

CLOSING ITEM NO.: A-4

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ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

CHPE LLC

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LEASE AGREEMENT

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DATED AS OF OCTOBER 1, 2022

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RELATING TO REAL PROPERTY RIGHTS AND INTERESTS HELD  
BY THE LANDLORD IN CERTAIN PARCELS OF LAND, SUCH  
LANDS LOCATED IN THE TOWNS OF GUILDERLAND, NEW  
SCOTLAND, BETHLEHEM, AND COEYMANS, AND THE  
VILLAGES OF VOORHEESVILLE AND RAVENA, ALBANY  
COUNTY, NEW YORK.

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

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## LEASE AGREEMENT

THIS LEASE AGREEMENT dated as of October 1, 2022 (the "Lease Agreement") by and between ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 112 State Street, Albany, New York (the "Agency"), and CHPE LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 600 Broadway, Albany, New York (the "Company");

### WITNESSETH:

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

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

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

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 178 of the Laws of 1975 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Company presented an application, as amended (the "Application") to the Agency, which Application requested that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project to include the following: (A) (1) the acquisition of an interest or interests in various parcels of land spanning across 24.2 miles of land located in the Towns of Guilderland, New Scotland, Bethlehem, and Coeymans, and the Villages of Voorheesville and Ravana, Albany County, New York (collectively, the "Land"), (2) the construction, installation and equipping on or under the Land of a fully-buried, up to 1,250-megawatt ("MW") high-voltage direct current ("HVDC") electric transmission line and related infrastructure (collectively, the "Improvements"), and (3) the acquisition and installation thereon and therein of certain related machinery and equipment, including but not limited to, two (2) five-inch diameter HVDC transmission cables (collectively, the "Equipment") (the Land, the Improvements and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be used and operated by the Company as a portion of an electric transmission line from the U.S.-Canada border to New York City; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the "Financial

Assistance”); and (C) the lease of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency (the “Public Hearing Resolution”), the Agency authorized a public hearing or public hearings to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chairman of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on October 21, 2021 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on a bulletin board located in the Towns of Guilderland, New Scotland, Bethlehem, and Coeymans, and the Villages of Voorheesville and Ravana, Albany County, New York, (C) caused notice of the Public Hearing to be published in the Times Union, a newspaper of general circulation available to the residents of the Towns of Guilderland, New Scotland, Bethlehem, and Coeymans, and the Villages of Voorheesville and Ravana, Albany County, New York, (D) conducted the Public Hearing on November 3, 2021 at 7:00 p.m., local time at the Town Halls located at the Towns of Guilderland, New Scotland, Bethlehem, and Coeymans, and (E) prepared a report of the Public Hearing (the “Hearing Report”) fairly summarizing the views presented at such Public Hearing and caused copies of said Hearing Report to be made available to the members of the Agency; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy (the “Policy”) provides a standardized method for the determination of payments in lieu of taxes for a facility similar to the Project Facility. In connection with the Application, the Company made a request to the Agency (the “PILOT Request”) that the Agency deviate from the Policy with respect to Project Facility. Pursuant to the resolution adopted by the members of the Agency on July 14, 2021 (the “PILOT Deviation Notice Resolution”), the members of the Agency authorized the Chairman of the Agency to send a notice to the chief executive officers of the “Affected Tax Jurisdictions” (as defined in the Act) pursuant to Section 874(4) of the Act, informing said individuals that the Agency had received the PILOT Request and that the members of the Agency would consider said request at a subsequent meeting of the members of the Agency. The Chairman of the Agency caused a letter dated October 15, 2021 (the “First PILOT Deviation Notice Letter”) to be mailed to the chief executive officers of the Affected Tax Jurisdictions, informing said individuals that the Agency would at a subsequent meeting of the Agency, consider a proposed deviation from the Policy with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility (the “Payment in Lieu of Tax Agreement”) and the reasons for said proposed deviation; and

WHEREAS, in December, 2021, the Agency received additional information from the Company with respect to the Project from the Company, which information provided the Agency with revised Project costs resulting in the need for the Agency, pursuant to Section 859-a of the Act, to hold a second public hearing with respect to the Project and the amount of the Financial Assistance; and

WHEREAS, the Chairman of the Agency (A) caused notice of a public hearing of the Agency (the “Second Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on January 10, 2022 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Second Public Hearing to be published on January 13, 2022 in the Times Union, a newspaper of general circulation available to the residents of the Towns of Guilderland, New Scotland, Bethlehem, and Coeymans, and the Villages of Voorheesville and Ravana, Albany County, New York, (C) conducted the Second Public Hearing on January 25, 2022 at 7:00 p.m., local time at the Town Hall located at the Town of Coeymans, Albany County, New

York and (D) prepared a report of the Second Public Hearing (the “Second Hearing Report”) fairly summarizing the views presented at such Second Public Hearing and caused copies of said Second Hearing Report to be made available to the members of the Agency; and

WHEREAS, following the Second Public Hearing, the Chairman of the Agency caused a letter dated January 7, 2022 (the “Second PILOT Deviation Notice Letter”) to be mailed to the chief executive officers of the Affected Tax Jurisdictions, informing said individuals that the Agency would at a meeting of the Agency scheduled for February 9, 2022, consider a proposed deviation from the Policy with respect to the Payment in Lieu of Tax Agreement and the reasons for said proposed deviation; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”), and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the “Regulations”, and collectively with the SEQR Act, “SEQRA”), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to undertake the Project; and

WHEREAS, Sections 617.5(a) and 617.5(c)(44) of the Regulations provide that actions requiring a certificate of environmental compatibility and public need under Article VII of the Public Service Law constitute “Type II” actions and are not subject to review under the Regulations, and Section 8-0111 of the SEQR Act further provides that the requirements of the SEQR Act do not apply to actions subject to the provisions requiring a certificate of environmental compatibility and public need in Article VII of the Public Service Law; and

WHEREAS, pursuant to the Regulations, the Agency has examined the Application, the Regulations, the SEQR Act, and other relevant materials, in order to classify the Project for purposes of SEQRA review; and

WHEREAS, the Application provides that the Project has been issued a Certificate of Environmental Compatibility and Public Need under Article VII of the Public Service Law by the Public Service Commission of the State of New York; and

WHEREAS, by resolution adopted by the members of the Agency on February 9, 2022 (the “PILOT Deviation Approval Resolution”), the members of the Agency determined to deviate from the Agency’s uniform tax exemption policy with respect to the Project; and

WHEREAS, by further resolution adopted by the members of the Agency on February 9, 2022 (the “Approving Resolution”), the Agency determined to grant the Financial Assistance and to enter into a lease agreement dated as of October 1, 2022 (the “Lease Agreement”) between the Agency and the Company and certain other documents related thereto and to the Project (collectively with the Lease Agreement, the “Basic Documents”). Pursuant to the terms of the Lease Agreement, (A) the Company will agree, as agent of the Agency, to undertake and complete the Project and (B) the Agency has leased the Project Facility to the Company; and

WHEREAS, simultaneously with the execution and delivery of the Lease Agreement (the “Closing”), (A) the Company will execute and deliver to the Agency a certain lease to agency dated as of October 1, 2022 (the “Underlying Lease”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company will lease to the Agency the Project Facility; (B) the Company and the Agency will execute and deliver (1) a certain payment in lieu of tax agreement dated as of October 1, 2022 (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company will agree to pay certain payments in lieu of taxes with respect to the Project Facility,

and (2) a certain recapture agreement (the “Section 875 GML Recapture Agreement”) by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes; (C) the Agency and the Company will execute and deliver the uniform agency project agreement dated as of October 1, 2022 (the “Uniform Agency Project Agreement”) by and between the Agency and the Company relating to the terms of the granting by the Agency of the Financial Assistance to the Company; (D) the Agency will file with the assessor 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 (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement; (E) the Agency will execute and deliver to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which forms a part of the Financial Assistance and (F) the Agency will file with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”) with respect to the Company and any indirect agent appointed by the Company pursuant to the Lease Agreement; 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, pursuant to the provisions of the Act; and

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

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

ARTICLE I  
DEFINITIONS

SECTION 1.1. DEFINITIONS. All of the capitalized terms used in this Lease Agreement and the preambles hereto not otherwise defined shall have the meanings assigned thereto in the Schedule of Definitions attached hereto as Appendix A and made a part hereof.

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

- (A) the terms "hereby", "hereof", "herein", "hereunder" and any similar terms as used in this Lease Agreement, refer to this Lease Agreement, and the term "heretofore" shall mean before, and the term "hereafter" shall mean after, the date of this Lease Agreement;
- (B) words of masculine gender shall mean and include correlative words of feminine and neuter genders;
- (C) words importing the singular number shall mean and include the plural number, and vice versa;
- (D) any headings preceding the texts of the several Articles and Sections of this Lease Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Lease Agreement nor affect its meaning, construction or effect; and
- (E) any certificates, letters or opinions required to be given pursuant to this Lease Agreement shall mean a signed document attesting to or acknowledging the circumstances, representations, opinions of law or other matters therein stated or set forth or setting forth matters to be determined pursuant to this Lease Agreement.

**ARTICLE II**  
**REPRESENTATIONS, WARRANTIES  
AND COVENANTS**

**SECTION 2.1. REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE AGENCY.** The Agency makes the following representations, warranties and covenants as the basis for the undertakings on 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 as to the utilization of the Project Facility, the Project will constitute a "project", as such quoted term is defined in the Act. By proper official action, the Agency has been duly authorized to execute, deliver and perform this Lease Agreement and the other Basic Documents to which the Agency is a party.

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

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

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

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

(A) The Company is a limited liability company duly organized and validly existing under the laws of the State of New York, is qualified and authorized to do business in the State of New York, and has the power to enter into this Lease Agreement and the other Basic Documents to which the Company is a party and to carry out its obligations hereunder and thereunder. By proper action of its member, the Company has been duly authorized to execute, deliver and perform this Lease Agreement and the other Basic Documents to which the Company is a party.

(B) Except as has been heretofore disclosed to the Agency, neither the execution and delivery of this Lease Agreement or the other Basic Documents to which the Company is a party, the consummation of the transactions contemplated hereby and thereby nor the fulfillment of or compliance with the provisions

of this Lease Agreement or the other Basic Documents to which the Company is a party will (1) conflict with or result in a breach of any of the terms, conditions or provisions of the Company's articles of organization and operating agreement or any other restriction, order, judgment, agreement or instrument to which the Company is a party or by which the Company or any of its Property is bound, or (2) constitute a default by the Company under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any Property of the Company under the terms of any such instrument or agreement, other than the Permitted Encumbrances, or (3) require consent (which has not been heretofore received) under any restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (4) require consent (which has not been heretofore obtained or which is not likely to be obtained in the ordinary course of business after the Closing Date) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company.

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

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

(E) The Basic Documents to which the Company is a party constitute, or upon their execution and delivery in accordance with the terms thereof will constitute, valid and legally binding obligations of the Company, enforceable in accordance with their respective terms, except as may be limited by applicable bankruptcy, insolvency, moratorium, reorganization, or similar laws affecting the enforcement of creditors' rights and subject to general equitable principles.

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

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

(H) The Project has been issued a Certificate of Environmental Compatibility and Public Need under Article VII of the Public Service Law by the Public Service Commission of the State of New York, and, accordingly, pursuant to Sections 617.5(a) and 617.5(c)(44) of the Regulations, the requirements under have been satisfied.

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

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

(K) The Company acknowledges receipt of notice of Section 874(9) of the Act, which requires that, if the Company claims any sales tax exemption by virtue of the Agency's involvement in the Project, the Agency must file within thirty (30) days of the date the Company is appointed the agent of the Agency, a Thirty-Day Sales Tax Report identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. The Company further acknowledges that if the Company delegates its sales tax exemption agency hereunder to contractors or subcontractors, including any Subagent (as defined below), performing work or making purchases in connection with the acquisition, construction, installation and equipping of the Project Facility (each an "Indirect Agent"), the Agency must file within thirty (30) days of the date any such Indirect Agent is appointed by the Company as an indirect agent of the Agency, a Thirty-Day Sales Tax Report identifying the Indirect Agent as an indirect agent of the Agency, setting forth the taxpayer identification number of the Indirect Agent, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as an indirect agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as an indirect agent relates, indicating the date when such designation as an indirect agent became effective and indicating the date upon which such designation as an indirect agent shall cease.

(L) The Company agrees to post a sign at the site of the Project, if practicable, listing the Agency and its participation in the Project, in form and substance to the reasonable satisfaction of the Agency.

(M) The Company agrees to provide the Agency with at least fourteen (14) days prior written notice of the following:

(1) any groundbreaking, grand opening or other public event in Albany County relating to the undertaking and completion of the Project and to provide the officers of the Agency and such other officials as they may designate with an opportunity to speak at and participate in such event or events; and

(2) any press releases, announcements, social media, online communications or other publicity material relating to the undertaking and completion of the Project in Albany County and

to provide the officers and staff of the Agency as they may designate with an opportunity to review and provide input in such publicity material.

## 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 also 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 or a Lien affecting the Project Facility, except for Permitted Encumbrances.

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 or the Act, provided such use causes the Project Facility to qualify or continue to qualify as a "project" under the Act and does not tend, in the reasonable judgment of the Agency, to bring the Project Facility into disrepute as a public project; provided, however, that the Project Facility will not be used (1) as facilities used or to be used primarily for sectarian instruction or as a place of religious worship or (2) primarily as in connection with any part of a program of a school or department of divinity for any religious denomination; provided, further, however, that at no time shall any such use of the Project Facility be other than as an electric transmission line from the U.S.-Canada board to New York City and uses related thereto, without the written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed.

(B) 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, 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

SECTION 3.3. HAZARDOUS MATERIALS. (A) The Company represents, warrants and covenants that the Company has not used Hazardous Materials on, from or affecting the Project Facility in any manner which violates any Applicable Law, including but not limited to those governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials.

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

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

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

(E) In the event the Project Facility is foreclosed by the Agency, or the Company tenders a deed in lieu of foreclosure, the Company shall deliver the Project Facility to the purchaser free of any and all Hazardous Materials used in connection with its construction, operation and ownership of the Project Facility (except Hazardous Materials the presence of which do not violate any Federal, State or local laws, ordinances, rules and regulations governing the use and storage of such materials), so that the condition of the Project Facility shall conform with all Applicable Laws affecting the Project Facility. Nothing herein shall refer to the actions or omissions, or the compliance with Applicable Laws, of underlying landowners of the Land or any tenants thereof (other than the Company), or the potential or actual presence of Hazardous Materials on the portion of the Land controlled by underlying landowners that is unrelated to the Company's construction, operation and ownership of the Project Facility.

(F) The Company agrees, upon the occurrence of an Event of Default or if the Agency reasonably believes that an unpermitted release of Hazardous Substances or a violation of Applicable Laws has occurred or is occurring at the Project Facility that was caused by the Company, its agents, contractors, or employees, or its tenants or subtenants, that the Agency and its officers, agents or representatives, may at any reasonable time, after thirty (30) days' prior written notice, and at the Company's expense inspect the Company's books and records and inspect and conduct any test on the Project Facility, including taking soil samples, in order to determine that the Company is in compliance with all Applicable Laws.

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

(H) Notwithstanding anything to the contrary in this Lease Agreement, (1) the Company makes no representations, warranties or covenants regarding Hazardous Materials or the presence thereof on any real property other than the Land, (2) the Company shall have no obligation to ensure the owners of parcels adjacent to or in the vicinity of any of the Land, or the underlying landowners of the Land or any tenants thereof (other than the Company), comply with Applicable Laws, or keep such parcels free of Hazardous Materials, and (3) the Company shall have no obligation to the Agency (except for indemnification of the Agency required by Section 3.3(D) and Section 8.2 hereof) or any other entity or person with respect to past or future actions or omissions of the underlying landowners of the Land or any tenants thereof (other than the Company) and their use or occupancy (or the use or occupancy of their tenants) thereof (other than its own in the context of Land owned by the Company).

**SECTION 3.4. NON-MERGER.** During the Lease Agreement Term, there shall be no merger of this Lease Agreement nor of the leasehold estate created by this Lease Agreement with the Company's interest in the Land or any part thereof by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (1) this Lease Agreement or the leasehold estate created by this Lease Agreement or any interest in this Lease Agreement or in any such leasehold estate, (2) the Underlying Lease or the leasehold estate created by the Underlying Lease or any interest in the Underlying Lease or in any such leasehold estate, and (3) the Company's interest in the Land or any part thereof, and no such merger shall occur unless and until all corporations, firms and other entities including any mortgagee having any interest in (x) this Lease Agreement or the leasehold estate created by this Lease Agreement, (y) the Underlying Lease or the leasehold estate created by the Underlying Lease, and (z) the Company's interest in the Land or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

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

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

Lease, to the end that all things shall be done which are necessary to keep unimpaired the rights of the Agency, as tenant, under the Underlying Lease.

**ARTICLE IV**  
**UNDERTAKING AND COMPLETION OF THE PROJECT**

**SECTION 4.1. ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF THE PROJECT FACILITY.** (A) The Company shall, on behalf of the Agency, promptly acquire, construct, install and equip the Project Facility, or cause the acquisition, construction, installation and equipping of the Project Facility.

(B) There shall be no material change in the scope of the Project Facility unless the Agency shall have consented thereto in writing (which consent of the Agency shall not be unreasonably withheld, conditioned or delayed).

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

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

(E) (1) The Agency hereby appoints the Company as its true and lawful agent to perform the following in compliance with the terms, purposes and intent of the Basic Documents, and the Company hereby accepts such appointment: (a) to acquire, construct, install and equip the Project Facility, (b) 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, provided that the liability of the Agency thereunder shall be limited to the moneys made available therefore by the Company and advanced for such purposes by the Company pursuant to this Lease Agreement, (c) to pay all fees, costs and expenses incurred in the acquisition, construction, installation and equipping of the Project Facility from funds made available therefor in accordance with this Lease Agreement, and (d) to ask, demand, sue for, levy, recover and receive all such sums of money, debts, dues and other demands whatsoever which may be due, owing and payable to the Agency under the terms of any contract, order, receipt or writing in connection with the acquisition, construction, installation and equipping of the Project Facility and to enforce the provisions of any contract, agreement, obligation, bond or other performance security in connection with the same.

(2) The Company shall have the right to delegate its sales tax exemption agency hereunder to any Indirect Agent, as provided in Section 8.12(F) hereof.

(F) The Company has given or will give or cause to be given all notices and has complied or will comply or cause compliance with all Applicable Laws applying to or affecting the conduct of work on the Project Facility, and the Company will defend, indemnify and save the Agency and its officers,

members, agents, servants and employees harmless from all fines and penalties due to the Company's failure to comply therewith. All permits and licenses necessary for the prosecution of work on the Project Facility shall be procured promptly by the Company.

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

(H) The Company agrees, for the benefit of the Agency, to undertake and complete the Project and to pay all such undisputed sums as may be required in connection therewith.

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

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

**SECTION 4.3. REMEDIES TO BE PURSUED AGAINST CONTRACTORS, SUBCONTRACTORS, MATERIALMEN AND THEIR SURETIES.** In the event of a breach or an event of default by any contractor, subcontractor or materialman under any contract made by it in connection with the acquisition, construction, installation and equipping of the Project Facility or in the event of a breach of warranty or other liability with respect to any materials, workmanship or performance guaranty, the Company shall proceed, either separately or in conjunction with others, to exhaust the remedies of the Company and the Agency against the contractor, subcontractor or materialman so in default and against each surety for the performance of such contract. The Company may, in its own name or, with the prior written consent of the Agency (which consent shall not be unreasonably withheld, conditioned or delayed), in the name of the Agency, prosecute or defend any action or proceeding or take any other action involving any such contractor, subcontractor, materialman or surety which the Company deems reasonably necessary, and in such event the Agency hereby agrees, at the Company's sole expense, to cooperate fully with the Company and to take all action necessary to effect the substitution of the Company for the Agency in any such action or proceeding. If requested by the Agency, or in the case of any dispute exceeding \$10,000,000 with respect to the Project Facility, the Company shall advise the Agency of any actions or proceedings taken hereunder.

The Net Proceeds of any recovery secured by the Company as a result of any action pursued against a contractor, subcontractor, materialman or their sureties pursuant to this Section 4.3 shall be used to the extent necessary to complete the Project Facility, and thereafter be paid to the Company for its own use. If requested by the Agency, or in the case of any dispute exceeding \$10,000,000 with respect to the Project Facility, the Company shall advise the Agency of any actions or proceedings taken hereunder.

## ARTICLE V

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

**SECTION 5.1. LEASE OF THE PROJECT FACILITY.** (A) In consideration of the Company's covenant herein to make rental payments hereunder, and in consideration of the other covenants of the Company contained herein, including the covenant to make additional and other payments required hereby, the Agency hereby agrees to lease to the Company, and the Company hereby agrees to rent and lease 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"). 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.

(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 PILOT Payment pursuant to the Payment in Lieu of Tax 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 K.

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

(B) The Lease Agreement term and the leasehold estate created hereby (the "Lease Agreement Term") shall commence on the Closing Date and terminate on the earlier to occur of (1) the Expiration Date or (2) the date that this Lease Agreement shall terminate pursuant to Article X or Article XI hereof.

(C) The Company acknowledges that during the Lease Agreement Term the Company shall not be relieved of its obligation to make PILOT Payments due pursuant to Section 2.02(C) of the Payment in Lieu of Tax Agreement.

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

SECTION 5.3. RENTAL PAYMENTS AND OTHER AMOUNTS PAYABLE. (A) The Company shall pay basic rental payments for the Project Facility as follows:

(1) On the Closing Date, an amount equal to \$500,000 (the "Initial Agency Fee"), representing a portion of the Agency's administrative fee relating to the Project of \$2,714,660 (1.0% x \$271,465,993) (the "Agency Fee");

(2) On the date the Basic Documents are released from escrow pursuant to the IDA Document Escrow Agreement (the "Escrow Release Date"), but in no event later than June 30, 2023, an amount equal to \$2,214,660 (the "Remaining Agency Fee"), representing the remaining balance of the Agency Fee;

(3) On January 15 of each year during the Lease Agreement Term, with the first such payment due on the first January 15 occurring after the Escrow Release Date, an amount equal to \$7,500 for the Agency's annual administrative fee, with such amount increasing by five percent (5%) every five (5) years during the Lease Agreement Term; and

(4) On the Closing Date, the reasonable fees and expenses of general counsel and special counsel to the Agency relating to the Project.

(B) Within ten (10) Business Days after receipt of a demand therefor from the Agency, the Company shall pay to the Agency the sum of the reasonable expenses of the Agency and the officers, members, agents and employees thereof incurred by reason of the Agency's leasing of the Project Facility or in connection with the carrying out of the Agency's duties and obligations under this Lease Agreement or any of the other Basic Documents, and any other fee or expense of the Agency with respect to the Project Facility, the leasing of the Project Facility to the Company, or any of the other Basic Documents, the payment of which is not otherwise provided for under this Lease Agreement.

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

(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 5.3(A)(4) 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 Remaining Agency Fee in the amount set forth in Section 5.3(A)(2) hereof.

SECTION 5.4. NATURE OF OBLIGATIONS OF THE COMPANY HEREUNDER. (A) The obligations of the Company to make the payments required by this Lease Agreement and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be general obligations of the Company and shall be absolute and unconditional irrespective of any defense or any right of set-off, recoupment, counterclaim or abatement that the Company may otherwise have against the Agency. The Company agrees that it will not suspend, discontinue or abate any payment required by, or fail to observe

any of its other covenants or agreements contained in, this Lease Agreement, or terminate this Lease Agreement for any cause whatsoever, including, without limiting the generality of the foregoing, failure to complete the Project, any defect in the title, design, operation, merchantability, fitness or condition of the Project Facility or any part thereof or in the suitability of the Project Facility or any part thereof for the Company's purposes or needs, failure of consideration for, destruction of or damage to, Condemnation of title to or the use of all or any part of the Project Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision thereof, or any failure of the Agency to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Lease Agreement.

(B) Nothing contained in this Section 5.4 shall be construed to release the Agency from the performance of any of the agreements on its part contained in this Lease Agreement, and, in the event the Agency should fail to perform any such agreement, the Company may institute such action against the Agency as the Company may deem necessary to compel performance or recover damages for non-performance (subject to the provisions of Section 12.10 hereof); provided, however, that the Company shall look solely to the Agency's estate and interest in the Project Facility for the satisfaction of any right or remedy of the Company for the collection of a judgment (or other judicial process) requiring the payment of money by the Agency in the event of any liability on the part of the Agency, and no other Property or assets of the Agency or of the members, officers, agents (other than the Company) or employees of the Agency shall be subject to levy, execution, attachment or other enforcement procedure for the satisfaction of the Company's remedies under or with respect to this Lease Agreement, the relationship of the Agency and the Company hereunder or the Company's use and occupancy of or purchase of or title to the Project Facility, or any other liability of the Agency to the Company.

**SECTION 5.5. GRANT OF SECURITY INTEREST.** The Company hereby grants the Agency a security interest in all of the right, title and interest of the Company in the Project Facility and in all additions and accessions thereto, all replacements and substitutions therefor and all proceeds thereof (subject only to Permitted Encumbrances), and all proceeds thereof, as security for payment of the rental payments and all other payments and obligations of the Company hereunder. The Company hereby irrevocably appoints the Agency as its attorney-in-fact to execute and deliver and file any instruments necessary or convenient to perfect and continue the security interest granted herein. Such security interest shall terminate upon termination of the Lease Agreement Term, and the Agency shall deliver and file any instruments necessary to effect such termination.

## ARTICLE VI

### MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

**SECTION 6.1. MAINTENANCE OF AND MODIFICATIONS TO THE PROJECT FACILITY.** (A) During the Lease Agreement Term, the Company shall (1) keep the Project Facility in good condition and repair and preserve the same against waste, loss, damage and depreciation, ordinary wear and tear excepted, (2) make all 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.

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

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

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

(3) the Company shall furnish to the Agency, at least thirty (30) days prior to commencing such addition, modification or improvement to the Project Facility detailed plans and specifications therefor; provided, further, however, that such plans need not be furnished to the Agency for additions, modifications or improvements to the Project Facility which do not exceed, at any one time, \$25,000,000 in value.

**SECTION 6.2. TAXES, ASSESSMENTS AND UTILITY CHARGES.** (A) The Company shall pay or cause to be paid, as the same respectively become due, (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 with respect to the Project Facility by any Governmental Authority for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated hereunder to pay only such installments as are required to be paid during the Lease Agreement Term and (4) all payments in lieu of taxes with respect to the Project Facility payable pursuant to the Payment in Lieu of Tax Agreement and Section 6.6 hereof, as they come due.

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

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

(A) (1) During and prior to completion of the Project Facility, builder's risk (or equivalent coverage) insurance upon any work done or material furnished in connection with the acquisition, construction, installation and equipping of the Project Facility, issued to the Company, as insured, and the Agency, as an additional insured, as their interests may appear, and (2) at such time that builder's risk insurance is no longer available by virtue of completion of the acquisition, construction, installation and equipping of the Project Facility, insurance protecting the interests of the Company, as 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 which the Company is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Company who are located at or assigned to the Project Facility or who are responsible for the acquisition, construction, installation 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 \$500,000 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workers' compensation law, and a separate umbrella liability policy protecting the Company, as insured, and the Agency, as an additional insured, as their interests may appear, with a limit of not less than \$10,000,000.

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

SECTION 6.4. ADDITIONAL PROVISIONS RESPECTING INSURANCE. (A) All insurance required by Section 6.3 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State and satisfactory and having a Best rating satisfactory to the Agency. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall name the Company, as insured, and the Agency, 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 year, insurance in the amounts and of the types required by Sections 6.3 and 6.4 hereof.

(B) All premiums with respect to the insurance required by Section 6.3 hereof shall be paid by the Company. If at any time the Agency is not in receipt of written evidence that all insurance required hereunder is in force and effect, the Agency shall have the right following five (5) Business Days' advance written notice to the Company to take such action as the Agency deems necessary to protect its interest in the Project Facility, including, without limitation, the obtaining of such insurance coverage as the Agency in its sole discretion deems appropriate, and all expenses incurred by the Agency in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by the Company to the Agency upon demand, together with interest thereon at the Default Interest Rate.

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

**SECTION 6.6. PAYMENTS IN LIEU OF REAL PROPERTY TAXES.** (A) It is recognized that under the provisions of the Act, the Agency is required to pay no taxes or assessments upon any of the Property acquired by it or under its jurisdiction, control or supervision or upon its activities. It is not the intention, however, of the parties hereto that the Project Facility be treated as exempt from real property taxation. Accordingly, the parties hereto acknowledge that the Payment in Lieu of Tax Agreement is expected to be executed with respect to the Project Facility, and a Real Property Tax Exemption Form will be filed by the Agency with respect to the Project Facility once the Payment in Lieu of Tax Agreement is executed by the Agency and the Company. Once the Payment in Lieu of Tax Agreement is executed by the Agency and the Company, and thereafter until the expiration date of the Payment in Lieu of Tax Agreement, the Agency and the Company hereby agree that the Company (or any subsequent user of the Project Facility pursuant to this Lease Agreement) shall be required to make or cause to be made PILOT Payments in the amounts and in the manner set forth in the Payment in Lieu of Tax Agreement.

(B) In the event that (1) the Project Facility would be subject to real property taxation if owned by the Company but shall be deemed exempt from real property taxation due to the involvement of the Agency therewith, and (2) the Payment in Lieu of Tax Agreement shall not have been entered into by the Agency and the Company, or if entered into the Payment in Lieu of Tax Agreement shall for any reason no longer be in effect, the Agency and the Company hereby agree that the Company, or any subsequent user of the Project Facility under this Lease Agreement, shall in such event be required to make or cause to be made payments in lieu of real property taxes to the Affected Tax Jurisdictions in such amounts as would result from real property taxes being levied on the Project Facility by the Affected Tax Jurisdictions if the Project Facility were privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, but with appropriate reductions similar to the tax exemptions and credits, if any, which would be afforded to the Company if it were the owner of the Project Facility. It is agreed that the Agency, in cooperation with the Company, (a) shall cause the Project Facility to be valued for purposes of determining the amounts due hereunder as if owned by the Company as aforesaid by the appropriate officer or officers of any of the Affected Tax Jurisdictions as may from time to time be charged with responsibility for making such valuations, (b) shall cause to be appropriately applied to the valuation or valuations so determined the respective real property tax rate or rates of the Affected Tax Jurisdictions that would be applicable to the Project Facility if so privately owned, (c) shall cause the appropriate officer or officers of the Affected Tax Jurisdictions charged with the duty of levying and collecting such real property taxes to submit to the Company, when the respective levies are made for purposes of such real

property taxes upon Property privately owned as aforesaid, statements specifying the amounts and due dates of such real property taxes which the Affected Tax Jurisdictions would receive if such Property were so privately owned by the Company and not deemed owned by or under the jurisdiction, control or supervision of the Agency, and (d) shall file with the appropriate officer or officers any accounts or tax returns furnished to the Agency by the Company for the purpose of such filing.

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

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

## ARTICLE VII

### DAMAGE, DESTRUCTION AND CONDEMNATION

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

- (1) the Agency shall have no obligation to replace, repair, rebuild or restore the Project Facility;
- (2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement or under any other Basic Document (whether or not the Project Facility is replaced, repaired, rebuilt or restored) except as provided therein;
- (3) the Company shall promptly give notice thereof to the Agency, if such damage is material; and
- (4) except as otherwise provided in subsection (B) of this Section 7.1, (a) the Company shall promptly replace, repair, rebuild or restore the Project Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project", as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency (which consent shall not be unreasonably withheld, conditioned or delayed), and (b)(1) the Agency shall make available to the Company (from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the replacement, repair, rebuilding or restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any insurance settlement provided by the Agency to the Company are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete such work and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any insurance settlement relating to the Project Facility, if any, remaining on deposit with the Agency after payment of all of the costs of such replacement, repair, rebuilding or restoration shall be paid to the Company for its own purposes.

(B) Notwithstanding anything to the contrary contained in subsection (A) of this Section 7.1, the Company shall not be obligated to replace, repair, rebuild or restore the Project Facility, and the Net Proceeds of any insurance settlement shall not be applied as provided in subsection (A) of this Section 7.1, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to terminate this Lease Agreement. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (1) the total amount of the Net Proceeds collected under any and all policies of insurance covering the damage to or destruction of the Project Facility, or (2) the amount necessary to prepay the Indebtedness in full shall be applied to the prepayment of the Indebtedness in full. If the Net Proceeds collected under any and all policies of insurance are less than the amount necessary to prepay the Indebtedness in full, the Company shall pay to the Agency the difference between the Net Proceeds of such insurance and the amount necessary to prepay the Indebtedness in full.

(C) If all Indebtedness has been paid in full, all such Net Proceeds (or the balance thereof) shall be paid to the Company for its purposes.

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

SECTION 7.2. CONDEMNATION. (A) To the knowledge of the Company, no condemnation or eminent domain proceeding has been commenced or threatened against any part of the Project Facility. The Company shall notify the Agency of the institution of any condemnation proceedings and, within seven days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(B) If title to, or the use of, all or any part of the Project Facility shall be taken by Condemnation:

(1) the Agency shall have no obligation to restore the Project Facility;

(2) there shall be no abatement or reduction in the amounts payable by the Company under this Lease Agreement or under any other Basic Document (whether or not the Project Facility is restored) except as provided therein;

(3) the Company shall promptly give notice thereof to the Agency; and

(4) except as otherwise provided in subsection (C) of this Section 7.2, (a) the Company shall promptly restore the Project Facility (excluding any part of the Project Facility taken by Condemnation) as a complete architectural unit of substantially the same usefulness, design and construction as existed immediately prior to such Condemnation, with such changes, alterations and modifications as may be desired by the Company and consented to in writing by the Agency, provided that such changes, alterations or modifications do not so change the nature of the Project Facility that it does not constitute a "project" as such quoted term is defined in the Act, or change the use of the Project Facility as specified in Section 3.2 hereof without the prior written consent of the Agency (which consent shall not be unreasonably withheld, conditioned or delayed), and (b)(1) the Agency shall make available to the Company (from the Net Proceeds of any Condemnation award relating to the Project Facility, if any, on deposit with the Agency) such moneys as may be necessary to pay the costs of the restoration of the Project Facility, and in the event that the funds from the Net Proceeds of any Condemnation award on deposit with the Agency provided by the Agency to the Company are not sufficient to pay in full the costs of such restoration, the Company shall nonetheless complete such restoration and shall pay from its own moneys that portion of the costs thereof in excess of such funds, and (2) any balance of such funds from the Net Proceeds of any Condemnation award, if any, remaining on deposit with the Agency after payment of all of the costs of such restoration shall be paid to the Company for its own purposes.

(C) Notwithstanding anything to the contrary contained in subsection (B) of this Section 7.2, the Company shall not be obligated to restore the Project Facility, and the Net Proceeds of any Condemnation award shall not be applied as provided in subsection (B) of this Section 7.2, if the Company shall notify the Agency that it elects to exercise its option under Article XI hereof to terminate this Lease Agreement. In such event, or if an Event of Default shall have occurred and be continuing, the lesser of (1) the Net Proceeds of any Condemnation award, or (2) the amount necessary to prepay all of the Indebtedness in full shall be applied to the prepayment of the Indebtedness in full. If the Net Proceeds collected under any and all Condemnation awards are less than the amount necessary to prepay the Indebtedness in full, the

Company shall pay to the Agency the difference between such amounts and the Net Proceeds of such Condemnation awards so that the Indebtedness shall be prepaid in full.

(D) If all of the Indebtedness has been paid in full, all such Net Proceeds or the balance thereof shall be paid to the Company for its purposes.

(E) Unless an Event of Default under any of the Basic Documents shall have occurred and be continuing, the Company shall have sole control of any Condemnation proceeding with respect to the Project Facility or any part thereof and may negotiate the settlement of any such proceeding. The Company shall notify the Agency of the institution of any condemnation proceedings and, within seven days after inquiry from the Agency, inform the Agency in writing of the status of such proceeding.

(F) The Agency shall, at the expense of the Company, cooperate fully with the Company in the handling and conduct of any such Condemnation proceeding. In no event shall the Agency voluntarily settle, or consent to the settlement of, any such Condemnation proceeding without the written consent of the Company.

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

## ARTICLE VIII

### SPECIAL COVENANTS

SECTION 8.1. NO WARRANTY OF CONDITION OR SUITABILITY BY THE AGENCY; ACCEPTANCE "AS IS". THE AGENCY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE PROJECT FACILITY OR ANY PART THEREOF OR AS TO THE SUITABILITY OF THE PROJECT FACILITY OR ANY PART THEREOF FOR THE COMPANY'S PURPOSES OR NEEDS. THE COMPANY SHALL HAVE NO RECOURSE OF ANY NATURE AGAINST THE AGENCY FOR ANY CONDITION NOW OR HEREAFTER EXISTING AS TO TITLE TO THE PROJECT FACILITY. NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY IS MADE. IN THE EVENT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE, WHETHER PATENT OR LATENT, THE AGENCY SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT THERETO.

SECTION 8.2. HOLD HARMLESS PROVISIONS. (A) The Company hereby releases the Agency and its members, officers, agents (other than the Company) and employees from, agrees that the Agency and its members, officers, agents (other than the Company) and employees shall not be liable for and agrees to indemnify, defend and hold the Agency and its members, officers, agents (other than the Company) and employees harmless from and against any and all claims, causes of action, judgments, liabilities, damages, losses, costs and expenses arising as a result of the Agency's undertaking the Project, including, but not limited to, (1) liability for loss or damage to Property or bodily injury to or death of any and all Persons that may be occasioned, directly or indirectly, by any cause whatsoever pertaining to the Project Facility or arising by reason of or in connection with the occupation or the use thereof or the presence of any Person or Property on, in or about the Project Facility, (2) liability arising from or expense incurred by the Agency's acquiring, constructing, equipping, installing, owning, leasing or selling the Project Facility, including, without limiting the generality of the foregoing, any sales or use taxes which may be payable with respect to goods supplied or services rendered with respect to the Project Facility, all liabilities or claims arising as a result of the Agency's obligations under this Lease Agreement or any of the other Basic Documents or the enforcement of or defense of validity of any provision of any of the Basic Documents, (3) all claims arising from the exercise by the Company of the authority conferred on it pursuant to Section 4.1(E) hereof, and (4) all causes of action and attorneys' fees and other expenses incurred in connection with any suits or actions which may arise as a result of any of the foregoing; provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Agency are not incurred or do not result from the intentional wrongdoing of the Agency or any of its members, officers, agents (other than the Company) or employees. The foregoing indemnities shall apply notwithstanding the fault or negligence in part of the Agency or any of its officers, members, agents (other than the Company) or employees and notwithstanding the breach of any statutory obligation or any rule of comparative or apportioned liability.

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

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

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

**SECTION 8.3. RIGHT OF ACCESS TO THE PROJECT FACILITY.** The Company agrees that the Agency and its duly authorized agents shall have the right at all reasonable times during normal business hours and upon reasonable advance written notice to enter upon and to examine and inspect the Project Facility. The Company further agrees that the Agency shall have such rights of access to the Project Facility as may be reasonably necessary to cause the proper maintenance of the Project Facility in the event of failure by the Company to perform its obligations hereunder.

**SECTION 8.4. COMPANY NOT TO TERMINATE EXISTENCE OR DISPOSE OF ASSETS; CONDITIONS UNDER WHICH EXCEPTIONS ARE PERMITTED.** (A) The Company agrees that, during the Lease Agreement Term, it will maintain its existence, will not dissolve or otherwise dispose of all or substantially all of its assets, and will not consolidate with or merge into another entity, or permit one or more entities to consolidate with or merge into it, without notice to the Agency and obtaining the prior written consent of the Agency which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that, if no Event of Default specified in Section 10.1 hereof shall have occurred and be continuing (and if no event exists which with the passage of time or notice or both would become an Event of Default), the Company may consolidate with or merge into another domestic entity organized and existing under the laws of one of the states of the United States, or permit one or more such domestic entities to consolidate with or merge into it, or sell or otherwise transfer to another Person all or substantially all of its assets as an entirety and thereafter dissolve, provided that (1) the Agency has received notice of such action, (2) the Agency gives its written consent to the proposed transaction, which consent shall not be unreasonably withheld, conditioned or delayed, (3) the surviving, resulting or transferee entity assumes in writing all of the obligations of and restrictions on the Company under this Lease Agreement and the other Basic Documents, and (4) as of the date of such transaction, the Agency shall be furnished with (1) an opinion of counsel to the Company as to compliance with item (3) of this Section 8.4(A) and (2) a certificate, dated the effective date of such transaction, signed by an Authorized Representative of the Company and an authorized officer of the surviving, resulting or transferee entity, as the case may be, or the transferee of its assets, as the case may be, to the effect that immediately after the consummation of the transaction and after giving effect thereto, no Event of Default exists under this Lease Agreement and no event exists which, with notice or lapse of time or both, would become such an Event of Default (unless waived by the Agency in writing).

(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 considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

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

(B) As soon as possible after the end of each fiscal year of the Company, but in any event within thirty (30) days after such date, the Company shall furnish to the Agency a certificate of an Authorized Representative of the Company stating that no Event of Default hereunder has occurred or is continuing or, if any Event of Default exists, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto.

**SECTION 8.7. COMPLIANCE WITH APPLICABLE LAWS.** (A) The Company agrees, for the benefit of the Agency, that it will, during the Lease Agreement Term, promptly comply with all Applicable Laws.

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

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

**SECTION 8.8. DISCHARGE OF LIENS AND ENCUMBRANCES.** The Company hereby agrees not to create or suffer to be created any Lien on any Property of the Agency (other than the Project Facility) or on any funds of the Agency applicable to the Project Facility.

**SECTION 8.9. PERFORMANCE OF THE COMPANY'S OBLIGATIONS.** Should the Company fail to make any payment or to do any act as herein provided, the Agency may, but need not, following fifteen (15) days' advance written notice to or demand on the Company, and without releasing the Company from any obligation herein, make or do the same, including, without limitation, appearing in and defending any action purporting to affect the rights or powers of the Company or the Agency, and paying all fees, costs and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Agency in connection therewith, and the Company shall pay immediately upon demand all sums so incurred or expended by the Agency under the authority hereof, together with interest thereon at the Default Interest Rate or the maximum rate 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. EMPLOYMENT OPPORTUNITIES.** (A) The Company shall insure that all employees and applicants for employment opportunities created as a result of the completion of the Project are afforded equal employment opportunities without discrimination.

(B) Pursuant to Section 858-b of the Act, except as otherwise provided by collective bargaining contracts or agreements, where applicable, the Company agrees (1) to list all new employment opportunities created as a result of the Project with the New York State Department of Labor, Community Services Division ("NYSDOL") and with the administrative entity (collectively with NYSDOL, the "JTPA Referral Entities") of the service delivery area created by the Federal Job Training Partnership Act (P.L. No. 97-300) in which the Project Facility is located (while currently cited in Section 858-b of the Act, the Federal Job Training Partnership Act was repealed effective June 1, 2000, and has been supplanted by the Workplace Investment Act of 1998 (P.L. No. 105-220)) and (2), where practicable, to first consider for such new employment opportunities persons eligible to participate in federal JTPA programs who shall be referred by the JTPA Referral Entities.

(C) (1) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, prior to the effective date of this Lease Agreement, an employment plan, in substantially the form attached hereto as Exhibit F.

(2) The Agency recognizes that the Project will not create and the Company will not have permanent employees in Albany County during the Lease Agreement Term.

(D) (1) Pursuant to the requirements of subsection one of Section 6 of Chapter 127 of the 1995 Laws of the State, the Company agrees to file with the Agency, on an annual basis, reports regarding the number of people employed at the Project Facility and certain other matters, the initial said annual employment report to be in substantially the form annexed hereto as Exhibit G.

(2) The Agency recognizes that the Project will not create and the Company will not have permanent employees in Albany County during the Lease Agreement Term.

**SECTION 8.12. SALES AND USE TAX EXEMPTION.** (A) Pursuant to Section 874 of the Act, the parties understand that the Agency is exempt from certain sales taxes and use taxes imposed by the State and local governments in the State, and that the Project may be exempted from those taxes due to the involvement of the Agency in the Project. The Agency makes no representations or warranties that any property is exempt from the payment of New York sales or use taxes. Any exemption from the payment of New York sales or use taxes resulting from the involvement of the Agency with the Project shall be limited to purchases of services and tangible personal property conveyed to the Agency or utilized by the

Agency or by the Company as agent of the Agency, or any Subagent (as defined herein) appointed pursuant to Section 8.12(F) hereof, as a part of the Project prior to the Completion Date, or incorporated within the Project Facility prior to the Completion Date. No operating expenses of the Project Facility, and no other purchases of services or property shall be subject to an exemption from the payment of New York sales or use tax. It is the intention of the parties hereto that the Company will receive a sales tax exemption letter with respect to the Project, said sales tax exemption letter to be issued on the date of the execution of this Lease Agreement and in a form similar to the form attached hereto as Exhibit H.

(B) Pursuant to Section 874(8) of the Act, the Company agrees to annually file and cause any sublessee or other operator of the Project Facility to file annually, with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Annual Sales Tax Report"), a statement of the value of all sales and use tax exemptions claimed by the Company and all contractors, subcontractors, consultants and other agents of the Company under the authority granted to the Company pursuant to Section 4.1(E) of this Lease Agreement. Pursuant to Section 874(8) of the Act, the penalty for failure to file the Annual Sales Tax Report shall be removal of authority to act as agent of the Agency. Additionally, if the Company shall fail to comply with the requirements of this subsection (B), the Company shall immediately cease to be the agent of the Agency in connection with the Project. A current sample form of such Annual Sales Tax Report required to be completed by the Company pursuant to this Lease Agreement is attached hereto as Exhibit I. For future filings of the Annual Sales Tax Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Annual Sales Tax Report.

(C) The Company agrees to furnish to the Agency a copy of each such Annual Sales Tax Report submitted to the New York State Department of Taxation and Finance by the Company pursuant to Section 874(8) of the Act.

(D) Pursuant to Section 874(9) of the Act, if the Company claims any sales tax exemption by virtue of the Agency's involvement in the Project, the Agency agrees to file within thirty (30) days of the Closing Date with the New York State Department of Taxation and Finance, on a form and in such manner as is prescribed by the New York State Commissioner of Taxation and Finance (the "Thirty-Day Sales Tax Report"), a statement identifying the Company as agent of the Agency, setting forth the taxpayer identification number of the Company, giving a brief description of the goods and/or services intended to be exempted from sales taxes as a result of such appointment as agent, indicating a rough estimate of the value of the goods and/or services to which such appointment as agent relates, indicating the date when such designation as agent became effective and indicating the date upon which such designation as agent shall cease. A current sample form of such Thirty-Day Sales Tax Report required to be completed by the Company pursuant to this Lease Agreement is attached hereto as Exhibit J. For future filings of the Thirty-Day Sales Tax Report, the Company is responsible for obtaining from the New York State Department of Taxation and Finance any updated or revised versions of such Thirty-Day Sales Tax Report.

(E) The Company acknowledges, pursuant to Section 875(5) of the Act, the Thirty-Day Sales Tax Report may not be utilized as the basis to make any purchase exempt from sales tax, and that use of the Thirty-Day Sales Tax Report in such manner will both (1) subject the Company or any user to civil and criminal penalties for misuse of a copy of such statement as an exemption certificate or document or for failure to pay or collect tax as provided in the tax law and (2) be deemed to be under articles twenty-eight and thirty-seven of the New York State tax law, the issuance of a false or fraudulent exemption certificate or document with intent to evade tax. The Company or any user is required to utilize a Form ST-123 or Form FT-123, as applicable (forms of which are attached to the Sales Tax Exemption Letter), to obtain the sales tax exemption.

(F) The Agency recognizes that the Company may exercise the functions of agent of the Agency pursuant to Section 4.1(E)(2) of this Lease Agreement either directly or through a series of contractors, subcontractors or other third parties. In some cases, purchases made by such contractors, subcontractors or other third parties will be exempt from sales and use taxes imposed in New York State for one or more of the reasons set forth in Section 1116(a) of the Tax Law of the State of New York, as indicated in Form ST-120.1 promulgated by the New York State Department of Taxation and Finance. However, from time to time, the Company may desire (1) to appoint one or more of its contractors as subagent of the Company with respect to the Project (a "Contractor Subagent"), (2) to appoint one or more of the subcontractors or other third parties of a Contractor Subagent as subagent of the Company with respect to the Project (a "Subcontractor Subagent" and together with a Contractor Subagent, a "Subagent" and sometimes referred to herein as an Indirect Agent) and (3) that each such Subagent be recognized by the New York State Department of Taxation and Finance as a subagent of the Agency. In this event, the Company may request that the Agency execute a Form ST-60 (IDA Appointment of Project Operator or Agent) (a "Subagent Thirty-Day Sales Tax Report") notifying the New York State Department of Taxation and Finance that the Company has appointed a Subagent to act as subagent of the Agency with respect to the Project.

(1) For Contractor Subagents, the Agency shall comply with such request upon receipt by the Agency from the Company of the following:

(a) a completed Subagent Thirty-Day Sales Tax Report with respect to such proposed Contractor Subagent, (i) containing a statement identifying such proposed Contractor Subagent as an indirect subagent of the Agency, (ii) containing the taxpayer identification number of such proposed Contractor Subagent, (iii) indicating that such proposed Contractor Subagent was appointed by the Company and not by the Agency, (iv) containing a brief description of the goods and/or services intended to be exempted from sales taxes as a result of the appointment of such Contractor Subagent as subagent of the Agency, (v) containing the value of the goods and/or services, in the aggregate, which the Company expects such proposed Contractor Subagent, together with the Company, all other Contractor Subagents and all Subcontractor Subagents, will purchase in their capacities (A) with respect to the Company, as agent of the Agency and (B) with respect to Contractor Subagents and Subcontractor Subagents, as indirect subagents of the Agency, (vi) containing the date when such designation of the proposed Contractor Subagent as subagent of the Agency is intended to become effective, and (vii) containing the date upon which such designation of the proposed Contractor Subagent as subagent of the Agency shall cease;

(b) a certificate of liability insurance indicating that the Contractor Subagent maintains insurance with respect to the Project Facility, which insurance policies shall (i) include (A) to the extent required by the construction contract or similar agreement between the Company and Contractor Subagent, during and prior to completion of the Project Facility, builder's risk (or equivalent coverage) insurance upon any work done or material furnished in connection with the acquisition, construction, reconstruction and installation of the Project Facility, (B) to the extent applicable, workers' compensation insurance, disability benefits insurance and such other forms of insurance which Contractor Subagent is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of Contractor Subagent who are located at or assigned to the Project Facility or who are responsible for the acquisition, construction, reconstruction and installation of the Project Facility, and (C) comprehensive general liability insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury or death or damage to the property

of others caused by any accident or occurrence, (ii) contain ordinary and customary coverages and liability limits (through direct or umbrella policies) for construction work on projects of like size and scope, (iii) name the Contractor Subagent, as insured, and the Company and the Agency, as additional insureds, as their interests may appear, and (iv) provide for at least thirty (30) days' written notice to the Contractor Subagent, the Company and the Agency prior to cancellation, reduction in policy limits or material change in coverage thereof; and

(c) such other information as the Agency reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

If the Agency approves such request, which approval shall not be unreasonably withheld, conditioned or delayed, the Agency will execute and deliver to the Company the Subagent Thirty-Day Sales Tax Report for such Contractor Subagent and shall file same with the New York State Department of Taxation and Finance.

(2) For Subcontractor Subagents, the Agency shall comply with such request upon receipt by the Agency from the Company of the following:

(a) a completed Subagent Thirty-Day Sales Tax Report with respect to such proposed Subcontractor Subagent (i) containing a statement identifying such proposed Subcontractor Subagent as an indirect subagent of the Agency, (ii) containing the taxpayer identification number of such proposed Subcontractor Subagent, (iii) indicating that such proposed Subcontractor Subagent was appointed by the Company and not by the Agency, (iv) containing a brief description of the goods and/or services intended to be exempted from sales taxes as a result of the appointment of such Subcontractor Subagent as subagent of the Agency, (v) containing the value of the goods and/or services, in the aggregate, which the Company expects such proposed Subcontractor Subagent, together with the Company, all other Subcontractor Subagents and all Contractor Subagents, will purchase in their capacities (A) with respect to the Company, as agent of the Agency, and (B) with respect to Subcontractor Subagents and Contractor Subagents, as indirect subagents of the Agency, (vi) containing the date when such designation of the proposed Subcontractor Subagent as subagent of the Agency is intended to become effective, and (vii) containing the date upon which such designation of the proposed Subcontractor Subagent as subagent of the Agency shall cease; and

(b) such other information as the Agency reasonably considers necessary or appropriate, including, but not limited to, such information as to enable the Agency to make any reports required by law or governmental regulation.

If the Agency approves such request, which approval shall not be unreasonably withheld, conditioned or delayed, the Agency will execute and deliver to the Company the Subagent Thirty-Day Sales Tax Report for such Subcontractor Subagent and shall file same with the New York State Department of Taxation and Finance.

(3) The Company shall require their Contractor Subagents to follow, and to require such Contractor Subagents to require their Subcontractor Subagents to follow, the procedures required by this Lease Agreement relating to applying for, securing, using, maintaining, or reporting (to the Company, as is necessary to allow the Company to timely file an Annual Sales Tax Report (ST-340) with the New York State Department of Taxation and Finance) on the sales tax

exemption; provided, however, that the Company shall have the ultimate responsibility over sales tax exemption matters and for reporting to the New York State Department of Taxation and Finance and the Agency the value of purchases of Subagents for which the sales tax exemption was used.

(4) The appointment of any Subagent as an agent of the Company and as an Indirect Agent is only for the period that the Company is acting as agent of the Agency pursuant to Section 4.1(E) of the Lease Agreement; and

(5) The Agency shall not be liable in any way to the Company, any Subagent or their respective laborers, contractors, subcontractors or materialmen with respect to cost and expenses associated with the acquisition, construction, installation and equipping of the Project Facility.

(5) THE APPOINTMENT OF ANY SUBAGENT AS AN AGENT OF THE COMPANY AND AS AN INDIRECT AGENT SHALL BE FOR THE SOLE PURPOSE OF PROVIDING EXEMPTION FROM NEW YORK STATE SALES AND USE TAXES FOR THE ACQUISITION, CONSTRUCTION, RECONSTRUCTION AND INSTALLATION OF THE PROJECT FACILITY ONLY. NO OTHER PRINCIPAL/AGENT RELATIONSHIP BETWEEN THE AGENCY AND THE COMPANY OR ANY SUBAGENT IS INTENDED OR MAY BE IMPLIED OR INFERRED HEREBY.

SECTION 8.13. IDENTIFICATION OF THE EQUIPMENT. All Equipment which is or may become part of the Project Facility pursuant to the provisions of this Lease Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as may be approved by the Agency, if the Agency provides the Company notice that it requires such review and approval.

## ARTICLE IX

### ASSIGNMENTS; MERGER OF THE AGENCY

SECTION 9.1. ASSIGNMENT OF THE 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 (i) a third party purchaser (a "Purchaser"), or (ii) 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 (an "Affiliate", and together with a Purchaser, a "Successor"), provided such Successor assumes and agrees to be bound by this Lease Agreement and the other Basic Documents 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 any person or entity providing financing for the Project (each 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, its affiliates, any Successor, 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.

(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, or any of its rights under this Lease Agreement and the other Basic Documents to any Successor, provided such Successor assumes and agrees to be bound by this Lease Agreement pursuant to the terms and conditions of an assignment and assumption agreement, in form and substance reasonably satisfactory to the Agency, (b) (i) assign, 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).

(3) Notwithstanding anything herein to the contrary, the Lease Agreement and the other Basic Documents may not be assigned without the prior written consent of the Agency (which consent shall not be unreasonably withheld, conditioned or delayed) to any Successor, or to any Lender exercising its right to foreclose on and acquire the Project Facility pursuant to its Loan Documents, that has not has 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.

**SECTION 9.2. MERGER OF THE AGENCY.** (A) Nothing contained in this Lease Agreement shall prevent the consolidation of the Agency with, or merger of the Agency into, or assignment by the Agency of its rights and interests hereunder to, any other public benefit corporation of the State or political subdivision thereof which has the legal authority to perform the obligations of the Agency hereunder, provided that upon any such consolidation, merger or assignment, the due and punctual performance and observance of all of the agreements and conditions of this Lease Agreement and the other Basic Documents to be kept and performed by the Agency shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Agency's rights and interests under this Lease Agreement shall be assigned.

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

**SECTION 9.3. SALE OR LEASE OF THE PROJECT FACILITY.** (A) Except as otherwise provided in Section 9.1 hereof and in compliance with the terms of this Lease Agreement and the other Basic Documents or as otherwise provided herein, 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 9.3.

## ARTICLE X

### EVENTS OF DEFAULT AND REMEDIES

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

- (1) A default by the Company in the due and punctual payment of the amounts specified to be paid pursuant to Section 5.3 or Section 6.6 hereof, and the continuance thereof for a period of fifteen (15) Business Days after written notice thereof is given by the Agency to the Company.
- (2) A default in the performance or observance of any other of the covenants, conditions or agreements on the part of the Company in this Lease Agreement and the continuance thereof for a period of sixty (60) days after written notice thereof is given by the Agency to the Company, provided that, if such default is capable of cure but cannot be cured within such sixty (60) day period, the failure of the Company to commence to cure within such sixty (60) day period and to prosecute the same with due diligence.
- (3) The occurrence of an "Event of Default" under any other Basic Document.
- (4) Any representation or warranty made by the Company herein or in any other Basic Document proves to have been false at the time it was made.
- (5) The Company shall generally not pay its debts as such debts become due or admits its inability to pay its debts as they become due.
- (6) The Company shall conceal, remove or permit to be concealed or removed any part of its Property, with intent to hinder, delay or defraud its creditors, or any one of them, or shall make or suffer a transfer of any of its Property which is fraudulent under any bankruptcy, fraudulent conveyance or similar law; or shall make any transfer of its Property to or for the benefit of a creditor at a time when other creditors similarly situated have not been paid; or shall suffer or permit, while insolvent, any creditor to obtain a Lien upon any of its Property through legal proceedings or distraint which is not vacated within thirty (30) days from the date thereof.
- (7) (a) The filing by the Company (as debtor) of a voluntary petition under Title 11 of the United States Code or any other federal or state bankruptcy statute, (b) the failure by the Company within sixty (60) days to lift any execution, garnishment or attachment of such consequence as will impair the Company's ability to carry out its obligations hereunder, (c) the commencement of a case under 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 sixty (60) days, (d) the entry of an order for relief by a court of competent jurisdiction under Title 11 of the United States Code or any other federal or state bankruptcy statute with respect to the debts of the Company, or (e) in connection with any insolvency or bankruptcy case, action or proceeding, appointment by final order, judgment or decree of a court of competent jurisdiction of a receiver or trustee of the whole or a substantial portion of the Property of the Company, unless such order, judgment or decree is vacated, dismissed or dissolved within sixty (60) days of such appointment.

(8) The imposition of a Lien on the Project Facility other than a Permitted Encumbrance.

(9) The removal of the Project Facility, or any portion thereof, outside Albany County, New York, without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed, other than in connection with a removal under Section 9.3(B) hereof.

(B) Notwithstanding the provisions of Section 10.1(A) hereof, if by reason of force majeure (as hereinafter defined) either party hereto shall be unable, in whole or in part, to carry out its obligations under this Lease Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Agency within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Lease Agreement of the party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (B) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (B), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Sections 4.1(H), 5.3, 6.2 and 6.6 hereof, to obtain and continue in full force and effect the insurance required by Article VI hereof, to provide the indemnity required by Sections 3.3 and 8.2 hereof and to comply with the provisions of Sections 2.2(G), 6.6, 8.2, 8.4, 8.5 and 8.7(C) hereof. The term "force majeure" as used herein shall include acts outside of the control of the Agency and the Company, including but not limited to acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of any Governmental Authority or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall not be required to settle any strike, lockout or other industrial disturbances by acceding to the demands of the opposing party or parties.

SECTION 10.2. REMEDIES ON DEFAULT. (A) Whenever any Event of Default hereunder shall have occurred 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, whereupon the same shall become immediately due and payable, (a) all amounts payable pursuant to Section 5.3 hereof (without acceleration), and (b) all other payments due under this Lease Agreement or any of the other Basic Documents (without acceleration); or

(2) re-enter and take possession of the Project Facility, enforce or terminate this Lease Agreement, sell the Project Facility, subject to Permitted Encumbrances, at public or private sale, as a whole or piecemeal, for such consideration as may be deemed appropriate in the circumstances, and hold the Company liable for the amount, if any, by which the aggregate unpaid amounts due hereunder exceed the Net Proceeds received upon such sale, or manage and operate the Project Facility, collect all or any rents accruing therefrom, let or relet the Project Facility or any part thereof for the Agency's own account or the account of the Company, holding the Company liable for payments due up to the effective date of such leasing and for the difference in the rent and other amounts paid by the lessee pursuant to such lease and the rental payments and other amounts payable by the Company hereunder, cancel or modify leases, evict tenants, bring or defend any

suits in connection with the possession of the Project Facility in its own name or in the Company's name, make repairs as the Agency deems appropriate, and perform such other acts in connection with the management and operation of the Project Facility as the Agency, in its discretion, may deem proper; or

(3) terminate this Lease Agreement in accordance with the procedure set forth in Section 11.1 hereof and convey to the Company all the Agency's right, title and interest in and to the Project Facility (The conveyance of the Agency's right, title and interest in and to the Project Facility shall be effected by the recording by the Agency of the Termination of Underlying Lease. The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from any such transfer of right, title and interest.); or

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

(B) No action taken pursuant to this Section 10.2 (including repossession of the Project Facility) shall relieve the Company from its obligations to make all due and owing payments required by this Lease Agreement and the other Basic Documents.

(C) During the Lease Agreement Term, no action taken pursuant to this Section 10.2 (including repossession of the Project Facility) shall relieve the Company from its obligations to make PILOT Payments due and owing pursuant to Section 2.02(C) of the Payment in Lieu of Tax Agreement.

(D) In the event that the Company fails to prepare at the request of the Agency the instruments described in Section 10.2(A)(3) hereof, the Company agrees that the Agency may prepare or cause to prepare such instruments. The Company hereby appoints the Agency as its true and lawful agent to execute, deliver and record all such instruments necessary to provide for the termination of this Lease Agreement and the conveyance to the Company all the Agency's right, title and interest in and to the Project Facility. The Company acknowledges that the foregoing appointment is coupled with an interest and is irrevocable.

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

**SECTION 10.4. AGREEMENT TO PAY ATTORNEYS' FEES AND EXPENSES.** In the event the Company should default under any of the provisions of this Lease Agreement and the Agency should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Agency the reasonable fees of such attorneys and such other expenses so incurred, whether an action is commenced or not.

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

SECTION 10.6.    RIGHT TO CURE. Prior to the exercise of any remedy by the Agency hereunder following an Event of Default, the Company, any Successor, 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 Agreement 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**  
**OPTIONS AND OBLIGATION TO PURCHASE**

**SECTION 11.1. EARLY TERMINATION OF THE LEASE AGREEMENT.** (A) Prior to the Commercial Operation Date, the Company shall have the option to terminate this Lease Agreement prior to the termination date specified in Section 5.2 hereof by filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1. After the Commercial Operation Date, the Company shall have the option, with the prior written consent of the Agency, which consent is subject to the absolute discretion of the Agency, to terminate this Lease Agreement prior to the termination date specified in Section 5.2 hereof by filing with the Agency a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1.

(B) Upon early termination of the Lease Agreement or termination of the Lease Agreement Term, the termination of the Agency's leasehold interest in the Project Facility created pursuant to the Underlying Lease shall be effected by the execution and delivery by the Agency to the Company of the Termination of Underlying Lease (an unexecuted copy of which is attached hereto as Exhibit C and by this reference made a part hereof). The termination of this Lease Agreement shall be effected by the execution and delivery of the Company and the Agency of the Termination of Lease Agreement (an unexecuted copy of which is attached hereto as Exhibit E and by this reference made a part hereof). The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from such lease terminations.

(C) The Company agrees to prepare the Termination of Underlying Lease and/or the Termination of Lease Agreement and all schedules thereto, together with all equalization and assessment forms and other necessary documentation, and to forward same to the Agency at least thirty (30) days prior to the date that the Agency's interest in the Project Facility or any portion thereof is to be conveyed to the Company.

(D) The Company hereby agrees to pay all expenses and taxes, if any, applicable to or arising from the transfers contemplated by this Section 11.1.

(E) This Lease Agreement shall survive the transfer of the Project Facility to the Company pursuant to this Section 11.1 and shall remain in full force and effect until all of the Indebtedness shall have been paid in full, and thereafter the obligations of the Company shall survive as set forth in Section 12.8 hereof.

(F) Upon the payment in full of all Indebtedness under or secured by this Lease Agreement, and notwithstanding the survival of certain obligations of the Company as described in Section 12.8 hereof, the Agency shall upon the request of the Company execute and deliver to the Company such documents as the Company may reasonably request, in recordable form if so requested, to evidence the termination and release of all Liens granted to the Agency hereunder.

(G) The Company acknowledges that during the Lease Agreement Term the Company shall not be relieved of its obligation to make PILOT Payments due pursuant to Section 2.02(C) of the Payment in Lieu of Tax Agreement.

ARTICLE XII  
MISCELLANEOUS

SECTION 12.1. NOTICES. (A) All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when (1) sent to the applicable address stated below by registered or certified mail, return receipt requested, or by such other means as shall provide the sender with documentary evidence of such delivery, or (2) delivery is refused by the addressee, as evidenced by the affidavit of the Person who attempted to effect such delivery.

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

IF TO THE COMPANY:

CHPE LLC  
600 Broadway  
Albany, New York 12207  
Attention: William Helmer, Esq.

WITH A COPY TO:

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

IF TO THE AGENCY:

Albany County Industrial Development Agency  
112 State Street  
Albany, New York 12207  
Attention: Chairman

WITH COPIES TO:

The Forman Law Firm  
68 Simmons Avenue  
Cohoes, New York 12047  
Attention: Walter J. Forman, Esq.

Hodgson Russ LLP  
677 Broadway, Suite 401  
Albany, New York 12207  
Attention: A. Joseph Scott, III, Esq.

(C) 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.

(D) The Company shall provide the Agency in writing with the address and contact information of any Lender designated by the Company to receive any notices under this Lease Agreement.

(E) A copy of all notices to the Company hereunder shall also be served on any Lender identified pursuant to Section 10.6 hereof and in which a written notice is provided to the Agency pursuant to Section 12.1(D) 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 12.2. BINDING EFFECT.** This Lease Agreement shall inure to the benefit of the Agency and the Company and shall be binding upon the Agency, the Company and, as permitted by this Lease Agreement, their respective successors and assigns.

**SECTION 12.3. SEVERABILITY.** If any one or more of the covenants or agreements provided herein on the part of the Agency or the Company to be performed shall, for any reason, be held or shall, in fact, be inoperative, unenforceable or contrary to law in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance. Further, if any one or more of the phrases, sentences, clauses, paragraphs or sections herein shall be contrary to law, then such covenant or covenants or agreement or agreements shall be deemed separable from the remaining covenants and agreements hereof and shall in no way affect the validity of the other provisions of this Lease Agreement.

**SECTION 12.4. AMENDMENT.** This Lease Agreement may not be amended, changed, modified, altered or terminated, except by an instrument in writing signed by the parties hereto.

**SECTION 12.5. EXECUTION OF COUNTERPARTS.** This Lease Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 12.6. APPLICABLE LAW.** This Lease Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State.

**SECTION 12.7. RECORDING AND FILING.** The Underlying Lease (or a memorandum thereof) and this Lease Agreement (or a memorandum hereof), and financing statements relating to the security interests created and/or assigned thereby, shall be recorded or filed, as the case may be, by the Agency (but at the sole cost and expense of the Company) in the office of the County Clerk of Albany County, New York, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

**SECTION 12.8. SURVIVAL OF OBLIGATIONS.** (A) The obligations of the Company to make the payments required by Sections 5.3 and 6.6 hereof then due and owing (without acceleration) as of the date of termination and to provide the indemnity required by Sections 3.3 and 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 to the Agency with respect to the Unassigned Rights shall survive the termination of this Lease Agreement until the expiration of the period stated in the applicable statute of limitations during which a claim, cause of action or prosecution relating to the Unassigned Rights may be brought and the payment in full or the satisfaction of such claim, cause of action or prosecution and the payment of all expenses and charges incurred by the Agency, or its officers, members, agents or employees, relating thereto.

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

**SECTION 12.10. NO RECOURSE; SPECIAL OBLIGATION.** (A) The obligations and agreements of the Agency contained herein and in the other Basic Documents and any other instrument or document executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company), servant or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company), servants and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby.

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

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

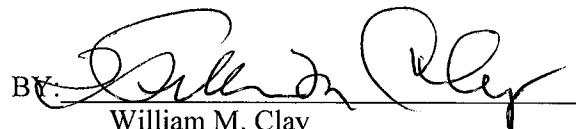
(D) The obligations and agreements of the Company contained herein and in the other Basic Documents and any other instrument or document executed in connection herewith or therewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of 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. 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.

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

ALBANY COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

BY:   
William M. Clay  
Chairman

CHPE LLC

BY: \_\_\_\_\_  
Todd Singer  
Chief Financial Officer

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

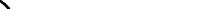
ALBANY COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

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

CHPE LLC

BY: \_\_\_\_\_  
Todd Singer  
Chief Financial Officer

On the 30<sup>th</sup> day of September, in the year 2022, before me, the undersigned, personally appeared WILLIAM M. CLAY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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

Shannon E. Wagner  
Notary Public, State of New York  
Qualified in Albany County  
No. 02WA6437589  
Commission Expires August 1, 2026

Massachusetts  
STATE OF NEW YORK )  
COUNTY OF Barnstable )  
ss: )

On the 17 day of August, in the year 2022, before me, the undersigned, 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 upon behalf of which the individual acted, executed the instrument.

  
Notary Public

PATRICIA S.K. KELINUI  
NOTARY PUBLIC  
COMMONWEALTH OF MASSACHUSETTS  
MY COMMISSION EXPIRES 01/13/2028

**APPENDIX A**  
**SCHEDULE OF DEFINITIONS**

The following words and terms used in the attached document shall have the respective meanings set forth below unless the context or use indicates another or different meaning or intent:

“Act” means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 178 of the 1975 Laws of the State, constituting Section 890-c of the General Municipal Law of the State, as amended from time to time.

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

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

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

“Agency Fee” means the administrative fee payable by the Company to the Agency pursuant to Section 5.3(A) of the Lease Agreement.

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

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

“Approving Resolution” means the resolution duly adopted by the Agency on February 9, 2022, authorizing and directing the undertaking and completion of the Project and the execution and delivery of the Basic Documents to which the Agency is a party.

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

“Basic Documents” means the Underlying Lease, the Lease Agreement, the Uniform Agency Project Agreement, the Payment in Lieu of Tax Agreement, the Section 875 GML Recapture Agreement and all other instruments and documents related thereto and executed in connection therewith, and any other instrument or document supplemental thereto, each as amended from time to time.

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

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

“Closing Date” means the date of the Closing.

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

“Company” means CHPE LLC, a limited liability company duly organized and existing under the laws of the State of New York, and its successors and assigns, to the extent permitted pursuant to Section 8.4 of the Lease Agreement.

“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. The Commercial Operation Date is anticipated to be December 31, 2025; provided, however, that if such date is to be later than December 31, 2025, the Company shall provide a written explanation regarding the basis for the delay, and except in the context of a Triggering Event, in no event shall such date be later than December 31, 2026, without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed. The Commercial Operation Date shall be automatically extended beyond December 31, 2026 upon the occurrence of a Triggering Event, and the period of such extension shall equal the time period of the delay actually caused by the Triggering Event (and not the time period of the delay projected to be caused by the Triggering Event). In connection with any Triggering Event, the Company shall provide the Agency with the following: (A), within thirty (30) days of the Triggering Event, a written explanation of the Triggering Event, together with a projection as to the estimated time period of the delay caused by the

Triggering Event, and (B), within thirty (30) days of the end of the Triggering Event, a written notice of the end of the Triggering Event.

“Completion Date” means the earlier to occur of (A) the Commercial Operation Date or (B) such date as shall be certified by the Company to the Agency as the date of completion of the Project pursuant to Section 4.2 of the Lease Agreement.

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

“Construction Financing” means the construction loan(s) providing financing to the Company for the purpose of undertaking the Project. The Construction Financing is anticipated to occur on or before June 30, 2022; provided, however, that if such date is to be later than June 30, 2022, the Company shall provide a written explanation regarding the basis for the delay, and except in the context of a Triggering Event, in no event shall such date be later than June 30, 2023, without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed. The Construction Financing shall be automatically extended beyond June 30, 2023 upon the occurrence of a Triggering Event, and the period of such extension shall equal the time period of the delay actually caused by the Triggering Event (and not the time period of the delay projected to be caused by the Triggering Event). In connection with any Triggering Event, the Company shall provide the Agency with the following: (A), within thirty (30) days of the Triggering Event, a written explanation of the Triggering Event, together with a projection as to the estimated time period of the delay caused by the Triggering Event, and (B), within thirty (30) days of the end of the Triggering Event, a written notice of the end of the Triggering Event.

“Contractor Subagent” means any contractor of the Company appointed by the Company as subagent of the Company to act as subagent of the Agency for sales tax exemption purposes with respect to the Project.

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

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

“Escrow Release Date” means the date the Basic Documents are released from escrow pursuant to the IDA Document Escrow Agreement.

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

“Expiration Date” means December 31 of the calendar year in which the last PILOT Payment pursuant to the Payment in Lieu of Tax Agreement is due. For illustrative purposes, if the Commercial Operation Date is December 15, 2025, the last PILOT Payment would be due on June 30, 2055 and the Expiration Date would be December 31, 2055.

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

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

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

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

“IDA Document Escrow Agreement” means the escrow agreement dated as of October 1, 2022 by and between the Agency and the Company governing their respective obligations under the Basic Documents during the period of escrow.

“Indebtedness” means (1) the due and owing monetary obligations (without acceleration) of the Company to the Agency and its members, officers, agents, servants and employees under the Lease Agreement and the other Basic Documents, (2) the due and owing monetary obligations (without acceleration) of the Company to the Affected Tax Jurisdictions under the Payment in Lieu of Tax Agreement and the other Basic Documents, and (3) all interest accrued and accruing on any of the foregoing.

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

“Initial Agency Fee” means the portion of the Agency Fee payable by the Company to the Agency on the Closing Date pursuant to Section 5.3(A)(1) of the Lease Agreement.

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

“Lease Agreement” means the lease agreement dated as of October 1, 2022 by and between the Agency, as landlord, and the Company, as tenant, pursuant to which, among other things, the Agency has leased the Project Facility to the Company, as said lease agreement may be amended or supplemented from time to time.

“Lease Agreement Term” means the term of the Lease Agreement, which shall commence on the Closing Date and terminate on the earlier to occur of (1) the Expiration Date or (2) the date that the Lease Agreement shall terminate pursuant to Article X or Article XI thereof.

“Lease Supplement” means a supplement to the Lease Agreement from the Agency to the Company (substantially in the form shown in Exhibit K to the Lease Agreement).

“Lender” shall mean any bank or other financial institution making a loan to the Company, the proceeds of which will be used to finance the acquisition, construction, installation and equipping of the Project Facility.

“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, a security agreement, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes or a judgment against the Company. The term “Lien” includes reservations, exceptions, encroachments, projections, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics’, materialmen’s, warehousemen’s and carriers’ liens and other similar encumbrances affecting real property. For purposes of the Basic Documents, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

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

“Payment in Lieu of Tax Agreement” means the payment in lieu of tax agreement dated as of October 1, 2022 by and between the Agency and the Company, pursuant to which the Company has agreed to make payments in lieu of taxes with respect to the Project Facility, as such agreement may be amended or supplemented from time to time.

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

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

“PILOT Payments” means payments in lieu of taxes owed by the Company pursuant to Section 2.02(C) of the Payment in Lieu of Tax Agreement.

“Project” shall have the meaning set forth in the fifth recital clause to the Lease Agreement.

“Project Facility” means, collectively, 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.

“Purchaser” means a third-party purchaser of the Project Facility.

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

“Remaining Agency Fee” means the portion of the Agency Fee payable by the Company to the Agency on the Escrow Release Date pursuant to Section 5.3(A)(2) of the Lease Agreement.

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

“Section 875 GML Recapture Agreement” means the recapture agreement dated as of October 1, 2022 by and between the Company and the Agency, required by the Act, regarding the recovery or recapture of certain sales and use taxes constituting a part of the Financial Assistance relating to the Project, as said recapture agreement may be amended or supplemented from time to time.

“SEQRA” means Article Eight of the Environmental Conservation Law of the State and the statewide regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York.

“State” means the State of New York.

“Subagent” means any Contractor Subagent or Subcontractor Subagent.

“Subagent Thirty-Day Sales Tax Report” means any Thirty-Day Sales Tax Report made by the Agency with respect to a Subagent.

“Subcontractor Subagent” means any subcontractor or other third party of a Contractor Subagent appointed by the Company as subagent of the Company to act as subagent of the Agency for sales tax exemption purposes with respect to the Project.

“Successor” is an Affiliate or Purchaser.

“Supplemental Interests” means real property interests necessary for and in furtherance of the Project acquired by the Company following the Closing Date and described in a Lease Supplement.

“System” means a fully-buried, up to 1,250-megawatt HVDC electric transmission line from the U.S.-Canada border to New York City.

“Term” means the term of the Underlying Lease.

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

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

“Thirty-Day Sales Tax Report” means a New York State Department of Taxation and Finance Form ST-60 (IDA Appointment of Project Operator or Agent) notifying the New York State Department of

Taxation and Finance (a) that the Agency has appointed the Company to act as agent of the Agency pursuant to Section 4.1(E) of the Lease Agreement, or (b) if the Company has delegated its sales tax exemption agency to an Indirect Agent, that such Indirect Agent has been appointed by the Company pursuant to the Lease Agreement.

“Triggering Event” means the occurrence of any of the following: (i) a final order of the Public Service Commission of the State of New York approving the Tier 4 REC Purchase and Sale Agreement between Hydro-Québec and NYSERDA is not issued or determined to be non-appealable by April 30, 2023; (ii) all necessary real property interests for the System are not obtained or under contract by the Company by April 30, 2023; or (iii) commissioning of the System is not commenced by September 1, 2026 due to documentable third party delays or a “force majeure” event, as defined in the fourth sentence of Section 10.01(B) of the Lease Agreement (with such definition not subject to other limitations within that Section).

“Unassigned Rights” means (A) the rights of the Agency granted pursuant to Sections 2.2, 3.2, 3.3, 4.1(B), 4.1(D), 4.1(E)(2), 4.1(F), 4.1(G), 5.2(A), 5.3(B), 5.4(B), 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 8.5, 8.6, 8.7, 8.8, 8.9, 9.1, 9.3, 11.1, 12.4, 12.8 and 12.10 of the Lease Agreement, (B) the moneys due and owing (without acceleration) to the Agency for its own account or the members, officers, agents (other than the Company) and employees of the Agency for their own account pursuant to Sections 2.2(G), 3.3, 4.1, 5.3(A)(1)(b), 5.3(B), 5.3(C), 6.4(B), 8.2, 10.2 and 10.4 of the Lease Agreement, (C) the moneys due and owing (without acceleration) as payments in lieu of taxes pursuant to Section 6.6 of the Lease Agreement and the Payment in Lieu of Tax Agreement, (D) the payments due and owing (without acceleration) from the Company pursuant to the Section 875 GML Recapture Agreement or the Uniform Agency Project Agreement, and (E) the right to enforce the foregoing pursuant to Article X of the Lease Agreement.

“Underlying Lease” means the lease to agency dated as of October 1, 2022 by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company has leased to the Agency an interest in the Project Facility, as said underlying lease may be amended or supplemented from time to time.

“Uniform Agency Project Agreement” means the uniform agency project agreement dated as of October 1, 2022 by and between the Agency and the Company, pursuant to which the Agency has agreed to grant certain Financial Assistance to the Company, subject to certain conditions, as such agreement may be amended or supplemented from time to time.

EXHIBIT A  
DESCRIPTION OF THE LAND

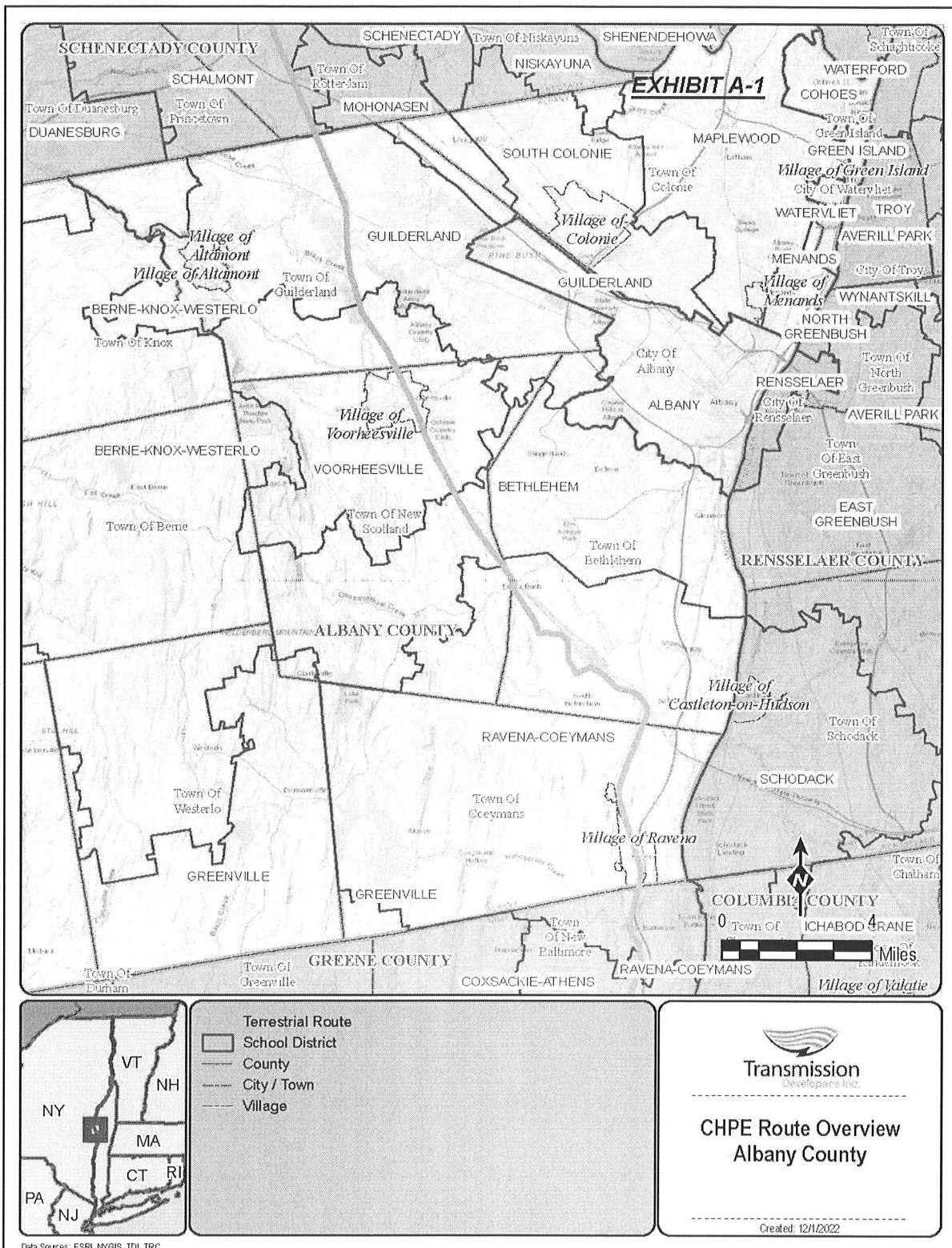
The Land consists of the Company's interest in the following real property rights and interests:

Real property located within the jurisdictional boundary of the County of Albany covered by:

1. Interim Permit No. LUW01626 for the Use of State-Owned Property ("Interim Permit") granted by the State of New York Office of General Services to CHPE LLC and CHPE Properties, Inc. dated August 31, 2022 for the installation, use and maintenance of two, solid, dielectric cables approximately six (6) inches in diameter, along with a fiber optic cable, which such Interim Permit shall be converted to a permanent easement by the Office of General Services following cable installation.

2. Fee, leasehold, or easement interests in properties within or along the construction corridor route shown in the map attached as Exhibit A-1.

EXHIBIT A-1  
PROJECT CORRIDOR MAP



**EXHIBIT B**  
**DESCRIPTION OF THE EQUIPMENT**

All equipment, fixtures, machinery, building materials 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 TERMINATION OF UNDERLYING LEASE**

THIS TERMINATION OF UNDERLYING LEASE (the "Termination of Underlying Lease") dated as of \_\_\_\_\_, by and between ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized under the laws of the State of New York having an office for the transaction of business located at 112 State Street, Albany, New York (the "Agency"), and CHPE LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 600 Broadway, Albany, New York (the "Company").

**WITNESSETH:**

WHEREAS, the Company and the Agency entered into a certain underlying lease dated as of October 1, 2022 (the "Underlying Lease") pursuant to which the Agency was granted a leasehold interest in the parcel of the land more particularly described in Exhibit A attached thereto (the "Land") and in and to all those Project related buildings, improvements, structures and other related facilities affixed or attached to the Land now or in the future; and

WHEREAS, pursuant to Section 11.1 of a lease agreement dated as of October 1, 2022 (the "Lease Agreement") between the Company and the Agency, the Company and the Agency further agreed that the Underlying Lease would be terminated upon the satisfaction of the conditions set forth in Section 11.1 of the Lease Agreement, as appropriate; and

WHEREAS, the conditions set forth in Section 11.1 of the Lease Agreement, as appropriate, have been satisfied on or before the date hereof.

NOW, THEREFORE, it is hereby agreed that the Underlying Lease is terminated as of the dated date hereof.

The Company hereby agrees to indemnify the Agency as to any claims that have arisen heretofore or shall arise hereafter under the Underlying Lease and this Termination of Underlying Lease.

IN WITNESS WHEREOF, the Agency and the Company, for the purposes above set forth, have caused this Termination of Underlying Lease to be executed and delivered by their duly authorized officers, all as of the day and year first above written.

**ALBANY COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY**

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

CHPE LLC

BY: \_\_\_\_\_  
Authorized Representative

STATE OF )  
Ss.: )  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

## Notary Public

STATE OF )  
Ss.: )  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

---

## Notary Public

EXHIBIT A  
DESCRIPTION OF THE LAND

The Land consists of the Company's interest in the following real property rights and interests:

Real property located within the jurisdictional boundary of the County of Albany covered by:

1. Interim Permit No. LUW01626 for the Use of State-Owned Property ("Interim Permit") granted by the State of New York Office of General Services to CHPE LLC and CHPE Properties, Inc. dated August 31, 2022 for the installation, use and maintenance of two, solid, dielectric cables approximately six (6) inches in diameter, along with a fiber optic cable, which such Interim Permit shall be converted to a permanent easement by the Office of General Services following cable installation.

2. Fee, leasehold, or easement interests in properties within or along the construction corridor route shown in the map attached as Exhibit A-1.

EXHIBIT A-1  
PROJECT CORRIDOR MAP

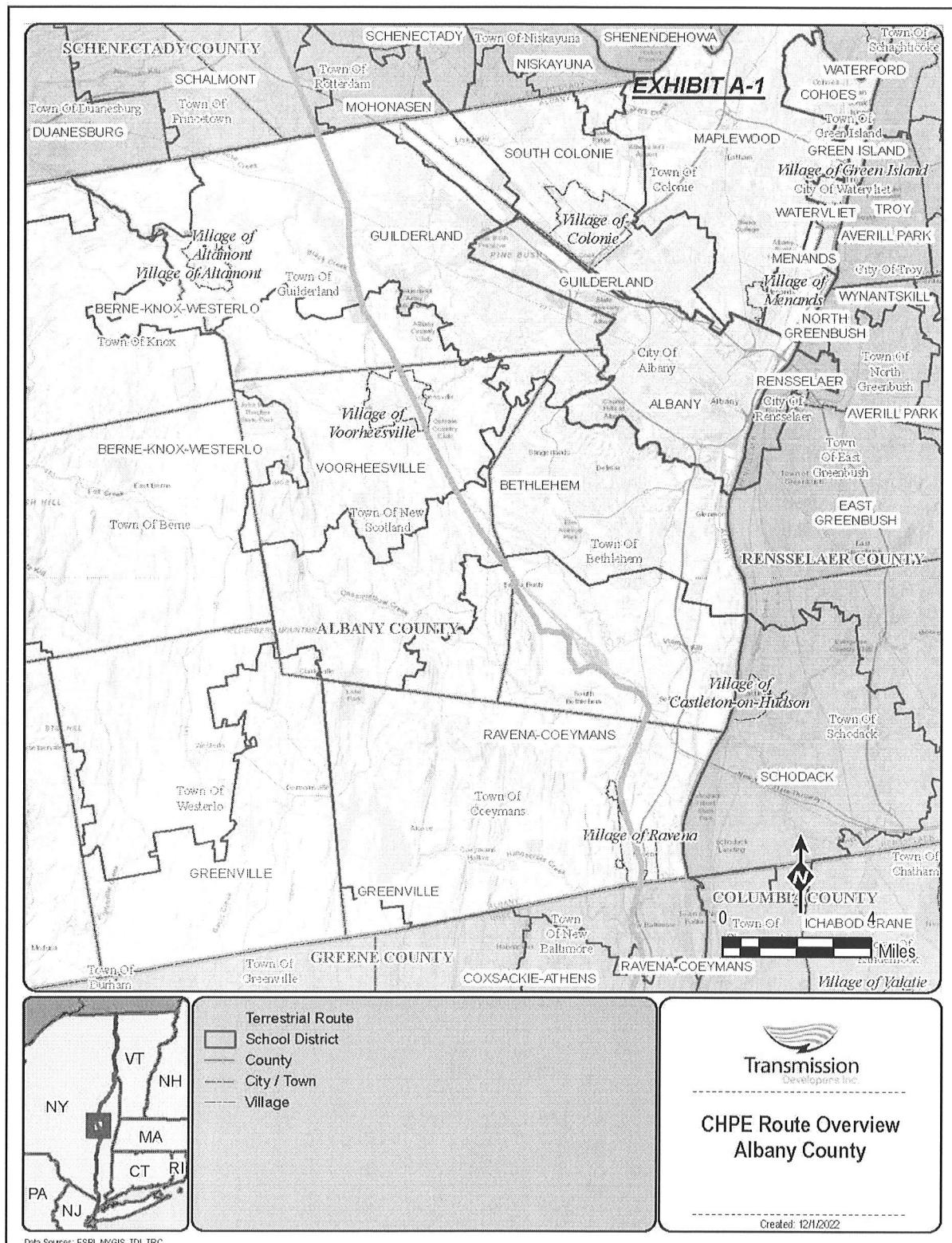


EXHIBIT D

RESERVED

**EXHIBIT E**  
**FORM OF TERMINATION OF LEASE AGREEMENT**

WHEREAS, CHPE LLC (the "Company"), as tenant, and Albany County Industrial Development Agency (the "Agency"), as landlord, entered into a lease agreement dated as of October 1, 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, pursuant to the Lease Agreement, the Company and the Agency agreed that the Lease Agreement would terminate on the earlier to occur of (1) the Expiration Date or (2) the date that the Lease Agreement shall be terminated pursuant to Article X or Article XI of the Lease Agreement; and

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

NOW, THEREFORE, it is hereby agreed that the Lease Agreement has terminated as of the dated date hereof; provided, however, that, as provided in Section 12.8 of the Lease Agreement, certain obligations of the Company shall survive the termination of the Lease Agreement, and the execution of this termination of lease agreement by the Agency is not intended, and shall not be construed, as a waiver or alteration by the Agency or the Company of the provisions of Section 12.8 of the Lease Agreement.

IN WITNESS WHEREOF, the Company and the Agency have signed this termination of lease agreement and caused to be dated as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CHPE LLC

BY: \_\_\_\_\_  
Authorized Representative

ALBANY COUNTY INDUSTRIAL DEVELOPMENT  
AGENCY

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

STATE OF )  
Ss.: )  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

## Notary Public

STATE OF )  
Ss.: )  
COUNTY OF )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

## Notary Public

**EXHIBIT F**

**INITIAL EMPLOYMENT PLAN**

COMPANY NAME:

ADDRESS:

**BUSINESS TYPE:**

**CONTACT PERSON:**

**TELEPHONE NUMBER**

Please complete the following chart describing your projected employment plan following receipt of financial assistance (the “Financial Assistance”) from Albany County Industrial Development Agency (the “Agency”):

Please indicate the estimated hiring dates for the new jobs shown above and any special recruitment or training that will be required.

Are the employees of your firm currently covered by a collective bargaining agreement? Yes

If yes, Name and Local \_\_\_\_\_.

In the event that the Company receives any Financial Assistance from the Agency, we agree to schedule a meeting with (insert name of local New York State Job Service Superintendent)

and \_\_\_\_\_ (insert name of representative of the Agency's area under the Federal Job Training Partnership Act) prior to the hiring of any employees for the purpose of supplying such information as may be requested in connection with this Employment Plan and to notify the regional office of the Department of Economic Development, in advance, of the time and place of such meeting.

Prepared by:

Title:

Signature:

Date:

**EXHIBIT G**  
**FORM OF ANNUAL EMPLOYMENT REPORT**  
**EMPLOYMENT PLAN STATUS REPORT**

COMPANY NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TYPE OF BUSINESS: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

<u>Occupation</u>	<u>Number of New Jobs</u>	<u>Number Listed<sup>1/</sup></u>	<u>Job Service Division Applicants</u>	<u>Job Training Partnership Act eligible persons</u>	<u>Number Filled</u>
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<sup>1/</sup>With local Jobs Service Division and local service delivery office created pursuant to the Job Training Partnership Act.

EXHIBIT H

FORM OF SALES TAX EXEMPTION LETTER

ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY  
112 State Street  
Albany, New York 12207

October \_\_, 2022

To Whom It May Concern:

Re:     New York State Sales or Use Tax Exemption  
Albany County Industrial Development Agency  
CHPE LLC Project

Pursuant to TSB-M-87(7) issued by the New York State Department of Taxation and Finance on April 1, 1987, as modified by TSB-M-14(1.1)S issued by the New York State Department of Taxation and Finance on February 12, 2014 (collectively, the "Policy Statement"), CHPE LLC (the "Company") has requested a letter from Albany County Industrial Development Agency (the "Agency"), a public benefit corporation created pursuant to Chapter 1030 of 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 178 of the 1975 Laws of New York, as amended, constituting Section 890-c of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act"), containing the information required by the Policy Statement regarding the sales tax exemption with respect to the captioned project (the "Project") located on certain parcels of land, such land located in the Towns of Guilderland, New Scotland, Bethlehem, and Coeymans, and the Villages of Voorheesville and Ravana, Albany County, New York (the "Project Site").

The Company has applied to and been approved for financial assistance from the Agency in the matter of completion of the Project on the Project Site. The Project includes the following:

(A) (1) the acquisition of an interest or interests in various parcels of land spanning across 24.2 miles of land located in the Towns of Guilderland, New Scotland, Bethlehem, and Coeymans, and the Villages of Voorheesville and Ravana, Albany County, New York (collectively, the "Land"), (2) the construction, installation and equipping on or under the Land of a fully-buried, up to 1,250-megawatt ("MW") high-voltage direct current ("HVDC") electric transmission line and related infrastructure (collectively, the "Improvements"), and (3) the acquisition and installation thereon and therein of certain related machinery and equipment, including but not limited to, two (2) five-inch diameter HVDC transmission cables (collectively, the "Equipment") (the Land, the Improvements and the Equipment hereinafter collectively referred to as the "Project Facility"), all of the foregoing to be used and operated by the Company as a portion of an electric transmission line from the U.S.-Canada border to New York City; (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes, and mortgage recording taxes (collectively, the "Financial Assistance"); and (C) the lease of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of October 1, 2022 (the "Lease Agreement") by and between the Agency and the Company. Please be advised that on or about October \_\_, 2022, the Agency executed and delivered the Lease Agreement, pursuant to which the Agency appointed the Company as agent of the Agency to acquire, construct, install and equip the Project Facility.

Pursuant to the Lease Agreement, the Company, as agent of the Agency, and any contractor or subcontractor appointed by the Company as an indirect agent of the Agency (“Indirect Agent”) and covered by a statement filed with the New York State Department of Taxation and Finance identifying such contractor or subcontractor as an indirect agent of the Agency (“Thirty-Day Sales Tax Report”), are authorized to make purchases of materials to be incorporated in the Project and machinery and equipment constituting a part of the Project, and purchases or rentals of supplies, tools, equipment, or services necessary to acquire, construct, install or equip the Project, as provided in the IDA Agent or Project Operator Exempt Purchase Certificate (“Form ST-123”), and fuel necessary to acquire, construct, install or equip the Project, as provided in the IDA Agent or Project Operator Exempt Purchase Certificate for Fuel (“Form FT-123”), current forms of which are attached hereto as Exhibit A.

To ensure that the above purchases or rentals are exempt from any sales or use tax imposed by the State of New York or any governmental instrumentality located within the State of New York, the vendor must identify the Project on each bill and invoice for such purchases and indicate on the bill or invoice that the Company, acting as agent of the Agency, and any Indirect Agent, acting as an indirect agent of the Agency, was the purchaser (e.g., “CHPE LLC, as agent for the Albany County Industrial Development Agency”). In addition, the following procedures should be observed:

1. The Company, as agent of the Agency, and any Indirect Agent must complete Form ST-123 or Form FT-123 (as applicable) and provide same to vendor.
2. Each bill and invoice should identify the date of delivery and indicate the place of delivery.
3. Payment should be made by the Company, acting as agent of the Agency, and any Indirect Agent, acting as an indirect agent of the Agency, directly to the vendor from a requisition from a special project fund of the payor.
4. Deliveries should be made to the Project Site, or under certain circumstances (such as where the materials require additional fabrication before installation on the Project Site or for storage to protect materials from theft or vandalism prior to installation at the Project Site) deliveries may be made to a site other than the Project Site, providing the ultimate delivery of the materials is made to the Project Site. Where delivery is made to a site other than the Project Site, the purchases should be billed or invoiced by the vendor to the Company, acting as agent of the Agency, and any Indirect Agent, acting as an indirect agent of the Agency, identify the date and place of delivery, the Agency’s full name and address and the Project Site where the materials will ultimately be delivered for installation.

A contractor or subcontractor not appointed as an indirect agent of the Agency must present suppliers with Form ST-120.1, Contractor Exempt Purchase Certificate, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16).

Pursuant to Section 874(8) of the Act, the Company, as agent of the Agency, must annually file a statement with the New York State Department of Taxation and Finance, on a form and in such a manner as is prescribed by the Commissioner of Taxation and Finance, of the value of all sales tax exemptions claimed by the Company, acting as agent of the Agency, and any Indirect Agent, acting as an indirect agent of the Agency, under the authority granted by the Agency. The penalty for failure to file such a statement under Section 874(8) of the Act shall be the removal of authority to act as an agent for the Agency.

Pursuant to Section 874(9) of the Act, the Agency must file within thirty (30) days of the date the Agency designates the Company as agent of the Agency, a Thirty-Day Sales Tax Report identifying the Company as agent of the Agency. Pursuant to Section 874(9) of the Act, the Agency must file within thirty (30) days

of the date the Company delegates its sales tax exemption agency to an Indirect Agent, a Thirty-Day Sales Tax Report identifying such Indirect Agent as an indirect agent of the Agency.

Pursuant to Section 875(5) of the Act, the Company any and Indirect Agent may not utilize the Thirty-Day Sales Tax Report as the basis to make any purchase exempt from sales tax, and that use of the Thirty-Day Sales Tax Report in such manner will both (A) subject the Company or any user to civil and criminal penalties for misuse of a copy of such statement as an exemption certificate or document or for failure to pay or collect tax as provided in the tax law and (B) be deemed to be, under articles twenty-eight and thirty-seven of the New York State tax law, the issuance of a false or fraudulent exemption certificate or document with intent to evade tax. The Company and any Indirect Agent are required to utilize Form ST-123 or Form FT-123 (as applicable) to obtain the sales tax exemption.

This letter shall serve as proof of the existence of an agency contract between the Agency and the Company for the SOLE EXPRESS PURPOSE OF SECURING EXEMPTION FROM NEW YORK STATE SALES AND USE TAXES FOR THE PROJECT ONLY. NO OTHER PRINCIPAL/AGENT RELATIONSHIP BETWEEN THE AGENCY AND THE COMPANY OR ANY INDIRECT AGENT IS INTENDED OR MAY BE IMPLIED OR INFERRED BY THIS LETTER.

It is hereby further certified that, under the Policy Statement, since the Agency is a public benefit corporation, neither the Agency, the Company, as agent of the Agency, nor any Indirect Agent, as an indirect agent of the Agency, is required to furnish an "Exempt Organization Certificate" in order to secure exemption from any sales or use tax for such items or services.

Under the Policy Statement, a copy of this letter received by any vendor or seller to the Company, as agent of the Agency, or any Indirect Agent, as an indirect agent of the Agency, may be accepted by such vendor or seller as a "statement and additional documentary evidence of such exemption" as provided by New York State Tax Law Section 1132(c)(1), thereby relieving such vendor or seller from the obligation to collect sales and use tax on purchases or rentals of such materials, supplies, tools, equipment, or services by the Agency through its agent, the Company, and its indirect agent, any Indirect Agent.

This letter shall be in effect until the first anniversary of the date on which the Project Facility commences transmitting electricity on a continuous basis at its maximum electrical transfer capability, excluding electricity transmitted during the period of test operations and commissioning of the Project Facility, 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.

In the event you have any questions with respect to the above, please do not hesitate to call Honorable William M. Clay, Chairman of the Agency, at 518-447-4841.

Very truly yours,

ALBANY COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY

By: \_\_\_\_\_  
(Vice) Chairman

EXHIBIT A

IDA AGENT OR PROJECT OPERATOR  
EXEMPT PURCHASE CERTIFICATE  
(FORM ST-123)

IDA AGENT OR PROJECT OPERATOR  
EXEMPT PURCHASE CERTIFICATE FOR FUEL  
(FORM FT-123)



New York State Department of Taxation and Finance  
New York State Sales and Use Tax

**ST-123**

(7/14)

## IDA Agent or Project Operator

## Exempt Purchase Certificate

Effective for projects beginning on or after June 1, 2014

This certificate is not valid unless all entries have been completed.

Note: To be completed by the purchaser and given to the seller. Do not use this form to purchase motor fuel or diesel motor fuel exempt from tax. See Form FT-123, *IDA Agent or Project Operator Exempt Purchase Certificate for Fuel*.

Name of seller	Name of agent or project operator		
Street address	Street address		
City, town, or village	State	ZIP code	City, town, or village
			State
			ZIP code
Agent or project operator sales tax ID number (see instructions)			

Mark an **X** in one:  Single-purchase certificate  Blanket-purchase certificate (valid only for the project listed below)

**To the seller:**

You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

### Project information

I certify that I am a duly appointed agent or project operator of the named IDA and that I am purchasing the tangible personal property or services for use in the following IDA project and that such purchases qualify as exempt from sales and use taxes under my agreement with the IDA.

Name of IDA					
Name of project	IDA project number (use OSC number)				
Street address of project site					
City, town, or village	State	ZIP code			
Enter the date that you were appointed agent or project operator (mm/dd/yy) .....	/	/	Enter the date that agent or project operator status ends (mm/dd/yy) .....	/	/

### Exempt purchases

(Mark an **X** in boxes that apply)

- A. Tangible personal property or services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) used to complete the project, but not to operate the completed project
- B. Certain utility services (gas, propane in containers of 100 pounds or more, electricity, refrigeration, or steam) used to complete the project, but not to operate the completed project
- C. Motor vehicle or tangible personal property installed in a qualifying motor vehicle

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements and issue this exemption certificate with the knowledge that this document provides evidence that state and local sales or use taxes do not apply to a transaction or transactions for which I tendered this document and that willfully issuing this document with the intent to evade any such tax may constitute a felony or other crime under New York State Law, punishable by a substantial fine and a possible jail sentence. I understand that this document is required to be filed with, and delivered to, the vendor as agent for the Tax Department for the purposes of Tax Law section 1838 and is deemed a document required to be filed with the Tax Department for the purpose of prosecution of offenses. I also understand that the Tax Department is authorized to investigate the validity of tax exclusions or exemptions claimed and the accuracy of any information entered on this document.

Signature of purchaser or purchaser's representative (include title and relationship)	Date
Type or print the name, title, and relationship that appear in the signature box	

## Instructions

### To the purchaser

You may use Form ST-123 if you:

- have been appointed as an agent or project operator by an industrial development agency (IDA) and
- the purchases qualify for exemption from sales and use tax as described in the IDA contract.

You may use Form ST-123 as a single-purchase certificate or as a blanket certificate covering the first and subsequent purchases qualifying for the project listed.

**Agent or project operator sales tax ID number** — If you are registered with the Tax Department for sales tax purposes, you must enter your sales tax identification number on this certificate. If you are not required to be registered, enter *N/A*.

*Industrial development agencies and authorities (IDAs)* are public benefit corporations under General Municipal Law Article 18-A and the Public Authorities Law, for the purpose of promoting, developing, encouraging, and assisting in the acquisition, construction, reconstruction, improvement, maintenance, equipping, and furnishing of industrial, manufacturing, warehousing, commercial, research, and recreational facilities in New York State.

IDAs are exempt from the payment of sales and use tax on their purchases, in accordance with Tax Law section 1116(a)(1). However, IDAs do not normally make direct purchases for projects. Commonly, IDAs instead appoint a business enterprise or developer, contractor, or subcontractor as its agent or project operator. Such purchases made by the agent or project operator, acting within the authority granted by the IDA, are deemed to be made by the IDA and therefore exempt from tax.

*Example 1. IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment necessary for completion of the project, as agent for the IDA. Contractor X rents a backhoe and a bulldozer for site preparation, purchases concrete and lumber to construct a building, and purchases machinery to be installed in the building. All these purchases by contractor X as agent of the IDA are exempt from tax.*

*Example 2: IDA agreement with its agent or project operator states that contractor X may make all purchases of materials and equipment to be incorporated into the project, as agent for the IDA. Contractor X makes the same purchases as in Example 1. Since the concrete, lumber, and machinery will actually be incorporated into the project, contractor X may purchase these items exempt from tax. However, rental of the backhoe and bulldozer is not exempt since these transactions are normally taxable and the IDA agreement does not authorize contractor X to make such rentals as agent of the IDA.*

A contractor or subcontractor not appointed as agent or project operator of an IDA must present suppliers with Form ST-120.1, *Contractor Exempt Purchase Certificate*, when making purchases that are ordinarily exempt from tax in accordance with Tax Law sections 1115(a)(15) and 1115(a)(16). For more information, see Form ST-120.1.

### Exempt purchases

To qualify, the purchases must be made within the authority granted by the IDA and used to complete the project (not to operate the completed project).

- A. Mark box A to indicate you are purchasing tangible personal property and services (other than utility services and motor vehicles or tangible personal property installed in a qualifying motor vehicle) exempt from tax.
- B. Mark box B to indicate you are purchasing certain consumer utility services used in completing the project exempt from tax. This includes gas, electricity, refrigeration, and steam; and gas, electric, refrigeration, and steam services.
- C. Mark box C to indicate you are purchasing a motor vehicle or tangible personal property related to a qualifying motor vehicle exempt from tax.

### Misuse of this certificate

Misuse of this exemption certificate may subject you to serious civil and criminal sanctions in addition to the payment of any tax and interest due. These include:

- A penalty equal to 100% of the tax due;
- A \$50 penalty for each fraudulent exemption certificate issued;
- Criminal felony prosecution, punishable by a substantial fine and a possible jail sentence; and
- Revocation of your *Certificate of Authority*, if you are required to be registered as a vendor. See TSB-M-09(17)S, *Amendments that Encourage Compliance with the Tax Law and Enhance the Tax Department's Enforcement Ability*, for more information.

### To the seller

When making purchases as agent or project operator of an IDA, the purchaser must provide you with this exemption certificate with all entries completed to establish the right to the exemption. You must identify the project on each bill and invoice for such purchases and indicate on the bill or invoice that the IDA or agent or project operator of the IDA was the purchaser.

As a New York State registered vendor, you may accept an exemption certificate in lieu of collecting tax and be protected from liability for the tax if the certificate is valid. The certificate will be considered valid if it is:

- accepted in good faith;
- in your possession within 90 days of the transaction; and
- properly completed (all required entries were made).

An exemption certificate is accepted in good faith when you have no knowledge that the exemption certificate is false or is fraudulently given, and you exercise reasonable ordinary due care. If you do not receive a properly completed certificate within 90 days after the delivery of the property or service, you will share with the purchaser the burden of proving the sale was exempt.

You must also maintain a method of associating an invoice (or other source document) for an exempt sale with the exemption certificate you have on file from the purchaser. You must keep this certificate at least three years after the due date of your sales tax return to which it relates, or the date the return was filed, if later.

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our Web site, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our Web site at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features



Sales Tax Information Center:

(518) 485-2889

To order forms and publications:

(518) 457-5431



Text Telephone (TTY) Hotline

(for persons with hearing and

speech disabilities using a TTY):

(518) 485-5082

EXHIBIT I  
FORM OF ANNUAL SALES TAX REPORT

- SEE ATTACHED -



Department of Taxation and Finance

## Annual Report of Sales and Use Tax Exemptions Claimed by Agent/Project Operator of Industrial Development Agency/Authority (IDA)

**ST-340**  
(1/18)

For period ending December 31, \_\_\_\_\_ (enter year)

### Project information

Name of IDA agent/project operator		Employer identification number	
Street address		Telephone number (        )	
City		State	ZIP code
Name of IDA	Name of project		IDA pri
Street address of project site			
City		State	ZIP code
Date project began	Completion date of project		Actual <input type="checkbox"/>
Total sales and use tax exemptions (actual tax savings; not total purchases) .....			\$

### Representative information (not required)

Authorized representative, if any		Title	
Street address		Telephone number (        )	
City		State	ZIP code

### Certification

I certify that the above statements are true, complete, and correct, and that no material information has been omitted. Statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Department is authorized to investigate the validity of any information entered on this document.

Print name of officer, employee, or authorized representative		Title of person signing	
Signature		Date	

If you do not annually file a complete report, we may remove your authority to act as an IDA agent/project operator.

Mail completed report to:

NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, Designated Private Delivery Services.

## Instructions

### General information

#### Who must file

The General Municipal Law (GML) and the Public Authorities Law require the agent/project operator (also known as the *project occupant*) of an Industrial Development Agency or Authority (IDA) to file an annual report with the Tax Department. The agent/project operator required to file this report is the person directly appointed by the IDA to act for and to represent the IDA for the project. The agent/project operator is ordinarily the one for whom the IDA project was created.

There is usually only one agent/project operator directly appointed by the IDA for an IDA project. However, if the IDA directly appoints multiple agents/project operators, each agent/project operator must file this form (unless they are related corporations).

Only the agent/project operators directly appointed by the IDA must file Form ST-340. Contractors, subcontractors, consultants, or agents appointed by the agent/project operators should not themselves file Form ST-340. However, the agent/project operators must include on Form ST-340 information obtained from such contractors, subcontractors, consultants, and agents, as described below.

#### What you must report

The report must show the total value of all state and local sales and use taxes exempted during the calendar year, as a result of the project's designation as an IDA project. This includes:

- the value of the exemptions the agent/project operator (you) obtained; and
- the value of the exemptions obtained by your contractors, subcontractors, consultants, and others, whether or not appointed as agents of the IDA.

Include only the total combined exemptions obtained by the above people. A breakdown of the total is not required. However, since the report must include the value of the exemptions they obtained, you must keep records of the amounts others report to you.

You must make it clear to the contractors, subcontractors, consultants, and others that they must keep accurate tax information and have it available, so that you can comply with the annual reporting requirements.

Do not include on this report the amount of any sales and use tax exemptions from other provisions of the Tax Law (for example, manufacturer's production equipment exemption, research and development exemption, or contractor's exemption for tangible personal property incorporated into a project of an exempt organization).

#### When the report is due

You must file Form ST-340 on a calendar-year basis. It is due by the last day of February of the following year. The reporting requirement applies to IDA projects started on or after July 21, 1993.

#### Project information

At the top of the form, identify the reporting period by entering the year in the space provided. If an address is required, always include the ZIP code.

Name of IDA agent/project operator: Enter your name, address, employer identification number (EIN), and telephone number.

Name of IDA and IDA project number: Enter the name and address of the IDA. If more than one IDA is involved in a particular project, you must file a separate report for the tax exemptions attributable to each IDA. Also enter the ID project number.

Name of project: Enter the name of the project and the address of the project site. If you are involved in more than one project, you

must file a separate report for each project, even if authorized by the same IDA.

Date project began: Enter the date the project started (this means the earliest of the date of any bond or inducement resolution, the execution of any lease, or any bond issuance). Include month, day, and year.

Completion date of project: Enter the date installation, lease, or rental of property (for example, machinery or computers) on the project ended, or the date the project is expected to be completed. Mark an *X* in the appropriate box to indicate if the date entered is actual or expected.

Total sales and use tax exemptions: Enter the total amount of New York State and local sales and use taxes exempted during the reporting period as a result of the project's receipt of IDA financial assistance (*If none, enter 0*). This includes exemptions obtained at the time of purchase, as well as through a refund or credit of tax paid. Include the sales and use taxes exempted on purchases of property or services incorporated into or used on the exempt project. This includes the taxes exempted on purchases made by or on behalf of the agent/project operator, the general contractor for the project, and any subcontractors, consultants, or others. Do not enter total purchases.

#### Representative information

If applicable, enter the name, address, title (for example, attorney or accountant), and telephone number of the individual you authorize to submit this report. This section is not required.

#### Certification

Enter the name and title of the person signing on your behalf (for example, the IDA agent/project operator's officer, employee, or other authorized representative). Your officer, employee, or authorized representative must sign and date the report.

Mail completed report to:

NYS TAX DEPARTMENT  
IDA UNIT  
W A HARRIMAN CAMPUS  
ALBANY NY 12227-0866

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

### Need help?



Visit our website at [www.tax.ny.gov](http://www.tax.ny.gov)

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Sales Tax Information Center: 518-485-2889

To order forms and publications: 518-457-5431

Text Telephone (TTY) or TDD equipment users Dial 7-1-1 for the New York Relay Service

#### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

**EXHIBIT J**  
**FORM OF THIRTY-DAY SALES TAX REPORT**



Department of Taxation and Finance

**IDA Appointment of Project  
Operator or Agent  
For Sales Tax Purposes**

**ST-60**

(1/18)

The industrial development agency or authority (IDA) **must** submit this form within **30 days** of the appointment of a project operator or agent, whether appointed directly by the IDA or indirectly by the operator or another agent.

**For IDA use only**

**IDA information**

Name of IDA	IDA project number (use OSC numbering system for projects after 1998)	
Street address	Telephone number (      )	
City	State	ZIP code
Email address (optional)		

**Project operator or agent information**

Name of IDA project operator or agent	Mark an <b>X</b> in the box if directly appointed by the IDA: <input type="checkbox"/>	Employer identification or Social Security number
Street address	Telephone number (      )	Primary operator or agent? Yes <input type="checkbox"/> No <input type="checkbox"/>
City	State	ZIP code
Email address (optional)		

**Project information**

Name of project		
Street address of project site		
City	State	ZIP code
Email address (optional)		
Purpose of project		

Description of goods and services intended to be exempted from New York State and local sales and use taxes		
Date project operator or agent appointed (mmddyy)	Date project operator or agent status ends (mmddyy)	Mark an <b>X</b> in the box if this is an extension to an original project: <input type="checkbox"/>
Estimated value of goods and services that will be exempt from New York State and local sales and use tax:	Estimated value of New York State and local sales and use tax exemption provided:	

**Certification:** I certify that the above statements are true, complete, and correct, and that no material information has been omitted. I make these statements with the knowledge that willfully providing false or fraudulent information with this document may constitute a felony or other crime under New York State Law, punishable by a substantial fine and possible jail sentence. I also understand that the Tax Department is authorized to investigate the validity of any information entered on this document.

Print name of officer or employee signing on behalf of the IDA	Print title	
Signature	Date	Telephone number (      )

## EXHIBIT K

### FORM OF LEASE SUPPLEMENT

THIS LEASE SUPPLEMENT (the "Lease Supplement") dated as of \_\_\_\_\_, by and between ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation organized and existing under the laws of the State of New York having an office for the transaction of business located at 112 State Street, Albany, New York, and CHPE LLC, a limited liability company organized and existing under the laws of the State of New York having an office for the transaction of business located at 600 Broadway, Albany, New York (the "Company").

#### WITNESSETH:

WHEREAS, the Company, as tenant, and the Agency, as landlord, entered into a lease agreement dated as of October 1, 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 A attached hereto, together with any and all Project-related improvements now or hereafter located thereon or therein for the Lease Agreement 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 Albany, 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.

ALBANY COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

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

CHPE LLC

BY: \_\_\_\_\_  
Authorized Representative

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

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## Notary Public

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

## Notary Public

EXHIBIT A  
DESCRIPTION OF THE SUPPLEMENTAL INTERESTS

SCHEDULE B

[TO BE COMPLETED AT THE TIME OF FILING]