expiration or termination hereof, and under the Environmental Compliance Agreement, shall continue notwithstanding such expiration or termination.

ARTICLE III

CONDITIONS PRECEDENT

3.1 Acquisition of Project Facility by Agency. Acquisition of a leasehold interest in the Project Facility by the Agency is a condition precedent to the Agency's obligations under this Agreement. The Company shall cause to be transferred to the Agency immediately prior to the time of the delivery hereof, good and marketable leasehold title to the Premises and the Facility, free and clear of all liens, claims, encumbrances and servitudes upon the fee simple and leasehold estates, except current taxes not yet due (and except Permitted Exceptions), including any buildings, structures, improvements and related facilities and any fixtures, and any other Permitted Exception. The consideration paid therefor by the Agency shall be \$1.00 and

other good and valuable consideration (which amount does not include the cost of the renovation of the Project Facility), receipt of which is hereby acknowledged by the Company.

3.2 Compliance with SEQRA by the Company. Submission by the Company to the Agency of the Environmental Assessment Form and other documents requested by the Agency in form and content reasonably acceptable to the Agency and its counsel to enable the Agency to comply with SEQRA, if applicable, with respect to the Project is a condition precedent to the Agency's obligations under this Agreement.

3.3 Prohibition Against Retail Sales. The Company represents, warrants and covenants that no portion of the Project Facility will be utilized for the making of retail sales to customers who personally visit the Project Facility. For purposes of this Section 3.4, "retail sales" shall mean: (i) sales by a registered vendor under Article 28 of the Tax Law of the State of New York primarily engaged in the retail sale of tangible personal property, as defined in Section 1101(b)(4)(i) of the Tax Law of the State of New York; or (ii) sales of a service to such customers.

3.4 Funds of the Agency. The Company represents, warrants and covenants that no funds of the Agency have been or will be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor will any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State of New York, nor will any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media.

ARTICLE IV

AGENCY'S OBLIGATIONS

4.1 Quiet Enjoyment. Provided the Company shall pay the rent and all other sums payable by it under this Agreement and shall duly observe all the covenants, stipulations and agreements obligatory upon it, the Agency covenants that it will not interfere with the Company's peaceful, quiet and undisputed possession of the Project Facility.

4.2 Bond Issue. Subject to eligibility under Agency policy and applicable law, and subject to Agency approval, the Agency would issue its revenue bond(s) for eligible expenses incurred by the Company or its successors or assigns as part of the Project. Cost or expense eligibility would be in accordance with federal law and regulation and Agency policy. To the extent eligible, such bonds would be issued on a tax-exempt basis. The documentation evidencing such bond issuance would be in form and substance acceptable to the Agency.

ARTICLE V

THE COMPANY'S OBLIGATIONS

5.1 Information. The Company shall furnish promptly to the Agency such information, in such form and supported by such certifications, as the Agency shall reasonably request, relating to the Company's obligations hereunder and under the PILOT.

5.2 Construction of the Project.

(a) The Company, as agent of the Agency, will, subject to the provisions hereof, cause to be renovated on the Premises described in Exhibit A hereto, certain buildings (substantially in accordance with plans and specifications therefor prepared by or on behalf of the Company, to be maintained by the Company and made available by the Company for inspection by the Agency, with such changes and substitutions as may be reasonably desired by the Company), and to be acquired and installed therein the Equipment. The cost of such acquisition, renovation and installation shall be paid by the Company. All contractors, materialmen, vendors, suppliers and other companies, firms or persons furnishing labor, services or materials for or in connection with the Project shall be designated by the Company. The acquisition, renovation and installation of the Project Facility shall be supervised by Lee Davis, hereby appointed the Project Supervisor, or by such other person appointed from time to time by the Company, with notice to the Agency, as Project Supervisor.

(b) The Company agrees to complete the acquisition, and any renovation and installation of the Project Facility on behalf of the Agency under the supervision of the Project Supervisor.

(c) The Company affirms that it shall bear all of the costs and expenses in connection with the preparation of the instruments of conveyance, the delivery of any instruments and documents and their filing and recording, if required, and all taxes, if any, and charges payable in connection with the conveyance and transfer of the Project Facility and all such costs, expenses, taxes and charges shall be costs to the Company. The Company further affirms that it shall pay all shipping and delivery charges and other expenses incurred in connection with the Project and pay all lawful claims, whether for labor, materials, supplies, rents or services, which might or could if unpaid become a lien or charge on the Project Facility.

(d) The Company covenants that it will obtain and maintain or cause to be obtained and maintained all necessary approvals from any and all governmental agencies requisite to the acquisition, renovation and installation of the Project Facility, and the operation thereof, and the acquisition, renovation and installation of the Project

Facility, and the operation thereof, will be done in compliance with the federal, state and local laws, ordinances and regulations applicable thereto including, with respect to any machinery, equipment or other property of the Project Facility, all manufacturers' instructions and warranty requirements, and in compliance with the conditions and requirements of all policies of insurance with respect to the Project Facility and this Agreement. Upon completion of the Project, the Company will promptly obtain and maintain or cause to be obtained and maintained all required occupancy permits, authorizations and licenses from appropriate authorities, if any be required, authorizing the occupancy and uses of the Project Facility for the purposes contemplated by this Agreement and shall furnish copies of same to the Agency immediately upon receipt thereof.

(e) The Company will extend to the Agency all vendors' warranties received by the Company in connection with the acquisition, renovation and installation of the Project Facility, including any warranties given by contractors, manufacturers or service organizations who perform construction work on the Project Facility. If requested, the Company shall execute and deliver appropriate instruments to the Agency to accomplish the foregoing.

(f) The Company shall, upon the prior consent of the Agency, take such action and institute such proceedings as shall be necessary to cause and require all contractors and material suppliers to complete their contracts diligently in accordance with the terms of said contracts, including, without limitation, the correcting of any defective work, with all expenses incurred by the Company or the Agency in connection with the performance of their obligations under this section to be considered part of the cost of the Project, and the Agency agrees that the Company may, from time to time, in its own name, or in the name of the Agency upon the prior consent of the Agency, take such action at the Company's sole expense, as may be necessary or advisable, as reasonably determined by the Company, to insure the acquisition, renovation and installation of the Project Facility in accordance with the terms of such applicable contracts, with all costs and expenses incurred by the Company in connection therewith to be considered as part of the cost of the Project.

(g) The Company shall operate the Project Facility in compliance with all local zoning, planning and other regulations. The Company shall comply with the applicable provisions of its collective bargaining agreements and will use commercially reasonable best efforts to maintain labor harmony with all of its trade contractors.

5.3 Responsibilities for Project Performance. The Agency appoints the Company its special agent to carry out the Project in the name of the Agency, and the Company shall serve in that capacity, and as such agent. The Company may make all

arrangements to obtain or provide materials and equipment reasonably necessary for completion of the Project.

5.4 Completion by Company. The Company reasonably expects and agrees to proceed with diligence to complete, or cause to be completed, the acquisition, renovation and installation of the Project Facility by December 31, 2011.

5.5 Mechanic's Liens. The Agency shall not be liable for any labor or materials furnished or to be furnished by others to the Company, and no mechanic's, public improvement or other lien for any such labor or materials shall attach to or affect the interest of the Agency or the Project Facility. If any lien is filed by any contractor, subcontractor or materialman, or if any security agreement is filed against the leasehold improvements constructed pursuant to Section 5.2 of this Agreement, the Company shall immediately take such action by bonding, deposit or payment as will remove the lien or security interest. If the Company has not commenced proceedings to remove the lien or security interest within thirty (30) days after notice to the Company or if the Company does not diligently pursue such proceedings, the Agency may, but in no event shall be obligated to, pay the amount of the lien or security interest or discharge the same by bonding or deposit, and the amount so paid or deposited or the bond premiums, with interest thereon, shall be deemed Additional Rent under this Agreement. Such payment shall be without prejudice to the Company's rights to challenge the validity of the claim or lien.

5.6 Identification of Equipment. All Equipment is identified in Exhibit B attached hereto.

5.7 Sale or Disposition of Equipment. The Company shall not sell or dispose of any of the Equipment unless the Agency shall have first consented thereto in writing, which consent shall not be unreasonably withheld, provided that the Company shall not be required to obtain the prior consent of the Agency to the sale or other disposition of Equipment made (a) after the obsolescence or expiration of the useful life of such Equipment, as determined in accordance with industry practices, or (b) in connection with enhancements to the Equipment or the Facility necessary to cause the Project Facility to comply with developing New York State environmental clean air and water standards or with an environmental consent order covering the Project Facility. The capital expenditures (as such term is used in Section 5.14) relating to any item of Equipment acquired by the Company to replace Equipment sold or disposed of prior to expiration of the useful life shall not qualify for inclusion in the calculation of the Investment. For purposes of this Section 5.7, the term "Equipment" shall mean only such Equipment (as that term is defined in Exhibit D annexed hereto) as was purchased by or on behalf of the Company for use or installation at the Project Facility, the capital expenditures associated therewith which were included as part of the Investment for purposes of Section 5.14.

5.8 Environmental Covenants. At all times while operating the Project Facility, the Company agrees to comply with, and ensure compliance by its subtenants with, the provisions of the Environmental Compliance Agreement.

5.9 Compliance with Laws. The Company and its subtenants will at all times be in material compliance with all applicable federal, state and local laws or ordinances (including rules and regulations), including, without limitation, those relating to zoning, building, safety and environmental quality.

5.10 Waiver of Set-Off or Counterclaim. The obligation of the Company to make all payments provided for in this Agreement and to maintain the Project Facility in accordance with this Agreement shall be absolute and unconditional, irrespective of any defense or any rights of set-off, recoupment or counterclaim or deduction and without any rights of suspension, deferment, diminution or reduction it might otherwise have against the Agency, provided, however, that nothing contained herein shall be construed as a waiver of any right of the Company to commence a separate action as a result of any breach of this Agreement by the Agency.

5.11 Operation of Project Facility. The Company shall operate the Project Facility throughout the term of this Agreement for the purposes described herein and otherwise in accordance with the terms of this Agreement, industry practices, and the Act, except as appropriate (including, without limitation, reasonable and customary maintenance outages) and for such period as may be necessary in the case of an event described in Article XIV of this Agreement. Any of the foregoing notwithstanding, the Company may use the Project Facility for some purpose other than that described in this Agreement with the prior written consent of the Agency, which consent may be withheld in the Agency's sole and absolute discretion, and provided further that such proposed use constitutes a qualified "project" in accordance with Agency policy and as defined under the Act.

5.12 Equal Employment Opportunities.

(a) The Company shall ensure that all employees and applicants for employment with regard to the Project (including the employees of and applicants for employment with the Company's contractors, subcontractors and agents with respect to the Project) are afforded equal employment opportunities without discrimination.

(b) Except as is otherwise provided by collective bargaining contracts or agreements, new employment opportunities created as a result of the Project (whether by the Company or any other occupant of the Project Facility) shall be listed by the Company (or, if applicable, by such other occupant) with the New York State Department of Labor Community Services Division, and with the administrative entity of the service delivery area created by the Federal Job Training Partnership Act (P.L.

No. 97-300), or any successor statute thereto, in which the Project Facility is located. Except as is otherwise provided by collective bargaining contracts or agreements, the Company agrees, and shall cause any other occupant of the Premises to agree, where practicable, to first consider persons eligible to participate in the Federal Job Training Partnership (P.L. No. 97-300) programs, or successor programs thereto, who shall be referred by administrative entities of service delivery areas created pursuant to such act(s) or by the Community Services Division of the New York State Department of Labor for such new employment opportunities.

5.13 Employment.

(a) The Company, together with its affiliates, agrees to maintain a level of full-time equivalent jobs at the Project Facility during each year (i.e., May 1 through April 30) of the first five (5) years of the term hereof in an amount not less than the product of (i) one hundred forty-five (145), multiplied by (ii) the ratio established by dividing (A) the average nameplate rated generating capacity of the Project Facility for the calendar year or applicable part thereof (after taking into account permitted retirements and any condemnation, damage or destruction as provided in this Agreement), by (B) the Current Capacity (such minimum level of employment, the "Required Employee Threshold"). The Company represents and warrants that it, together with its affiliates, employs at least 145 full-time equivalent employees at the Project Facility as of the date hereof.

(b) The Company's failure to meet the Required Employee Threshold at any time shall constitute an Event of Default.

5.14 Minimum Investment By Company on Project.

(a) The Company agrees to make or cause to be made the Investment (hereinafter defined) in the PC Equipment, in the following minimum cumulative amounts and not later than the following dates: (i) \$55,000,000 on or before December 31, 2008, (ii) \$100,000,000 on or before December 31, 2009, (iii) \$120,000,000 on or before December 31, 2010, and (iv) \$140,000,000 on or before December 31, 2011. As used in this Agreement, the term "Investment" shall mean capital expenditures actually made by the Company for PC Equipment by itself or with bona fide third party contractors, suppliers or other entities not affiliated with the Company (unless the Company can demonstrate to the Agency's reasonable satisfaction that such affiliated entity is being paid not more than the price that would have been paid by the Company to an unaffiliated entity). The Agency and the Company agree that the term "capital expenditures" (as used in this Section 5.14) with respect to each item, the expenditure of which is eligible for inclusion within the Investment, shall include costs incurred in connection with acquisition, installation or construction of such item including, without limitation, labor costs, transportation and delivery charges and costs, costs of design

and site preparation, all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with acquisition, installation or construction of such item, and all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with acquisition, installation or construction of such item.

(b) The Company agrees to account for its capital expenditures in accordance with GAAP.

(c) The Company shall deliver to the Agency a certificate with respect to its cumulative Investment when and as required by Section 4(a)(v) of the PILOT, together with such other details and documentation as the Agency may reasonably require in accordance with the PILOT.

5.15 Prohibition against Assessment Challenge.

(a) The Company for itself and for its successors and assigns waives its rights to and agrees not to grieve, contest or protest the assessment of the Project Facility in any judicial or administrative proceeding pursuant to the New York Real Property Tax Law for all assessment rolls up to and including the 2027 assessment roll.

(b) The Company shall have the right to challenge the assessments of the Project Facility pursuant to the New York Real Property Tax Law for all assessment rolls on and after the 2028 assessment roll. provided, however, that the Company shall have the right to challenge its inclusion in any special district created after the date hereof, as provided by law, and shall have the right to challenge the assessed value of the Project Facility with respect to any Special Assessment assessed or levied against or with respect to the Project Facility by any such special district. However, any such judicial or administrative challenge shall be limited to such special district and the assessed value used to calculate the Special Assessments assessed or levied by such special district and shall not include any challenge to the assessed value used by the Tax Districts. Nothing contained herein, in the PILOT or in any discussions among the Company, the Agency and the Tax Districts shall constitute an admission by the Company, the Agency or any Tax District as to the value of the Project Facility.

(c) Within thirty (30) days of execution of this Agreement, the Company shall withdraw or enter into stipulations of discontinuance with prejudice all proceedings initiated by the Company challenging the assessed value of the Project Facility.

ARTICLE VI

THE COMPANY'S OPTION

6.1 Option. Except as set forth in Section 18(a) of the PILOT, the Company shall have no option to terminate this Agreement or any document, instrument or agreement executed and/or delivered by the Company in connection herewith.

ARTICLE VII

AGENCY ADMINISTRATIVE FEE

7.1 Payment of Administrative Fee. The Company shall pay the Agency's administrative fee of \$250,000, payable upon execution of this Agreement.

ARTICLE VIII

PILOT AND TAXES

8.1 Real Estate Taxes/Payments in Lieu of Taxes. Subject to the completion and filing of the Application for Tax Exemption by the Taxable Status Date, the Project Facility shall be exempt from Real Estate Taxes commencing with the 2008 - 2009 tax fiscal year of the School District and the 2009 tax fiscal year of the City and County. The Company shall provide the Agency with all information required to complete the Application for Tax Exemption and the Agency and the Company shall provide such additional information and take such actions as are required by the Assessor under Section 412-a of the Real Property Tax Law in order to process the Application for Tax Exemption. Upon the granting of the exemption, the Company shall make prorated PILOT payments in accordance with the PILOT. The obligation of the Company to pay PILOT payments calculated to and including the date of termination of this Agreement, even though such PILOT payment may not yet be due by such date, shall survive the termination of this Agreement.

The Agency shall, prior to the Taxable Status Date, deliver the completed Application for Tax Exemption to the Assessor and shall thereafter forward to the Company in writing any notice, bill or other statement received by the Agency concerning any Real Estate Tax. The Company may, at its expense and in its own name, in good faith and with due diligence, contest (a) the denial of an exemption from Real Estate Taxes for any reason including based upon the Application for Tax Exemption and (b) any Real Estate Taxes payable by reason of such denial, and shall give notice of such contest to the Agency. In the event of such contest, the Company may permit the Real Estate Taxes so contested to remain unpaid during the period of such contest

unless (i) the failure to pay will subject the Project Facility to loss, forfeiture or sale prior to completion of the contest, or (ii) the Agency or any of its members, directors, officers, employees or agents would be in any danger of any civil or any criminal liability, other than normal accrual of interest, whereupon such Real Estate Taxes shall be paid under protest forthwith by the Company without prejudice to its contest. The Company waives any claim or cause of action against the Agency or any of its members, directors, officers, employees or agents, and releases such parties from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes (unless due solely to the failure of the Agency to timely file the completed Application for Tax Exemption with the Assessor). The Agency shall, at the Company's sole cost, cooperate in any contest by the Company of the denial of tax exemption by the Assessor.

8.2 Impositions. The Company shall pay all Impositions with respect to the Project Facility, foreseen and unforeseen, ordinary and extraordinary, under any present or future law whether billed in the name of the Company or in the name of the Agency. The Company shall be liable for Impositions, whether or not such Impositions encumber the Agency's title. The obligation of the Company to pay Impositions calculated to and including the date of termination of this Agreement even though such Impositions may not yet be due by such date, shall survive termination of this Agreement. The Company shall provide the Agency with proof of payment of Impositions within sixty (60) days after each payment.

In the event the Project Facility is exempt from Impositions solely due to the Agency's ownership of or interest in the Project Facility, the Company shall pay all Impositions to the appropriate authorities equivalent to the Impositions which would have been imposed on the Project Facility if the Company were the owner of record of the Project Facility and the Agency were not otherwise involved with the Project Facility.

The Agency shall promptly forward to the Company in writing any notice, bill or other statement received by the Agency concerning any Imposition. The Company may, at its expense and in its own name, in good faith and with due diligence, contest any Imposition and shall give notice of such contest to the Agency. In the event of such contest, the Company may permit the Imposition so contested to remain unpaid during the period of such contest unless (i) the failure to pay will subject the Project Facility to loss, forfeiture or sale prior to completion of the contest, or (ii) the Agency or any of its members, directors, officers, employees or agents would be in any danger of any civil or any criminal liability, other than normal accrual of interest, whereupon such Imposition shall be paid forthwith by the Company without prejudice to its contest.

If any Impositions constituting special district taxes or assessments (the "Special Assessments") are hereafter assessed or levied against or with respect to the Project Facility or the revenues therefrom, the Company shall pay such Special Assessments when due.

8.3 Taxes, Assessments and Charges. The Company shall pay, as the same may become due, all taxes and governmental charges of any kind (other than Real Estate Taxes) which may lawfully be assessed or levied against or with respect to the Project Facility or the revenues therefrom.

8.4 Limitation on Sales Tax Exemption.

(a) Any exemption from Sales Taxes from or occasioned by Agency involvement with the Project shall be limited to purchases of Exempt Property by or for the Company as agent for the Agency, it being the intent of the parties that no operating expenses of the Company and no purchases of equipment or other personal property (other than Exempt Property) shall be subject to an exemption from Sales Taxes because of Agency involvement with the Project. Nothing herein shall be construed as a representation by the Agency that any property included within the definition of Exempt Property is, in fact, exempt from Sales Taxes.

(b) The Company shall annually file, and shall cause any operator of the Project Facility to annually file, a statement with the New York State Department of Taxation and Finance, on a form and in a manner as is prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project Facility, including, but not limited to, consultants or subcontractors of such agents or Project Facility operators, under the authority granted pursuant to this Agreement (the "Sales Tax Exemption Report"). The Company shall deliver a copy of the Sales Tax Exemption Report to the Agency, simultaneously upon the Company's filing of the same with the New York State Department of Taxation and Finance. Should the Company fail to comply with the foregoing requirement, and such failure continues for thirty (30) days after written notice from the Agency, the Company shall immediately cease to be the agent for the Agency in connection with the Project (such agency relationship being deemed to be immediately revoked) and shall cease to be an operator of the Project Facility without any further action of the parties, and the Agency shall be authorized to immediately terminate this Agreement and reconvey its interest in the Project Facility to the Company pursuant to Section 2.4 of this Agreement.

ARTICLE IX

INSURANCE

9.1 Liability Insurance.

(a) The Company shall maintain insurance, with insurance companies authorized to do business in the State of New York, against such risks, loss, damage and liability (including liability to third parties) and for such amounts as are customarily insured against by other enterprises of like size and type as that of the Company, including, without limitation:

(i) public liability insurance in accordance with customary insurance practices for similar operations with respect to the Project Facility and the business thereby conducted in a minimum amount of \$5,000,000 per claim made and aggregate coverage, which insurance (A) will also provide coverage of the Company's obligations of contractual indemnity, (B) may be effected under overall blanket or excess coverage policies of the Company, and (C) shall provide for no self-insured retention amount in excess of \$1,000,000;

(ii) such additional coverage of the foregoing insurance and such other insurance in such amounts and against such insurable hazards as the Agency from time to time may reasonably require; and

(iii) in the event of any construction, improvement, installation or equipping of any part of the Project Facility, the Company shall provide Owners & Contractors Protective Liability Insurance for bodily injury and property damage or equivalent coverage and coverage for the contractual indemnity obligations of the Company in connection therewith.

(b) All insurance required by subsection (a) of this section shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and rated in Best's Insurance Guide (or any successor thereto) as having a general policy holder rating of "A" and a financial rating of at least "XIII."

(c) Each of the policies or certificates evidencing the insurance required above to be obtained shall:

(i) designate the Company and the Agency as additional insureds;

(ii) provide that there shall be no recourse against the Agency for the payment of premiums or commissions or (if such policies or binders provide for the payment thereof) additional premiums or assessments;

(iii) provide that such insurance shall be primary insurance without any right of contribution from any other insurance carried by the Agency to the extent that such other insurance provides the Agency with contingent and/or excess liability insurance with respect to its respective interest as such in the Project Facility, and shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the Company) shall operate in the same manner as if there were a separate policy covering each insured;

(iv) provide that if the insurers cancel such insurance for any reason whatsoever, or there occurs any reduction in amount, or any material change is made in the coverage that adversely affects the Agency such cancellation, reduction or change shall not be effective as to the Agency until at least thirty (30) days (or ten (10) days in the event of cancellation for nonpayment of premiums) after notice to the Agency by such insurers of such cancellation, reduction or change;

(v) waive any right of subrogation of the insurers thereunder against any person insured under such policy, and waive any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any person insured under such policy; and

(vi) contain such other terms and provisions as the Agency may reasonably request or any owner or operator of facilities similar to the Project Facility would, in the prudent management of its properties, require to be contained in policies, binders or interim insurance contracts with respect to facilities similar to the Project Facility owned or operated by it.

(d) The Company agrees that it will carry or cause to be carried in effect workers' compensation insurance, disability benefits insurance and such other form of insurance which the Agency or the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of the employees of the Company and all contractors and subcontractors employed upon or with respect to the Project Facility at the time of original construction or of any additions, remodeling, alterations, repair, restoration or reconstruction thereafter. The Company shall require that all said contractors and subcontractors shall maintain all forms or types of insurance with respect to their employees required by law.

(e) On or before the commencement of the term hereof, the Company shall deliver or cause to be delivered to the Agency duplicate copies of insurance policies and/or binders or certificates of insurance evidencing compliance with the insurance requirements of this Section. At least ten (10) business days prior to the expiration of any such policy (but in no event later than such expiration), the Company shall furnish the Agency with evidence that such policy has been renewed or replaced or is no longer required by this Agreement.

(f) The Company shall not do any act, or suffer or permit any act to be done, whereby any insurance required by this Section would or might be suspended or impaired.

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

9.2 Subtenants. The Company will require its subtenants, if any, to include the Agency as an additional insured on liability insurance policies carried with respect to their operations at the Project Facility.

9.3 Certificate of Compliance. Upon request by the Agency, but no more often than once per year, the Company shall file with the Agency a certificate of a representative of the Company to the effect that the insurance it maintains with respect to the Project Facility complies with the provisions of this Article IX and that certificates thereof have been filed with the Agency and the policies evidenced thereby are in full force and effect.

ARTICLE X

UTILITIES

10.1 Payment. The Company shall pay for its own account, and not as agent of the Agency, all utility charges, including, but not limited to, gas, electricity, telephone, water and sewer.

ARTICLE XI

MAINTENANCE AND REPAIRS

11.1 Project Facility Maintenance. Upon signing of this Agreement, the Company shall accept the Project Facility "as is" and the Company shall be responsible for all maintenance, repairs, remediation and replacements for the Project Facility.

11.2 Site Improvements. The Company shall be responsible for all maintenance and repairs to roads, parking area, exterior lighting, signs and site improvements to the Premises.

11.3 NO WARRANTY OF CONDITION OR SUITABILITY. THE AGENCY HAS MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, ENVIRONMENTAL STATUS, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE PROJECT FACILITY, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE MATERIALS IN THE PROJECT FACILITY, OR THE SUITABILITY OF THE PROJECT FACILITY FOR THE PURPOSES OR NEEDS OF THE COMPANY. THE COMPANY ACKNOWLEDGES THAT THE AGENCY IS NOT THE MANUFACTURER OF THE PROJECT FACILITY NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. THE COMPANY IS SATISFIED THAT THE PROJECT FACILITY IS SUITABLE FOR ITS PURPOSES. THE AGENCY SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO THE COMPANY OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL OR INCIDENTAL DAMAGES) OR EXPENSE OF ANY KIND OR NATURE CAUSED, DIRECTLY OR INDIRECTLY, BY THE PROPERTY OR THE PROJECT FACILITY OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE, OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED.

ARTICLE XII

REPRESENTATIONS AND WARRANTIES BY THE COMPANY AND THE AGENCY

The Company makes the following representations and warranties:

12.1 The Company's Authority. The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware, is duly qualified as a foreign limited liability company authorized to do business in the State of New York and all other jurisdictions in which its operations or ownership of property so require, and has the power and authority to own its property and assets, to carry on its business as now being conducted by it and to execute, deliver and perform this Agreement.

12.2 Conflicts. The execution, delivery and performance of this Agreement and each of the documents executed by the Company in connection herewith and the consummation of the transactions herein contemplated have been duly authorized by

all requisite member and manager action and will not violate any material provision of law, any order, judgment or decree of any court or agency of government or the organizational documents of the Company, or any indenture, agreement or other instrument to which the Company is a party or by which it or any of its property is bound, or be in conflict with or result in a breach of or constitute (with due notice and/or lapse of time) a material default under any such indenture, agreement or other instrument or result in the imposition of any lien, charge or encumbrance of any nature whatsoever except as provided in this Agreement.

12.3 Inducement. The acquisition of an interest in the Project Facility by the Agency and the subleasing thereof to the Company has induced the Company to proceed with the Project and to continue to operate the Project Facility in the County.

12.4 Operations. The Company shall operate the Project Facility in accordance with this Agreement and as a qualified "project," and shall not take any action or inaction or allow to be taken any action or inaction which would cause the Project Facility to not qualify as a "project," in accordance with Agency policy and as defined under the Act.

12.5 Enforceability. This Agreement and each of the documents executed by the Company in connection herewith constitute the legal, valid and binding obligation of the Company enforceable against the Company in accordance with their terms, except to the extent that the enforceability of this Agreement may be limited by bankruptcy, moratorium or insolvency or other laws affecting creditors' rights generally.

12.6 Unlawful Use. The Company shall not use or allow the Project Facility or any part thereof to be used or occupied for an unlawful purpose or in violation of any certificate of occupancy affecting the Project Facility or in any manner which may constitute a nuisance, public or private, or make void or voidable any insurance then in force with respect to the Project Facility or which would violate or be inconsistent with the Act. The Agency agrees that it will not claim that the generation of electricity using coal fire and steam is a nuisance, provided that the same shall be accomplished in accordance with all applicable laws, rules and regulations. The Company represents and agrees that the Agency shall have such rights to enter upon the Project Facility, as shall be reasonably necessary to enable the Agency to exercise its powers, rights, duties and obligations as set forth in this Agreement.

12.7 Lawful Design of Project Facility. The Project Facility will be operated in the future, in material compliance with all applicable federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality.

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

12.9 No Retail Use. The Project Facility does not and will not constitute a project where facilities or property that are primarily used in make 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.

12.10 Receipt of Notices.

(a) The Company acknowledges the provisions of Section 874(8) of the Act, which requires that the Company, as agent of the Agency, annually file a statement with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company under the authority granted by the Agency.

(b) The Company acknowledges the provisions of Section 858-b of the Act, which requires that the Company list new employment opportunities created as a result of the Project with the following entities (hereinafter, the "JTPA Entities"): (1) the New York State Department of Labor Community Services Division, and (2) the administrative entity of the service delivery area created by the federal job training partnership act (P.L. No. 97-300), or any successor statute thereto, in which the Project Facility is located. The Company agrees, where practicable, to first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred to by the JTPA Entities.

(c) The Company agrees that it shall, as agent of the Agency, file within thirty (30) days of the date the Company is appointed the agent of the Agency, a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease.

The Agency makes the following representations and warranties:

12.11 Authority. It is duly organized, validly existing, and in good standing under the laws of New York State (the "State") and has full legal right, power, and authority to execute, deliver, and perform all applicable terms and provisions of this Agreement.

12.12 Enforceability. All necessary action has been taken to authorize its execution, delivery, and performance of this Agreement, and this Agreement constitutes its legal, valid, and binding obligation enforceable against it in accordance with the terms of this Agreement and applicable law.

12.13 No Governmental Approval. No governmental approval by or with any government authority is required for the valid execution, delivery, and performance under this Agreement by it except such as have been duly obtained or made.

12.14 No Conflicts. To the best of its knowledge, none of the execution or delivery of this Agreement, the performance of the obligation in connection with the transaction contemplated hereby, or the fulfillment of the terms and conditions hereof will (i) conflict with or violate any of its resolutions, or any of its formation documents, as amended, or of any restriction or any agreement or instrument to which it is a party and by which it is bound; (ii) conflict with, violate, or result in a breach of any applicable law, rule, regulation, or order of any court or other agency or authority of government or ordinance of the State or any political subdivision thereof; or (iii) conflict with, violate, or result in a breach of or constitute a default under or result in the imposition or creation of any mortgage, pledge, lien, security interest, or other encumbrance under this Agreement or under any term or condition of any bond, indenture, or any other agreement or instrument to which it is a party or by which it or any of its properties or assets is bound.

12.15 No Litigation. To the best of its knowledge, there is no action, suit, or proceeding, at law or in equity, or official investigation before or by any government authority pending or, to its knowledge, threatened against it, wherein an anticipate decision, ruling, or finding would result in a material adverse effect on its ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

12.16 Compliance with Governmental Approval. To the best of its knowledge, the conduct of its business is in compliance with all applicable governmental approvals with respect to which a failure to comply, in any case or in the aggregate, would result in a material adverse effect on its ability to perform its obligations under this Agreement or on the validity or enforceability of this Agreement.

ARTICLE XIII

ADVANCES BY THE AGENCY

13.1 Advances by the Agency. In the event the Company fails to take out or maintain the full insurance coverage required by this Agreement, fails to pay the PILOT payments or Impositions at or prior to the time they are required to be paid or keep the Project Facility in good order and repair and in as reasonably safe condition as its operations permit or to perform or observe any of its other obligations under this Agreement (other than renovation and installation of the Project Facility under Section 5.2), the Agency, after first notifying the Company of any such failure on its part, may (but shall not be obligated to), and without waiver of any of the rights of the Agency under this Agreement, take out the required policies of insurance and pay the premiums on the same, pay such PILOT payments, Impositions and other charges or make such repairs as may be necessary to maintain the Project Facility in good order and repair and in as reasonably safe condition as the Company's operations permit or otherwise cure any failure by the Company to perform and observe its other obligations contained in this Agreement. All amounts so advanced therefor by the Agency shall become Additional Rent and an obligation of the Company to the Agency, which amounts, together with interest thereon at the rate of eighteen (18%) percent per annum, from the date advanced, the Company will pay upon demand therefor by the Agency. Any remedy available to the Agency based on a default by the Company under this Agreement shall also be available to the Agency for the collection of all such amounts so advanced.

ARTICLE XIV

DAMAGE, DESTRUCTION AND CONDEMNATION

14.1 Damage or Destruction. If the Project Facility shall be partially or totally damaged or destroyed at any time during the term of this Agreement, the Agency shall have no obligation to replace, repair, rebuild or restore the Project Facility and, except as may be provided in the PILOT, there shall be no abatement or reduction in the rent or other amounts payable by the Company under this Agreement. In such case, the Company will promptly give written notice thereof to the Agency, generally describing the nature and extent of such damage or destruction.

14.2 The Company's Obligation to Rebuild. The Company may, at its own cost and expense, repair, restore and reconstruct the damaged or destroyed portion of the Project Facility to substantially its condition immediately prior to such damage or destruction or to a condition of at least equivalent value and function, such repair, restoration or reconstruction to be completed within a reasonable time after such damage or destruction. The Company shall not be entitled to any reimbursement from

the Agency for any cost or expenses of repair, restoration or reconstruction, nor shall the rent or other payments due from the Company be abated or diminished, except as contemplated by Section 14.1(a) above. Any repair, restoration or reconstruction by the Company shall automatically be a part of the Project Facility.

14.3 Condemnation. If the whole or any part of the Project Facility shall be taken or condemned by a competent authority for any public use or purpose, the Agency shall be under no obligation to replace, restore or rebuild the Project Facility, and, except as may be provided in the PILOT, there shall be on account of such taking or condemnation no abatement or reduction in the rent or other amounts payable by the Company under this Agreement except as provided hereinbelow. In such case, the Company will promptly give written notice thereof to the Agency, generally describing the nature and extent of such taking or condemnation. Any condemnation award or damages received by the Agency, less any sums then owing to the Agency under this Agreement or with respect to the PILOT or Impositions to the date of taking, shall be paid by the Agency to the Company. The Company shall be entitled to proceeds of any taking or condemnation relating to the remaining value of the leasehold created by this Agreement, loss of business and moving expenses.

14.4 Taking of the Company's Equipment. The Company shall be entitled to the proceeds of any taking or condemnation relating to the Company's machinery, equipment or other property to which it has retained title in accordance with the provisions of this Agreement.

ARTICLE XV

ASSIGNMENT AND SUBLETTING

15.1 Notice Required.

(a) The Company may without the consent of, but upon reasonable prior notice to, the Agency, assign its interest herein and in the Project Facility to a third party, (whether by asset sale, equity interest transfer, assignment to a lender or by any other means). Any assignee of this Agreement must utilize the Project Facility for the same purposes as the Company or for such other uses as may be in compliance with Agency policy and the Act. Any mortgage of the Project Facility to which the Agency is a party, hereafter given by the Company covering the Project Facility, shall exclude from its mortgage grant the Agency's Reserved Rights. The Agency shall, at the Company's request and cost, reasonably cooperate with the Company in connection with any such assignment.

15.2 Continuing Obligations. Any assignment of this Agreement shall not relieve the Company from any of its obligations under this Agreement and no such

assignment shall be deemed a waiver of this Article, or a release of the Company. Notwithstanding the foregoing, if the Agency concludes, in its reasonable discretion, that such assignee possesses sufficient financial wherewithal in relation to the obligations hereunder and under the Environmental Compliance Agreement and the PILOT, then the Agency shall release the Company from any obligations arising hereunder after the date of such assignment.

15.3 Document Requirements. Any assignee must agree to assume all of the obligations of the Company under this Agreement, the Company Lease Agreement, the PILOT and the Environmental Compliance Agreement, pursuant to an assumption agreement in form and content acceptable to the Agency.

15.4 Maintain Existence. During the term of this Agreement, the Company shall maintain its existence in the form in effect on the date hereof.

ARTICLE XVI

EVENTS OF DEFAULT; REMEDIES

16.1 Event of Default. Any one or more of the following events shall constitute an "Event of Default":

(a) Failure by the Company to keep continuously in effect the insurance required by Article IX hereof.

(b) Failure by the Company to pay any rent or Additional Rent or other sum that has become due and payable by the terms of this Agreement or the PILOT, and the continuation of any such failure for fifteen (15) business days after written notice from the Agency.

(c) Any default by the Company in any of its obligations under Section 5.11 of this Agreement, and the continuation of any such default for thirty (30) days after written notice from the Agency (any such default shall be subject to the penalties and late payments described in Section 9 of the PILOT).

(d) Failure by the Company to observe and perform any other covenant, condition or agreement under this Agreement, in the Environmental Compliance Agreement or under any other agreement between the Company and the Agency on its part to be performed (except the obligation to pay rent, Additional Rent or other sums and to provide insurance), and continuance of such failure for a period of thirty (30) days after receipt by the Company of written notice specifying the nature of such default, provided that if such failure is not reasonably susceptible to cure within thirty (30) days and the Company commences and diligently pursues such cure within

said thirty (30) day period, then the thirty (30) day period shall be extended for up to an additional ninety (90) days (one hundred twenty (120) days total) so long as the Company diligently pursues such cure and keeps the Agency advised as to the status of same.

(e) Assignment of the rights of the Company under this Agreement to any entity whether such assignment occurs voluntarily, involuntarily or by operation of law, except as specifically permitted by Section 15.1 of this Agreement.

(f) If the Company shall (i) apply for or consent to the appointment of or the taking of possession by a receiver, liquidator, custodian or trustee of itself or of all or a substantial part of its property, (ii) admit in writing its inability, or be generally unable, to pay its debts as such debts become due, (iii) make a general assignment for the benefit of its creditors, (iv) commence a voluntary case under the Federal Bankruptcy Code (as now or hereafter in effect), (v) file a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, (vi) fail to controvert in a timely or appropriate manner, or acquiesce in writing to, any petition filed against itself in an involuntary case under such Bankruptcy Code, or (vii) take any action for the purpose of effecting any of the foregoing.

(g) If a proceeding or case shall be commenced, without the application or consent of the Company, in any court of competent jurisdiction, seeking, (i) liquidation, reorganization, dissolution, winding-up, or composition or adjustment of debts, (ii) the appointment of a trustee, receiver, liquidator, custodian or the like or of all or any substantial part of its assets, or (iii) similar relief with regard to the Company under any law relating to bankruptcy, insolvency, reorganization, winding-up, or composition or adjustment of debts, and such proceeding or case shall continue undismissed, or an order, judgment or decree approving or ordering any of the foregoing shall be entered and continued unstayed and in effect, for a period of thirty (30) days; or any order for relief against the Company shall be entered in an involuntary case under such Bankruptcy Code.

(h) Any representation or warranty made by the Company herein or in any report, certificate, financial statement or other instrument furnished pursuant hereto or any of the foregoing shall prove to be false, misleading or incorrect in any material respect as of the date made.

16.2 Remedies on Default. Whenever any Event of Default shall have occurred, the Agency may take one or more of the following remedial steps:

(a) Terminate this Agreement and the Company Lease Agreement and confirm such termination as provided in Section 2.4 hereof; provided that upon the occurrence of any Event of Default under Section 16.1(f) of this Agreement, this Agreement and the Company Lease Agreement shall automatically terminate without any action on the part of the Agency.

(b) Exercise its remedies under the Environmental Compliance Agreement or the PILOT.

(c) Take whatever action at law or in equity as may appear necessary or desirable to collect any sums due under this Agreement when due and thereafter to become due, or to enforce performance or observance of any obligations, agreements or covenants of the Company under this Agreement.

16.3 Compensation and Expenses of Agency. The Company shall pay the reasonable fees and expenses of the Agency (including attorneys' fees) incurred by the Agency from time to time by reason of the Agency's involvement with the Project Facility, within thirty (30) days of request therefor. Should the Company fail to so timely pay any such fees or expenses, such payment shall be subject to the penalty and interest provisions set forth in Section 7 of the PILOT, as if such payment was a delinquent PILOT payment.

16.4 Remedies Cumulative. The rights and remedies of the Agency under this Agreement shall be cumulative and shall not exclude any other rights and remedies of the Agency allowed by law with respect to any default under this Agreement. Failure by the Agency to insist upon the strict performance of any of the covenants and agreements herein set forth or to exercise any rights and remedies upon default by the Company hereunder shall not be considered or taken as a waiver or relinquishment for the future of the right to insist upon and enforce through specific performance or other appropriate legal remedy a strict compliance by the Company with all of the covenants and conditions of this Agreement, or of the rights to exercise any such rights or remedies, if such default by the Company be continued or repeated, or of the right to recover possession of the Project Facility.

16.5 No Additional Waiver Implied by One Waiver. In the event any covenant or agreement contained in this Agreement should be breached by either party and thereafter 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. No waiver shall be binding unless it is in writing and signed by the party making such waiver. No course of dealing between the Agency and the Company or any delay or omission on the part of the Agency in exercising any rights shall operate as a waiver.

16.6 Further Assurances. The Company will cooperate with the Agency for the purpose of protecting the Agency's interest in the Project Facility, this Agreement and the sums due under this Agreement and shall execute and deliver to the Agency upon written request such other instruments and assurances as the Agency deems necessary or advisable for the implementation, effectuation, confirmation or perfection this Agreement and any rights of the Agency hereunder.

16.7 Mortgagee Right to Cure. Any Mortgagee shall have the same rights to cure hereunder as are set forth in Section 10(d) of the PILOT.

ARTICLE XVII

FURTHER REQUIREMENTS

17.1 Opinions. The Company shall deliver promptly to the Agency, such opinions of counsel as may be reasonably requested by the Agency as to any matters provided for in this Agreement.

17.2 Notices. The Company shall give written notice to the Agency promptly upon the Company's discovery of any Event of Default under this Agreement.

17.3 Other Acts. At the Agency's request, the Company shall execute and deliver to the Agency all further documents and perform all other acts which the Agency reasonably deems necessary or appropriate to perfect or protect the Agency's rights and to carry out the purposes and terms of this Agreement.

ARTICLE XVIII

INDEMNITY

18.1 Indemnity. The Company shall at all times protect, indemnify and hold the Agency harmless against all claims (whether under any statute or at common law) for losses, damage, injury, including death, property damage and liability however caused, other than losses arising from the gross negligence or willful misconduct of the Agency, arising during the term of this Agreement upon or about the Project Facility or resulting from, arising out of, or in any way connected with the acquisition, construction, renovation, installation, equipping or operation of the Project Facility, the preparation of the site thereof, the condition of or defects in the Project Facility (including any defects in the Agency's title thereto) or the maintenance, repair, replacement, restoration, rebuilding, remediation, upkeep, use, occupancy, ownership, leasing or subletting of the Project Facility or any portion thereof or the Company's failure to fulfill its obligations hereunder. The Agency shall not be liable for any damage or injury, including death, to the person or property of the Company or its partners, employees, agents or servants or persons under the Company's control or

supervision, or any other person who may be about the Project Facility, due to any act or negligence of any person other than if same arises solely from the gross negligence or willful misconduct of the Agency. The Parties shall reasonably cooperate with regard to any joint defense of any such action. The Company shall have the right to approve any settlement of any such action.

18.2 Release. The Company releases the Agency from, and agrees that the Agency shall not be liable for and the Company agrees to indemnify and hold the Agency harmless against any expense, including without limitation reasonable attorneys' fees, penalties, fines, losses, damages, injuries or liabilities incurred because of any lawsuit commenced as a result of action taken or not taken by the Agency with respect to any of the matters set forth in Section 18.1 hereof or at the direction of the Company and in good faith with respect to any of such matters above referred to. The Agency shall promptly notify the Company in writing of any claim or action brought against the Agency, in which indemnity may be sought against the Company pursuant to Section 18.1; such notice shall be given in sufficient time to allow the Company to defend or participate in such claim or action, but the failure to give such notice in sufficient time shall not constitute a defense hereunder nor in any way impair the obligations of the Company under Sections 18.1 and 18.2 hereof.

18.3 Persons Protected. The indemnifications and protections set forth above in this Article XVIII, and elsewhere herein shall be extended, with respect to the Agency, to its members, directors, officers, employees, agents and servants and persons under the control or supervision of the Agency.

18.4 Survival of Obligations. Anything to the contrary in this Agreement notwithstanding, the covenants of the Company contained in this Article XVIII and in the Environmental Compliance Agreement shall remain in full force and effect after and survive the expiration or termination of this Agreement.

18.5 Relationship of Company to Agency. For the purposes of this Article XVIII, the Company shall not be deemed to be an employee, agent or servant of the Agency or a person under the control or supervision of the Agency.

18.6 Insuring of Obligations. To effectuate the purposes of this Article XVIII, the Company will provide for and insure, in the liability policies required in Section 9.1 hereof, not only its own liability in respect of the matters therein mentioned but also the liability pursuant to this Article.

ARTICLE XIX

DISPUTE RESOLUTION

19.1 Governing Law. This Agreement shall be governed in all respects by the laws of the State of New York, as the same may be in effect from time to time, without regard to its principles of conflicts of law.

19.2 WAIVER OF TRIAL BY JURY. THE COMPANY AND THE AGENCY WAIVE THE RIGHT TO TRIAL BY JURY OF ANY DISPUTE ARISING UNDER THIS AGREEMENT, AND THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

ARTICLE XX

MISCELLANEOUS CLAUSES

20.1 Notices. All notices, demands or communications given under this Agreement shall be sent to the parties at the addresses set forth below or at such other addresses as the parties may designate by written notice and shall be by hand delivery, overnight courier or prepaid registered or certified mail, return receipt requested, and shall be deemed given on the date received by hand delivery or overnight courier, or three (3) business days after the date mailed:

To the Agency: County of Chautauqua Industrial
Development Agency
200 Harrison Street
Jamestown, NY 14701
Attention: Administrative Director

With a copy to: Phillips Lytle LLP
8 East Third Street, Suite 307
P.O. Box 1279
Jamestown, NY 14702
Attention: Gregory L. Peterson, Esq.

To the Company: Dunkirk Power LLC
c/o NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
Attention: Lee Davis

With a copy to: Nixon Peabody LLP
1100 Clinton Square
Rochester, NY 14604
Attention: Peter H. Swartz, Esq.

To the Tax Districts: City of Dunkirk
Attn: Assessor
City Hall
Dunkirk, NY 14048

Dunkirk City School District
Attn: Gary Cerne
620 Marauder Drive
Dunkirk, NY 14048

County of Chautauqua
Attn: County Executive
Gerace Office Building
Mayville, NY 14757

20.2 No Recourse Under This Agreement. No provision, covenant or agreement contained herein, in any other agreement entered into in connection herewith, or any obligations herein imposed, upon the Agency, or any breach thereof, shall constitute or give rise to or impose upon the Agency, a debt or other pecuniary liability or a charge upon its general credit, and all covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his individual capacity. 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:

(i) The party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period; and

(ii) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses; and

(iii) If the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company), or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify and hold harmless the Agency and its members, officers, agents (other than the Company), and employees against any liability incurred as a result of its compliance with such demand; and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company), and employees against all liability expected to be incurred as a result of compliance with such request.

20.3 Entire Agreement. This Agreement contains the entire agreement between the parties and all prior negotiations and agreements are merged in this Agreement. This Agreement may not be changed, modified or discharged, in whole or in part, except by a written instrument executed by the party against whom enforcement of the change, modification or discharge is sought.

20.4 Agency Representations. The Company expressly acknowledges that neither the Agency nor the Agency's agents has made or is making, and the Company, in executing and delivering this Agreement, is not relying upon warranties, representations, promises or statements, except to the extent that the same are expressly set forth in this Agreement, and no rights, easements or licenses are or shall be acquired by the Company by implication or otherwise unless expressly set forth in this Agreement.

20.5 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors and assigns.

20.6 Paragraph Headings. Paragraph headings are for convenience only and shall not affect the construction or interpretation of this Agreement.

20.7 Time is of the Essence. Time is of the essence as to each of the dates set forth herein.

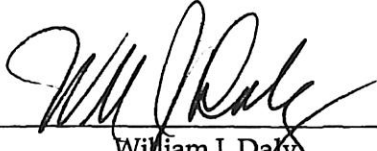
20.8 Additional Notice Provisions. The Company agrees to provide to the Tax Districts (a) copies of all notices, demands or communications given or received by the Company under this Agreement, and (b) copies of all reports and other documentation

submitted by the Company to the Agency pursuant to this Agreement or the PILOT, in each case simultaneously with the delivery, submittal or receipt thereof by the Company.


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IN WITNESS WHEREOF, the Agency and the Company have duly executed this Agreement, as of the day and year first above written.

COUNTY OF CHAUTAUQUA INDUSTRIAL
DEVELOPMENT AGENCY

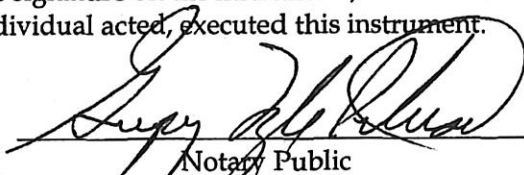
By: 
William J. Daly
Administrative Director

DUNKIRK POWER LLC

By: 
Peter G. Furniss
Secretary

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

On the 25 day of April, in the year 2008, before me, the undersigned, a Notary Public in and for said state, personally appeared William J. Daly, 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 this instrument.

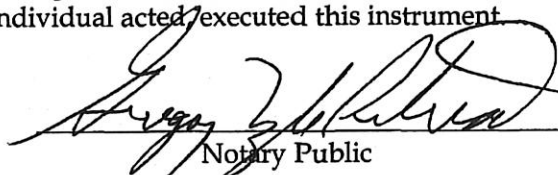


Notary Public

GREGORY LYLE PETERSON, #4643023
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires 6/30/11

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

On the 25 day of April, in the year 2008, before me, the undersigned, a Notary Public in and for said state, personally appeared Peter G. Furniss, 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 this instrument.



Notary Public

GREGORY LYLE PETERSON, #4643023
Notary Public, State of New York
Qualified in Chautauqua County
My Commission Expires 6/30/11

EXHIBIT A

Description of Premises

See Attached

2008 Dunkirk Power LLC Project

Real Property Description

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Dunkirk, County of Chautauqua and State of New York, being part of Lot 24, Township 6 and Range 12 of the Holland Land Company Survey, and being more particularly bounded and described as follows:

BEGINNING at a point where the southerly shore line of Lake Erie is intersected by the centerline of West Cedar Street extended, as said shore and street lines are laid down on a plat titled "Map of the Town of Dunkirk in Chautauqua Co., State of New York, 1836. The Termination of the New York and Erie Railroad made by Edward and Samuel Doughty, City Surveyors, in 1836, on file in the Office of the Clerk of the County of Chautauqua; said point of beginning being N 78° 51' 53" E, a distance of 177.40 feet measured along the centerline of West Cedar Street from its intersection with the centerline of Point Drive North (formerly Light Street); thence N 72° 08' 55" E, a distance of 816.09 feet to the southwesterly corner of the west breakwater; thence along the southerly face of the foundation course of the west breakwater and the lighthouse pier, the following courses and distances: N 59° 41' 55" E, a distance of 417.21 feet to an angle; thence N 61° 21' 15" E, a distance of 82.84 feet to an angle; thence S 27° 16' 15" E, a distance of 12.15 feet to an angle; thence N 63° 02' 55" E, a distance of 287.23 feet to an angle; thence N 27° 16' 15" W, a distance of 6.20 feet to an angle; thence N 64° 01' 35" E, a distance of 270.06 feet to an angle; thence S 42° 54' 21" E, a distance of 6.52 feet to an angle; thence N 47° 53' 37" E, a distance of 19.91 feet to the southeast corner of the lighthouse pier at the easterly end of the west breakwater; thence departing from the courses of said west breakwater and lighthouse pier and running S 41° 22' 55" E, a distance of 1485.92 feet to a point in the westerly boundary of the existing "project limit" for the improvement of the Dunkirk Harbor as approved by the District Engineer of the U.S. Engineer's Office at Buffalo, New York as said "project limit" is shown on Map No. E-69-A-4, dated November 12, 1946, accompanying the U.S. Engineer's Review Report of November 15, 1946, said last mentioned point being 200.0 feet northerly measured along the westerly line of said "project limit" from the southwest corner thereof; thence S 63° 16' 01" W, a distance of 1365.86 feet to a point on the northerly extension of the centerline of Brigham Road; thence S 01° 03' 08" W, along the northerly extension of the centerline of Brigham Road, 210.0 feet to the point of intersection with the southerly shoreline of Lake Erie as shown as the "Doughty Survey of 1836."; thence continuing S 01° 03' 08" W, a distance of 198.02 feet to a point; thence S 78° 52' 42" W, a distance of 696.33 feet to a point; thence S 11° 07' 18" E, a distance of 453.00 feet to a point in the northerly line of Lake Shore Drive; thence S 78° 52' 42" W, a distance of 50.0 feet to a point; thence N 11° 07' 18" W, a distance of 393.0 feet to a point; thence S 78° 52' 42" W, a distance of 223.00 feet to a point; thence S 11° 08' 07" E, a distance of 41.75 feet to a point; thence S 25° 48' 26" W, a distance of 210.62 feet to a point; thence S 11° 08' 07" E, a distance of 175.0 feet to the southerly line of Lake Shore Drive; thence S 78° 52' 42" W, a distance of 104.79 feet to a point; thence N 11° 08' 07" W, a distance of 59.46 feet to a point of curve; thence northeasterly on a curve to the right, having a radius of 528.34 feet, an arc distance of 496.42 feet to a point of tangency; thence N 48° 32' 01" E, a distance of 178.22 feet to a point; thence N 11° 08' 07" W, a distance of 543.0 feet to a point; thence S 78° 51' 03" W, a distance of 499.0 feet to a point in the easterly line of Point

Drive North; thence N 11° 08' 07" W, along the east line of Point Drive North, a distance of 126.0 feet to a point; thence N 78° 51' 53" E, a distance of 100.0 feet to a point; thence N 11° 08' 07" W, a distance of 213.0 feet to a point; thence S 78° 51' 53" W, a distance of 100.0 feet to a point in the easterly line of Point Drive North; thence N 11° 08' 07" W, along the east line of Point Drive North a distance of 456.0 feet to a point; thence N 78° 51' 53" E, a distance of 100.0 feet to a point; thence N 11° 08' 07" W, a distance of 90.0 feet to a point; thence S 78° 51' 53" W, a distance of 100.0 feet to a point in the easterly line of Point Drive North; thence N 11° 08' 07" W, along the east line of Point Drive North a distance of 30.0 feet to a point; thence N 78° 51' 53" E, a distance of 100.0 feet to a point; thence N 11° 08' 07" W, a distance of 60.0 feet to a point; thence S 78° 51' 53" W, a distance of 100.0 feet to a point in the easterly line of Point Drive North; thence N 11° 08' 07" W, along the east line of Point Drive North a distance of 4.21 feet to a point which intersects the centerline of West Cedar Street extended; thence N 78° 51' 53" E, a distance of 144.40 feet along said centerline extended to the point of beginning.

TOGETHER WITH the rights, benefits, privileges and easements created in and by that certain side track agreement between Buffalo Niagara Electric Corporation and Consolidated Rail Corporation dated July 5, 1949.

TOGETHER WITH an Easement for ship docking facility dated May 1, 1998 between The People of the State of New York and Niagara Mohawk Power Corporation recorded September 9, 1998 in the Department of State in Volume 499 of Miscellaneous Deeds and Title Papers at page 32 and also recorded in the Chautauqua County Clerk's Office in Liber 2401 of Deeds at page 14.

TOGETHER WITH all rights, benefits and privileges granted to Niagara Mohawk Power Corporation (including without limitation the right to install and operate a fish return system and to receive an easement therefore) pursuant to New York State Department of Environmental Conservation Permit Number 9-0603-00021/0024-0.

FEE RESERVATION PARCEL

EXCEPTING AND RESERVING to Niagara Mohawk Power Corporation and its successors and assigns the fee simple title to the following described parcel of land:

ALL THAT TRACT OR PARCEL OF LAND situate in the City of Dunkirk, County of Chautauqua, State of New York, being part of Lot 24, Township 6, Range 12 of the Holland Land Company's Survey being more particularly bounded and described as follows:

BEGINNING at a point, said point having N.Y.S. plane coordinate values north 908,151.47 east 942,804.28; thence S 62° 45' 56" W, a distance of 656.09 feet to a point; thence N 27° 03' 54" W, a distance of 265.43 feet to a point; thence N 29° 13' 50" E, a distance of 70.49 feet to a point; thence N 62° 42' 05" E, a distance of 460.74 feet to a point; thence N 27° 39' 50" W, a distance of 68.32 feet to a point; thence N 62° 53' 16" E, a distance of 138.15 feet to a point; thence S 26° 57' 14" E, a distance of 372.91 feet to the point of beginning, being 4.78 acres of land, more or less.

RESERVED ACCESS EASEMENTS

ALSO, RESERVING permanent easements for ingress and egress to the above described "FEE RESERVATION PARCEL" on, over and across the existing access roads as shown in their approximate locations on a map filed in the Chautauqua County Clerk's Office on June 15, 1999, and more particularly described as follows:

PARCEL 1 - 30 foot wide access easement lying 15 feet each side of the hereinafter described centerline:

BEGINNING at a point in the east line of Point Drive North 426.01 feet south of the centerline of West Cedar Street extended; thence N 78° 52' E, a distance of 12.7 +/- feet to a point of curvature; thence along a curve to the left having a radius of 440 feet an arc length of 149.9 +/- feet to a point of tangency; thence N 59° 21" E, a distance of 961.2 +/- feet to a point of curvature; thence along a curve to the right having a radius of 55 feet an arc length of 89.6 +/- feet to a point of tangency; thence S 27° 19' E, a distance of 231.3 +/- feet to a point of curvature; thence along a curve to the left having a radius of 40 feet an arc length of 59.6 +/- feet to a point of tangency and also the point of beginning of parcel 2 described hereinafter; thence N 62° 46' E, a distance of 192.0 +/- feet to a point of curvature; thence along a curve to the right having a radius of 10 feet an arc length of 20.3 +/- feet to a point of tangency; thence S 00° 43' E, a distance of 10.2 +/- feet to a point of curvature; thence along a curve to the right having a radius of 45 feet an arc length of 25.3 +/- feet to a point of tangency; thence S 31 ° 30' W, a distance of 77.6 +/- feet to a point on a northerly line of the lands previously described as being excepted and reserved by Niagara Mohawk Power Corporation and being the terminus of parcel 1.

Parcel 2 - 30 foot wide access easement lying 15 feet each side of the hereinafter described centerline:

BEGINNING at the point referenced in lands previously described in parcel 1; thence along a curve to the right having a radius of 15 feet an arc length of 22.4 +/- feet to a point of tangency; thence S 27° 16' E, a distance of 15.1 +/- feet to a point of curvature; thence along a curve to the right having a radius of 40 feet an arc length of 26.9 +/- feet to a point of tangency; thence S 11° 15' W, a distance of 35.1 +/- feet to a point on the northerly line of lands previously described as being excepted and reserved by Niagara Mohawk Power Corporation and being the terminus of parcel 2.

TRANSMISSION EASEMENT AREA

ALSO RESERVING a permanent easement to construct, reconstruct, replace, renew, repair, maintain, operate and remove electric and communication lines, including such towers, poles and/or supporting structures, cross arms, insulators, transformers, poles, cables, conduits, guys stubs, anchors, appliances, and all other appurtenances incident to said electric lines for the transmission and distribution of electric energy and communication signals as Niagara Mohawk Power Corporation, its successors and assigns, in its or their own sole discretion, may now and at any time and from time to time in the future, deem necessary or proper, upon, over, across and under a parcel of land more particularly described as follows:

BEGINNING at the most northerly corner of the lands previously described to be retained by Niagara Mohawk Power Corporation; thence N 62° 53' 16" E, a distance of 20.0 feet to a point; thence S 26° 57' 14" E, parallel with and distant 20 feet northeasterly from the last described course of lands to be retained by Niagara Mohawk Power Corporation a distance of 466.98 feet to a point; thence S 03° 46' 48" W, a distance of 130.11 feet to a point; thence S 27° 53' 48" W, a distance of 347.47 feet to a point; thence S 54° 11' 05" W, a distance of 610.33 feet to a point; thence S 54° 19' 40" W, a distance of 436.02 feet to a point; thence S 43° 50' 13" W, a distance of 472.95 feet to a point; thence S 10° 50' 43" E, a distance of 278.75 feet to a point in the north line of Lake Shore Drive; thence westerly along the north line of Lake Shore Drive a distance of 50 feet to a point, said point being 128.2 feet +/- easterly of the east line of Point Drive North; thence along the lands to be conveyed by Niagara Mohawk Power Corporation northerly 59.46 feet to a point of curvature; thence along a curve to the right having a radius of 528.34 feet an arc length of 496.42 feet to a point; thence easterly tangent from the previous curve a distance of 178.22 feet to a point on the west line of lands conveyed to B.N.E. Corporation by Liber 814 of Deeds at page 292; thence northerly and along the west line of said Liber 814 of Deeds at page 292 a distance of 361 feet more or less to a point; thence N 48° 33' 37" E, parallel with and approximately 134 feet northwesterly of the centerline of the Erie-Dunkirk #68 Electric Transmission Line a distance of 690.59 feet to a point, said point being the most southwesterly corner of lands to be retained by Niagara Mohawk Power Corporation; thence N 62° 45' 56" E, along the southeasterly line of lands to be retained by Niagara Mohawk Power Corporation a distance of 656.09 feet to the most southeasterly corner of lands to be retained by Niagara Mohawk Power Corporation; thence N 26° 57' 14" W, along the northeasterly line of lands to be retained by Niagara Mohawk Power Corporation a distance of 372.91 feet to the point of beginning.

The bearings described in the above exception and reservation parcels are based on New York State Plane Coordinate NAM-west zone, established by Global Positioning System (GPS) observation and adjusted to the published coordinates for control stations Dunport and USACOE monument stamped "5-Reset". Associated horizontal distances are measured along ground.

ALSO RESERVING the perpetual right, privilege and easement to trim, cut and remove any and all trees and brush within the bounds of the Easement Area, and also any and all trees and brush beyond the bounds of the Easement Area which, in the sole judgment of Niagara Mohawk Power Corporation may be a source of danger to the grantor's electric facilities, all as the grantor may from time to time deem necessary; and together with the further right of access to and from the Transmission Easement Area across adjoining lands conveyed to Dunkirk Power LLC for the purposes herein stated.

EXHIBIT B

Description of Equipment

The Equipment included in the description of the Project in Exhibit D.

EXHIBIT C

Permitted Exceptions

Exceptions as set forth on Policy No. 5008-25087 issued by TICOR Title Insurance Company to the Agency insuring the Agency's leasehold interest in the Premises.

EXHIBIT D

Description of the Project

"Project" shall mean (A)(i) the acquisition of a leasehold interest in the improved real property located at 100 Point Drive North, City of Dunkirk, County of Chautauqua, New York and consisting of approximately 83.5 acres (the "Premises"), (ii) the renovation of the existing Dunkirk Steam Station located on the Premises (the "Facility") to the extent required to install the Equipment (as hereinafter defined), and (iii) the acquisition and installation of the following equipment, machinery, fixtures and furnishings therein and thereon (the "Equipment"): solid waste disposal facility and pollution control equipment consisting of fabric filter (baghouse) system, solids handling equipment, a solid waste silo system and related improvements, structures and auxiliary equipment to remove nitrogen oxide, sulfur dioxide, mercury and particulate matter from the Facility's flue gas, as well as other equipment and maintenance work necessary to comply with an environmental consent order covering the Facility (the Premises, the Facility and the Equipment being collectively referred to as 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 sublease (with an obligation to purchase) of the Project Facility to the Company.