
COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY

AND

CHPE LLC

LEASE AGREEMENT

DATED AS OF OCTOBER 12, 2022

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(This Table of Contents is not part of the Lease Agreement and is for convenience of reference only)

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LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of October 12, 2022 (“Lease Agreement”) by and between the COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at Saratoga County Municipal Center, Ballston Spa, New York 12020 (the “Agency”), as landlord, and CHPE LLC, a limited liability company organized and existing under the laws of the State of New York and having an address of 600 Broadway, Albany, New York 12207 (the “Company”), as tenant;

W I T N E S S E T H:

WHEREAS, the New York State Industrial Development Agency Act, being Title I of Article 18-A of the General Municipal Law, Chapter 24, of the Consolidated Laws of the State of New York, as amended (the “Enabling Act”), authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any buildings or other improvements, 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, among other things, manufacturing, warehousing, research, commercial or industrial purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities; and

WHEREAS, the Agency was created pursuant to and in accordance with the provisions of the Enabling Act by Chapter 855 of the Laws of 1971 of the State of New York, as amended (said chapter and the Enabling Act being hereinafter collectively referred to as the “Act”), and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and improve their standard of living; and

WHEREAS, the Agency, by resolution adopted on August 16, 2022 (the “Resolution”), resolved to undertake a project (the “Project”) consisting of (A) (1) the acquisition of an interest in certain parcels of land located in the Towns of Moreau, Northumberland, Wilton, Greenfield, Milton, Ballston and Clifton Park and in the City of Saratoga Springs, County of Saratoga, State of New York (collectively, the “Land”), (2) the acquisition of two five-inch diameter high-voltage direct current (“HVDC”) transmission cables (the “Equipment”), and (3) the construction, installation and equipping on or under the Land of a fully-buried, up to 1,250-megawatt (“MW”) HVDC electric transmission line and related infrastructure (the “Improvements”, and together with the Land and Equipment, the “Project Facility”) primarily in a rail right of way owned by Canadian Pacific Railway as well as in state and municipally-owned roads and streets, all of the foregoing for use by the Company as a portion of an electric transmission line from the U.S.-Canada border to New York City, (B) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency and (C) the providing by the Agency of certain “Financial Assistance” (as defined in the Act) in the form of exemptions from real property taxes, mortgage recording tax and state and local sales tax; and

WHEREAS, the providing of the Project Facility and the lease of the Project Facility to the Company pursuant to this Lease Agreement is for a proper purpose, to wit, to advance the job opportunities, health, general prosperity and economic welfare of the inhabitants of the State of New York, pursuant to the provisions of the Act (as hereinafter defined); and

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

NOW, THEREFORE, THE AGENCY AND THE COMPANY HEREBY AGREE AS FOLLOWS:

ARTICLE I

DEFINITIONS

SECTION 1.1. DEFINITIONS. The terms defined in this Section 1.1 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Lease Agreement and of any agreement supplemental hereto shall have the respective meanings specified in this Section 1.1.

“Act” means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 855 of the Laws of 1971 of the State.

“Affiliate” means an affiliate (as such term is defined in Rule 12b-2 of the General Rules and Regulations under the Security Exchange Act of 1934) of the Company that is controlled by, controlling or under common control with the Company.

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

“Authorized Representative” means the person or persons at the time designated to act in behalf of the Agency or the Company, as the case may be, by written certificate furnished to the Company and the Agency and signed on behalf of (A) the Agency by an officer thereof and (B) on behalf of the Company by an officer, member or manager thereof.

“Basic Documents” means the Underlying Lease, this Lease Agreement, the Project Agreement, and any other document now or hereafter executed by the Agency and the Company in connection with the Project Facility, as the same may be amended or supplemented from time to time in accordance with the terms thereof.

“Business Day” means a day on which banks located in New York City are not required or authorized to remain closed and on which the New York Stock Exchange is not closed.

“Closing Date” means the date of the execution and delivery of the Lease Agreement by the Company and the Agency.

“Code” means the Internal Revenue Code of 1986, as amended and regulations of the Department of Treasury promulgated thereunder and under the Internal Revenue Code of 1954, as amended.

“Commercial Operation Date” means the date on which the Company has completed construction and operational testing of the Project Facility and has established that the Project Facility is capable of continuous electrical transmission at its maximum capacity and has undergone line loss testing, as evidenced by the date stated in the Company’s notice to the New York Independent System Operator that the Project Facility has become or will become commercially operational.

“Company” means CHPE LLC, a limited liability company organized and existing under the laws of the State of New York, and its successors and permitted assigns.

“Completion Date” means the date which is certified by an Authorized Representative of the Company as the date of completion of the construction of the Improvements and the installation of the Equipment pursuant to this 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 Authority.

“Construction Period” means the period (A) beginning on the date of commencement of construction of the Improvements and/or installation of the Equipment, and (B) ending on the Completion Date.

“Debt Fund Affiliates” means (a) any fund or client managed by, or under common management with Blackstone Liquid Credit Strategies LLC, Blackstone Tactical Opportunities Fund L.P. or Blackstone Real Estate Debt Strategies L.P., (b) any fund or client managed by an investment manager within the credit-focused division of The Blackstone Group Inc., (c) any fund managed by Blackstone Alternative Credit Advisors LP, Blackstone Debt Advisors L.P., Blackstone Distressed Securities Advisors L.P., Blackstone Mezzanine Advisors L.P. or Blackstone Mezzanine Advisors II L.P., and (d) any Affiliate of the Company other than the Company that is, in each case, a bona fide debt fund or an investment vehicle that is engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds and similar extensions of credit in the ordinary course that, in each case of clauses (a) through (d), provides Financing to the Project Facility on terms and conditions that, when considered in the aggregate, are no less favorable to the Company than the terms and conditions that would be obtained in a comparable arm’s length transaction with a Person that is not an Affiliate of the Company; provided, that at any time that the aggregate amount of commitments made by Debt Fund Affiliates under the Financing for the Project Facility constitute less than fifty percent (50%) of the aggregate commitments outstanding thereunder, such commitments shall be deemed to have been made on an arm’s length basis for purposes of this definition.

“Environmental Laws” shall have the meaning set forth in Section 8.11 hereof.

“Equipment” means the building materials, machinery, equipment, fixtures, supplies and items of personal property and all appurtenances intended to be acquired in connection with the completion of the Project prior to the Completion Date, and such substitutions and replacements therefor as may be made from time to time pursuant to this Lease Agreement, including without limitation, all the Property described in Exhibit B attached to this Lease Agreement.

“Event of Default” means any of those events defined as Events of Default by the terms of this Lease Agreement, the Underlying Lease, and/or any other document now or hereafter executed by the Agency and the Company in connection with the Project Facility.

“Financing” means each construction, interim, long-term debt or equity financing, refinancing and/or credit support arrangement related to all or a portion of the development, construction or operation of the Project Facility.

“Financing Documents” means, collectively, a Mortgage and any construction or permanent Financing documents as may reasonably be requested by any Lender in connection with a Financing.

“Governmental Authority” means the United States, the State and any political subdivision thereof, and any agency, department, commission, board, bureau or instrumentality of any of them.

“Host Community Benefit Agreement” means that certain host community benefit agreement dated as of August 16, 2022 by and between the Company and Saratoga County, New York, as said host community benefit agreement may be amended from time to time.

“HVDC” means high-voltage direct current.

“IDA Document Escrow Agreement” means that certain escrow agreement of even date herewith by and between the Agency and the Company governing their respective obligations under the Basic Documents during the period of escrow, as said escrow agreement may be amended from time to time.

“Improvements” means the construction, installation and equipping on or under the Land of a fully-buried, up to 1,250-MW HVDC electric transmission line and related infrastructure.

“Indirect Agent” shall mean any contractor or subcontractor appointed by the Company as an indirect agent of the Agency pursuant to Section 4.1 of the Lease Agreement.

“Investment Grade Rating” means, with respect to a Person, that such Person has (whether individually or together with its Affiliates) at least one Long-Term Credit Rating of no less than (as applicable) ‘BBB-’ from S&P, ‘Baa3’ from Moody’s, or “BBB-” by Fitch.

“Land” means the interests in real property leased to the Agency pursuant to the Underlying Lease, as more particularly described on Exhibit A to this Lease Agreement, as may be supplemented from time to time with Supplemental Interests.

“Lease Agreement” means this lease agreement, as said lease agreement may be amended or supplemented from time to time in accordance with the terms hereof.

“Lease Term” shall have the meaning assigned to such term in Section 5.2 hereof.

“Lender” means, with respect to the Company, any Person, other than an Affiliate of the Company, providing or seeking to provide Financing or financial support in any form in respect of the Project, including any commercial bank, institutional lender, export credit agency, funding agency, underwriter, bondholder, or insurance agency, and any representative, collateral agent, trustee, depository, agent or other designee of such Person; provided, that solely for the purposes of this definition, a Debt Fund Affiliate is not deemed to be an “Affiliate” of the Company.

“Lien” means any interest in Property securing an obligation owed to a Person whether such interest is based on the common law, statute or contract, and including but not limited to a security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. 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 and carriers’ liens and other similar encumbrances, affecting real property. For the purposes hereof, a Person shall be deemed to be the owner of 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.

“Lien Law” means the Lien Law of the State.

“Local Authority” means any Governmental Authority which exercises jurisdiction over the Project Facility.

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

“Mortgage” means one or more mortgages from the Agency and/or the Company to a Mortgagee, to be recorded in the Saratoga County Clerk’s office contemporaneously with, or subsequent to, the filing and recording of a memorandum of this Lease Agreement, securing construction or permanent Financing for the Project Facility, executed in accordance with this Lease Agreement, as such may be amended from time to time.

“Mortgagee” means one or more Lenders providing construction and/or permanent Financing relative to the costs of acquisition, construction, installation and equipping of the Project Facility, including any refinancing of the Project Facility.

“MW” means megawatt.

“Permitted Encumbrances” means (A) utility, access and other easements, rights of way, restrictions, encroachments and exceptions that exist on the Closing Date and benefit or do not materially impair the utility or the value of the Property affected thereby for the purposes for which it is intended, (B) mechanics’, materialmen’s, warehousemen’s, carriers’ and other similar Liens, to the extent permitted by Section 8.8 of this Lease Agreement, (C) Liens for taxes, assessments and utility charges, to the extent permitted by Section 6.2(B) of this Lease Agreement, (D) any Lien on the Project Facility obtained through any Basic Document or any lien on the Project Facility to modify, extend, amend, consolidate or refinance the Financing Documents or the Financing, (E) any Lien requested by the Company in writing and consented to in writing by the Agency, which consent of the Agency shall not be unreasonably withheld, conditioned or delayed, and (F) any Mortgage on the Project Facility granted to a Lender pursuant to Section 8.12 of this Lease Agreement.

“Permitted Transferee” means (i) an Affiliate of the Company (which shall include (x) existing or future portfolio companies of any investment funds or vehicles Affiliated with or managed by Blackstone Capital Partners L.P. or Blackstone Energy Partners L.P. and (y) other investment funds or vehicles managed by Blackstone Capital Partners L.P. or Blackstone Energy Partners L.P. (including, in each such case, Blackstone Capital Partners VIII L.P. and Blackstone Energy Partners III L.P.)), or (ii) any Lender (x) to whom the Company collaterally assigns this Agreement or (y) who is exercising its rights and remedies under any documentation related to the Financing at the Company or (iii) a Qualified Transferee.

“Person” shall mean any legal entity, including without limitation an individual, a corporation, a company, a voluntary association, a partnership, a trust, an unincorporated organization or a government, or any agency, instrumentality or political subdivision thereof.

“Project” means that project undertaken by the Agency consisting of (A) the acquisition of an interest in the Land, (B) the construction of the Improvements and (C) the acquisition and installation in the Facility of the Equipment.

“Project Agreement” means that certain uniform agency project agreement of even date herewith by and between the Company and the Agency as said uniform agency project agreement may be amended or supplemented from time to time in accordance with the terms thereof.

“Project Facility” means the Land, the Improvements and the Equipment.

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

“Qualified Transferee” means any Person that has (whether individually or together with its Affiliates) either (a) an Investment Grade Rating, (b) a Total Net Worth of at least One Billion Dollars (\$1,000,000,000) or (c) assets under management of at least Ten Billion Dollars (\$10,000,000,000).

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

“Resolution” means the resolution duly adopted by the Agency on August 16, 2022 authorizing the execution and delivery of the Basic Documents to which the Agency is a party.

“SEQRA” means the New York State Environmental Quality Review Act constituting Article 8 of the New York State Environmental Conservation Law and the regulations promulgated thereunder.

“State” means the State of New York.

“Supplemental Interests” means real property interests necessary for and in furtherance of the Project acquired by the Company following the Closing Date and located in any of the Towns of Moreau, Northumberland, Wilton, Greenfield, Milton, Ballston or Clifton Park or in the City of Saratoga Springs, County of Saratoga and described in a Lease Supplement.

“Total Net Worth” means, with respect to any Person, the tangible net worth, bona fide capital commitments, fair market value of investments and other assets over which such Person (together with its Affiliates) collectively has supervisory control.

“Unassigned Rights” means (A) the rights of the Agency granted pursuant to Sections 2.2(D), 3.1, 4.1(C), 5.4, 6.3, 6.4, 6.6, 8.1, 8.2, 8.3, 8.5, 8.7, 8.8, 8.9, 9.1, 9.2, 9.4, 11.3, 12.1(B) and 12.10 of this Lease Agreement, (B) the moneys due and to become due to the Agency for its own account or the members, officers, agents and employees of the Agency for their own account pursuant to Sections 2.2(D), 4.1, 5.4, 6.3, 6.4, 6.6, 8.2, 10.2, 10.4 and 12.10 of this Lease Agreement, and (C) the right to enforce the foregoing pursuant to Article X of this Lease Agreement.

“Underlying Lease” means that certain underlying lease of even date herewith by and between the Company, as landlord, and the Agency, as tenant, as said underlying lease may be amended or supplemented from time to time in accordance with the terms thereof.

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

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

(B) words of masculine gender shall mean and include correlative words of feminine and neuter genders and words importing the singular number shall mean and include the plural number and vice versa; and

(C) any certificates, letters or opinions required to be given pursuant to this Lease Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Lease Agreement.

ARTICLE II

REPRESENTATIONS, WARRANTIES AND COVENANTS

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

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

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

(C) Pursuant to the Underlying Lease, the Agency will acquire an interest in the Project Facility from the Company and, pursuant to this Lease Agreement, the Agency will cause the Project Facility to be acquired, constructed, installed and equipped and will lease its interest in the Project Facility to the Company, all for the purpose of advancing the job opportunities, health, general prosperity and economic welfare of the people of the State and improving their standard of living.

(D) Except as provided herein and in Article IX and Section 10.2(A)(3) hereof, the Agency, to the extent of its interest therein, shall not sell, assign, transfer, encumber or pledge as security the Project Facility or any part thereof and shall maintain the Project Facility free and clear of all Liens or encumbrances, except as contemplated or allowed by the terms of this Lease Agreement and the other Basic Documents.

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

(A) The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York and has power to enter into this Lease Agreement and to carry out its obligations hereunder. The Company’s execution and delivery of this Lease Agreement has been authorized by all necessary corporate action on behalf of the Company.

(B) Neither the execution and delivery of this Lease Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the provisions of this Lease Agreement will (1) result in a breach of or conflict with any of the terms, conditions or provisions of the Company’s articles of organization or operating agreement or any agreement, instrument, order or judgment to which the Company is a party or by which the Company is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon the Project Facility under the terms of any such instrument or agreement, (2) require consent under (which has not been heretofore received) or result in a breach of or default under any credit agreement, indenture, purchase agreement,

mortgage, deed of trust, commitment, guaranty or other agreement or instrument to which the Company is a party or by which it or any of its Property may be bound or affected, or (3) conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign), having jurisdiction over the Company or any of the Property of the Company.

(C) The Project will not result in the removal of a facility or plant of the Company or any contemplated occupant of the Project Facility from one area of the State to another area of the State or in the abandonment of one or more plants or facilities of the Company or any contemplated occupant of the Project Facility located within the State.

(D) The Company shall cause all notices required by law to be given, and shall comply or cause compliance with all laws, ordinances, municipal rules and regulations and requirements of all Governmental Authorities applying to or affecting the operation of the Improvements (the applicability of such laws, ordinances, rules and regulations to be determined as if the Company and not the Agency were the owner of the Improvements), and the Company will defend and save the Agency and its officers, members, agents and employees harmless from all fines and penalties due to failure to comply therewith.

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

(F) The Company is in possession of all federal, state and local approvals relating to the construction and operation of the Improvements for their intended purpose and the Improvements and the operation thereof complies and will comply with all applicable building, zoning, environmental, planning and subdivision laws, ordinances, rules and regulations of all Governmental Authorities having jurisdiction over the Improvements.

(H) Except as provided in Section 9.4 hereof, all items comprising the Equipment shall remain in the Improvements at all times during the Lease Term (as defined below).

(I) Notwithstanding the foregoing or anything to the contrary in this Lease Agreement or the other Basic Documents, the Company makes no representation, warranty or covenant that (1) the Project Facility or any part thereof, whether now existing or hereinafter constructed, will operate at any particular level or with any particular throughput, (2) the Company will continue to develop the Project or complete construction of the Project Facility, in whole or in part, or (3) the Company will construct and install the full potential transmission capacity of the Project Facility.

ARTICLE III

CONVEYANCE AND USE OF PROJECT FACILITY

SECTION 3.1. CONVEYANCE TO THE AGENCY. (A) Pursuant to the Underlying Lease and any supplement thereof, the Company has conveyed or will convey, or will cause to be conveyed, to the Agency a leasehold interest in the Project Facility and all personal property acquired, installed, used or consumed in connection with the acquisition, construction, installation and equipping thereof. The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest such interest in the Agency and shall take all action necessary or appropriate to protect such interest against claims of any third Persons.

The Company shall, however, be entitled to physical possession and control of the Project Facility and shall be liable at all times for all risk, loss and damage with respect to the Project Facility.

(B) The Company hereby represents and warrants that it has good and valid interests in the portions of the Project Facility that exist on the Closing Date, free and clear from all Liens except for Permitted Encumbrances, and agrees that the Company will defend, indemnify and hold the Agency harmless from any expense or liability due to any defect in title thereto. The Company agrees to pay all reasonable expenses incurred by the Agency in defending any action with respect to the Agency's leasehold interest in the Project Facility to or a Lien affecting the Project Facility, except for Permitted Encumbrances. The Company shall pay all (i) costs, expenses, taxes and charges incurred in connection with such conveyance and transfer, and (ii) taxes, assessments and other charges and impositions of the Project Facility attributable to periods prior to the date of this Lease Agreement.

SECTION 3.2. USE OF PROJECT FACILITY. (A) Subsequent to the Closing Date, the Company shall be entitled to use the Project Facility in any manner not otherwise prohibited by the Basic Documents, provided that such use (1) causes the Project Facility to qualify or continue to qualify as a "project" under the Act and (2) does not tend, in the reasonable judgment of the Agency, to bring the Project Facility into disrepute as a public project.

(B) Subject to the provisions of paragraph (A) of this Section 3.2, except as otherwise provided after the occurrence of an Event of Default hereunder, (1) the Company has the exclusive right to possess the Project Facility and make improvements relating thereto, and (2) the interest of the Agency in the Project Facility is passive only and nothing contained herein shall authorize or permit the Agency to (a) take possession of the Project Facility, (b) have managerial, executive or participating rights with respect to the Project Facility, meaning, without limitation, that the Company shall have (i) sole and exclusive discretion, determination rights and decisional control over and with respect to the development, construction and operation of, and the structuring of agreements and relationships relating to, the Project Facility, for any and all purposes (including, without limitation, for Financing, for equity investment, for disposition of renewable energy credits and other benefits and proceeds of operation, and for the purposes contemplated by the Company's interest in the Land) and (ii) the right to freely enter into amendments, modifications, extensions, restatements and/or replacements of any of its interests in the Land, and/or any other agreement with any underlying landowner of the Land; in each case under clauses (i) and (ii) hereof without the consent of or any notice to the Agency, except as required by Section 9.4(A) hereof, or (c) exercise operational or managerial control over the Company. The Company shall be liable at all times for all risk, loss and damage with respect to the Project Facility.

ARTICLE IV

ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF PROJECT FACILITY

SECTION 4.1. SALES TAX PROVISIONS. (A) The Company shall, on behalf of the Agency, promptly acquire, construct, install and equip the Project Facility, or cause the acquisition, construction, installation and equipping of the Project Facility.

(B) The Agency hereby appoints the Company its true and lawful agent during the Construction Period to perform under the following authority in compliance with the terms, purposes and intent of the Basic Documents, and the Company hereby accepts such agency: (1) acquire, construct, install and equip the Project Facility, (2) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for the acquisition, construction, installation and equipping of the Project Facility, with the same powers and with the same validity as the Agency could do if acting in its own behalf including, but not limited to, the

appointment of subagents for such purposes, and (3) to pay all fees, costs and expenses incurred in the acquisition, reconstruction and installation of the Project Facility.

(C) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all laws, ordinances, rules, regulations and requirements of all Governmental Authorities applying to or affecting the conduct of work on the Project Facility (the applicability of such laws, ordinances, rules and regulations to be determined as if the Company and not the Agency were the owner of the Project Facility), and the Company will defend, indemnify and save the Agency and its officers, members, agents, servants and employees harmless from all fines and penalties due to failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

(D) To the extent required by applicable law, the Company, on its own behalf, or as agent of the Agency, as applicable, will cause (1) compliance with the requirements of Article 8 of the Labor Law of the State, and (2) any contractor, subcontractors and other Persons involved in the acquisition, construction, installation and equipping of the Project Facility to comply with Article 8 of the Labor Law of the State. The covenant in this subsection is not intended as a representation that Article 8 of the Labor Law of the State applies.

(E) The Company agrees to file with the Department of Taxation and Finance of the State in a manner and at the time prescribed thereby, information relating to the extent of exemption from sales and use tax claimed with respect to the acquisition, construction and installation of the Project Facility all in compliance with Section 874 of the General Municipal Law of the State. THE COMPANY ACKNOWLEDGES THAT THE FAILURE TO COMPLY WITH THE PROVISIONS OF SAID SECTION 874 SHALL RESULT IN A REVOCATION OF ANY SALES TAX ABATEMENT EXTENDED BY THE AGENCY.

(F) The Company acknowledges and agrees that to the extent it (i) utilizes the exemption from New York State and local sales and use tax in a manner inconsistent with the intent of this Agreement and/or (ii) attempts to obtain an exemption from New York State and/or local sales and/or use tax which exceeds the scope of the exemption conferred by the provisions of this Agreement, it will be subject to a recapture of such inconsistent or excessive exemption benefits by the Agency in accordance with the provisions of Section 875 of the General Municipal Law of the State, the provisions of which are hereby incorporated herein by reference. The Company agrees to cooperate with the efforts of the Agency to recapture such inconsistent or excessive exemption benefits and any failure to do so shall constitute an Event of Default hereunder.

(G) The Company shall have the right to delegate its sales tax exemption agency hereunder to contractors and subcontractors performing work or making purchases in connection with the acquisition, construction, installation and equipping of the Project Facility (each an "Indirect Agent"). The Company agrees to complete "IDA Appointment of Project Operator or Agent for Sales Tax Purposes" (Form ST-60) for itself and each Indirect Agent and to provide said form to the Agency within fifteen (15) days of appointment such that the Agency can execute and deliver said form to the State Department of Taxation and Finance within thirty (30) days of appointment.

ARTICLE V

LEASE OF PROJECT FACILITY; RENT; CONVEYANCE OF PROJECT FACILITY

SECTION 5.1. LEASE OF PROJECT FACILITY. The Agency hereby leases to the Company and the Company hereby leases from the Agency the Agency's interest in the following, subject only to Permitted Encumbrances, the Project Facility, including: (1) the Land, and (2) any real property interests necessary

for and in furtherance of the Project acquired by the Company after the Closing Date (“Supplemental Interests”) and described in a Lease Agreement supplement executed by the Agency and the Company with respect to such Supplemental Interests (“Lease Supplement”), for the Lease Term. The obligation of the Agency under this Section 5.1 to lease the Project Facility to the Company shall be subject to there being no Event of Default existing hereunder, or any other event which would, but for the passage of time, be such an Event of Default. The Company assumes and agrees to perform and discharge all of the Agency’s obligations under the Lease Documents during the Lease Term, and shall enforce all claims arising under any representation, warranty, covenant, indemnity, guarantee or agreement in the Basic Documents.

(B) The Company and the Agency understand and recognize that a leasehold interest in the Supplemental Interests will be conveyed by the Company to the Agency subsequent to the Closing Date. The Company expects to acquire the Supplemental Interests after the date hereof and desires to subject any such parcels to this Lease Agreement. The Company will, and will be permitted by the Agency to, subject such Supplemental Interests to this Lease Agreement by executing and delivering a Lease Supplement with respect thereto. Notwithstanding the foregoing and anything to the contrary contained herein, the Agency shall not be required to enter into a Lease Supplement for such Supplemental Interests unless (1) such Lease Supplement has been presented to the Agency for signature, as contemplated under Section 5.1(A) hereof, on or before the date by which the first HCBA Payment pursuant to the Host Community Benefit Agreement is due, (2) the Agency has been presented with all documents relating to such Supplemental Interests which are required under the Underlying Lease Supplement, and (3) the Company and the Agency have complied with SEQRA and any other applicable laws with respect to such Supplemental Interests. The form of the Lease Supplement is attached hereto as Exhibit C.

SECTION 5.2. DURATION OF TERM. The term of this Lease Agreement shall become effective upon its delivery and shall expire on December 31 of the calendar year in which the last HCBA Payment pursuant to the Host Community Benefit Agreement is due, or such earlier date as this Lease Agreement may be terminated as hereinafter provided (the “Lease Term”). The Agency shall deliver to the Company and the Company shall accept sole and exclusive possession of the Project Facility simultaneously with the execution of this Lease Agreement.

SECTION 5.3. QUIET ENJOYMENT. So long as no Event of Default shall have occurred and be continuing, and except as otherwise expressly provided herein or in the Basic Documents, the Agency will not disturb the Company in its peaceful and quiet enjoyment of the Project Facility, which shall be free from any interference, repossession or disturbance by the Agency.

SECTION 5.4. RENT AND OTHER AMOUNTS PAYABLE. The Company shall pay rent for the Project Facility as follows:

(A) The Company shall remit to the Agency on the Closing Date (1) an amount equal to \$560,378.00 for the Agency’s administrative fee, and (2) the fees and expenses of counsel to the Agency relating to the Project.

(B) Within ten (10) business days after receipt of a demand therefor from the Agency accompanied by any supporting evidence or documentation therefor reasonably requested by the Company, the Company shall pay to the Agency the sum of the reasonable and actual expenses of the Agency and the officers, members, agents and employees thereof incurred by reason of the Agency’s ownership or lease of the Project Facility or in connection with the carrying out of the Agency’s duties and obligations under this Lease Agreement or any of the other Basic Documents and any other reasonable and actual fee or expense of the Agency, including reasonable and actual attorneys’ fees, with respect to the Project Facility, the sale of the Project Facility to the Company, any of the other Basic Documents, the payment of which is not otherwise provided for under this Lease Agreement.

(C) The Company agrees to make the above mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to make any payment required by this Section 5.4 for a period of more than thirty (30) days from the date such payment is due, the Company shall pay the same together with interest thereon at a rate equal to two percent (2%) per month or the maximum permitted by law, whichever is less, from the date on which such payment was due until the date on which such payment is made.

(D) The Company and the Agency will enter into a document escrow agreement dated as of the Closing Date (the "IDA Document Escrow Agreement") pursuant to which: (1) the Basic Documents shall be held in escrow by Agency counsel from the Closing Date, (2) all obligations of the Company and the Agency under the Basic Documents shall be held in abeyance during the escrow period (except for the Company's obligation to reimburse the Agency's counsel fees and expenses relating to the Project pursuant to Section 5.4(B) of this Lease Agreement), and (3) the escrow shall be broken pursuant to the terms of the IDA Document Escrow Agreement and in no event prior to the Agency's receipt of the Agency fee in the amount set forth in Section 5.4(A) hereof.

SECTION 5.5. NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER. (A) Except as provided herein or in the other Basic Documents, the obligations of the Company to make the payments required by this Lease Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any rights of set-off, recoupment or counterclaim the Company may otherwise have against the Agency. Except as provided herein or in the other Basic Documents, the Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe any of its other covenants or agreements contained in this Lease Agreement, or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project, any material defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of title to or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease Agreement.

(B) Nothing contained in this Section 5.5 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease Agreement, and, in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance; provided, however, that the Company shall look solely to the Agency's estate and interest in the Project Facility (other than the Unassigned Rights), for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or members, officers, agents (other than the Company) or employees of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Lease Agreement, the relationship of the Agency and the Company hereunder or the Company's use and occupancy of or purchase of and title to the Project Facility, or any other liability of the Agency to the Company.

ARTICLE VI

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

SECTION 6.1. MAINTENANCE AND MODIFICATIONS OF PROJECT FACILITY. The Company agrees that during the Lease Term it will (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) make all repairs and replacements to the Project Facility or any part thereof (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen) deemed necessary by the Company, in the Company's reasonable discretion, and (3) operate the Project Facility in a sound and economic manner.

SECTION 6.2. TAXES, ASSESSMENTS AND UTILITY CHARGES. (A) The Company shall pay or cause to be paid, before the imposition of any penalties, fees or interest for late payment of the same, respectively become, (1) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to the Project Facility, (2) all utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Project Facility, (3) all assessments and charges of any kind whatsoever lawfully made by any Governmental Authority for public improvements, and (4) all payments required under Section 6.6 (B) hereof; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated hereunder to pay only such installments as are required to be paid during all periods that sums payable by the Company hereunder or under any of the other Basic Documents are due and owing.

(B) Notwithstanding the provisions of subsection (A) of this Section 6.2 but subject however to the provisions of Section 6.6 hereof, the Company may in good faith actively contest any such taxes, assessments and other charges, provided that the Company shall pay such taxes, assessments and other charges in accordance with the provisions of such subsection (A) and shall not defer, or be deemed entitled to defer such payment by reason of any such contest.

SECTION 6.3. INSURANCE REQUIRED. At all times during the Lease Term, the Company shall maintain and, with respect to insurance required by subsection (D) of this Section 6.3, cause its general contractor(s) to maintain insurance with respect to the Project Facility against such risks and for such amounts as are customarily insured against by businesses of like size and type, paying, as the same become due and payable, all premiums with respect thereto, including, but not necessarily limited to:

(A) Insurance protecting the interests of the Company as the insured, and the Agency, as an additional insured, as their interests may appear, against loss or damage to the Project Facility by fire, lightning, vandalism, malicious mischief and other perils normally insured against with a uniform extended coverage endorsement, such insurance at all times to be in an amount acceptable to the Company and the Agency.

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

(C) Insurance protecting the Company, as insured, and the Agency, as an additional insured, as their interests may appear, against loss or losses from liabilities imposed by law or assumed in any written contract (including, without limitation, the contractual liability assumed by the Company under Section 8.2 of this Lease Agreement) and arising from personal injury or death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$1,000,000 per person per accident or occurrence

on account of personal injury, including death resulting therefrom, and \$1,000,000 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate commercial umbrella liability policy in excess of the basic coverage stated above protecting the Company, as insured, and the Agency, as an additional insured, as their interests may appear, with a limit of not less than \$5,000,000.

(D) During any period of construction or reconstruction, the Company shall require its general contractor(s) to carry, and further require such general contractor(s) to require their subcontractor(s) constructing, installing and equipping the Project Facility to carry workers' compensation and general comprehensive liability insurance containing ordinary and customary coverages and liability limits (through direct or umbrella policies) for construction work on projects of like size and scope.

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

SECTION 6.4. ADDITIONAL PROVISIONS RESPECTING INSURANCE. All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and reasonably satisfactory to the Agency. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing liability insurance shall name the Company, as insured and the Agency, as an additional insured, as their interests may appear, and provide for at least thirty (30) days' written notice to the Company and the Agency prior to cancellation, reduction in policy limits or material change in coverage thereof. All insurance required hereunder shall be in form, content and coverage satisfactory to the Agency. Certificates satisfactory in form and substance to the Agency to evidence all insurance required hereby shall be delivered to the Agency on or before the Closing Date. The Company shall deliver to the Agency within fifteen (15) Business Days following the anniversary date of any such insurance policy 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 12-month period, insurance in the amounts and of the types required by Sections 6.3 and 6.4 hereof. The Company shall require its general contractor(s) to name, and further require such general contractor(s) to require their subcontractor(s) acquiring, constructing, installing and equipping the Project Facility to name, the Agency as an additional insured, as its interest may appear, in their policies evidencing insurance required hereunder.

(B) All premiums with respect to the liability insurance required by Section 6.3 hereof shall be paid by the Company; provided, however, that if the premiums are not timely paid, the Agency may pay such premiums and the Company shall pay immediately upon demand all sums so expended by the Agency, together with interest, to the extent permitted by law, at a rate equal to two percent (2%) per month from the date on which such payment was due until the date on which the payment is made.

(C) (1) The Company shall not take out separate insurance concurrent in form or contributing in the event of loss with that required to be maintained under Section 6.3 unless the Agency is included therein as a named insured.

(2) Each of the policies required pursuant to Section 6.3 hereof shall, to the extent commercially available, waive (a) any right of subrogation against any Person insured under such policy, and (b) any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any Person insured under such policy.

SECTION 6.5. RESERVED.

SECTION 6.6. REAL PROPERTY TAX EXEMPTION. (A) It is recognized that, under the provisions of the Act and pursuant to Section 412-a of the Real Property Tax Law of the State, the Agency is required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control or supervision or upon its activities and that, upon acquisition of a leasehold interest in and to the Project Facility by the Agency, and for so long thereafter as the Agency shall have such leasehold interest in the Project Facility, the Project Facility shall be assessed by the various taxing entities having jurisdiction over the Project Facility, including, without limitation, any county, city, school district, town, village or other political unit or units wherein the Project Facility is located (such taxing entities being sometimes collectively hereinafter referred to as the "Taxing Entities", and each of such Taxing Entities being sometimes individually hereinafter referred to as a "Taxing Entity") as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the acquisition by the Agency of such leasehold interest in and to the Project Facility. The Agency shall promptly, following acquisition by the Agency of such leasehold interest in and to the Project Facility, ensure that the Project Facility is assessed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to such acquisition by the Agency (including, but not limited to, filing with the appropriate officer the filing required under Section 412-a (2) of the Real Property Tax Law of the State), and for so long thereafter as the Agency shall have a leasehold interest in the Project Facility, the Company shall take such further action as may be necessary to maintain such exempt assessment with respect to each Taxing Entity. The Agency will cooperate with the Company and will take all action as may be necessary (subject to the provisions of Section 12.10 hereof) to preserve the tax exempt classification of the Project Facility. The parties hereto acknowledge that the Project Facility shall not be entitled to such exempt classification on the assessment rolls of any Taxing Entity until preparation and filing of the assessment rolls corresponding to the first taxable status date occurring after the Basic Documents are released from escrow pursuant to the terms of the IDA Document Escrow Agreement. Pursuant to the provisions of the Lease Agreement, during any period during the Lease Term in which the Project Facility is not classified as tax-exempt on the assessment rolls of the Taxing Entities, the Company will be required to pay to the appropriate Taxing Entity all taxes and assessments lawfully levied and/or assessed by the appropriate Taxing Entity against the Project Facility, including taxes and assessments levied for the current tax year and all subsequent tax years until the Project Facility shall be entitled to exempt classification on the assessment rolls of the appropriate Taxing Entity. The parties hereto understand that the tax exemption extended to the Agency by Section 874 of the Act and Section 412-a of the Real Property Tax Law of the State does not entitle the Agency to exemption from special assessments and special ad valorem levies and that the Company will be required to pay to the appropriate Taxing Entity all special assessments and special ad valorem levies lawfully levied and/or assessed by the appropriate Taxing Entity against the Project Facility.

(B) In consideration for the entering into of the Host Community Benefit Agreement by the County and the Company, the Agency has waived any requirement that the Company remit payments in lieu of real property taxes to the Agency or any Taxing Entity.

(C) If the Company is dissatisfied with the amount of the assessed value of the Project Facility (the "Assessed Value") as initially established or as changed, the Company may pursue review of the Assessed Value under Article 7 of the New York State Real Property Tax Law or any other law or ordinance then in effect relating to disputes over assessed valuation of real property in the State of New York, and may take any and all other action available to it at law or in equity, for a period of seven (7) years from the date such Assessed Value is initially established or changed. IF THE COMPANY FAILS TO PURSUE REVIEW DURING THE TERM OF (i) THE INITIALLY ESTABLISHED ASSESSED VALUE, DURING THE SEVEN (7) YEAR PERIOD FOLLOWING SUCH ESTABLISHMENT, OR (ii) ANY CHANGE IN ASSESSED VALUE, DURING THE SEVEN (7) YEAR PERIOD FOLLOWING ANY SUCH CHANGE, THE COMPANY SHALL BE DEEMED TO HAVE WAIVED ANY RIGHT TO CONTEST OR DISPUTE SUCH ASSESSED VALUE AT ANY TIME DURING THE LEASE TERM, NOTWITHSTANDING

ANYTHING IN THE NEW YORK STATE REAL PROPERTY TAX LAW TO THE CONTRARY. THIS SEVEN (7) YEAR LIMITATION SHALL APPLY TO EACH AND EVERY ASSESSMENT MADE DURING THE PERIOD THAT THE AGENCY HOLDS A LEASEHOLD INTEREST IN AND TO THE PROJECT FACILITY, AND SHALL BE FOR THE BENEFIT OF THE AGENCY AND THE TAXING ENTITIES. The Agency hereby irrevocably appoints the Company its attorney-in-fact and agent (coupled with an interest) for the purpose of commencing any proceeding, preparing and filing all documents and taking any and all other actions required to be taken by Agency, necessary or desirable, in the opinion of the Company, to contest or dispute any Assessed Value within such periods; provided, however, that the Agency shall incur no expense or liability in connection with any action taken or omitted to be taken by its attorney-in-fact and agent.

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION

SECTION 7.1. DAMAGE OR DESTRUCTION. If the Project Facility shall be damaged or destroyed, in whole or in part, the Company shall give the Agency prompt written notice thereof. As between the Agency and the Company, the Company shall have sole right to and control over the use of the Net Proceeds of any insurance settlement. The Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied to replace, repair, rebuild or restore the Project Facility if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to so replace, repair, rebuild or restore the Project Facility. The Agency shall have no obligation to rebuild or restore the Project Facility, and upon payment of all payments due pursuant to Section 5.4 hereof, the Lease Term shall end and the obligations of the Company hereunder (other than any such obligations expressed herein as surviving termination of this Lease Agreement) shall terminate as of the date of such payment and the Agency shall transfer to the Company, without recourse or warranty, all right, title and interest of the Agency in and to the Project Facility.

SECTION 7.2. CONDEMNATION. If title to, or the use of, the Project Facility shall be taken by Condemnation, the Company shall give the Agency prompt written notice thereof. As between the Agency and the Company, the Company shall have sole right to and control over the use of the Net Proceeds of any insurance settlement. The Net Proceeds of any Condemnation award shall not be applied to restore the Project Facility if the Company shall notify the Agency that, in the Company's sole judgment, the Company does not deem it practical or desirable to restore the Project Facility. The Agency shall have no obligation to restore the Project Facility, and upon payment of all payments due pursuant to Section 5.4 hereof, the Lease Term shall end and the obligations of the Company hereunder (other than any such obligations expressed herein as surviving termination of this Lease Agreement) shall terminate as of the date of such payment and the Agency shall transfer to the Company, without recourse or warranty, all right, title and interest of the Agency in and to the Project Facility.

SECTION 7.3. ADDITIONS TO THE PROJECT FACILITY. All replacements, repairs, rebuilding or restoration made pursuant to Sections 7.1 or 7.2 hereof, whether or not requiring the expenditure of the Company's own moneys shall automatically become part of the Project Facility and subject to the Basic Documents as if the same were specifically described herein.

ARTICLE VIII

SPECIAL COVENANTS

SECTION 8.1. NO WARRANTY OF CONDITION OR SUITABILITY BY AGENCY; ACCEPTANCE "AS IS". THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT

FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL ACCEPT POSSESSION OF THE PROJECT FACILITY "AS IS", WITHOUT RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW, HERETOFORE OR HEREAFTER EXISTING. NO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY ARE MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

SECTION 8.2. HOLD HARMLESS PROVISIONS. (A) The Company hereby (i) releases the Agency and its members, officers, agents (other than the Company) and employees from, (ii) agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for, and (iii) agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against: any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the acquisition, construction, installation and equipping of the Project Facility, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's financing, acquiring, constructing, installing, equipping, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility and any and all claims for brokerage, leasing, finders or similar fees which may be made relating to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Lease Agreement or any of the other Basic Documents or the enforcement of or defense of validity of any provision of any Basic Documents, and all liabilities or claims arising out of environmental matters with respect to the Project Facility, and (3) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence (except intentional wrongdoing) on the part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

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

(C) To effectuate the provisions of this Section 8.2, the Company agrees to provide for and insure, in the liability policies required by Section 6.3(C) of this Lease Agreement, its liabilities assumed pursuant to this Section 8.2.

(D) Notwithstanding any other provisions of this Lease Agreement, the obligations of the Company pursuant to this Section 8.2 shall remain in full force and effect after the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the matters herein described may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses,

charges and costs incurred by the Agency, or its officers, members, agents (other than the Company) or employees, relating thereto.

(E) Notwithstanding anything contained in this Lease Agreement to the contrary, whenever the Company is obligated under this Lease Agreement to indemnify and hold harmless the Agency, its directors, members, officers, agents (except the Company), or employees, the Company shall be given prompt notice of any matter that arises requiring indemnification, but failure to give such notice shall not constitute a defense hereunder nor in any way impair the obligations of the Company under this Section provided that such failure does not materially prejudice the Company in its ability to defend the Agency or materially impair the Company defense. The Company shall have the right to defend the Agency, its directors, members, officers, agents (except the Company), and employees, and provided the Company promptly and continuously thereafter defends the Agency, its directors, members, officers, agents (except the Company), and employees, no other attorneys' fees of the Agency, its directors, members, officers, agents (except the Company), and employees shall be payable by the Company.

SECTION 8.3. RESERVED.

SECTION 8.4. THE COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS. (A) The Company agrees that, so long as this Lease Agreement is in effect, it will maintain its existence and will not dissolve or otherwise dispose of all or substantially all of its assets.

(B) Notwithstanding the foregoing, nothing in this Lease Agreement or in any other Basic Document shall prevent, restrict or limit in any way the right of any member of the Company, or any successive transferee of any member, to sell, convey, transfer, encumber or otherwise dispose of its membership interest(s) in the Company (or a portion thereof) to one or more persons without the consent of the Agency, or divide its membership interest(s) into different classes and sell, convey, transfer, encumber or otherwise dispose of such divided interest(s) to one or more persons without the consent of the Agency. The Agency acknowledges that nothing in this Lease Agreement or any other Basic Document shall prevent, restrict or limit in any way the right of any person or entity that owns an interest, directly or indirectly, in any member of the Company, or any successive transferee of such person or entity, to sell, convey, transfer, encumber or otherwise dispose of such interest in such member of the Company (or a portion thereof) without consent of the Agency, whether for equity investment purposes or otherwise.

SECTION 8.5. AGREEMENT TO PROVIDE INFORMATION. The Company agrees, whenever requested by the Agency, to provide and certify or cause to be provided and certified such information concerning the Company, its finances and other topics as the Agency from time to time reasonably consider necessary or appropriate, including, but not limited to, (i) such information as to enable the Agency to make any reports required by law or governmental regulation, and (ii) within thirty (30) days of receipt by the Company of written request therefor, a complete and accurate listing of all items of personalty which were acquired or leased by the Company based upon an exemption from sales or use tax provided by the Agency.

SECTION 8.6. BOOKS OF RECORD AND ACCOUNT; FINANCIAL STATEMENTS; COMPLIANCE CERTIFICATES. The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company.

SECTION 8.7. COMPLIANCE WITH ORDERS, ORDINANCES, ETC. (A) The Company agrees that it will, during the Lease Term, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all Governmental Authorities, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Project Facility or any part thereof, or to any use, manner of use or condition of the Project Facility or any part thereof (the applicability of such laws, ordinances, rules

and regulations to be determined as if the Company and not the Agency were the owner of the Project Facility).

(B) Notwithstanding the provisions of subsection (A) of this Section 8.7, the Company may in good faith actively contest the validity or the applicability of any requirement of the nature referred to in such subsection (A), provided that the Company (1) shall have notified the Agency in writing of such contest, (2) is not in default under any of the Basic Documents, (3) shall have set aside adequate reserves for any such requirement, and (4) demonstrates to the reasonable satisfaction of the Agency that noncompliance with such requirement will not materially endanger the Project Facility or any part thereof to loss or forfeiture. Otherwise, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

(C) Notwithstanding the provisions of subsection (B) of this Section 8.7, if the Agency or any of its members, officers, agents, servants or employees may be liable for prosecution for failure to comply therewith, the Company shall promptly take such action with respect thereto as shall be satisfactory to the Agency.

SECTION 8.8. RESERVED.

SECTION 8.9. PERFORMANCE BY AGENCY OF COMPANY'S OBLIGATIONS. Should the Company fail to make any payment as herein provided beyond all applicable cure periods, the Agency may, but need not, without notice to or demand on the Company and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Agency, and paying all expenses, including, without limitation, reasonable attorneys' fees; and the Company shall pay immediately upon demand all sums so expended by the Agency under the authority hereof, together with interest thereon at the rate of two percent (2%) per month or the maximum permitted by law, whichever is less.

SECTION 8.10. DEPRECIATION DEDUCTIONS AND TAX CREDITS. The parties agree that as between them the Company shall be entitled to all depreciation deductions and accelerated cost recovery system deductions with respect to any depreciable property in the Project Facility pursuant to Sections 167 and 168 of the Code to any credits under the Code with respect to any portion of the Project Facility and to any other federal or State tax benefits or attributes associated with the ownership, construction, or operation of the Project Facility. Further, notwithstanding anything to the contrary herein or in any of the Basic Documents, each of the Agency and the Company hereby agrees that (1) the Company is the owner of the Project Facility and entitled to the economic benefits of ownership (including, but not limited to, any profits, income and gain from the Project) and bears the economic burdens of ownership of the Project Facility (including, but not limited to, any losses from and risk of loss with respect to the Project Facility), (2) the Agency has no incidents or indicia of ownership other than a bare leasehold interest in the Project Facility, (3) the Agency intends that the Company is and will be considered the owner of the Project Facility for federal income tax purposes, and will not take any position inconsistent with such intention, (4) the Company is the legal owner of the Project Facility for purposes of any tax credits pursuant to the Code, and (5) the sole purpose for the Agency's acquisition of an interest in the Project Facility by this Agreement is to encourage and facilitate development, acquisition, construction, installation, and equipping of the Project Facility.

SECTION 8.11. ENVIRONMENTAL WARRANTIES AND COVENANTS. (A) Warranties. The Company makes the following representations and warranties relating to the Project Facility to the best of its knowledge: (i) the Company is in compliance in all respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to toxic and hazardous substances and other environmental matters (the "Environmental Laws"), (ii) no portion of the Project Facility is being used by the Company or has been used at any previous time by the Company, for the disposal, storage,

treatment, processing or other handling of any hazardous or toxic substances, in a manner not in compliance with the Environmental Laws, (iii) the soil and any surface water and ground water which are a part of the Project Facility are free from any solid wastes, toxic or hazardous substance or contaminant and any discharge of sewage or effluent resulting from the Company's activities; and (iv) neither the federal government nor the State Department of Environmental Conservation or any other governmental or quasi-governmental entity has filed a lien on the Project Facility, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or threatened in writing, which involve the Project Facility.

(B) Agreement to Comply. If any environmental contamination is found at the Project Facility for which any removal or remedial action is required pursuant to any Environmental Law, ordinance, order, rule, regulation or governmental action, the Company agrees that it will at its sole cost and expense take such removal or remedial action promptly and to the Agency's reasonable satisfaction.

(C) Indemnification. The Company agrees to defend, indemnify and hold harmless the Agency and its employees, agents, officers and directors, from and against any claims, actions, demand, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, reasonable and actual attorney and consultant fees, investigations and laboratory fees, court costs and litigation expenses) of whatever kind or nature, known or unknown, contingent or otherwise arising out of or in any way related to: (i) the past or present disposal, release or threatened release of any hazardous or toxic substances on the Project Facility; (ii) any personal injury (including wrongful death or property damage, real or personal) arising out of or related to such hazardous or toxic substances; (iii) any lawsuit brought or threatened, settlement reached or government order given relating to such hazardous or toxic substances; and/or (iv) any violation of any Environmental Law, order, regulation, requirement, or demand of any government authority, or any policies or requirements of the Agency, which are based upon or in any way related to such hazardous or toxic substances.

(D) Other Sites. The Company knows of no on-site or off-site locations where hazardous or toxic substances from the operation of the Project Facility on the Land have been stored, treated, recycled or disposed of, except in compliance with the Environmental Laws.

(E) Leases. The Company agrees not to lease or permit the lease of the Project Facility to a tenant or subtenant whose operations will knowingly result in contamination of the Project Facility with hazardous or toxic substances in violation of any Environmental Law.

(F) Non-Operation by the Agency. The Company acknowledges that the Agency does not intend to be involved in the operations of the Project Facility.

(G) Compliance Determinations. The Company acknowledges that any determinations made by the Agency under this Section regarding the compliance with Environmental Laws shall be made for the Agency's benefit only and are not intended to be relied upon by any other party.

(H) Survival of Conditions. The provisions of this Section shall be in addition to any other obligations and liabilities the Company may have to the Agency at common law, and shall survive the transactions contemplated herein.

(I) Definitions. The term "hazardous substance" shall include, without limit, any substance or material defined in 42 U.S.C. Section 9601 (as the same may be amended from time to time), the Hazardous Materials Transportation Act (as amended from time to time), and the New York Environmental Conservation Law or the Resource Conservation and Recovery Act (as each may be amended from time to time) and in any regulations adopted or publications promulgated pursuant to any of the foregoing.

(J) Further Indemnification. The Company further agrees to indemnify and hold the Agency harmless from and against any loss, liability, damage, cost or expense (including reasonable and actual attorneys' fees) incurred by the Agency resulting from (i) the Company's failure to comply with any order, decree, settlement, judgment or verdict (whether arising as a result of the manufacture, holding, handling, transportation, spilling, leaking or dumping of toxic or hazardous wastes or waste products prior to, or during, the Company's ownership of the Land), (ii) the Company's failure to comply with any such statute, rule or regulation, or (iii) the Company's failure to conduct an appropriate inquiry into previous uses and ownership of any portion of the Land, as described in the Superfund Amendment and Reauthorization Act of 1986.

SECTION 8.12. MORTGAGES AND SECURITY AGREEMENTS. The Agency and the Company agree to grant a mortgage or security interest in the Project Facility to a Lender if the Lender makes a loan to the Company and requires entry into a mortgage or security agreement, the proceeds of which loan are used to finance or refinance the Project Facility (in which event the Lien thereby created shall be deemed a Permitted Encumbrance).

SECTION 8.13. FINANCING AND REFINANCING OF THE PROJECT FACILITY. Over the Lease Term, the Agency agrees to reasonably cooperate with the Company in connection with any financing and any refinancing of the indebtedness encumbering the Project Facility. In connection with any financing or refinancing by the Company of such indebtedness, the Agency will execute and deliver all such documents and/or instruments reasonably required by the Company's lender in connection with such financing or refinancing, as the case maybe, provided that such documents or instruments are those to which the Agency is typically a party, and further subject to the reasonable approval of the Agency and the Agency's legal counsel as to form and content of the document. In all cases the Company shall pay any reasonable out-of-pocket expenses and fees of the Agency in connection with any financing or refinancing of the loan including, without limitation, any reasonable attorneys' fees.

ARTICLE IX

ASSIGNMENTS; MERGER OF AGENCY

SECTION 9.1. RESTRICTION ON TRANSFER OF AGENCY'S INTEREST HEREUNDER. Except as otherwise specifically provided in this Article IX hereof, the Agency shall not sell, assign or otherwise dispose of any of its rights under this Lease Agreement, without the prior written consent of the Company.

SECTION 9.2. ASSIGNMENT OF THIS LEASE AGREEMENT. (A) Except as otherwise provided in Section 8.4 hereof or as provided herein, this Lease Agreement may not be assigned by the Company, in whole or in part, without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed.

(B) (1) The Company may, upon reasonable prior written notice to the Agency, without the consent of the Agency, (a) assign this Lease Agreement and the other Basic Documents to a Permitted Transferee, provided (i) provided at the time of any proposed assignment that an Event of Default has not occurred and is continuing and (ii) such Permitted Transferee assumes and agrees to be bound by this Lease Agreement, the other Basic Documents and the Host Community Benefit Agreement pursuant to the terms and conditions of an assignment and assumption agreement, in form and substance reasonably satisfactory to the Agency, and (b) pledge, mortgage, grant a security interest in and collaterally assign this Lease Agreement and the other Basic Documents to a Lender, including a collateral agent acting on behalf of any such Lender (subject to the Agency's Unassigned Rights). The Agency shall, at the Company's sole cost and expense and subject to the Agency's policies and procedures cooperate with the Company, any Permitted Transferee, and any Lender from time to time, including, without limitation, by entering into a consent or other agreements

with such Lender and the Company in connection with any collateral assignment on such terms as may be customary under the circumstances and shall reasonably be required by such Lender; provided, however, that those agreements shall not expose the Agency to any duty or liability other than to perform the obligations of the Agency as contained in this Lease Agreement or the other Basic Documents. In the event this Lease Agreement and the other Basic Documents are assigned to a Permitted Transferee, the Company shall have no further obligations hereunder or thereunder that accrue on or after the date of such assignment. (2) In connection with the foregoing, the Company shall have the absolute right at any time, upon reasonable prior written notice to the Agency, without the consent of the Agency, to: (a) sell, convey, transfer, encumber or otherwise dispose of the Project Facility or any part thereof to any Permitted Transferee, (b) (i) sublease, or grant an easement, subeasement, license or security interest in, or otherwise transfer all or any portion of its right, title or interest in the Project Facility to any person or entity, and/or (ii) encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security agreement) all or any portion of its right, title or interest in the Project Facility to any Lender as security for the repayment of any indebtedness and/or the performance of any obligation, regardless of whether such obligation is related to any indebtedness, and the Agency agrees to join in such security instruments to subject its interest in the Project Facility for such purposes (subject to the Agency's Unassigned Rights).

(C) With respect to any assignment pursuant to Section 9.2(B) hereof:

(1) the assignee shall be qualified to transact business in the State of New York and shall assume the obligations of the Company hereunder to the extent of the interest assigned;

(2) the Company shall, within ten (10) business days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of such assignment and the instrument of assumption;

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

(4) the assignee shall have been previously determined by the Public Service Commission of the State (or its successor agency) to be a qualified owner and operator of the Project Facility (including a determination of financial capability) pursuant to Article 4 and Article VII of the New York Public Service Law; and

(5) the Company or the assignee shall furnish or cause to be furnished to the Agency a certificate, dated as of the effective date of the transaction, signed by an Authorized Representative of the Company or the assignee, as the case may be, to the effect that immediately after the consummation of the transaction and after giving effect thereto, (a) no Event of Default exists under this Lease Agreement and no event exists which, with notice or lapse of time or both, would become such an Event of Default (unless waived by the Agency in writing), and (b) the assignee is a Permitted Transferee.

In accordance with its policies and procedures, the Agency reserves the right to receive and review financial information concerning any prospective assignee.

SECTION 9.3. MERGER OF THE AGENCY. (A) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder (provided that the Agency's rights and interests under the Basic Documents are simultaneously transferred to such Person) to, any other public benefit corporation of the State or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder and the other Basic Documents, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Lease Agreement and

the other Basic Documents to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests under this Lease Agreement and the other Basic Documents shall be assigned.

(B) As of the date of any such consolidation, merger or assignment, the Agency shall give notice thereof in reasonable detail to the Company. The Agency shall promptly furnish to the Company such additional information with respect to any such consolidation, merger or assignment as the Company may reasonably request.

SECTION 9.4. SALE OR LEASE OF PROJECT FACILITY. (A) Except as otherwise provided in this Lease Agreement or in any of the other Basic Documents, the Company may not sell, lease, transfer, convey or otherwise dispose of the Project Facility or any part thereof without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that the prior written consent of the Agency shall not be required when the Company proposes to sublease a portion of the Project Facility in the ordinary course of business and such sublease is consistent with Section 3.2 hereof and the provisions of Section 854(4) and Section 862(1) of the Act.

(B) Notwithstanding anything to the contrary contained in this Lease Agreement or any other Basic Document, in any instance after the Completion Date where the Company reasonably determines that any portion of the Project Facility has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such portion of the Project Facility and may sell, trade in, exchange or otherwise dispose of the same, as a whole or in part, without the prior written consent of the Agency. At the request of the Company, the Agency shall execute and deliver to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of any such item of Property free from the Liens of the Basic Documents. The Company shall pay all costs and expenses (including attorneys' fees) incurred in terminating the Agency's leasehold interest in and releasing from the Liens of the Basic Documents any item of Property removed pursuant to this Section 9.4.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

SECTION 10.1. EVENTS OF DEFAULT DEFINED. (A) The following shall be "Events of Default" under this Lease Agreement, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Lease Agreement, any one or more of the following events subject to any applicable notice and cure periods:

(a) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.4 (B) hereof, and the continuance thereof for a period of fifteen (15) business days after written notice thereof.

(b) A default in the performance or observance of any other of the covenants, conditions or agreements on the part of the Company in this Lease Agreement and the continuance thereof for a period of sixty (60) days after written notice is given by the Agency to the Company; provided, however, that if such default cannot reasonably be cured within said sixty (60) day period and the Agency or the Company shall have commenced action to cure the breach of covenant within said sixty (60) day period, and thereafter diligently and expeditiously proceeds to cure the same, such sixty (60) day period shall be extended for so long as the Agency or the Company shall require, in the exercise of due diligence, to cure such default. If any conflict shall exist between the provisions of this Subsection (b) and the immediately following Subsection (c) as to when an Event of Default has occurred, the provisions of such Subsection (c) shall govern.

(c) Any representation or warranty made by the Company herein proves to have been false in any material manner at the time it was made.

(d) The Company shall conceal, remove or permit to be concealed or removed any part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law, or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid, or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof.

(e) (i) The filing by the Company (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute, (ii) the failure by the Company within one hundred twenty (120) days to lift any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder, (iii) the commencement of a case under Title 11 of the United States Code against the Company as the debtor or commencement under any other federal or state bankruptcy statute of a case, action or proceeding against the Company and continuation of such case, action or proceeding without dismissal for a period of one hundred twenty (120) days, (iv) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company, or (v) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company, unless such order, judgment or decree is vacated, dismissed or dissolved within one hundred twenty (120) days of such appointment.

(f) If by order of a court of competent jurisdiction, a trustee, receiver or liquidator of the Company, or the Project Facility or any part thereof, shall be appointed and such order shall not be discharged or dismissed within one hundred twenty (120) days after such appointment.

(g) The dissolution of the Company.

(h) The occurrence and continuation of an Event of Default under the Host Community Benefit Agreement.

(i) The failure by the Company to maintain the insurance required by Section 6.3 (C) hereof.

(j) The abandonment of the Project Facility by the Company or the permanent suspension of the operation of the Project Facility.

(B) Notwithstanding the provisions of Section 10.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Lease Agreement other than, with respect to the Company, its obligation to provide the insurance required by Section 6.3 (C) hereof, and if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease Agreement of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an event of default under this Section. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial

disturbances, acts of public enemies, orders of any kind of government authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

SECTION 10.2. REMEDIES ON DEFAULT. (A) Whenever any Event of Default shall have occurred and continue beyond any cure period, the Agency may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) Declare, by written notice to the Company, to be immediately due and payable (a) all unpaid payments payable pursuant to Section 5.4(B) hereof (without acceleration), and (b) all other payments due under this Lease Agreement (without acceleration).

(2) Take any other action at law or in equity which may appear necessary or desirable to collect any amounts then due or thereafter to become due hereunder and to enforce the obligations, agreements or covenants of the Company under this Lease Agreement.

(3) In the event of (i) a default beyond all applicable cure periods by the Company in the payment of any amounts due and owing hereunder and/or under the Host Community Benefit Agreement and upon forty-five (45) days' prior written notice to the Company or (ii) the occurrence of an Event of Default described in Section 10.1(e), Section 10.1(f), Section 10.1(g), or Section 10.1(i) hereof (and the failure to cure the same), terminate the Lease Agreement and reconvey the Agency's right, title and interest in the Project Facility to the Company. The Company hereby consents to said reconveyance and appoints the Agency its attorney-in-fact, which appointment is coupled with an interest and is irrevocable, to execute any and all instruments and documents in its name as may be necessary, in the sole discretion of the Agency, to effectuate such transfer.

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

SECTION 10.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES. In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should reasonably 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 and actual fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

SECTION 10.5. NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER. In the event any agreement contained herein should be breached by either party and thereafter such breach be waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

SECTION 10.6. RIGHT TO CURE. Prior to the exercise of any remedy by the Agency hereunder following an Event of Default, the Company and any Lender shall have an absolute right to cure such Event of Default during the time period allowed for curing same. If the Company at any time during the Lease Term prior to the occurrence of an Event of Default provides a written request to the Agency that notices hereunder be provided to any Lender, any such Lender shall be afforded an additional sixty (60) days (beyond the time period allowed for the Company to cure) within which to cure an Event of Default on behalf of the Company.

ARTICLE XI

EARLY TERMINATION OF LEASE AGREEMENT

SECTION 11.1 OPTION TO TERMINATE LEASE AGREEMENT. The Company shall have, if there exists no Event of Default hereunder with respect to any amounts due and owing to the Agency hereunder or under the other Basic Documents, the option to cancel or terminate this Lease Agreement, subject to the survival of those obligations of the Company which are intended to survive the Lease Term, upon payment of all payments currently due and owing pursuant to Section 5.4 hereof for which a written payment request with respect to has been provided to the Company by the Agency, and by giving the Agency notice in writing of such termination and thereupon such termination shall forthwith become effective.

SECTION 11.2. OBLIGATION TO SELL AND PURCHASE THE PROJECT FACILITY. Upon termination of this Lease Agreement in accordance with Section 5.2 or 11.1 hereof or expiration of this lease Agreement in accordance with Section 5.2 hereof, the Agency shall be obligated to sell to the Company, and the Company shall be obligated to purchase, all the Agency's right, title and interest in and to the Project Facility from the Agency for the purchase price of One Dollar (\$1.00) plus payment of all sums due and payable to the Agency hereunder.

SECTION 11.3. CONVEYANCE OF PROJECT FACILITY UPON PURCHASE. (A) At the closing of any purchase of all the Agency's right, title and interest in and to the Project Facility pursuant to Section 11.2 hereof, the Agency's right, title and interest in and to the Project Facility shall be conveyed from the Agency to the Company. The Company agrees to prepare a termination of this Lease Agreement together with all gains tax affidavits, equalization and assessment forms and other necessary documentation and to forward same to the Agency at least fifteen (15) days prior to the date that the Agency's right, title and interest in and to the Project Facility is to be conveyed to the Company. The Company will pay all expenses and taxes, if any, applicable to or arising from such transfers.

(B) The sale and conveyance of the Agency's right, title and interest, if any, in and to the Project Facility shall be effected by the execution, delivery and recording by the Agency of a termination of this Lease Agreement.

(C) The Company hereby agrees to pay all expenses, filing and recording fees and taxes, if any, and the reasonable and actual attorneys' fees of the Agency applicable to or arising from the transfers contemplated by this Section 11.3.

ARTICLE XII

MISCELLANEOUS

SECTION 12.1. RESERVED.

SECTION 12.2. NOTICES. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (A) sent to the applicable address stated

below by registered or certified mail, return receipt requested, or by such other means (including overnight delivery) as shall provide the sender with documentary evidence of such delivery, or (B) delivery is refused by the addressee, as evidenced by the affidavit of the person who attempted to effect such delivery. The addresses to which notices, certificates and other communications hereunder shall be delivered are as follows:

IF TO THE COMPANY:

CHPE LLC
600 Broadway
Albany, New York 12207
Attention: Jeremiah Sheehan, Esq.

CHPE LLC
600 Broadway
Albany, New York 12207
Attention: Todd Singer, CFO

WITH A COPY TO:

Swartz Moses PLLC
1583 East Genesee Street
Skaneateles, New York 13152
Attention: Peter Swartz, Esq.

IF TO THE AGENCY

County of Saratoga Industrial Development Agency
Saratoga County Municipal Center
50 West High Street
Ballston Spa, New York 12020
Attention: Executive Director

WITH A COPY TO:

Lemery Greisler LLC
60 Railroad Place
Saratoga Springs, New York 12866
Attention: James A. Carminucci, Esq.

The Agency and the Company may, by notice given hereunder, designate any further or different addresses to which, or the manner by which, subsequent notices, certificates and other communications shall be sent. A copy of all notices to the Company hereunder shall also be served on any Lender identified pursuant to Section 10.6 hereof, and no such notice or other communication to the Company shall be deemed received unless a copy is so served upon any such Lender in the manner provided herein for the giving of notice.

SECTION 12.3. BINDING EFFECT. This Lease Agreement shall inure to the benefit of the Agency and the Company, and shall be binding upon the Agency, the Company and, their respective successors and assigns permitted hereunder, provided, however that except as provided elsewhere herein or in the other Basic Documents, the interest of the Agency in this Lease Agreement may not be mortgaged, encumbered, sold, assigned, transferred, conveyed, pledged, sublet or subjected to any lien or otherwise transferred without the prior written consent of the Company.

SECTION 12.4. SEVERABILITY. If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Lease Agreement.

SECTION 12.5. AMENDMENTS, CHANGES AND MODIFICATIONS. This Lease Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

SECTION 12.6. 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 12.7. APPLICABLE LAW. This Lease Agreement shall be governed exclusively by the applicable laws of the State.

SECTION 12.8. SURVIVAL OF OBLIGATIONS. (A) The obligations of the Company to make the payments required by Section 5.4(B) hereof and to provide the indemnity required by Section 8.2 hereof shall survive the termination of this Lease Agreement, and all such payments after such termination shall be made upon demand of the party to whom such payment is due.

(B) The obligations of the Company with respect to the Unassigned Rights shall survive the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents or employees, relating thereto.

SECTION 12.9. TABLE OF CONTENTS AND SECTION HEADINGS NOT CONTROLLING. The table of contents and the headings of the several sections in this Lease Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of or be taken as an interpretation of any provision of this Lease Agreement.

SECTION 12.10. NO RECOURSE; SPECIAL OBLIGATION. (A) The obligations and agreements of the Agency contained herein and in the other Basic Documents and any other instruments or documents executed in connection therewith or herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his or her individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby. The obligations and agreements of the Agency contained herein and therein shall not constitute or give rise to an obligation of the State of New York or the County of Saratoga, New York, and neither the State of New York nor the County of Saratoga, New York shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited, special obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Project Facility (except for revenues derived by the Agency with respect to the Unassigned Rights). No order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought

or enforced against the Agency unless (A) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten [10] days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (B) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount or undertaking sufficient to cover such reasonable fees and expenses, and (C) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company) or employees shall be subject to potential liability, the party seeking such order or decree shall (1) agree to indemnify, hold harmless and defend the Agency and its members, officers, agents (other than the Company) and employees against any liability incurred as a result of its compliance with such demand, and (2) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents (other than the Company) and employees against all liability expected to be incurred as a result of compliance with such request. Any failure to provide the indemnity required in this Section 12.10 shall not affect the full force and effect of an Event of Default under any of the Basic Documents.

(B) The obligations and agreements of the Company contained herein and in the other Basic Documents and any other instrument or document executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Company, and not of any member, officer, agent, servant or employee of the Company in his individual capacity, and the members, officers, agents, servants and employees of the Company shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

SECTION 12.11. SUBMISSION TO JURISDICTION. The Company hereby irrevocably and unconditionally agrees that any suit, action or proceeding arising out of or relating to this Lease Agreement shall be brought in the state courts of the State of New York or federal district court for the Northern District of New York and waives any right to object to jurisdiction within either of the foregoing forums by the Agency. Nothing contained herein shall prevent the Agency from bringing any suit, action or proceeding or exercising any rights against any security and against the Company personally, and against any property of the Company, within any other jurisdiction and the initiation of such suit, action or proceeding or taking of such action in any such other jurisdiction shall in no event constitute a waiver of the agreements contained herein with respect to the laws of the State of New York governing the rights and obligations of the parties hereto or the agreement of the Company to submit to personal jurisdiction within the State of New York.

SECTION 12.12. RECORDING. The Agency and the Company agree that this Lease Agreement shall be recorded in the office of the Clerk of Saratoga County, New York by the Agency at the expense of the Company.

SECTION 12.13. JOINT AND SEVERAL LIABILITY. In the event that this Lease Agreement is executed by more than one lessee, the liability of such parties is joint and several. A separate action or actions may be brought and prosecuted against each lessee, whether or not action is brought against any other person or whether or not any other person is joined in such action or actions.

SECTION 12.14. ESTOPPEL CERTIFICATES. The Agency, within forty-five (45) days after a request in writing by the Company, shall furnish a written statement, duly acknowledged, that this Lease Agreement and the other Basic Documents are in full force and effect and that there are no defaults thereunder by the Company, or if there are any defaults, such statement shall specify the defaults the Agency claims to exist.

SECTION 12.15. SUPERSESSION. The Company obligations under this Lease Agreement and the other Basic Documents shall supersede the Company obligations in the Company's application to the Agency for Financial Assistance; provided, however, that nothing herein shall amend, modify, eliminate or replace the information presented by the Company in such application.

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

COUNTY OF SARATOGA INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Philip Klein, Vice Chairman

CHPE LLC

By: _____
Todd Singer, Chief Financial Officer

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

On this 11th day of October, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared **Philip Klein**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF)
) SS.:
COUNTY OF)

On this ____ day of October, 2022, before me, the undersigned, a Notary Public in and for said State, personally appeared **Todd Singer**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT A

DESCRIPTION OF THE LAND

EXHIBIT B

DESCRIPTION OF THE EQUIPMENT

All building materials, machinery, equipment, fixtures, supplies and items of personal property and all appurtenances (A) acquired, constructed, installed or equipped and to be acquired, constructed, installed or equipped in connection with the acquisition, construction, installation and equipping of the Project Facility, said Project Facility to be acquired, constructed, installed and equipped by the Company, as agent of the Agency, or by contractors or subcontractors appointed by the Company as indirect agents of the Agency, and (B) now or hereafter attached to, contained in or used in connection with the Project Facility or placed on any part thereof, though not attached thereto, together with any and all products of any of the above, all substitutions, replacements, additions or accessions therefor and any and all cash proceeds or non-cash proceeds realized from the sale, transfer or conversion of any of the above.

EXHIBIT C

FORM OF LEASE SUPPLEMENT

THIS LEASE SUPPLEMENT (the "Lease Supplement") dated as of _____, _____, by and between the COUNTY OF SARATOGA INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at Saratoga County Municipal Center, Ballston Spa, New York 12020 (the "Agency"), as landlord, and CHPE LLC, a limited liability company organized and existing under the laws of the State of New York and having an address of 600 Broadway, Albany, New York 12207 (the "Company"), as tenant.

WITNESSETH:

WHEREAS, the Company, as tenant, and the Agency, as landlord, entered into a lease agreement dated as of October 12, 2022 (the "Lease Agreement") pursuant to which, among other things, the Agency leased the Project Facility (as defined in the Lease Agreement) to the Company; and

WHEREAS, the Lease Agreement provides for the execution and delivery by the Company and the Agency of a Lease Supplement, substantially in the form hereof, for the purpose of describing the supplemental interests leased from the Agency to the Company pursuant to and in accordance with the terms of the Lease Agreement ("Supplemental Interests"); and

WHEREAS, the Company and the Agency have entered into an Underlying Lease Supplement with respect to the Supplemental Interests and now desire to enter into this Lease Supplement;

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

1. Unless otherwise defined herein, capitalized terms used herein shall have the meanings specified in the Lease Agreement.

2. Pursuant to Section 5.1(B) of the Lease Agreement, the Agency hereby leases to the Company, and the Company hereby rents and leases from the Agency, the Agency's interest in the parcels of real property described in Exhibit C-1 attached hereto, together with any and all Project-related improvements now or hereafter located thereon or therein for the Lease Term.

3. The Agency shall file with the assessor for and mail to the chief executive officer of each "affected tax jurisdiction" (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form 412-a relating to the Supplemental Interests, together with any and all Project-related improvements now or hereafter located thereon or therein, conveyed pursuant to this Lease Supplement.

4. This Lease Supplement shall be construed in connection with and as part of the Lease Agreement, and all terms, conditions and covenants contained in the Lease Agreement shall be and remain in full force and effect and are incorporated herein by reference with the same force and effect as if fully set forth herein. The Land shall include the Supplemental Interests for all purposes under the Lease Agreement.

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

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

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

IN WITNESS WHEREOF, the Company and the Agency have caused this Lease Supplement to be duly executed and delivered on the day and year first above written.

COUNTY OF SARATOGA INDUSTRIAL
DEVELOPMENT AGENCY

By: _____,
Chairman

CHPE LLC

By: _____
Todd Singer, Chief Financial Officer

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

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared **Rodney Sutton**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF _____)
)SS.:
COUNTY OF _____)

On this ____ day of _____, _____, before me, the undersigned, a Notary Public in and for said State, personally appeared **Todd Singer**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT C-1

SUPPLEMENTAL INTERESTS