

Transcript Document No. 3

TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY
(TOWN OF BROOKHAVEN, NEW YORK)

and

CAITHNESS LONG ISLAND, LLC

LEASE AGREEMENT

Dated as of February 1, 2007

Town of Brookhaven Industrial Development Agency
(Caithness Long Island, LLC 2007 Facility)

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THIS LEASE AGREEMENT, dated as of February 1, 2007 (the "Lease Agreement"), is between the TOWN OF BROOKHAVEN INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, having its office at 1 Independence Hill, 3rd Floor, Farmingville New York 11738 (the "Agency"), and CAITHNESS LONG ISLAND, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware and authorized to transact business in the State of New York, having its principal office at c/o Caithness Corporation, 565 Fifth Avenue, 29th Floor, New York, New York 10017 (together with its successors and assigns, the "Company").

R E C I T A L S

Title 1 of Article 18-A of the General Municipal Law of the State of New York was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York;

The aforesaid act authorizes the creation of industrial development agencies for the Public Purposes of the State of New York (the "State");

The aforesaid act further authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, reconstruct, renovate, refurbish, equip, lease, sell and dispose of land and any building or other improvement, and all real and personal property, including but not limited to, machinery and equipment deemed necessary in connection therewith, whether now in existence or under construction, which shall be suitable for manufacturing, civic, warehousing, research, commercial, recreation or industrial facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living;

Pursuant to and in accordance with the provisions of the aforesaid act and Chapter 358 of the Laws of 1970 of the State, as amended (collectively, the "Act"), the Agency was created and is empowered to undertake the providing, financing and leasing of the Facility defined below;

The Facility shall consist of the acquisition, construction and equipping of an industrial development facility located on a 55 acre parcel of land (the "Land") located north of Horseblock Road, south of the Long Island Expressway, west of Patchogue Yaphank Road, East of Old Dock Road, south of the Long Island Rail Road (Main Branch) at the northern terminus of Zorn Boulevard in the Town of Brookhaven, Suffolk County, New York (more specifically known as S.C. tax map numbers Section 777, Block 1, Lots 026.000 and 028.005, Section 777, Block 2, Lots 001.000 and 002.000 and Section 777, Block 7, Lot 001.001), Town of Brookhaven, Suffolk County, New York, together with certain access and operations and use rights over the CELI Easement Areas (as defined in this Lease Agreement), all as more particularly described in Exhibit A attached hereto (the "Site"), and the construction and equipping of four (4) buildings thereon, totaling approximately 22,000 square feet to be used as an electric generating facility, and the acquisition and installation of certain electric generating equipment and auxiliary equipment including, but not limited to, a gas turbine and generator, a steam turbine and generator, a heat recovery steam generator, an air cooled condenser, generator step-up transformers, two auxiliary transformers, gas

conditioning equipment (including compressors), a low sulfur distillate fuel tank, a raw water tank, a demineralized water tank, fire water pumps, two boiler feed pumps, two condensate pumps, two vacuum pumps, plus other miscellaneous pumps, motors, switchgear, station service transformers, instruments, controls, piping, valves and other equipment as may be required, all to be leased, subleased or sold by the Agency to the Company (the "Facility"), including the following in connection with the appointment of the Company as the agent of the Agency, as they relate to the acquisition, construction and equipping of such Facility, whether or not any materials or supplies described below are incorporated into or become an integral part of such Facility: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction of the Facility, (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction of the Facility, and (iii) all equipment, machinery, and other tangible personal property (including installation costs with respect thereto), installed or placed in, upon or under such Facility;

The Agency proposes to acquire a leasehold interest in and to the Site pursuant to a certain Ground Lease, dated as of February 1, 2007 (the "Ground Lease"), between the Company, as lessor, and the Agency, as lessee;

The Agency proposes to acquire title to the Improvements and Equipment consisting of the balance of the Facility and to sublease the Site and lease the Improvements and Equipment to the Company pursuant to this Lease Agreement, and the Lender (as such term is defined in Schedule A to this Lease Agreement) proposes to finance the cost thereof by making the Loan (as such term is defined in Schedule A to this Lease Agreement) to the Company;

The Company has agreed with the Agency, on behalf of the Agency and as the Agency's agent, to acquire, construct and equip the Facility in accordance with the Plans and Specifications; and

The Agency proposes to sublease the Site and lease the balance of the Facility to the Company, and the Company desires to sublease the Site and lease the balance of the Facility from the Agency, upon the terms and conditions set forth in this Lease Agreement.

AGREEMENT

For and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto do hereby mutually agree as follows:

ARTICLE I

DEFINITIONS

All capitalized terms used in this Lease Agreement and not otherwise defined herein shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Schedule A.

ARTICLE II

REPRESENTATIONS AND COVENANTS

Section 2.1 Representations and Covenants of Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Agency is duly established and validly existing under the provisions of the Act and has full legal right, power and authority to execute, deliver and perform each of the Agency Documents and the other documents contemplated thereby. Each of the Agency Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Agency.

(b) The Agency will acquire a leasehold interest in the Site to be acquired, will cause the Improvements to be acquired and constructed and will cause the Equipment to be acquired and installed and will sublease the Site and lease the balance of the Facility to the Company pursuant to this Lease Agreement, all for the Public Purposes of the State.

(c) By resolution adopted on February 26, 2007, the Agency adopted a Findings Statement for the Facility, and further certified that, having considered the DEIS and FEIS, and such other documents as may be necessary or appropriate, (1) the requirements of 6 NYCRR Part 617 have been met; (2) consistent with the social, economic and other essential considerations, from among the reasonable alternatives thereto, the Facility is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including effects disclosed in the environmental impact statement; and (3) consistent with social, economic, and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement will be minimized or avoided by incorporating as conditions those mitigative measures which were identified as practicable.

(d) Neither the execution and delivery of any of the Agency Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Agency Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law or ordinance of the State or any political subdivision thereof or of the Agency's Certificate of Establishment or By-Laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, certificate of establishment, by-laws, restriction, agreement or instrument, except for Permitted Encumbrances.

(e) Each of the Agency Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms.

(f) The Agency has been induced to enter into this Lease Agreement by the undertaking of the Company to utilize the Facility in the Town of Brookhaven, Suffolk County, New York.

(g) The Agency will, at the sole cost and expense of the Company, grant and, if required, subordinate any other easements necessary in connection with the construction, equipping, operation and maintenance of the Facility.

(h) The Agency agrees, at the sole cost and expense of the Company, to hereafter execute and deliver (i) any and all Loan Documents to which the Agency is a signatory, and (ii) any and all amendments, supplements, and amendments and restatements to the Agency Documents as may be requested by the Lender or the Company, provided such documents are in a form approved by the Agency.

Section 2.2 Representations and Covenants of Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained, which representations and covenants are made as of the Closing Date:

(a) The Company is a limited liability company duly organized and validly existing under the laws of the State of Delaware and is authorized to do business in the State of New York and has full legal right, power and authority to execute, deliver and perform each of the Company Documents and the other documents contemplated thereby. Each of the Company Documents and the other documents contemplated thereby has been duly authorized, executed and delivered by the Company.

(b) Neither the execution and delivery of any of the Company Documents and the other documents contemplated thereby or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of any of the Company Documents and the other documents contemplated thereby, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law or ordinance of the State or any political subdivision thereof or of the Company's Certificate of Formation or Limited Liability Company Agreement, as amended, or any restriction or any agreement or instrument to which the Company is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company under the terms of any such law, ordinance, articles of organization or operating agreement, as amended, restriction, agreement or instrument, except for Permitted Encumbrances. The Facility and the design, acquisition, construction, equipping, installation and operation thereof will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. The Company shall defend, indemnify and hold harmless the Agency and the Lender for expenses, including reasonable attorneys' fees, resulting from any failure by the Company to comply with the provisions of this subsection.

(c) Except as otherwise provided in the Mortgages, the Company shall perform or cause to be performed, for and on behalf of the Agency, each and every obligation of the Agency under and pursuant to the Mortgages.

(d) Each of the Company Documents and the other documents contemplated thereby constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(e) The Company will complete construction of the Facility in accordance with the terms and provisions of the Plans and Specifications.

(f) The Facility is and will continue to be a "project" as such quoted term is defined in the Act. The Company will not take any action, or fail to take any action, which would cause the Facility to not constitute a "project" as such quoted term is defined in the Act.

ARTICLE III

FACILITY LAND AND TITLE INSURANCE

Section 3.1 Agreement to Convey to Agency. The Company has conveyed or has caused to be conveyed to the Agency (i) a good and marketable leasehold interest in the Site and (ii) lien-free title to all buildings, structures, enclosures or other improvements existing thereon, in each case except for Permitted Encumbrances, and will convey or cause to be conveyed to the Agency lien-free title to the Equipment and Improvements acquired after the date hereof, except for Permitted Encumbrances.

Section 3.2 Title Insurance. The Company (i) has obtained or will obtain a leasehold title insurance policy for the benefit of the Agency insuring the Agency's leasehold estate in the Site and fee estate in the Improvements, (a) in an amount equal to \$1,000,000 upon the execution and delivery of this Lease Agreement, and (b) in an amount equal to \$450,000,000 upon the execution and delivery of the Loan Documents (in each case, such policy shall contain an endorsement pursuant to which the Company will become the beneficiary thereof once the Ground Lease and this Lease Agreement have been terminated and the Improvements have been transferred to the Company by the Agency), and (ii) will obtain a mortgage title policy for the benefit of the Lender insuring the Lien of the Mortgages on the Site and the Improvements, in an amount reasonably acceptable to the Lender, as applicable, and in each case except for Permitted Encumbrances. The Agency agrees that except in a case where the Agency has invoked its remedies under Section 10.2(a)(iv) of this lease Agreement, (i) it will not make any claim under its title insurance policy prior to providing written notice to the Company, and which claim will be at the sole expense of the Company, (ii) it will not settle any claim made under its title insurance policy without first obtaining the written consent of the Company and (ii) any moneys paid pursuant to a claim made under such title insurance policy shall belong and be paid by the Agency upon receipt to the Company, subject to its obligations under the Lease Agreement, including, without limitation, the Company's obligation to indemnify and hold harmless the Agency.

Section 3.3 Subordination of Lease Agreement. This Lease Agreement and the Ground Lease, and any and all modifications, amendments, renewals and extensions thereof, is subject and subordinate to the Mortgages, the LIPA Easement, the Declaration, the Gas Easement, the Access Easement, the Temporary Easement, the Right of Way and to any and

all modifications, amendments, consolidations, extensions, renewals, replacements and increases thereof.

Section 3.4 Public Authorities Law Representations. The parties hereto hereby acknowledge and agree that the Facility and the interest therein to be conveyed by this Lease Agreement are not "Property" as defined in Article 9, Title 5-A of the Public Authorities Law of the State because the Facility and the leasehold interests therein are securing the financial obligations of the Company. The Facility and the leasehold interests therein have been (or will be) pledged to secure the Loan from the Lender to the Company. The Facility and the leasehold interests therein further secure the Company's obligations to the Agency under the PILOT Agreement, the Environmental Compliance and Indemnification Agreement and this Lease Agreement, including the Company's obligation to use reasonable efforts to acquire, construct, equip and maintain the Facility on behalf of the Agency and the Company's obligation to indemnify and hold harmless the Agency.

ARTICLE IV

ACQUISITION, CONSTRUCTION AND EQUIPPING OF FACILITY; MAKING OF THE LOAN

Section 4.1 Acquisition, Construction and Equipping of Facility.

(a) The Company agrees that, on behalf of the Agency, it will acquire, construct, install and equip the Facility in accordance with the Plans and Specifications. On or before the Completion Date, the Company agrees to obtain from CELI Land, LLC ("CELI"), an affiliate of the Company, easements over portions of certain lands owned by CELI adjacent to the Site (collectively, the "CELI Easement Areas"), for (i) the siting by LIPA of a switchyard to service the Facility (the "Switchyard") and for LIPA's ingress and egress to the Switchyard, (ii) the siting of electric transmission lines leading from the Facility to the Switchyard, and (iii) the siting of a natural gas transmission pipeline, and equipment appurtenant thereto, to service the Facility.

(b) The Company may revise the Plans and Specifications from time to time with the approval of the Lender in accordance with and as may be required pursuant to the Loan Documents.

(c) Subject to the Lender's rights under the Mortgages, title to all materials, equipment, machinery and other items of Property incorporated or installed in the Facility shall vest in the Agency immediately upon the Company's obtaining title in or to the materials, equipment, machinery and other items of Property. The Company shall execute, deliver and record or file all instruments necessary or appropriate to so vest title to the Agency and shall take all action necessary or appropriate to protect such title against claims of any third Persons, other than the Lender.

(d) The Agency hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency (i) to acquire, construct, install and equip the Facility in

accordance with the Plans and Specifications, and to maintain, repair and replace the Facility and any components thereof for the term of this Lease Agreement, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for constructing the Improvements and acquiring and installing the Equipment with the same powers and with the same validity as the Agency could do if acting on its own behalf, (iii) to pay all fees, costs and expenses incurred in the construction of the Improvements and the acquisition and installation of the Equipment from funds made available therefor in accordance with this Lease Agreement, and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt, or writing in connection with the construction and completion of the Improvements and the acquisition and installation of the Equipment, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security. This agency appointment expressly excludes the Company from purchasing or registering in the Agency's name or as agent for the Agency, any motor vehicles, including any cars, trucks, vans or buses which are licensed or registered by the Department of Motor Vehicles for use on public highways or streets,

(e) The Agency shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1.

(f) The Company, as agent for the Agency, shall comply with all provisions of the Labor Law of the State applicable to the acquisition, construction, maintaining, repairing and replacing of the Facility and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions. Except as provided in the preceding sentence, the provisions of this subsection do not create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement.

Section 4.2 Making of the Loan; Disbursements of Loan Proceeds. The Lender may propose to make the Loan to the Company on or after the date of this Lease Agreement. Certain proceeds of the Loan may be disbursed to the Company on or after the Closing Date pursuant to the Loan Documents.

Section 4.3 Certificates of Completion. To establish the Completion Date, the Company shall deliver to the Agency and the Lender a certificate signed by an Authorized Representative of the Company (i) stating that acquisition, construction, installation and equipping of the Facility has been substantially completed in accordance with the Plans and Specifications therefor; (ii) stating that the payment of all labor, services, materials and supplies used in such acquisition, construction and equipping has been made or provided for; and (iii) such certificates as may be reasonably satisfactory to the Lender, including without limitation, a final certificate of occupancy, if applicable. The Company agrees to complete the acquisition, construction and equipping of the Facility on or before July 1, 2011; provided however, such appointment shall be extended by the Agency at the request of the Company for a reasonable period of time if the Company is diligently pursuing the completion of the Facility and further provided that the appointment may be extended by the Agency, at the request of the Company.

Section 4.4 Completion by Company.

(a) In the event that the Net Proceeds of the Loan are not sufficient to pay in full all costs of acquiring, installing and equipping the Facility in accordance with the Plans and Specifications, the Company agrees to pay, for the benefit of the Agency and the Lender, all such sums as may be in excess of the Net Proceeds of the Loan necessary to complete the Facility. Title to all portions of the Facility installed or constructed at the Company's cost or expense shall immediately upon such installation or construction occurring and being paid for vest in the Agency and shall be leased by the Agency to the Company pursuant to the terms of this Lease Agreement. The Company shall execute, deliver and record or file such instruments as the Agency or the Lender may reasonably request in order to perfect or protect the Agency's title to or the Lien of the Mortgages on such portions of the Facility.

(b) The Company shall not be entitled to any reimbursement for such excess cost or expense from the Agency nor shall it be entitled to any diminution or abatement of any other amounts payable by the Company under this Lease Agreement.

Section 4.5 Remedies to be Pursued Against Contractors, Subcontractors, Materialmen and their Sureties. In the event of a default by any contractor, subcontractor, materialman or other Person under any contract made by it in connection with the Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship, or performance guaranty, the Company at its expense, either separately or in conjunction with others, may pursue any and all remedies available to it and the Agency, as appropriate, against the contractor, subcontractor, materialman or other Person so in default and against any surety or guarantor for the performance of such contract. The Company, in its own name or in the name of the Agency, may prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman, guarantor or surety or other Person which the Company deems reasonably necessary, and in such event the Agency, at the Company's expense, hereby agrees to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding.

ARTICLE V

DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1 Demise of Facility.

(a) The Agency hereby leases the Facility, consisting of the Site as particularly described in Exhibit A attached hereto, the Improvements and the Equipment as particularly described in Exhibit B attached hereto, to the Company and the Company hereby takes the Facility from the Agency upon the terms and conditions of this Lease Agreement.

(b) Notwithstanding anything contained herein to the contrary, simultaneously with the granting of the LIPA Easement being on the portion of the Land described in Exhibit A under the heading "Legal Description of LIPA Easement" attached hereto and made a part hereof (the "Subordinated Parcel No. 1"), the Agency agrees to deliver to Company, at the

Company's sole cost and expense, a subordination agreement, in recordable form, and in a form reasonably acceptable to the Company and the Agency, wherein the Agency subordinates to the LIPA Easement the leasehold estate of (i) this Lease Agreement, (ii) the Ground Lease, and (iii) any other lien or encumbrance which may have been filed by Agency against the Subordinated Parcel No. 1 or may have been created against the Subordinated Parcel No. 1 pursuant to any of the other Agency Documents. At the request of the Company, either at the time of or after the execution of the subordination agreement provided for in this Section 5.1(b), the Agency agrees that a different portion of the Land may be substituted for the Subordinated Parcel No. 1 (the "Substituted Subordinated Parcel No. 1"), provided that (i) such Substituted Subordinated Parcel No. 1 is acceptable to LIPA and (ii) the location of the Substituted Subordinated Parcel No. 1 is approved by the Agency (which approval shall not be unreasonably withheld, delayed, nor conditioned).

(c) Notwithstanding anything contained herein to the contrary, simultaneously with the execution of the Declaration restricting the use of the portion of the Site described in Exhibit A under the heading "Legal Description of Declaration" attached hereto and made a part hereof (the "Subordinated Parcel No. 2") to drainage purposes only, the Agency agrees to deliver to the Company, at the Company's sole cost and expense, a subordination agreement, in recordable form, and in a form reasonably acceptable to the Company, wherein the Agency subordinates to the Declaration the leasehold estate of (i) this Lease Agreement, (ii) the Ground Lease, and (iii) any other lien or encumbrance which may have been filed by the Agency against the Subordinated Parcel No. 2 or may have been created against the Subordinated Parcel No. 2 pursuant to any of the other Agency Documents. The Agency acknowledges that the exact location of the Subordinated Parcel No. 2 may change slightly due to field conditions during construction and that the portion of the Site described in Exhibit A under the heading "Legal Description of Declaration" may accordingly also change.

(d) Notwithstanding anything contained herein to the contrary, simultaneously with the granting of the Gas Easement on (x) the portion of the Site described in Exhibit A under the heading "Legal Description of Gas Easement" attached hereto and made a part hereof, or (y) such other portion of the Site as may be approved by the Agency (which approval shall not be unreasonably withheld, delayed, nor conditioned) ((x) or (y) as applicable, the "Subordinated Parcel No. 3"), the Agency agrees to deliver to the Company, at the Company's sole cost and expense, a subordination agreement, in recordable form, and in a form reasonably acceptable to the Company and the Agency, wherein the Agency subordinates to the Gas Easement the leasehold estate of (i) this Lease Agreement, (ii) the Ground Lease, and (iii) any other lien or encumbrance which may have been filed by the Agency against the Subordinated Parcel No. 3 or may have been created against the Subordinated Parcel No. 3 pursuant to any of the other Agency Documents.

(e) Notwithstanding anything contained herein to the contrary, simultaneously with the granting of the Temporary Easement wherein the Company and the Agency grant to the Town of Brookhaven, County of Suffolk, or State of New York a temporary easement to use the portion of the Land described in Exhibit A under the heading "Legal Description of Temporary Easement" attached hereto and made a part hereof (the "Subordinated Parcel No. 4") for temporary turn-around purposes, the Agency agrees to deliver to the Company, at the Company's sole cost and expense, a subordination agreement in recordable form and in a

form reasonably acceptable to the Company and the Agency, wherein the Agency subordinates to the Temporary Easement the leasehold estate of (i) this Lease Agreement, (ii) the Ground Lease, and (iii) any other lien or encumbrance which may have been filed by the Agency against the Subordinated Parcel No. 4 or may have been created against the Subordinated Parcel No. 4 pursuant to any of the other Agency Documents. The Agency acknowledges that the exact location of the Subordinated Parcel No. 4 may change slightly due to field conditions during construction and that the portion of the Site described in Exhibit A under the heading "Legal Description of Temporary Easement" may accordingly also change.

(f) Notwithstanding anything contained herein to the contrary, simultaneously with the granting of a right of way (the "Right of Way") for ingress and egress to and from certain out parcels, as provided in condition No. 7 of the site plan approval for the Facility issued by the Planning Board of the Town of Brookhaven, over the portion of the Site as shown on the final approved Site Plan of the Facility (the "Subordinated Parcel No. 5"), the Agency agrees to deliver to the Company, at the Company's sole cost and expense, a subordination agreement in recordable form and in a form reasonably acceptable to the Company and the Agency, wherein the Agency subordinates to the Right of Way the leasehold estate of (i) this Lease Agreement, (ii) the Ground Lease, and (iii) any other lien or encumbrance which may have been filed by the Agency against the Subordinated Parcel No. 5 or may have been created against the Subordinated Parcel No. 5 pursuant to any of the other Agency Documents.

Section 5.2 Duration of Lease Term; Quiet Enjoyment.

(a) The Agency shall deliver to the Company sole and exclusive possession of the Facility (subject to Sections 3.3, 8.3 and 10.2 hereof) and the leasehold estate created hereby shall commence on the Closing Date and the Company shall accept possession of the Facility on the Closing Date.

(b) Except as provided in Section 10.2 hereof, the leasehold estate created hereby shall terminate at 11:59 p.m. on November 30, 2029 or on such earlier date as may be permitted by Section 11.1 hereof.

(c) Except as provided in Sections 3.3, 8.3 and 10.2 hereof, the Agency shall neither take nor suffer or permit any action to prevent the Company during the Lease Term from having quiet and peaceable possession and enjoyment of the Facility and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable exclusive possession and enjoyment of the Facility as hereinabove provided.

Section 5.3 Rents and Other Amounts Payable.

(a) The Company shall pay basic rent for the Facility as follows: One Dollar (\$1.00) per year commencing on the Closing Date and on each January 1 thereafter during the term of

this Lease Agreement. The Agency acknowledges receipt of \$23.00 representing payment in full for the term hereof.

(b) In addition to the payments of rent pursuant to Section 5.3(a) hereof, throughout the Lease Term, the Company shall pay to the Agency as additional rent, within thirty (30) days of receipt of demand therefor, the reasonable expenses of the Agency and the members thereof incurred (i) by reason of the Agency's leasing of the Site from the Company, subleasing the Site to the Company and the ownership or leasing of the balance of the Facility or (ii) in connection with the carrying out of the Agency's duties and obligations under the Agency Documents, the payment of which is not otherwise provided for under this Lease Agreement. The foregoing shall not be deemed to include any annual or continuing administrative or management fee beyond any initial administrative or management fee or fee for services rendered by the Agency, paid on the Closing Date.

(c) The Company, under the provisions of this Section 5.3, agrees to make the above-mentioned payments in immediately available funds and without any further notice in lawful money of the United States of America. In the event the Company shall fail to timely make any payment required in Section 5.3(a) or 5.3(b), the Company shall pay the same together with interest on such payment at a rate equal to two percent (2%) plus the Prime Rate, but in no event at a rate higher than the maximum lawful prevailing rate, from the date on which such payment was due until the date on which such payment is made.

Section 5.4 Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 5.3 hereof, and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company, and shall be absolute and unconditional irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Agency. The Company agrees it will not (i) suspend, discontinue or abate any payment required hereunder, or under the PILOT Agreement, (ii) fail to observe any of its other covenants or agreements in this Lease Agreement or under the PILOT Agreement, or (iii) terminate this Lease Agreement for any cause whatsoever unless and until the Loan has been paid in full unless the Improvements and Equipment are conveyed by the Agency to the Company subject to the Lien of the Mortgages.

Subject to the foregoing provisions, nothing contained in this Section shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease Agreement or to affect the right of the Company to seek reimbursement, and in the event the Agency should fail to perform any such agreement, the Company may institute such separate action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance, and the Agency covenants that it will not, subject to the provisions of Sections 3.3 and 8.3 and Article X hereof, take, suffer or permit any action which will adversely affect, or create any defect in its title to the Facility or which will otherwise adversely affect the rights or estate of the Company hereunder, except upon written consent of the Company.

Section 5.5 Payment of Additional Moneys in Prepayment of Loan. In addition to any other moneys required or permitted to be paid pursuant to this Lease Agreement, the

Company may, subject to the terms of the Notes, the Mortgages and the Building Loan Agreement, pay moneys to the Lender to be used for the prepayment of the Loan at such time or times and on such terms and conditions as is provided in the Notes, the Mortgages and the Building Loan Agreement.

Section 5.6 Rights and Obligations of the Company upon Prepayment of Loan. In the event the Loan shall have been paid in full prior to the termination date specified in Section 5.2(b) hereof (i) all references in this Lease Agreement to the Lender, the Building Loan Agreement, the Notes and the Mortgages shall be ineffective and (ii) the Company shall be entitled, at its option, to the exclusive use, occupancy and enjoyment of the Facility from the date of such payment until the scheduled expiration of the Lease Term, on all of the terms and conditions hereof, except that the Company shall not be required to carry any insurance for the benefit of the Lender, or the Company may, at its option, require the Agency to convey the Facility to the Company pursuant to the terms of Section 11.3 hereof. In the event of any such payment or the making of any such provision, the Agency, at the sole cost of the Company, shall obtain and record or file appropriate discharges or releases of the Mortgages and any other security interest relating to the Facility or this Lease Agreement.

ARTICLE VI

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1 Maintenance and Modifications of Facility by Company.

(a) The Company shall not abandon the Facility or cause or permit any waste to the Site, the Improvements or the Equipment. During the Lease Term, the Company shall not remove any part of the Facility outside of the jurisdiction of the Agency and shall (i) keep the Facility in as reasonably safe condition as its operations shall permit; (ii) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen); and (iii) operate the Facility in a sound and economic manner according to prudent electrical utility practices.

(b) With the written consent of the Agency, which shall not be unreasonably withheld, delayed nor conditioned, the Company from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof, provided such actions do not adversely affect the structural integrity of the Facility. All such additions, modifications or improvements made by the Company shall become a part of the Facility and the Property of the Agency. The Company agrees to deliver to the Agency all documents which may be necessary or appropriate to convey to the Agency title to such Property and to perfect or protect the Lien of the Mortgages, provided such conveyed Property becomes a part of the Facility leased to the Company pursuant to this Lease.

Section 6.2 Installation of Additional Equipment. Subject to the provisions of Section 8.10 hereof, the Company or any permitted sublessee of the Company from time to time may install additional machinery, equipment or other personal property in the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. Subject

to the Lender's rights under the Mortgages, the Company from time to time may create or permit to be created any Lien on such machinery, equipment or other personal property. Further, the Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility, provided that any such removal of such machinery, equipment or other personal property shall not occur (i) if any Event of Default has occurred; or (ii) if any such removal shall materially adversely affect the structural integrity of the Facility or cause to the Facility to be operated not in accordance with prudent electric utility practices, and provided further, that if any damage is occasioned to the Facility by such removal, the Company agrees to promptly repair such damage at its own expense.

Section 6.3 Taxes, Assessments, Payments in Lieu of Taxes and Utility Charges.

(a) The Company agrees to pay, as the same become due and before any fine, penalty, interest (except interest which is payable in connection with legally permissible installment payments) or other cost may be added thereto or become due or be imposed by operation of law for the non-payment thereof, (i) all taxes, payments in lieu of taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Facility and any machinery, equipment or other Property installed or brought by the Company therein or thereon, including, without limiting the generality of the foregoing, any sales or use taxes imposed with respect to the Facility or any part or component thereof, or the rental or sale of the Facility or any part thereof and any taxes levied upon or with respect to the income or revenues of the Agency from the Facility; (ii) all utility and other charges, including service charges, incurred or imposed for or with respect to the operation, maintenance, use, occupancy, upkeep and improvement of the Facility; (iii) all assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; and (iv) all payments under the PILOT Agreement; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Lease Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such proceedings, the Company shall pay under protest the taxes, assessments, payments in lieu of taxes, or other charges so contested.

(c) The Agency agrees that if it or the Company successfully contests any taxes, assessments or other charges provided for in paragraph (b) hereof, any refunds returned, as a result thereof, will be credited against future payments due under the PILOT Agreement; provided, however, that to the extent the Agency receives any refund for the account of the Company with regard to any Additional Facilities (as defined in the PILOT Agreement), such refund shall be refunded to the Company from the Agency. If the Agency receives a refund for an overpayment made pursuant to the PILOT Agreement in connection with the Facility for the account of the Company and the future payments under the PILOT Agreement are not equal to or greater than such refund, then any refund in excess of such future payments shall be refunded to the Company from the Agency to the extent received by the Agency.

(d) Within thirty (30) days of receipt of written request therefor, the Company shall deliver to the Agency official receipts of the appropriate taxing authorities or other proof reasonably satisfactory to the Agency evidencing payment of any tax.

Section 6.4 Insurance Required. At all times throughout the Lease Term, including, when indicated herein, during the Construction Period, the Company shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type and shall pay, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(a) Insurance against loss or damage by fire, lightning and other casualties customarily insured against, with an all risk insurance policy form, such insurance to be in an amount not less than the full replacement value of the completed Improvements, exclusive of footings and foundations, as determined by a recognized appraiser or insurer selected by the Company, in such amount as may be required by the Loan Documents. During the Construction Period, such policy shall be written in the so-called "Builder's Risk Completed Value Non-Reporting Form" and shall contain a provision granting the insured permission to complete and/or occupy.

(b) Workers' compensation insurance and each other form of insurance which the Company or any permitted sublessee is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company or any permitted sublessee who are located at or assigned to the Facility. This coverage shall be in effect from and after the Completion Date or on such earlier date as any employees of the Company, any permitted sublessee, any contractor or subcontractor first occupy the Facility.

(c) Insurance protecting the Agency and the Company against loss or losses from liability imposed by law or assumed in any written contract (including the contractual liability assumed by the Company under Section 8.2 hereof and under the Environmental Compliance and Indemnification Agreement) or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage); comprehensive automobile liability insurance covering all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit or equivalent for personal injury, including bodily injury or death, and property damage); and umbrella excess liability coverage, in an amount not less than \$30,000,000 combined single limit or equivalent, protecting the Agency and the Company against any loss or liability or damage for personal injury, including bodily injury or death, or property damage. This coverage shall also be in effect during the Construction Period.

(d) During the Construction Period (and for at least one year thereafter in the case of Products and Completed Operations as set forth below), the Company shall maintain or shall cause the general contractor to carry liability insurance of the type and providing the minimum limits set forth below:

(i) Workers' compensation and employer's liability with limits in accordance with applicable law.

(ii) Comprehensive general liability providing coverage for:

Premises and Operations
 Products and Completed Operations
 Contractual Liability
 Personal Injury Liability
 Broad Form Property Damage
 (including completed operations)
 Explosion Hazard
 Collapse Hazard
 Underground Property Damage Hazard

Such insurance shall have a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iii) Comprehensive auto liability, including all owned, non-owned and hired autos, with a limit of liability of not less than \$1,000,000 (combined single limit for personal injury, including bodily injury or death, and property damage).

(iv) Excess "umbrella" liability providing liability insurance in excess of the coverages in (i), (ii) and (iii) above with a limit of not less than \$30,000,000.

(e) A policy or policies of flood insurance in an amount not less than the principal amount of the Loan or the maximum amount of flood insurance available with respect to the Facility under the Flood Disaster Protection Act of 1973, as amended, whichever is less. This requirement will be waived upon presentation of evidence satisfactory to the Lender that no portion of the Site is located within an area identified by the U.S. Department of Housing and Urban Development as having special flood hazards.

Section 6.5 Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in the State and selected by the entity required to procure the same. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All policies evidencing the insurance required by Sections 6.4(a) hereof shall contain a standard New York non-contributory mortgagee clause showing the interest of the Lender as mortgagee, shall provide for payment to the Lender (to the extent required by the Loan Documents) of the Net Proceeds of insurance resulting from any claim for loss or damage thereunder and all policies of insurance required by Section 6.4 hereof shall provide for at least thirty (30) days prior written notice of the restriction, cancellation or modification thereof to the Agency and the Lender. The policy

evidencing the insurance required by Section 6.4(c) hereof shall name the Agency and the Lender as additional named insureds. All policies evidencing the insurance required by Sections 6.4(d)(ii), (iii) and (iv) shall name the Agency as additional named insureds. The Company acknowledges that a mortgage and security interest in the policies of insurance required by Section 6.4(a) and the Net Proceeds thereof have been or may be granted by the Agency to the Lender pursuant to the Mortgages and the Company consents thereto. Upon request of the Lender, and subject to the terms of the Loan Documents, the Company will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default under the Mortgages) to the Lender, the proceeds of the policies of insurance required under Section 6.4(a) in accordance with the Loan Documents, so and in such manner and form that the Lender shall at all times, upon such request and until the payment in full of the Loan, but subject to the terms of the Loan Documents, have and hold said policies and the Net Proceeds thereof, as collateral and further security under the Mortgages for the payment of the Loan. The policies under Section 6.4(a) shall contain appropriate waivers of subrogation. Nothing contained in this Lease Agreement is intended to limit or modify any insurance requirements set forth in the Mortgages.

(b) The policies or certificates (or binders) of insurance required by Sections 6.4(a) and (e) hereof shall be deposited with the Lender on or before the execution and delivery of the Loan Documents. A copy of the policy or certificate (or binder) of insurance required by Section 6.4(c) hereof shall be delivered to the Agency on or before the Closing Date. The policy or certificate (or binder) of insurance required by Section 6.4(b) hereof shall be deposited with the Lender on or before the Completion Date. A copy of the policies or certificates (or binders) of insurance required by Sections 6.4(d)(ii), (iii) and (iv) hereof shall be delivered to the Agency on or before the commencement of the Construction Period. The Company shall deliver to the Agency and the Lender before the first Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance of the types and in the amounts required by Section 6.4 hereof and complying with the additional requirements of Section 6.5(a) hereof. Prior to the expiration of each such policy, the Company shall furnish the appropriate Person with evidence that such policy has been renewed or replaced or is no longer required by this Lease Agreement. The Company shall provide such further information with respect to the insurance coverage required by this Lease Agreement as the Agency and the Lender may from time to time reasonably require.

Section 6.6 Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Sections 6.4(a) and (e) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Sections 6.4(b), (c), and (d) hereof shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.7 Right of Lender to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, together with any fine, penalty, interest or cost which may have been added thereto or become due or been imposed by operation of law for nonpayment thereof, or payments in lieu of taxes pursuant to the PILOT Agreement,

assessment or other governmental charge required to be paid by Section 6.3 hereof, (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, (iii) to pay any amount required to be paid by any law or ordinance relating to the use or occupancy of the Facility or by any requirement, order or notice of violation thereof issued by any governmental person, (iv) to pay any mechanic's Lien which is recorded or filed against the Facility or any part thereof (unless contested in accordance with the provisions of Section 8.9(b) hereof), or (v) to pay any other amount or perform any act hereunder required to be paid or performed by the Company hereunder, the Agency or the Lender may pay or cause to be paid such tax or payments in lieu of taxes pursuant to the PILOT Agreement, assessment or other governmental charge or the premium for such insurance or any such other payment or may perform any such act. Subject to the terms of the Mortgages, no such payment shall be made or act performed by the Agency or the Lender until at least ten (10) days shall have elapsed since notice shall have been given by the Lender to the Agency, with a copy of such notice being given to the Company (or by the Agency to the Company and the Lender), and in the case of any tax, assessment or governmental charge or the amounts specified in paragraphs (iii) and (iv) hereof, no such payment shall be made in any event if the Company is contesting the same in good faith to the extent and as permitted by this Lease Agreement unless an Event of Default hereunder shall have occurred and be continuing. No such payment by the Agency or the Lender shall affect or impair any rights of the Agency hereunder or of the Lender under the Mortgages arising in consequence of such failure by the Company. The Company shall, on demand, reimburse the Agency or the Lender for any amount so paid or for expenses or costs incurred in the performance of any such act by the Agency or the Lender pursuant to this Section (which shall include all reasonable legal fees and disbursements), together with interest thereon from the date of payment of such amount, expense or cost by the Agency at a rate per annum equal to seven percent (7%).

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1 Damage or Destruction of the Facility.

(a) If the Facility or any part or component shall be damaged or destroyed (in whole or in part) at any time during the Lease Term:

- (i) the Agency shall have no obligation to replace, repair, rebuild, restore or relocate the Facility; and
- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement or the PILOT Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated); and
- (iii) the Company shall promptly give written notice thereof to the Agency and the Lender; and
- (iv) upon the occurrence of such damage or destruction, the Net Proceeds derived from the insurance shall be paid to the Company or as otherwise

required by the Loan Documents and, except as otherwise provided in Section 11.1 and subsection (d) hereof, applied by the Lender pursuant to the terms of the Loan Documents; and

(v) if the Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.1(b) hereof, this Lease Agreement shall be terminated at the option of the Agency or the Company and the provisions of Sections 11.2, 11.3 and 11.4 hereof shall apply.

(b) Any replacements, repairs, rebuilding, restorations or relocations of the Facility by the Company after the occurrence of such damage or destruction shall be subject to the following conditions:

(i) the Facility shall be in substantially the same condition and be able to be operated as an electrical generating facility in accordance with prudent electrical utility practices as existed prior to the damage or destruction;

(ii) the Facility shall continue to constitute a "project" as such term is defined in the Act;

(iii) the Facility will be subject to no Liens, other than Permitted Encumbrances; and

(iv) any other conditions the Lender may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts, and shall automatically become a part of the Facility as if the same were specifically provided herein.

(d) If the Company or the Agency shall exercise its option to terminate this Lease Agreement pursuant to Section 7.1(a)(v), Section 10.2 or Section 11.1 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If an Event of Default hereunder shall have occurred and the Lender shall have exercised its remedies under Section 10.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

(e) If the entire amount of the Loan and interest thereon has been fully paid, all such remaining Net Proceeds shall be paid to the Company.

(f) If the Facility has been substantially damaged or destroyed and is not replaced, rebuilt, restored or relocated, the Facility will be reconveyed to the Company subject to the Mortgages.

Section 7.2 Condemnation.

(a) If title to or use of the Facility shall be taken by Condemnation (in whole or in part) at any time during the Lease Term:

- (i) the Agency shall have no obligation to replace, repair, rebuild, restore or relocate the Facility or acquire, by construction or otherwise, facilities of substantially the same nature as the Facility ("Substitute Facilities"); and
- (ii) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement or the PILOT Agreement (whether or not the Facility is replaced, repaired, rebuilt, restored or relocated or Substitute Facilities acquired); and
- (iii) the Company shall promptly give written notice thereof to the Agency and the Lender; and
- (iv) upon the occurrence of such Condemnation, the Net Proceeds derived therefrom shall be paid to the Company or to the Lender as may be required by the Loan Documents and applied by the Lender pursuant to the terms of the Loan Documents except as otherwise provided in Section 11.1 and subsection (d) hereof; and
- (v) if the Facility is not replaced, repaired, rebuilt, restored or relocated, as provided herein and in Section 7.2(b) hereof, this Lease Agreement shall be terminated at the option of the Agency or the Company and the provisions of Section 11.2, 11.3 and 11.4 hereof shall apply.

(b) Any replacements, repairs, rebuilding, restorations or relocations of the Facility by the Company after the occurrence of such Condemnation or acquisitions by the Company of Substitute Facilities shall be subject to the following conditions:

- (i) the Facility or the Substitute Facilities shall be in substantially the same condition and be able to be operated as an electrical generating facility in accordance with prudent electrical utility practices as existed prior to the Condemnation;
- (ii) the Facility or the Substitute Facilities shall continue to constitute a "project" as such term is defined in the Act;
- (iii) the Facility or the Substitute Facilities will be subject to no Liens, other than Permitted Encumbrances; and
- (iv) any other conditions the Lender may reasonably impose.

(c) All such repair, replacement, rebuilding, restoration or relocation of the Facility shall be effected with due diligence in a good and workmanlike manner in compliance with all applicable legal requirements, shall be promptly and fully paid for by the Company in accordance with the terms of the applicable contracts, and shall automatically become a part of the Facility as if the same were specifically described herein.

(d) If the Company or the Agency shall exercise its option to terminate this Lease Agreement pursuant to Section 7.2(a)(v), Section 10.2 or Section 11.1 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 11.2 hereof. If any Event of Default hereunder shall have occurred and the Lender shall have exercised its remedies under Section 10.2 hereof such Net Proceeds shall be applied to the payment of the amounts required to be paid by Section 10.2 and Section 10.4 hereof.

(e) If the entire amount of the Loan and interest thereon has been fully paid, all such remaining Net Proceeds shall be paid to the Company.

(f) If the Facility has been substantially condemned and, is not replaced, repaired, rebuilt or relocated or if a Substitute Facility is not acquired, constructed and equipped, the Facility will be reconveyed to the Company subject to the Mortgages.

Section 7.3 Condemnation of Company-Owned Property. Subject to the Mortgages, the Company shall be entitled to the proceeds of any Condemnation award or portion thereof made for damage to or taking of any Property which, at the time of such damage or taking, is not part of the Facility.

Section 7.4 Waiver of Real Property Law Section 227. The Company hereby waives the provisions of Section 227 of the Real Property Law of the State or any law of like import now or hereafter in effect.

ARTICLE VIII

SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability by Agency. THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF, OR TITLE TO, THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.2 Hold Harmless Provisions.

(a) The Company agrees that the Agency, its directors, members, officers, agents (except the Company) and employees shall not be liable for and agrees to defend, indemnify, release and hold the Agency, its directors, members, officers, agents (except the Company) and employees harmless from and against any and all (i) liability for loss or damage to Property or injury to or death of any and all Persons arising after the Closing Date that may be occasioned by, directly or indirectly, any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Facility or the Site or (ii) liability arising from or expense incurred by the Agency's financing, acquiring, renovating, equipping, owning and leasing of the Facility, including without limiting the generality of the foregoing, all claims arising from the breach by the Company of any of its covenants contained herein, the exercise by the Company of the authority conferred upon it pursuant to Section 4.1(c) of this Lease Agreement and all causes of action and attorneys' fees (whether by reason of third party

claims or by reason of the enforcement of any provision of this Lease Agreement (including without limitation this Section) or any of the other documents delivered on the Closing Date by the Agency) and any other expenses incurred in defending any claims, suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Agency are not incurred or do not result from the gross negligence or intentional or willful wrongdoing of the Agency or any of its directors, members, agents (except the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency, or any of its members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability. The foregoing indemnities are limited only to the extent of any prohibitions imposed by law, and upon the application of any such prohibition by the final judgment or decision of a competent court of law, the remaining provisions of these indemnities shall remain in full force and effect.

(b) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and payment in full or the satisfaction of such claim, cause of action or prosecution relating to the matters herein described and the payment of all expenses and charges reasonably incurred by the Agency, or its respective members, directors, officers, agents and employees, relating to the enforcement of the provisions herein specified.

(c) In the event of any claim against the Agency or its respective members, directors, officers, agents or employees by any employee or contractor of the Company or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the obligations of the Company hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, disability benefits or other employee benefit acts.

Section 8.3 Right to Inspect Facility. The Agency and the Lender and the duly authorized agents of either of them shall have the right at all reasonable times to inspect the Facility, subject to the Company's safety and security procedures.

Section 8.4 Company to Maintain Its Existence. The Company agrees that during the Lease Term it will maintain its existence and will not dissolve, liquidate or otherwise dispose of substantially all of its assets and will not merge with or into any other entity or allow any other entity to merge with or into the Company without the prior written consent of the Agency, which consent shall not be unreasonably withheld, delayed or conditioned. The Company shall provide prior written notice to the Agency of any subsequent sale, transfer or conveyance (not including any transfer or conveyance as security) of a controlling interest in the Company, and any such sale, transfer or conveyance of a controlling interest in the Company or the general partner of the Company shall be subject to the Agency's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

Section 8.5 Qualification in State. The Company throughout the Lease Term shall continue to be duly authorized to do business in the State.

Section 8.6 Agreement to File Annual Statements and Provide Information. The Company shall file with the New York State Department of Taxation and Finance an annual statement of the value of all sales and use tax exemptions claimed in connection with the Facility in compliance with Sections 874(8) and (9) of the New York State General Municipal Law. The Company shall submit a copy of such annual statement to the Agency at the time of filing with the Department of Taxation and Finance. The Company further agrees whenever requested by the Agency to provide and certify or cause to be provided and certified such information concerning the Company, its finances, its operations, its employment and its affairs necessary to enable the Agency to make any report required by law, governmental regulation, including, without limitation, any reports required by the New York State Comptroller, the Act or the Public Authorities Accountability Act of 2005, as amended from time to time, or any of the Agency Documents or Company Documents. Such information shall be provided within thirty (30) days following written request from the Agency.

Section 8.7 Books of Record and Account; Financial Statements. The Company at all times agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all transactions and events relating to the business and affairs of the Company. The Company shall furnish to the Agency and to the Lender, within thirty (30) days of their filing, copies of all reports, if any, filed with the Securities and Exchange Commission, pursuant to the Securities Exchange Act of 1934, as amended, relative to the Company.

Section 8.8 Compliance With Orders, Ordinances, Etc.

(a) The Company, throughout the Lease Term, agrees that it will promptly comply, and cause any sublessee or occupant of the Facility to comply, with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof or to the acquisition, construction and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof, of all federal, state, county, municipal and other governments, departments, commissions, boards, courts, authorities, officials and officers having jurisdiction of the Facility or any part thereof, or to the acquisition, construction and equipping thereof, or to any use, manner of use or condition of the Facility or any part thereof and of the companies or associations insuring the premises.

(b) The Company shall keep or cause the Facility to be kept free of Hazardous Substances except in compliance with all applicable federal, state and local laws, ordinances, rules and regulations. The Company shall comply with the terms and conditions of the Environmental Compliance and Indemnification Agreement concerning Hazardous Substances.

(c) Notwithstanding the provisions of subsections (a) and (b) hereof, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsections (a) and (b) by appropriate legal proceedings conducted in good faith and with due diligence. In such event, the Company may fail to comply with the

requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Agency or the Lender shall notify the Company that by failure to comply with such requirement or requirements, the Lien of the Mortgages as to any part of the Facility may be materially endangered or the Facility or any part thereof may be subject to loss, penalty or forfeiture, in which event the Company shall promptly take such action with respect thereto or provide such security as shall be reasonably satisfactory to the Lender and to the Agency. If at any time the then existing use or occupancy of the Facility shall, pursuant to any zoning or other law, ordinance or regulation, be permitted only so long as such use or occupancy shall continue, the Company shall use its best efforts to not cause or permit such use or occupancy to be discontinued without the prior written consent of the Agency and the Lender, which consent will not be unreasonably withheld, conditioned nor delayed.

(d) Notwithstanding the provisions of this Section 8.8, if, because of a breach or violation of the provisions of subsections (a) or (b) hereof (without giving effect to subsection (c) hereof), either the Agency, the Lender, or any of their respective members, directors, officers, agents, or employees, shall be threatened with a fine, liability, expense or imprisonment, then, upon notice from the Agency or the Lender, the Company shall immediately provide legal protection and/or pay amounts necessary in the reasonable opinion of the Agency or the Lender, as the case may be, and their respective members, directors, officers, agents and employees deem sufficient, to the extent permitted by applicable law, to remove the threat of such fine, liability, expense or imprisonment.

(e) Notwithstanding any provisions of Section 8.8, the Lender and the Agency each retain the right to defend themselves in any action or actions which are based upon or in any way related to such Hazardous Substances if such action is not being defended by the Company to the reasonable satisfaction of the Agency. In any such defense of themselves, the Lender and the Agency shall each select their own counsel, and any and all reasonable costs of such defense, including, without limitation, attorney and consultant fees, investigation and laboratory fees, court costs, and litigation expenses, shall be paid by the Company.

Section 8.9 Discharge of Liens and Encumbrances.

(a) The Company, throughout the Lease Term, shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) hereof, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Agency or the Lender shall notify the Company that by nonpayment of any such item or items, the Lien of the Mortgages may be materially endangered or the Facility or any part thereof may be subject to loss or forfeiture, in which event the Company shall promptly secure payment of all such unpaid items by the filing of a bond in the correct statutory form and amount, thereby causing such Lien to be removed, or by taking such other actions as may be reasonably satisfactory to the Lender and the Agency

to protect their respective interests. Mechanics' Liens shall be discharged or bonded within thirty (30) days of the filing or perfection thereof.

Section 8.10 Identification of Equipment. All Equipment which is or may become the Property of the Agency pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be reasonably approved by the Agency and the Lender. All Equipment and other Property of whatever nature affixed or attached to the Site or used or to be used by the Company in connection with the Site or the Improvements shall be deemed presumptively to be owned by the Agency, rather than the Company, unless the same were utilized for purposes of construction of the Facility or were installed by the Company and title thereto was retained by the Company as provided in Section 6.2 of this Lease Agreement and such Equipment and other Property were properly identified by such appropriate records as were approved by the Agency and the Lender.

Section 8.11 Depreciation Deductions and Investment Tax Credit. The parties agree that, as between them, the Company shall be entitled to (i) all depreciation deductions with respect to any depreciable property comprising a part of the Facility, (ii) to any investment credit with respect to any part of the Facility and (iii) benefits arising as a result of the Company qualifying as a Qualified Empire Zone Enterprise as defined by the New York State Department of Taxation and Finance.

Section 8.12 Employment Opportunities, Notice of Jobs. The Company covenants and agrees that, in consideration of the participation of the Agency in the transactions contemplated herein, it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, and to the extent it is provided for in agreements to which it is a party, cause any new employment opportunities created in connection with the Facility to be listed with the New York State Department of Labor, Community Services Division and with the administrative entity of the service delivery area created pursuant to the Job Training Partnership Act (PL 97-300) in which the Facility is located (collectively, the "Referral Agencies"). The Company also agrees that it will, except as otherwise provided by collective bargaining contracts or agreements to which it is a party, first consider for such new employment opportunities persons eligible to participate in federal job training partnership programs who shall be referred by the Referral Agencies. Covenant with respect to Environmental and Zoning Opinions. The Company covenants and agrees that upon the execution and delivery of the Loan Documents, it will deliver an opinion or opinions to the Agency from Independent Counsel or an independent engineer (in connection with zoning matters only) in connection with certain environmental matters, laws of general and specific application and zoning matters in the form below or in such other form reasonably acceptable to the Agency:

"The operation of the Site, the Improvements or the Equipment as contemplated by the Lease Agreement is not prohibited by nor does it conflict with zoning ordinances or other laws applicable thereto. The Company has complied with the terms of the New York State Environmental Quality Review Act, and all applicable regulations thereunder."

ARTICLE IX

RELEASE OF CERTAIN INTERESTS IN LAND; ASSIGNMENTS AND SUBLEASING;
MORTGAGE AND PLEDGE OF INTERESTSSection 9.1 Restriction on Sale of Facility; Release of Certain Interests in Land.

(a) Except as otherwise specifically provided in this Article IX and in Article X hereof, the Agency shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Lease Agreement, without the prior written consent of the Company and the Lender.

(b) With the prior written consent of the Lender, the Agency and the Company from time to time may release from the provisions of this Lease Agreement and the leasehold estate created hereby any part of, or interest in, the Site which is not necessary, desirable or useful for the Facility. In such event, the Agency, at the Company's sole cost and expense, shall execute and deliver, and request the Lender to execute and deliver, any and all instruments necessary or appropriate to so release such part of, or interest in, the Site and convey such title thereto or interest therein, free from the Lien of the Mortgages if required by the Lender, to the Company or such other Person as the Company may designate. As a condition to such conveyance, the Lender shall be provided with a copy of the instrument transferring such title or interest in such Land, an instrument survey (if the Lender so requests) of the portion of the Site to be conveyed, together with a certificate of an Authorized Officer of the Company stating that there is then no Event of Default under this Lease Agreement and such part of, or interest in the Site is not necessary for the Facility or its operation.

(c) No conveyance of any part of or interest in the Site affected under the provisions of this Section 9.1 shall entitle the Company to any abatement or diminution of the rents payable by it under this Lease Agreement or any abatement or diminution of the amounts payable by it under the PILOT Agreement.

Section 9.2 Removal of Equipment.

(a) The Agency shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of Equipment. In any instance where the Company determines that any item of Equipment has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may, subject to the terms of the Loan Documents, remove such items from the Facility and may sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, free from the Lien of the Mortgages, provided that such removal will not materially impair the operation of the Facility for the purpose for which it is intended or change the nature of the Facility so that it does not constitute a "project" under the Act.

(b) The Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Equipment. The Company shall pay any costs (including counsel fees) incurred in transferring title to any item of Equipment removed pursuant to this Section 9.2.

(c) The removal of any item of Equipment pursuant to this Section shall not entitle the Company to any abatement or diminution of the rents payable by it under this Lease Agreement or any abatement or diminution of the amounts payable by it under the PILOT Agreement.

Section 9.3 Assignment, Subleasing and Release.

(a) This Lease Agreement may not be assigned, in whole or in part, and the Facility may not be subleased, in whole or in part, without the prior written consent of the Lender and the Agency in each instance which, subject to the requirements set forth below, shall not be unreasonably withheld, conditioned or delayed. Any assignment or sublease shall be on the following conditions, as of the time of such assignment or sublease:

- (i) no assignment or sublease shall relieve the Company from primary liability for any of its obligations hereunder unless otherwise consented to by the Agency in its sole discretion;
- (ii) the assignee or sublessee (except in the case of a true sublease in the ordinary course of business) shall assume the obligations of the Company hereunder to the extent of the interest assigned or subleased;
- (iii) the Company shall, within ten (10) days after the delivery thereof, furnish or cause to be furnished to the Agency and to the Lender a true and complete copy of such assignment or sublease and the instrument of assumption;
- (iv) neither the validity nor the enforceability of the Lease Agreement or any of the Loan Documents shall be adversely affected thereby;
- (v) the Facility shall continue to constitute a "project" as such quoted term is defined in the Act; and
- (vi) the sublessee will execute and deliver an agency compliance agreement, in form and substance reasonably satisfactory to the Agency.

(b) If the Lender or the Agency shall so request, as of the purported effective date of any assignment or sublease pursuant to subsection (a) of this Section 9.3, the Company at its cost shall furnish the Lender and the Agency, with an opinion, in form and substance satisfactory to the Lender and the Agency, (i) of Transaction Counsel as to item (v) above, and (ii) of Independent Counsel as to items (i), (ii) and (iv) above.

(c) Notwithstanding anything contained herein to the contrary, simultaneously with the dedication as a public road to the Town of Brookhaven, County of Suffolk, or State of New York (i) of the portion of the Site described in Exhibit A under the heading "Legal Description of Released Parcel No. 1" attached hereto and made a part hereof (the "Released Parcel No. 1"), or (ii) a portion of the Released Parcel No. 1, the Agency agrees to deliver to the Company, at the Company's sole cost and expense, a release agreement, in recordable form, and in a form reasonably acceptable to the Company and the Agency, wherein the

Agency releases the Released Parcel No. 1 (or the portion thereof as is being dedicated as a public road) from (i) this Lease Agreement, (ii) the Ground Lease, and (iii) any other lien or encumbrance which may have been filed by the Agency against the Released Parcel No. 1 or may have been created against the Released Parcel No. 1, or such portion being dedicated as a public road, pursuant to any of the other Agency Documents. The Agency acknowledges that the exact location of the Released Parcel No. 1 may change slightly due to field conditions during construction and that the portion of the Site described in Exhibit A under the heading "Legal Description of Released Parcel No. 1" may accordingly also change. As-built drawings and revised legal descriptions shall be delivered to the Agency for its review within sixty (60) days after completion of the above-described drawings. The real property released pursuant to this Section 9.3(c) shall be released from the lien of this Lease Agreement and the Ground Lease Agreement pursuant to an amendment of this Lease Agreement and an amendment to the Ground Lease Agreement, respectively, both in form and substance mutually acceptable to the parties thereto. An amendment to the Memorandum of Lease Agreement and an amendment to the Memorandum of Ground Lease Agreement, setting forth the respective revised legal descriptions shall be prepared and recorded at the sole expense of the Company.

(d) Notwithstanding anything contained herein to the contrary, the Company shall have the right to subdivide the Site pursuant to the laws of the Town of Brookhaven and the Agency shall deliver to the Company a release of the portion of the Site so subdivided and not needed for the Facility (the "Released Parcel No. 2) from (i) this Lease Agreement, (ii) the Ground Lease, and (iii) any other lien or encumbrance which may have been filed by the Agency against the Released Parcel No. 2 or may have been created against the Released Parcel No. 2 pursuant to any of the other Agency Documents. The right of the Company to obtain a release of the Released Parcel No. 2 pursuant to the preceding sentence shall be conditioned upon (i) the Company's engineering consultant certifying that the subdivision and the release of the Released Parcel No. 2 (and the future use of the Released Parcel No. 2) will not unreasonably interfere with or otherwise materially impair the construction, operation, or maintenance of the Facility or the generation or distribution of electric power from the Facility, (ii) any portion of the Site necessary for access to the Facility shall be subdivided and released only if and to the extent that easements or public roads reasonably satisfactory to the "LOC Agent" and the "Collateral Agent" (as such quoted terms are defined in the Mortgage) are granted or created to allow access to the Facility, and (iii) the fact that after the release of the Released Parcel No. 2, all necessary permits, licenses, regulatory and other governmental approvals necessary for the construction, operation and maintenance of the Facility (and the generation or distribution of electric power therefrom) shall remain in full force and effect. If the conditions of the preceding sentence are met, the Agency agrees to deliver to Company, at the sole cost and expense of the Company, a release agreement, in recordable form, and in a form reasonably acceptable to the Company and the Agency, wherein the Agency releases the Released Parcel No. 2 as provided for in this Section 9.3(d). As-built drawings and revised legal descriptions shall be delivered to the Agency for its review within sixty (60) days after completion of the above-described drawings. The real property released pursuant to this Section 9.3(c) shall be released from the lien of this Lease Agreement and the Ground Lease Agreement pursuant to an amendment of this Lease Agreement and an amendment to the Ground Lease Agreement, respectively, both in form and substance mutually acceptable to the parties thereto. An amendment to the Memorandum of Lease Agreement and an amendment

to the Memorandum of Ground Lease Agreement, setting forth the respective revised legal descriptions shall be prepared and recorded at the sole expense of the Company.

Section 9.4 Mortgage and Pledge of Agency's Interests to Lender. The Agency shall (i) mortgage its interest in the Facility pursuant to the Loan Documents, and (ii) pledge and assign its rights to and interest in this Lease Agreement and in all amounts payable by the Company pursuant to Section 5.3 hereof and all other provisions of this Lease Agreement (other than Unassigned Rights), to the Lender as security for the payment of the principal of and interest on the Loan. The Company hereby acknowledges and consents to such mortgage, pledge and assignment by the Agency. Notwithstanding the foregoing, all indemnities herein contained shall, subsequent to such mortgage, pledge and assignment continue to run to the Agency for its benefit as well as for the benefit of the Lender.

Section 9.5 Pledge of Company's Interest to Lender. The Company shall pledge and assign its rights to and interest in this Lease Agreement to the Lender as security for the payment of the principal of and interest on the Loan. The Agency hereby acknowledges and consents to such pledge and assignment by the Company.

Section 9.6 Merger of Agency.

(a) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or transfer of title to the entire Facility to any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility, provided that upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Lease Agreement to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred, and provided the Company shall suffer no material adverse effect as a result of such merger, consolidation or transfer.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Agency shall give notice thereof in reasonable detail to the Company and the Lender and shall furnish to the Company and the Lender, at the sole cost and expense of the Company, a favorable opinion of Independent Counsel as to compliance with the provisions of Section 9.6(a) hereof. The Agency promptly shall furnish such additional information with respect to any such transaction as the Company or the Lender may reasonably request.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

Section 10.1 Events of Default Defined.

(a) The following shall be "Events of Default" under this Lease Agreement:

- (i) the failure by the Company to pay or cause to be paid on the date due, the amount specified to be paid pursuant to Section 5.3(a) and (b) hereof for a

period of fifteen (15) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or the Lender;

(ii) the failure by the Company to observe and perform any covenant contained in Sections 6.4, 8.2, 8.6, 8.8 and 9.3(a) hereof, and the failure by the Company to observe and perform any covenant contained in Sections 6.3, 8.4, 8.8, 9.3(b), 9.3(c) and 9.3(d) hereof for a period of fifteen (15) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or the Lender (but if such event is incapable of being cured within such fifteen (15) day period, the Company's time to cure shall be extended providing that the Company is diligently pursuing such cure);

(iii) the failure by the Company to pay or cause to be paid on the dates due, the amounts specified to be paid pursuant to the PILOT Agreement;

(iv) the invalidity, illegality or unenforceability of the PILOT Agreement; or the failure in any material respect by the Company to observe and perform any covenant contained in the PILOT Agreement fifteen (15) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or the Lender (but if such event is incapable of being cured within such fifteen (15) day period, the Company's time to cure shall be extended providing that the Company is diligently pursuing such cure);

(v) any representation or warranty of the Company herein or in any of the Company Documents shall prove to have been false or misleading in any material respect;

(vi) the failure by the Company to observe and perform any covenant, condition or agreement hereunder on its part to be observed or performed (except obligations referred to in 10.1(a)(i), (ii) and (iii)) for a period of fifteen (15) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or the Lender (but if such event is incapable of being cured within such fifteen (15) day period, the Company's time to cure shall be extended providing that the Company is diligently pursuing such cure);

(vii) the dissolution or liquidation of the Company; or the failure by the Company to release, stay, discharge, lift or bond within ninety (90) days any execution, garnishment, judgment or attachment of such consequence as may materially impair its ability to carry on its operations; or the failure by the Company generally to pay its debts as they become due; or an assignment by the Company for the benefit of creditors; or the commencement by the Company (as the debtor) of a case in Bankruptcy or any proceeding under any other insolvency law; or the commencement of a case in Bankruptcy or any

proceeding under any other insolvency law against the Company (as the debtor) and a court having jurisdiction in the premises enters a decree or order for relief against the Company as the debtor in such case or proceeding, or such case or proceeding is consented to by the Company or remains undismissed for ninety (90) days, or the Company consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of the Company for the purpose of enforcing a Lien against such Property or for the purpose of general administration of such Property for the benefit of creditors;

(viii) an Event of Default under the Mortgages shall have occurred and be continuing fifteen (15) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or the Lender (but if such event is incapable of being cured within such fifteen (15) day period, the Company's time to cure shall be extended providing that the Company is diligently pursuing such cure);

(ix) an Event of Default under the Loan Documents shall have occurred and be continuing fifteen (15) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or the Lender (but if such event is incapable of being cured within such fifteen (15) day period, the Company's time to cure shall be extended providing that the Company is diligently pursuing such cure);

(x) a breach of any covenant or representation contained in Section 8.8 hereof with respect to environmental matters for a period of fifteen (15) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or the Lender (but if such event is incapable of being cured within such fifteen (15) day period, the Company's time to cure shall be extended providing that the Company is diligently pursuing such cure); or

(xi) failure of the Company to substantially create, maintain or retain the number of full-time and part-time jobs at the Facility after the Completion Date that the Company represented to the Agency in the Company's Application, as amended, that the Company would create, maintain or retain at the Facility for a period of fifteen (15) days after written notice, specifying such failure and requesting that it be remedied, given to the Company by the Agency or the Lender (but if such event is incapable of being cured within such fifteen (15) day period, the Company's time to cure shall be extended providing that the Company is diligently pursuing such cure).

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure any party hereto shall be unable in whole or in part to carry out its obligations under Sections 4.1 and 6.1 of this Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Lender, within a

reasonable time after the occurrence of the event or cause relied upon, such obligations under this Lease Agreement of the party giving such notice (and only such obligations), so far as they are affected by such force majeure, shall be suspended during continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, acts, priorities or orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, shortages of labor or materials or delays of carriers, partial or entire failure of utilities, shortage of energy, actions or inactions of any governmental, judicial or administrative entity, or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault. The party claiming such inability shall remove the cause for the same with all reasonable promptness. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2 Remedies on Default.

(a) Whenever any Event of Default shall have occurred, the Agency or the Lender may take, to the extent permitted by law, any one or more of the following remedial steps:

- (i) declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (A) all unpaid installments of rent payable pursuant to Section 5.3(a) and (b) hereof, (B) all unpaid and past due payments in lieu of taxes pursuant to the PILOT Agreement and (C) all other payments due under this Lease Agreement; provided, however, that if an Event of Default specified in Section 10.1(a)(vii) hereof shall have occurred, such installments of rent and other payments due under this Lease Agreement shall become immediately due and payable without notice to the Company or the taking of any other action by the Agency or the Lender;
- (ii) [reserved];
- (iii) [reserved];
- (iv) enter upon the Facility and complete the acquisition, construction and equipping of the Facility in accordance with the Plans and Specifications (with such changes as the Lender may deem appropriate) and in connection therewith (a) engage architects, contractors, materialmen, laborers and suppliers and others, (b) employ watchmen to protect and preserve the Facility, (c) assume any contract relating to the Facility and take over and use all labor, materials, supplies and equipment, whether or not previously

incorporated into the Facility, (d) pay, settle or compromise all bills or claims, (e) discontinue any work or change any course of action already undertaken with respect to the Facility, and (f) take or refrain from taking such action hereunder as the Lender may from time to time determine;

(v) terminate this Lease Agreement, the Ground Lease, reconvey the Facility to the Company subject to the Mortgages (unless same have been satisfied or released), and terminate the PILOT Agreement, in which event the Agency shall have the right to execute an appropriate deed, bill of sale and other necessary instruments with respect to the Facility and to place the same on record in the Suffolk County Clerk's Office, at the expense of the Company, and in which event the Company waives delivery and acceptance of such deed and other instruments, and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution, to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such deed and other instruments;

(vi) take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder and under the PILOT Agreement, to secure possession of the Facility, and to enforce the obligations, agreements or covenants of the Company under this Lease Agreement and under the PILOT Agreement.

(b) Whenever any Event of Default shall have occurred, the Company shall have the right, upon the payment of all moneys due pursuant to (i) Section 5.3(a) and (b) hereof, (ii) the Agency's Unassigned Rights, (iii) the PILOT Agreement, and (iv) the Environmental Compliance and Indemnification Agreement, to terminate this Lease Agreement, the Ground Lease, have the Facility reconveyed by the Agency to the Company subject to the Mortgages (unless same have been satisfied or released), and terminate the PILOT Agreement, in which event the Agency shall (i) execute an appropriate deed, bill of sale, termination of Lease and Memorandum of Lease, termination of Ground Lease and Memorandum of Ground Lease, termination of PILOT Agreement, and other necessary instruments with respect to the Facility, in recordable form, and the Company shall place same on record in the Suffolk County Clerk's Office, at the expense of the Company, and the Company hereby appoints the Agency its true and lawful agent and attorney-in-fact (which appointment shall be deemed to be an agency coupled with an interest), with full power of substitution, to file on its behalf all affidavits, questionnaires and other documentation necessary to accomplish the recording of such deed, terminations, and other instruments, and (ii) make such conveyances and releases as set forth in Section 11.4 hereof;

(c) Any sums payable to the Agency as a consequence of any action taken pursuant to this Section 10.2 (other than those sums attributable to Unassigned Rights) shall be paid to the Lender and applied as provided for in the Loan Documents.

(d) No action taken pursuant to this Section 10.2 (including repossession of the Facility) shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof.

(e) After an Event of Default shall have occurred, the Company shall have the right upon notice to the Agency and the Lender to enter the Facility with agents or representatives of the Agency and the Lender to remove any equipment or other personalty owned by the Company if such equipment or personalty is not part of the Facility.

Section 10.3 Remedies Cumulative. No remedy herein conferred upon or reserved to the Agency or the Lender is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Lease Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Agency or the Lender, as appropriate, to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Lease Agreement.

Section 10.4 Agreement to Pay Attorneys' Fees and Expenses.

(a) In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other reasonable expenses so incurred.

(b) In the event the Company should default under any of the provisions of this Lease Agreement and the Lender should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Lender the reasonable fees of such attorneys and such other reasonable expenses so incurred.

Section 10.5 No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 10.6 Certificate of No Default. The Company shall deliver to the Agency and the Lender each year beginning in 2008 no later than January 15 a certificate signed by an Authorized Representative of the Company stating that the Company is not in default under this Lease Agreement and no Event of Default exists under this Lease Agreement, the PILOT Agreement, the Mortgages, or any other Company Document. Such certificate shall also contain all information required by Section 8.6 hereof.

ARTICLE XI

EARLY TERMINATION OF LEASE AGREEMENT;
OPTION IN FAVOR OF COMPANY

Section 11.1 Early Termination of Lease Agreement. The Company shall have the option to terminate this Lease Agreement upon filing with the Agency and the Lender a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section and effective no earlier than the date upon which such payments required by Section 11.2 hereof shall be made (which date shall not be less than 45 nor more than 90 days from the date such certificate is filed) and upon compliance with the requirements set forth in Section 11.2 hereof.

Section 11.2 Conditions to Early Termination of Lease Agreement. In the event the Company exercises its option to terminate this Lease Agreement in accordance with the provisions of Section 11.1 hereof, the Company shall make the following payments:

(a) To the Lender: an amount certified by the Lender that will be sufficient to pay the principal of and interest on the Loan, together with all other fees and sums which may be owed to the Lender pursuant to the Loan, unless the Company instructs the Agency that the Improvements and Equipment are to be conveyed by the Agency to the Company subject to the Lien of the Mortgages, any other Liens and all Permitted Encumbrances, in which event no payments shall be required to be made to the Lender.

(b) To the Agency or the Taxing Authorities (as such term is defined in the PILOT Agreement), as appropriate pursuant to the PILOT Agreement: all amounts due and payable under the PILOT Agreement as of the date of the conveyance described in Section 11.3 hereof.

(c) To the Agency: an amount certified by the Agency sufficient to pay all unpaid fees and expenses of the Agency incurred under the Agency Documents.

Section 11.3 Obligation to Purchase Facility. Upon termination or expiration of the Lease Term, in accordance with Sections 5.2 or 11.1 hereof, the Agency shall be obligated to sell and the Company shall be obligated to purchase the Facility from the Agency for the purchase price of One Dollar (\$1.00) plus all due and unpaid payments in lieu of taxes pursuant to the PILOT Agreement through the date upon which this Lease Agreement terminates or expires. The Company shall purchase the Facility by giving written notice to the Agency and to the Lender (which may be contained in the certificate referred to in Section 11.1 hereof) (i) declaring the Company's election to purchase and (ii) fixing the date of closing such purchase, which shall be the date on which this Lease Agreement is to be terminated (which should be no sooner than the termination date described in Section 11.1).

Section 11.4 Conveyance on Purchase. At the closing of any purchase of the Facility pursuant to Section 11.3 hereof, the Agency shall, upon receipt of the purchase price, deliver and request the Lender to deliver to the Company all necessary documents, including but not limited to those set forth in Section 10.2(b) hereof, (i) to convey to the Company title

to the Property being purchased, as such Property exists, subject only to the following: (A) any Liens to which title to such Property was subject when conveyed to the Agency, (B) any Liens created at the request of the Company, to the creation of which the Company consented or in the creation of which the Company acquiesced, (C) any Permitted Encumbrances (other than the Lien of the Mortgages) unless the Company has instructed the Agency to transfer the Property subject to the Lien of the Mortgages) and (D) any Liens relating to a matter which adversely affects the Agency resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Lease Agreement or arising out of an Event of Default hereunder, (ii) to release and convey to the Company all of the Agency's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Facility (but not including any Unassigned Rights) and (iii) to discharge and release the Mortgages and any other security interest held by the Lender if the Mortgages are being paid off simultaneously with such transfer. Upon the conveyance of the Facility by the Agency to the Company pursuant to this Article XI, the PILOT Agreement and the Ground Lease shall terminate.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Brookhaven Industrial Development Agency
1 Independence Hill, 3rd Floor
Hempstead, New York 11550-4037
Attention: Chief Executive Officer

To the Company:

Caithness Long Island, LLC
c/o Caithness Corporation
565 Fifth Avenue, 29th Floor
New York, New York 10017
Attention: Ross D. Ain, Senior Vice President

To the Lender:

[To be hereinafter supplied by the Company]

Section 12.2 Binding Effect. This Lease Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns.

Section 12.3 Severability. In the event any provision of this Lease Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.4 Amendments, Changes and Modifications. This Lease Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties hereto and without the concurring written consent of the Lender. The Agency, with the consent of the Company, and at the Company's sole cost and expense, agrees to modify the Company Documents, as reasonably requested by the Lender.

Section 12.5 Execution of Counterparts. This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.6 Applicable Law. This Lease Agreement shall be governed exclusively by the applicable laws of the State, without regard or reference to its conflict of laws principles.

Section 12.7 List of Additional Equipment; Further Assurances.

(a) Upon the Completion Date with respect to the Facility and the installation of all of the Equipment therein, the Company shall prepare and deliver to the Agency and the Lender a schedule listing all of the Equipment not previously described in this Lease Agreement. If requested in writing by the Agency or the Lender, the Company shall thereafter furnish to the Agency and the Lender, within sixty (60) days after the end of each calendar year, a schedule listing all of the Equipment not theretofore previously described herein or in the aforesaid schedule.

(b) The Agency and the Company shall execute and deliver all instruments and shall furnish all information necessary or appropriate to perfect or protect any security interest created or contemplated by this Lease Agreement and the Mortgages, or as may be reasonably requested by the Lender.

Section 12.8 Survival of Obligations. This Lease Agreement shall survive the making of the Loan and the performance of the obligations of the Company to make payments required by Section 5.3 and all indemnities shall survive the foregoing and any termination or expiration of this Lease Agreement and the payment of the Loan.

Section 12.9 Table of Contents and Section Headings Not Controlling. The Table of Contents and the headings of the several Sections in this Lease Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

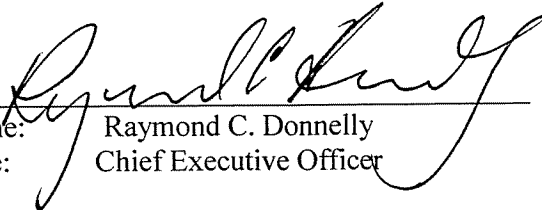
Section 12.10 Lien Law Covenant. This Lease Agreement and the conveyance made hereby shall be subject to the trust fund provisions of Section 13 of the Lien Law of the State.

Section 12.11 Memorandum of Lease. The parties shall not record this Lease Agreement but will record a Memorandum of Lease.

Section 12.12 Consent. Wherever in this Lease Agreement the consent or approval of the Company or the Agency is required, such consent or approval shall not be unreasonably withheld, delayed nor conditioned.

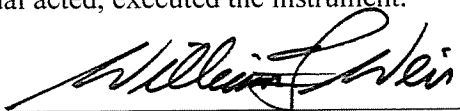
IN WITNESS WHEREOF, the Agency and the Company have caused this Lease Agreement to be executed in their respective names by their duly authorized officers, all as of February 1, 2007.

TOWN OF BROOKHAVEN INDUSTRIAL
DEVELOPMENT AGENCY

By: 
Name: Raymond C. Donnelly
Title: Chief Executive Officer

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

On the 26th day of February in the year 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Raymond C. Donnelly, 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 Lease Agreement, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Lease Agreement, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.



Notary Public

WILLIAM F. WEIR
NOTARY PUBLIC, STATE OF NEW YORK
REGISTRATION #: 02WE4991594
QUALIFIED IN MONROE COUNTY
CERTIFICATE FILED IN MONROE COUNTY
COMMISSION EXPIRES FEB. 3, 20 10

CAITHNESS LONG ISLAND, LLC

By: _____

Name: Ross D. Ain

Title: Senior Vice President

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

On the 26th day of February in the year 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared Ross D. Ain, 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 Lease Agreement, and acknowledged to me that she executed the same in her capacity, and that by her signature on the Lease Agreement, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

Notary Public

RONALD M. BEIGEL
Notary Public, State of New York
No. 01BE4861461
Qualified in Nassau County
Commission Expires June 9, 2010

EXHIBIT A

LEGAL DESCRIPTION

PART 1 - LEGAL DESCRIPTION OF SITE:

[TO COME FROM COMPANY COUNSEL]

PART 2 - LEGAL DESCRIPTION OF LIPA EASEMENT:

[TO COME FROM COMPANY COUNSEL]

PART 3 - LEGAL DESCRIPTION OF DECLARATION:

[TO COME FROM COMPANY COUNSEL]

PART 4 - LEGAL DESCRIPTION OF GAS EASEMENT:

[TO COME FROM COMPANY COUNSEL]

PART 5 - LEGAL DESCRIPTION OF TEMPORARY EASEMENT:

[TO COME FROM COMPANY COUNSEL]

PART 6 - LEGAL DESCRIPTION OF RELEASED PARCEL NO. 1:

[TO COME FROM COMPANY COUNSEL]

PART 7 - LEGAL DESCRIPTION OF ACCESS EASEMENT:

[TO COME FROM COMPANY COUNSEL]

EXHIBIT A - PART I

UNIT DESCRIPTION:

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Brookhaven, County of Suffolk and State of New York, bounded and described as follows:

BEGINNING at a point on the northerly terminus of Zorn Boulevard as shown on the Map of Zorn Industrial Park Section 1 filed July 9, 1999 as Map Number 10306 said point of beginning also being distant 2,334.78 feet northerly as measured along the easterly side of Zorn Boulevard from its intersection with the northerly side of Horseblock Road (CR 16) as widened;

THENCE North 82 degrees 03 minutes 21 seconds West, 377.01 feet to a point on the easterly line of land shown as Map of Sills Industrial Park Section Two, Map No. 8227;

THENCE along the easterly line of said last mentioned map and part of the easterly line of Map of Sills Industrial Park Section One, Map No. 7762, North 07 degrees 56 minutes 39 seconds East, 2,299.17 feet;

THENCE South 82 degrees 03 minutes 21 seconds East, 651.02 feet to a point;

THENCE partially along the westerly side of lands now or formerly of Esposito, now or formerly of Celi Land LLC, south 07 degrees 45 minutes 07 seconds West, 727.06 feet to the southerly side of said land;

THENCE along the southerly side of said last mentioned land south 82 degrees 14 minutes 53 seconds east 660 feet to the westerly side of lands now or formerly of Lake Wildwood Properties;

THENCE along said last mentioned land south 07 degrees 45 minutes 07 seconds west 1320 feet to a point on the northerly side of lands now or formerly of Island Motor Cross of New York Inc.;

THENCE along said last mentioned land north 82 degrees 14 minutes 53 seconds west 660.00 feet to a point;

THENCE along the westerly line of said last mentioned land south 07 degrees 45 minutes 07 seconds west 331.33 feet to a point on the north side of lot 20 on Map of Zorn Industrial Park, Map No. 10306;

THENCE along the said northerly lot line north 82 degrees 05 minutes 00 seconds west 281.99 feet to a point on the easterly side of Zorn Boulevard as shown on said map;

THENCE along the easterly side of Zorn Boulevard north 07 degrees 56 minutes 39 seconds east 79.34 feet to the point or place of BEGINNING

Excepting certain parcels shown as lots 274 through 280 inclusive Block 10 as shown on the Map of the Want A Home Realty and Improvement Co. filed September 22, 1910 as Map Number 485.

Being designated on the Suffolk County Tax Map as Numbers:

District	County Section	Tax Block	Map # Lot
0200	777	1	26
0200	777	1	28.5
0200	777	7	1.1
0200	777	2	1
0200	777	2	2

EXHIBIT A – PART 2

SUGGESTED DESCRIPTION OF A SWITCHYARD
ACCESS EASEMENT OVER C.L.I. PROPERTY,
SITUATED AT YAPHANK, TOWN OF BROOKHAVEN,
COUNTY OF SUFFOLK, STATE OF NEW YORK.

BEGINNING at a point on the northerly terminus of Zorn Boulevard as shown on the Map of Zorn Industrial Park Section 1 filed July 9, 1999 as Map Number 10306 said point of beginning also being distant 2,334.78 feet northerly as measured along the easterly side of Zorn Boulevard from its intersection with the northerly side of Horseblock Road (CR 16) as widened;

RUNNING THENCE the following course:

- 1) N 82° 03' 21" W, 60.00 feet; to the POINT of BEGINNING.

RUNNING THENCE the following twenty-two (22) courses:

- 1) N 07° 56' 39" E, 2.02 feet;
- 2) Northerly along the arc of a curve bearing to the right, having a radius of 310.00 feet and a length of 51.92 feet;
- 3) Northwesterly along the arc of a curve bearing to the right, having a radius of 250.00 feet and a length of 322.59 feet;
- 4) N 07° 46' 46" E, 19.97 feet;
- 5) Northeasterly along the arc of a curve bearing to the right, having a radius of 64.00 feet and a length of 100.53 feet;
- 6) S 82° 13' 14" E, 319.82 feet;
- 7) Northerly along the arc of a curve bearing to the left, having a radius of 40.00 feet and a length of 62.83 feet;
- 8) N 07° 46' 46" E, 739.32 feet;
- 9) N 08° 14' 27" E, 1,079.31 feet;
- 10) Northerly along the arc of a curve bearing to the right, having a radius of 204.00 feet and a length of 63.01 feet;
- 11) S 82° 03' 21" E, 25.41 feet;
- 12) Southerly along the arc of a curve bearing to the left, having a radius of 180.00 feet and a length of 63.45 feet;
- 13) S 08° 14' 27" W, 1,079.22 feet;
- 14) S 07° 46' 46" W, 739.22 feet;
- 15) Southwesterly along the arc of a curve bearing to the right, having a radius of 64.00 feet and a length of 100.53 feet;
- 16) N 82° 13' 14" W, 319.82 feet;
- 17) Southerly along the arc of a curve bearing to the left, having a radius of 40.00 feet and a length of 62.83 feet;
- 18) S 07° 46' 46" W, 19.97 feet;
- 19) Southeasterly along the arc of a curve bearing to the left, having a radius of 226.00 feet and a length of 350.41 feet;
- 20) Southerly along the arc of a curve bearing to the left, having a radius of 250.00 feet and a length of 66.94 feet;
- 21) S 07° 56' 39" W, 2.02 feet;
- 22) N 82° 03' 21" W, 60.00 feet to the POINT or PLACE of BEGINNING.

Containing within said bounds: 1.58 acres/68,912 s.f.

EXHIBIT A - PART 3

SUGGESTED DESCRIPTION OF RECHARGE BASIN,
SITUATED AT YAPHANK, TOWN OF BROOKHAVEN,
COUNTY OF SUFFOLK, STATE OF NEW YORK.

BEGINNING at a point on the northerly terminus of Zorn Boulevard as shown on the Map of Zorn Industrial Park Section 1 filed July 9, 1999 as Map Number 10306 said point of beginning also being distant 2,334.78 feet northerly as measured along the easterly side of Zorn Boulevard from its intersection with the northerly side of Horseblock Road (CR 16) as widened to the POINT of BEGINNING.

RUNNING thence the following seven (7) courses:

- 1) S 07° 56' 39" W, 79.34 feet;
- 2) S 82° 05' 00" E, 281.99 feet;
- 3) N 07° 45' 07" E, 301.33 feet
- 4) Northwesterly along the arc of a curve bearing to the left, having a radius of 30.00 feet, and a length of 47.12 feet.
- 5) N 82° 14' 53" W, 1.72 feet;
- 6) Southwesterly along the arc of a curve bearing to the left, having a radius of 250.00 feet, and a length of 391.86 feet
- 7) S 07° 56' 39" W, 2.02 feet to the POINT of BEGINNING.

Containing within said bounds: 1.83 acres/79,613 s.f

EXHIBIT A- PART 4

SUGGESTED DESCRIPTION OF PRIVATE GAS
TRANSMISSION EASEMENT OVER C.L.I. PROPERTY,
SITUATED AT YAPHANK, TOWN OF
BROOKHAVEN, COUNTY OF SUFFOLK, STATE OF
NEW YORK

BEGINNING at a point on the northerly terminus of Zorn Boulevard as shown on the Map of Zorn Industrial Park Section 1 filed July 9, 1999 as Map Number 10306 said point of beginning also being distant 2,334.78 feet northerly as measured along the easterly side of Zorn Boulevard from its intersection with the northerly side of Horseblock Road (CR 16) as widened;

RUNNING THENCE the following seven (7) courses:

- 1) S 07° 56' 39" W, 79.34 feet;
- 2) S 82° 05' 00" E, 281.99 feet;
- 3) N 07° 45' 07" E, 331.33 feet;
- 4) S 82° 14' 53" E, 660.00 feet;
- 5) N 07° 45' 07" E, 1320.00 feet
- 6) N 82° 14' 53" W, 660.00 feet;
- 7) N 07° 45' 07" E, 700.00 feet to the POINT of BEGINNING.

RUNNING THENCE the following thirteen (13) courses:

- 1) S 82° 15' 20" E, 40.00 feet;
- 2) N 07° 45' 07" E, 789.99 feet;
- 3) N 82° 14' 53" E, 47.73 feet;
- 4) N 07° 45' 07" E, 37.00 feet;
- 5) S 82° 14' 53" E, 22.00 feet
- 6) N 07° 45' 07" E, 53.00 feet;
- 7) S 82° 14' 53" E, 37.50 feet;
- 8) S 07° 45' 07" W, 68.01 feet;
- 9) S 82° 03' 21" E, 15.32 feet;
- 10) S 82° 14' 27" W, 777.14 feet;
- 11) Northeasterly along the arc of a curve bearing to the right,
having a radius of 180.00 feet and a length of 55.78 feet;
- 12) N 82° 15' 12" W, 51.41 feet;
- 13) S 07° 45' 07" W, 20.00 feet to the POINT or PLACE of BEGINNING

EXHIBIT A - PART 5

SUGGESTED DESCRIPTION OF TEMPORARY CUL-DE-SAC, SITUATED AT YAPHANK, TOWN OF BROOKHAVEN, COUNTY OF SUFFOLK, STATE OF NEW YORK.

BEGINNING at a point on the northerly terminus of Zorn Boulevard as shown on the Map of Zorn Industrial Park Section I filed July 9, 1999 as Map Number 10306 said point of beginning also being distant 2,334.78 feet northerly as measured along the easterly side of Zorn Boulevard from its intersection with the northerly side of Horseblock Road (CR 16) as widened;

RUNNING THENCE the following four (4) courses:

- 1) N 82° 03' 21" W, 60.00 feet;
- 2) N 07° 56' 39" E, 2.02 feet;
- 3) Northeasterly along the arc of a curve bearing to the right having a radius of 310.00 feet and a length of 485.91 feet;
- 4) S 82° 14' 53" E, 526.64 feet, to the POINT OF BEGINNING.

RUNNING THENCE the following four (4) courses:

- 1) S 82° 14' 53" E, 165.08 feet;
- 2) N 07° 45' 07" E, 8.00 feet;
- 3) Northeasterly along the arc of a curve bearing to the left, having a radius of 68.00 feet, and a length of 197.15 feet.
- 4) Southwesterly along the arc of a curve bearing to the right, having a radius of 32.00 feet, and a length of 42.51 feet to the POINT of BEGINNING.

Containing within said bounds: 0.19 acres/8,508 s.f.

EXHIBIT A – PART 6

PARCEL 1

BEGINNING at a point on the northerly terminus of Zorn Boulevard as shown on the Map of Zorn Industrial Park Section 1 filed July 9, 1999 as Map Number 10306 said point of beginning also being distant 2,334.78 feet northerly as measured along the easterly side of Zorn Boulevard from its intersection with the northerly side of Horseblock Road (CR 16) as widened;

RUNNING THENCE the following course:

- 1) N 82° 03' 21" W, 60.00 feet; to the POINT of BEGINNING.

RUNNING THENCE the following eleven (11) courses:

- 1) N 07° 56' 39" E, 2.02 feet;
- 2) Northeasterly along the arc of a curve bearing to the right, having a radius of 310.00 feet, and a length of 485.91 feet.
- 3) S 82° 14' 53" E, 691.72 feet;
- 4) S 07° 45' 07" W, 60.00 feet;
- 5) N 82° 14' 53" W, 660.00 feet;
- 6) S 07° 45' 07" W, 30.00 feet;
- 7) Northwesterly along the arc of a curve bearing to the left, having a radius of 30 feet, and a length of 47.12 feet.
- 8) N 82° 14' 53" West, 1.72 feet;
- 9) Southwesterly along the arc of a curve bearing to the left, having a radius of 250.00 feet, and a length of 391.86 feet.
- 10) S 07° 56' 39" W, 2.02 feet;
- 11) N 82° 03' 21" W, 60.00 feet to the point of beginning.

Containing within said bounds: 1.56 acres/68,151 s.f.

PARCEL 2

BEGINNING at a point on the northerly terminus of Zorn Boulevard as shown on the Map of Zorn Industrial Park Section 1 filed July 9, 1999 as Map Number 10306 said point of beginning also being distant 2,334.78 feet northerly as measured along the easterly side of Zorn Boulevard from its intersection with the northerly side of Horseblock Road (CR 16) as widened;

RUNNING THENCE the following four (4) courses:

- 1) N 82° 03' 21" W, 60.00 feet;
- 2) N 07° 56' 39" E, 2.02 feet;
- 3) Northeasterly along the arc of a curve bearing to the right having a radius of 310.00 feet and a length of 485.91;
- 4) S 82° 14' 53" E, 691.72 feet, to the POINT OF BEGINNING.

RUNNING THENCE the following four (4) courses:

- 1) N 82° 14' 53" W, 60.00 feet;
- 2) N 07° 45' 07" E, 1,260.00 feet;
- 3) S 82° 14' 53" E, 60.00 feet;
- 4) S 07° 45' 07" W, 1,260.00 feet to the POINT of BEGINNING.

Containing within said bounds: 1.72 acres/75,600 s.f.

EXHIBIT A – PART 7

PARCEL 1

BEGINNING at a point on the northerly terminus of Zorn Boulevard as shown on the Map of Zorn Industrial Park Section 1 filed July 9, 1999 as Map Number 10306 said point of beginning also being distant 2,334.78 feet northerly as measured along the easterly side of Zorn Boulevard from its intersection with the northerly side of Horseblock Road (CR 16) as widened;

RUNNING THENCE the following course:

1) N 82° 03' 21" W, 60.00 feet; to the POINT of BEGINNING.

RUNNING THENCE the following eleven (11) courses:

- 1) N 07° 56' 39" E, 2.02 feet;
- 2) Northeasterly along the arc of a curve bearing to the right, having a radius of 310.00 feet, and a length of 485.91 feet.
- 3) S 82° 14' 53" E, 691.72 feet;
- 4) S 07° 45' 07" W, 60.00 feet;
- 5) N 82° 14' 53" W, 660.00 feet;
- 6) S 07° 45' 07" W, 30.00 feet;
- 7) Northwesterly along the arc of a curve bearing to the left, having a radius of 30 feet, and a length of 47.12 feet.
- 8) N 82° 14' 53" West, 1.72 feet;
- 9) Southwesterly along the arc of a curve bearing to the left, having a radius of 250.00 feet, and a length of 391.86 feet.
- 10) S 07° 56' 39" W, 2.02 feet;
- 11) N 82° 03' 21" W, 60.00 feet to the point of beginning.

Containing within said bounds: 1.56 acres/68.151 s.f.

PARCEL 2

BEGINNING at a point on the northerly terminus of Zorn Boulevard as shown on the Map of Zorn Industrial Park Section 1 filed July 9, 1999 as Map Number 10306 said point of beginning also being distant 2,334.78 feet northerly as measured along the easterly side of Zorn Boulevard from its intersection with the northerly side of Horseblock Road (CR 16) as widened;

RUNNING THENCE the following four (4) courses:

- 1) N 82° 03' 21" W, 60.00 feet;
- 2) N 07° 56' 39" E, 2.02 feet;
- 3) Northeasterly along the arc of a curve bearing to the right having a radius of 310.00 feet and a length of 485.91;
- 4) S 82° 14' 53" E, 691.72 feet, to the POINT OF BEGINNING.

RUNNING THENCE the following four (4) courses:

- 1) N 82° 14' 53" W, 60.00 feet;
- 2) N 07° 45' 07" E, 1,260.00 feet;
- 3) S 82° 14' 53" E, 60.00 feet
- 4) S 07° 45' 07" W, 1,260.00 feet to the POINT of BEGINNING.

Containing within said bounds: 1.72 acres/75,600 s.f.

EXHIBIT B

Equipment

All equipment, fixtures, machinery, building materials and items of personal property acquired, constructed and installed and/or to be acquired, constructed and installed in connection with the completion of the Caithness Long Island, LLC 2007 Facility located on an approximately 55 acre parcel of land (the "Land") located north of Horseblock Road, south of the Long Island Expressway, west of Patchogue Yaphank Road, East of Old Dock Road, south of the Long Island Rail Road (Main Branch) at the northern terminus of Zorn Boulevard in the Town of Brookhaven, Suffolk County, New York (more specifically known as S.C. tax map numbers Section 777, Block 1, Lots 026.000 and 028.005, Section 777, Block 2, Lots 001.000 and 002.000 and Section 777, Block 7, Lot 001.001), Town of Brookhaven, Suffolk County, New York, together with certain access and operations and use rights over the CELI Easement Areas (as defined in this Lease Agreement), all as more particularly described in Exhibit A attached to this Lease Agreement (the "Site"), and the construction and equipping of four (4) buildings thereon, totaling approximately 22,000 square feet to be used as an electric generating facility, and the acquisition and installation of certain electric generating equipment and auxiliary equipment including, but not limited to, a gas turbine and generator, a steam turbine and generator, a heat recovery steam generator, an air cooled condenser, generator step-up transformers, two auxiliary transformers, gas conditioning equipment (including compressors), a low sulfur distillate fuel tank, a raw water tank, a demineralized water tank, fire water pumps, two boiler feed pumps, two condensate pumps, two vacuum pumps, plus other miscellaneous pumps, motors, switchgear, station service transformers, instruments, controls, piping, valves and other equipment as may be required.

EXHIBIT B

Equipment

All equipment, fixtures, machinery, building materials and items of personal property acquired, constructed and installed and/or to be acquired, constructed and installed in connection with the completion of the Caithness Long Island, LLC 2007 Facility located on an approximately 55 acre parcel of land (the "Land") located north of Horseblock Road, south of the Long Island Expressway, west of Patchogue Yaphank Road, East of Old Dock Road, south of the Long Island Rail Road (Main Branch) at the northern terminus of Zorn Boulevard in the Town of Brookhaven, Suffolk County, New York (more specifically known as S.C. tax map numbers Section 777, Block 1, Lots 026.000 and 028.005, Section 777, Block 2, Lots 001.000 and 002.000 and Section 777, Block 7, Lot 001.001), Town of Brookhaven, Suffolk County, New York, together with certain access and operations and use rights over the CELI Easement Areas (as defined in this Lease Agreement), all as more particularly described in Exhibit A attached to this Lease Agreement (the "Site"), and the construction and equipping of four (4) buildings thereon, totaling approximately 22,000 square feet to be used as an electric generating facility, and the acquisition and installation of certain electric generating equipment and auxiliary equipment including, but not limited to, a gas turbine and generator, a steam turbine and generator, a heat recovery steam generator, an air cooled condenser, generator step-up transformers, two auxiliary transformers, gas conditioning equipment (including compressors), a low sulfur distillate fuel tank, a raw water tank, a demineralized water tank, fire water pumps, two boiler feed pumps, two condensate pumps, two vacuum pumps, plus other miscellaneous pumps, motors, switchgear, station service transformers, instruments, controls, piping, valves and other equipment as may be required.

SCHEDULE A

SCHEDULE OF DEFINITIONS

“Access Easement” means the granting by the Company to Celi Land, LLC (“Celi”) of an easement for ingress and egress to and from certain land contiguous to the Site, and being on the portion of the Land described in Exhibit A attached to the Lease Agreement under the heading “Legal Description of Access Easement”.

“Act” means, collectively, Title 1 of Article 18-A of the General Municipal Law of the State, enacted into law as Chapter 1030 of the Laws of 1969 of the State, as amended, together with Chapter 358 of the Laws of 1970 of the State, as amended.

“Agency” means (i) the Town of Brookhaven Industrial Development Agency, its successors and assigns, and (ii) any local governmental body resulting from or surviving any consolidation or merger to which the Agency or its successors may be a party.

“Agency Documents” means the Ground Lease, the Lease Agreement, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement, the Mortgages and the Assignments.

“Approving Resolution” means the resolution adopted by the Agency on February 26, 2007, authorizing the execution and delivery of the Agency Documents, as such resolution may be amended and supplemented from time to time.

“Assignments” means, collectively, any and all assignments of leases and rents, each to be dated a date to be determined, and each in the form required by, and from the Agency to, the Lender.

“Authorized Representative” means, in the case of the Agency, the Chairman, Vice Chairman or the Chief Executive Officer of the Agency; in the case of the Company, the President, any Vice President or the Secretary of the Company; and, in the case of any of the foregoing, such additional persons as, at the time, are designated to act on behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Lender and to the Agency or the Company, as the case may be, containing the specimen signature of each such person and signed on behalf of (i) the Agency by the Chairman, Vice Chairman or the Chief Executive Officer of the Agency, or (ii) the Company by the President, any Vice President or the Secretary of the Company.

“Bill of Sale” means the Bill of Sale, dated the Closing Date, given by the Company to the Agency with respect to the Equipment, as the same may be amended from time to time.

“Building Loan Agreement” means, collectively, one or more building loan agreements, dated on or after the Closing Date, between the Company and the Lender, if any such Building Loan Agreement is required.

“Business Day” means any day other than a Saturday, a Sunday, a legal holiday or a day on which banking institutions in New York, New York or any city in which the principal office of the Lender is located are authorized by law or executive order to remain closed.

“Celi Easement Areas” shall have the meaning set forth in Section 4.1(a) of this Lease Agreement.

“Closing Date” means the date of delivery of the Deed.

“Company” means Caithness Long Island, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware authorized to transact business in the State, and its successors and assigns.

“Company Documents” means the Bill of Sale, the Deed, the Ground Lease, the Lease Agreement, the Environmental Compliance and Indemnification Agreement, the PILOT Agreement, the Mortgages and the other Loan Documents.

“Completion Date” means the date of completion of the Facility as certified pursuant to Section 4.3 of the Lease Agreement.

“Condemnation” means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

“Construction Period” means the period (a) beginning on the earlier of (i) the date of commencement of construction and equipping of the Facility, which date shall not be prior to February 26, 2007, or (ii) the Closing Date, and (b) ending on the Completion Date.

“Declaration” means the execution and delivery by the Company and the Agency of a certain Declaration, wherein the Company restricts the use of the portion of the Land described in Exhibit A attached to the Lease Agreement under the heading “Legal Description of Declaration” to drainage purposes only.

“Deed” means the Bargain and Sale Deed, dated the Closing Date, given by the Company to the Agency with respect to the Improvements.

“Easement Areas” means collectively, the Subordinated Parcel No. 1, the Subordinated Parcel No. 2, the Subordinated Parcel No. 3, the Subordinated Parcel No. 4, the Subordinated Parcel No. 5, the Access Easement and the Substituted Subordinated Parcel No. 1.

“Easements” means collectively, the LIPA Easement, the Gas Easement, the Declaration, the Temporary Easement, the Access Easement and the Right of Way.

“Environmental Compliance and Indemnification Agreement” means the Environmental Compliance and Indemnification Agreement, dated as of February 1, 2007, between the Agency and the Company.

“Equipment” means all machinery, equipment and other personal property acquired, installed and used and to be used in connection with the Facility, including as described in Exhibit B to the Lease Agreement.

“Event of Default” (a) when used with respect to the Lease Agreement, means any of the events defined as Events of Default by Section 10.1 of the Lease Agreement, and

(b) when used with respect to the Mortgages, means any of the events defined as Events of Default in the Mortgages.

“Facility” means the Site, the Improvements and the Equipment to be leased and subleased, respectively, to the Company under the Lease Agreement.

“Facility Services” means all services necessary for the acquisition, construction and equipping of the Facility.

“Gas Easement” means collectively, the granting by the Company and the Agency to any supplier of natural gas fuel (i) an easement for the purposes of siting of any natural gas fuel pipeline, metering station, and related equipment (collectively, the “Gas Line”) to service the Facility, and (ii) an easement for ingress and egress to and from the Gas Line on the portion of the Land described in Exhibit A attached to the Lease Agreement under the heading “Legal Description of Gas Easement”, or such other portion of the Land as may be approved by the Lender pursuant to the terms of the Loan Documents.

“Ground Lease” means the Ground Lease, dated as of February 1, 2007, between the Company and the Agency.

“Hazardous Substance” means, without limitation, any flammable, explosive, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum, petroleum constituents, petroleum products, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, pollutants, or toxic pollutants, as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Sections 6901, et seq.), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Sections 2601, et seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. Sections 1251 et seq.), Articles 17 and 27 of the New York State Environmental Conservation Law, or any other applicable Environmental Law and the regulations promulgated thereunder.

“Improvements” means all those buildings, improvements, enclosures, structures and other related facilities (i) affixed or attached to the Site and (ii) not part of the Equipment, all as they may exist from time to time.

“Independent Counsel” means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full time employee of the Agency, the Company or the Lender.

“Lease Agreement” means this Lease Agreement, dated as of February 1, 2007, between the Agency, as lessor, and the Company, as lessee, with respect to the Facility, as the same may be amended from time to time.

“Lease Term” means the duration of the leasehold estate created by the Lease Agreement as specified in Section 5.2 of the Lease Agreement.

“Lender” means, collectively and individually, as applicable, (i) U.S. Bank, National Association, (ii) any bank, lender or entity making a loan, in whole or in part, to the Company in connection with the acquisition, construction and equipping of the Facility, and its or their successors and assigns, or (iii) any surviving, resulting or transferee banking institution or other lender authorized to do business in the State.

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

“LIPA” means the Long Island Power Authority.

“LIPA Easement” means the granting by the Company and the Agency to LIPA of an easement for ingress and egress to and from the switchyard to be constructed by LIPA to service the Facility, and being on the portion of the Land described in Exhibit A attached to the Lease Agreement under the heading “Legal Description of LIPA Easement”.

“Loan” means, collectively and individually, one or more building loans and project loans made by the Lender to the Company to finance (or to reimburse the Company for the financing of) the acquisition, construction, installation and development of the Facility and all extension, modifications or refinancing thereof.

“Loan Documents” means, collectively, the Mortgages, the Building Loan Agreement, the Assignments, the Notes and any other documents executed and delivered to the Lender in connection with the Loan.

“Mortgages” means, collectively, all mortgages and security agreements granted by the Agency and the Company to the Lender to secure the Notes and the Loan.

“Net Proceeds” means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys’ fees) incurred in obtaining such gross proceeds.

“Notes” means, collectively and individually, all promissory notes in given by the Company to the Lender to evidence the Loan and the Company’s obligations to repay the Loan, and all extensions or modifications or restatements thereof.

“Permitted Encumbrances” means (i) exceptions to title set forth in the Title Report, (ii) the Mortgages and the Assignments and other encumbrances created by the Loan Documents, (iii) the Ground Lease and the Lease Agreement, (iv) the LIPA Easement, (v) the Declaration, (vi) the Gas Easement, (vii) the Temporary Easement, (viii) the Access Easement, (ix) utility, access and other easements and rights-of-way, restrictions, exceptions

and other minor imperfections in title that do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (x) the Right of Way, (xi) mechanics', materialmen's, warehousemen's, carriers' and other similar Liens which are approved in writing by the Lender or its Counsel, and (xii) Liens for taxes not yet delinquent and any other Lien allowed by the Loan Documents.

"Person" or "Persons" means an individual, partnership, limited liability company, corporation, trust or unincorporated organization, and a government or agency or political subdivision or branch thereof.

"PILOT Agreement" means the Payment-in-Lieu-of-Tax Agreement, dated as of February 1, 2007, between the Company and the Agency, as amended from time to time.

"Plans and Specifications" means the plans and specifications for the Improvements, prepared by or for the Company, as revised from time to time.

"Prime Rate" means the rate designated by the Lender from time to time as its "prime rate."

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

"Public Purposes" shall mean the State's objective to create industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and to empower such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, recreation or industrial facilities, including industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living.

"Released Parcel No. 1" shall have the meaning as set forth in Section 9.3(c) of the Lease Agreement.

"Released Parcel No. 2" shall have the meaning as set forth in Section 9.3(d) of the Lease Agreement.

"Released Parcels" means collectively, the Released Parcel No. 1 and the Released Parcel No. 2.

"Right of Way" shall have the meaning as set forth in Section 5.1(f) of this Lease Agreement.

"Schedule of Definitions" means the words and terms set forth in this Schedule of Definitions attached to the Lease Agreement, as the same may be amended from time to time.

"SEQR Act" means the State Environmental Quality Review Act and the regulations thereunder.

“Site” shall have the meaning as set forth in the Recitals to this Lease Agreement.

“State” means the State of New York.

“Subordinated Parcel No. 1” shall have the meaning as set forth in Section 5.1(b) of the Lease Agreement.

“Subordinated Parcel No. 2” shall have the meaning as set forth in Section 5.1(c) of the Lease Agreement.

“Subordinated Parcel No. 3” shall have the meaning as set forth in Section 5.1(d) of the Lease Agreement.

“Subordinated Parcel No. 4” shall have the meaning as set forth in Section 5.1(e) of the Lease Agreement.

“Subordinated Parcel No. 5” shall have the meaning as set forth in Section 5.1(f) of the Lease Agreement.

“Substituted Subordinated Parcel No. 1” shall have the meaning as set forth in Section 5.1(b) of the Lease Agreement.

“Substitute Facilities” means facilities of substantially the same nature as the proposed Facility.

“Temporary Easement” means the execution and delivery by the Company and the Agency of a temporary easement wherein the Company grants to the Town of Brookhaven, County of Suffolk, or State of New York a temporary easement to use the portion of the Land described in Exhibit A attached to the Lease Agreement under the heading “Legal Description of Temporary Easement” for temporary turn-around purposes.

“Title Report” means that certain Leasehold Policy Title Number LTNY-5065-S-06/2 issued by Stewart Title Insurance Company dated as of February 22, 2007 and recertified on February 26, 2007.

“Transaction Counsel” means the law firm of Nixon Peabody LLP.

“Transaction Documents” means the Agency Documents, the Company Documents and the Loan Documents.

“Unassigned Rights” means the rights of the Agency and moneys, other than refunds received by the Agency on account for the Company, payable pursuant to and under Sections 5.3(a)(i), 5.3(b), 6.3, 6.4(b) and (c), 6.7, 8.1, 8.2, 8.4, 8.6, 8.8, 8.9, 8.12, 10.2(a)(i)(B) and 10.2(a)(v), 10.4, 11.2(b) and (c) and 12.8 of the Lease Agreement.