

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

HORIZON VENTURES OF WEST  
VIRGINIA, INC., a West Virginia  
corporation

Plaintiff,

vs.

AMERICAN BITUMINOUS POWER  
PARTNERS, L.P., a Delaware limited  
partnership, PLEASANT VALLEY  
ENERGY COMPANY, a California  
corporation, AMERICAN HYDRO  
POWER PARTNERS, L.P., a  
Pennsylvania limited partnership

Defendants.

CIVIL ACTION NO.: 13-C-196

CIRCUIT COURT  
OF OHIO COUNTY  
2013 JUN 17 PM 3 26

**COMPLAINT**

NOW COMES the Plaintiff, Horizon Ventures of West Virginia, Inc., by and through the undersigned counsel, and for its Complaint against the Defendants, American Bituminous Power Partners, L.P., Pleasant Valley Energy Company, and American Hydro Power Partners, L.P., states and avers as follows:

1. The Plaintiff, Horizon Ventures of West Virginia, Inc. (hereinafter "Horizon") is a West Virginia corporation with its principal place of business located in Wheeling, Ohio County, West Virginia.
2. Upon information and belief, the Defendant, American Bituminous Power Partners, L.P. (hereinafter "AMBIT") is a Delaware limited partnership licensed to do business in West Virginia with its principal place of business located in Marion County, West Virginia.
3. Upon information and belief, the Defendant, Pleasant Valley Energy Company (hereinafter "Pleasant Valley"), is a California corporation licensed to do business in West Virginia

with its principal place of business located in Santa Ana, California, and at all times relevant herein was a general partner of AMBIT.

4. Upon information and belief, the Defendant, American Hydro Power Partners, L.P. (hereinafter "American Hydro"), is a Pennsylvania limited partnership not licensed to do business in West Virginia with its principal place of business located in Bala Cynwyd, Pennsylvania, and at all times relevant herein was a general partner of AMBIT.

5. At all times relevant herein, the Defendant, AMBIT, was engaged in the operation of an electric generation plant located in Marion County, West Virginia.

6. As the general partners of AMBIT, Pleasant Valley and American Hydro are liable for the obligations of AMBIT as described herein.

7. On or about November 29, 1989, Horizon and AMBIT entered into an Amended and Restated Lease Agreement whereby AMBIT leased from Horizon certain parcels of real property located in Marion County, West Virginia (hereinafter "Leased Premises") for the purpose of constructing, operating, and maintaining an electric generation plant to be located on the Leased Premises for the generation and sale of electricity, steam, ash, hot water, and hot air under and pursuant to the terms of the Lease Agreement.

8. The November 29, 1989, Amended and Restated Lease Agreement between Horizon and AMBIT was amended by an Amendment to Amended and Restated Lease dated December 28, 1989, a Second Amendment to Amended and Restated Lease dated January 11, 1990, and a Third Amendment to Amended and Restated Lease dated April 1, 1993. The Third Amendment to the Amended and Restated Lease was nullified by agreement between the parties on or about May 28, 1996. The November 29, 1989, Amended and Restated Lease Agreement, together with the Amendment to Amended and Restated Lease dated December 28, 1989, and Second Amendment to

Amended and Restated Lease dated January 11, 1990, are hereinafter referred to collectively as the "Lease Agreement." A true and correct copy of the Lease Agreement is attached hereto and incorporated herein as Exhibit A.

9. Pursuant to the terms of the Lease Agreement, AMBIT agreed to pay rent to Horizon for the Leased Premises calculated upon a formula of three percent (3%) of all gross revenues received by AMBIT from the sale of electricity and steam generated at its plants on the Leased Premises, and three percent (3%) of all gross revenues received by AMBIT from the sale to third parties of ash, hot water, hot air (other than steam) or other products or energy resulting from the burning of fuel and the fair market value of local by-products used by AMBIT in connection with any secondary business. (Exhibit A, Section 6.)

10. Pursuant to the terms of the Lease Agreement, all rent paid by AMBIT to Horizon was to be paid at the principal office of Horizon located in Wheeling, Ohio County, West Virginia.

### **COUNT I Declaratory Judgment**

11. Plaintiff hereby incorporates by reference paragraphs 1 through 10 of this Complaint as if fully set forth herein.

12. The Lease Agreement expressly provides that AMBIT shall pay all rent due to Horizon prior to making any distributions or payments to its partners (other than Operation and Maintenance payments to partners), including payments to notes issued by AMBIT to its partners. (Exhibit A, Section 7.)

13. The Lease Agreement provides that "(n)othing in this Lease (i) shall be deemed to subordinate the payment of rent to any other payments (including payments constituting O&M Payments to Partners) except to the extent such payments constitute "Senior Debt" as defined in

Section 7A [Subordination of Rent], or (ii) shall be deemed to waive any right of Landlord to collect, rent which is due and unpaid, the payment of which is not prohibited by Section 7A [Subordination of Rent].” (Exhibit A, Section 7.)

14. Upon information and belief, contrary to the terms of the Lease Agreement, AMBIT utilizes a priority list for monthly distributions and payments that subordinates the payment of rent to Horizon to payments other than Senior Debt.

15. Upon information and belief, contrary to the terms of the Lease Agreement, AMBIT has made and will continue to make payments to others which should have been paid to Horizon as rent under the Lease Agreement.

16. AMBIT has failed to pay to Horizon rent due and owing under the terms of the Lease Agreement.

17. By letter dated April 3, 2013, Horizon notified AMBIT of its default under the Lease Agreement because of the failure of AMBIT to pay rent due under the Lease Agreement, and Horizon made demand for payment of all rent due and owing.

18. In response to Horizon’s notice of default AMBIT asserted that the rent owed to Horizon was subordinated to other payments that are not Senior Debt as such term is defined in the Lease Agreement.

19. There now exists between the parties an actual justiciable controversy in respect to the priority and order of the payments of rent to Horizon versus the payment of other expenses.

20. There now exists between the parties an actual, justiciable controversy in respect to the definition of Senior Debt under the terms of the Lease Agreement.

21. Pursuant to the West Virginia Declaratory Judgment Act, West Virginia Code §§55-13-1, *et seq.*, Horizon is entitled to a declaration of its rights in the priority of the payment of rent to Horizon and a declaration and interpretation of the applicable terms of the Lease Agreement.

**COUNT II**  
**Breach of Contract**

22. Plaintiff hereby incorporates by reference paragraphs 1 through 21 of this Complaint as if fully set forth herein.

23. Contrary to the express terms of the Lease Agreement, AMBIT has failed and refused to pay Horizon the rent due and owing Horizon under the terms of the Lease Agreement.

24. By letter dated April 3, 2013, Horizon notified AMBIT of its default under the Lease Agreement because of the failure of AMBIT to pay rent due under the Lease Agreement, and Horizon made demand for payment of all rent due and owing.

25. Notwithstanding the demands of Horizon and notification of default under the Lease Agreement, AMBIT has failed to pay Horizon the rent due and owing under the Lease Agreement.

26. Based upon the failure of AMBIT to pay rent due under the Lease Agreement, as set forth hereinabove, Horizon believes and therefore avers, that AMBIT will continue to fail and refuse to pay rent due under the Lease Agreement in the future.

27. The failure and/or refusal of AMBIT to pay rent due to Horizon under the terms of the Lease Agreement constitutes a breach of contract.

28. As a result of the actions of AMBIT, as set forth hereinabove, Horizon has been deprived of the rent due and owing it under the terms of the Lease Agreement and interest on said rent at the rate of ten percent (10%), pursuant to Section 7 of the Lease Agreement. (Exhibit A, Section 7.)

29. As the general partners of AMBIT, American Hydro and Pleasant Valley Energy Company are liable for the obligations of AMBIT as set forth hereinabove.

**COUNT III**  
**Injunctive Relief**

30. Plaintiff hereby incorporates by reference paragraphs 1 through 29 of this Complaint as if fully set forth herein.

31. Upon information and belief, contrary to the terms of the Lease Agreement, AMBIT utilizes a priority list for monthly distributions and payments that subordinates the payment of rent to Horizon to payments other than Senior Debt, as aforesaid.

32. Upon information and belief, contrary to the terms of the Lease Agreement, AMBIT has made and will continue to make payments to others which should have been paid to Horizon as rent under the Lease Agreement, as aforesaid.

33. The payments made by AMBIT to others without having first paid rent to Horizon, under the circumstances set forth herein above, constitute a continuing breach of the Lease Agreement.

34. The disbursement of funds by AMBIT in breach of the Lease Agreement on a continuing basis has and will continue to irreparably impair and/or injure the rights of Horizon, and if allowed to continue, constitutes an injury for which Horizon will have no adequate remedy at law.

35. Horizon asserts that the likelihood of success on the merits is sufficiently high so as to warrant the relief requested herein.

**COUNT IV**  
**Specific Performance**

36. Plaintiff hereby incorporates by reference paragraphs 1 through 35 of this Complaint as if fully set forth herein.

37. Pursuant to Section 17 of the Lease Agreement, AMBIT is required to: furnish Horizon with annual operating statements of AMBIT with respect to the facilities located on the leased premises, showing the gross receipts of AMBIT with respect to its primary business and O&M payments to partners, certified by AMBIT and prepared in a manner reasonably satisfactory to Horizon; make those portions of AMBIT's books, records and tax returns (federal, state and local) relating to the information contained on the operating statements available for inspection by Horizon and its agents and representatives upon request, at any reasonable time; to furnish to Horizon any interim operating statements and information which AMBIT otherwise prepares, as Horizon from time to time requires; and to allow Horizon, at any reasonable time, but only once in a calendar year, to audit the information contained on the operating statements of AMBIT to be made by a Certified Public Accountant to be selected by Horizon. (Exhibit A, Section 17.)

38. Beginning in or about February 2013 Horizon made multiple demands upon AMBIT for its records in accordance with the provisions of Section 17 of the Lease Agreement.

39. Notwithstanding the demands made by Horizon, as set forth hereinabove, AMBIT has failed and/or refused to make its records available to Horizon, and/or has failed and/or refused to provide its records in a manner that would allow Horizon to perform the analysis contemplated by Section 17 of the Lease Agreement.

40. The failure and/or refusal of AMBIT to make its records available to Horizon constitutes a continuing breach of the Lease Agreement which continues to exist as of the date of filing of this Complaint.

#### **PRAYER**

WHEREFORE, the Plaintiff, Horizon Ventures of West Virginia, Inc., prays that this Honorable Court:

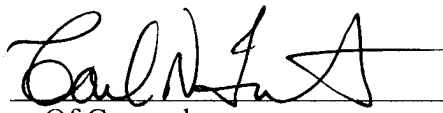
1. Enter a declaratory judgment determining the priority of payments, and declare that the prior for determining monthly distributions by American Bituminous Power Partners, L.P. shall require the payment of rent to Horizon Ventures of West Virginia, Inc. subordinate only to Senior Debt;

2. Enter judgment against the Defendants, American Bituminous Power Partners, L.P., Pleasant Valley Energy Company, and American Hydro Power Partners, L.P., jointly and severally, in an amount which will compensate Horizon for all past due rent together with interest at the agreed rate of ten percent (10%), legal fees and costs associated with bringing this action and all other damages allowed by law and such other relief permitted under applicable law;

3. Enter an Order enjoining the Defendants, American Bituminous Power Partners, L.P., Pleasant Valley Energy Company, and American Hydro Power Partners, L.P. from making any payments other than Senior Debt of the Defendant without first having fully paid all rent due to Ventures of West Virginia, Inc. under the terms of the Lease Agreement;

4. Enter an Order specifically enforcing the Lease Agreement to require that American Bituminous Power Partners, L.P. make its records available to Horizon Ventures of West Virginia, Inc. for the purpose of an audit as required by the terms of the Lease Agreement; and

5. Grant it such other and further relief as the Court deems meet and proper.

By:   
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11/28/89

AMENDED AND RESTATED LEASE  
OF  
AMERICAN BITUMINOUS POWER PARTNERS, L.P.  
FOR  
GRANT TOWN/JOANNA PARCELS

EXHIBIT

A

11/28/89

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EXHIBITS TO AMENDED AND RESTATED LEASE

- Exhibit A - Description and Survey of Grant Town Parcel
- Exhibit A-1 Description and Survey of Joanna Parcel
- Exhibit A-2 Description of Adjacent Property
- Exhibit B-1 Rent Assignment
- Exhibit B-2 Horizon Deed
- Exhibit B-3 Bill of Sale
- Exhibit B-4 Prior Lease Assignment
- Exhibit C List of Landlord's Permits and Licenses
- Exhibit D Conditions, Restrictions, Agreements, Limitations,  
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- Exhibit E Base Case Amortization Schedule
- Exhibit F Description of Mon Power Property
- Exhibit F-1 Mon Power Easement Map
- Exhibit G Calculation of Percentage Rent - Example

## AMENDED AND RESTATED LEASE

THIS AMENDED AND RESTATED LEASE (this "Lease"), made <sup>as of</sup> ~~this~~ 29th day of November, 1989, by and between HORIZON VENTURES OF WEST VIRGINIA, INC., a West Virginia corporation (referred to herein as either "Landlord" or "Horizon"), AMERICAN BITUMINOUS POWER PARTNERS, L.P., a Delaware limited partnership transacting business in West Virginia as American Bituminous Power Partners, Limited Partnership ("Tenant"), and with respect only to the provisions of Section 1.b. [Amendment of Prior Lease; Substitution of Horizon as Landlord], Section 25 [Further Assurances], Section 39 [Certain Representations and Agreements of North Marion and Horizon] and Section 41 [Miscellaneous], NORTH MARION DEVELOPMENT, INC., a West Virginia corporation ("North Marion").

WHEREAS, Tenant has been organized for the purposes of, and intends to engage in, among other potential businesses, the business of developing, operating, leasing, selling and otherwise dealing in, for itself and/or on behalf of others, coal-fired, fluidized bed steam-powered electrical generating plants, the first of which Tenant anticipates, subject, inter alia, to on-site fuel availability, applicable laws and regulations and financing arrangements, will have a maximum generating capacity of approximately 80 megawatts ("Initial Cogeneration Plant").

WHEREAS, North Marion was the owner of two parcels of land (one containing approximately 370.645 acres ["Grant Town Parcel"]

and the other containing approximately 81.449 acres ["Joanna Parcel"]) in Marion County, West Virginia, which Tenant has identified as potentially appropriate and suitable for the development, construction and operation of one or more such plants. The Grant Town Parcel is more particularly described in Exhibit A [Description and Survey of Grant Town Parcel]. The Joanna Parcel is more particularly described in Exhibit A-1 [Description and Survey of Joanna Parcel]. The Joanna Parcel adjoins and is situated on the east side of a paved public highway known as Mods Run Highway a/k/a Marion County Highway No. 16 ("Highway"). North Marion also owns a parcel of ground which adjoins the Joanna Parcel and is situated on and also adjoins the east side of the Highway ("Adjacent Property"). The Adjacent Property is more particularly described in Exhibit A-2 [Description of Adjacent Property]. The Grant Town Parcel and the Joanna Parcel together with other rights as hereinafter described are herein referred to collectively as the "Demised Premises."

WHEREAS, mined waste material resulting from coal mining operations and deposited on the surface of the ground is referred to herein as "waste coal material" (it being understood that the word "coal" when used herein or in the Lease does not include waste coal material).

WHEREAS, the Grant Town Parcel and the Joanna Parcel contain waste coal material.

WHEREAS, (i) Tenant and North Marion executed a Lease regarding the Demised Premises dated June 30, 1987 ("Prior Lease"); (ii) North Marion assigned to Horizon all of the benefits, proceeds, and revenues to be derived from the Prior Lease pursuant to an Assignment dated July 1, 1987 ("Rent Assignment"); (iii) North Marion sold, transferred and conveyed to Horizon all of North Marion's right, title and interest in and to the Demised Premises pursuant to a Deed dated November 12, 1989 from North Marion to Horizon which was recorded on November 16, 1989 (the "Horizon Deed") and a Bill of Sale dated November 12, 1989 from North Marion to Horizon ("Bill of Sale"); and North Marion also assigned to Horizon all of its right, title and interest in and to, inter alia, the Prior Lease pursuant to an Assignment dated as of November 12, 1989 from North Marion to Horizon ("Prior Lease Assignment"); (iv) true and correct copies of the Rent Assignment, Horizon Deed, Bill of Sale and the Prior Lease Assignment are attached hereto as Exhibits B-1 [Rent Assignment], B-2 [Horizon Deed], B-3 [Bill of Sale] and B-4 [Prior Lease Assignment], respectively; and (v) Landlord is willing to lease the Demised Premises to Tenant, and Tenant is willing to lease the same from Landlord, for the rent, for the term and under the covenants, terms and conditions set forth in this Lease, which is intended to amend and restate the Prior Lease in its entirety.



NOW, THEREFORE, in consideration of the premises (i.e., the recitals) and the mutual covenants herein contained, Landlord and Tenant hereby covenant and agree as follows:

1. AMENDMENT OF PRIOR LEASE; SUBSTITUTION OF HORIZON AS LANDLORD.

a. As of the date hereof, the Prior Lease is hereby amended and restated in its entirety as herein provided.

b. Horizon and North Marion shall be jointly and severally liable for Landlord's obligations under the Prior Lease. Horizon shall be solely liable for all obligations of Landlord under this Lease.

1A. DEMISED PREMISES.

Landlord hereby leases, conveys and assigns the Demised Premises to Tenant for the term and on and subject to the covenants, terms and conditions herein stated. Included as a part of the Demised Premises shall be:

a. all rights of Landlord appurtenant to or relating to the Grant Town Parcel and the Joanna Parcel;

b. all licenses and permits of Landlord, including all applications and supporting documents thereto and therefor, to the extent now or hereafter issued to, held by, or possessed by Landlord, pertaining to the Demised Premises, including but not limited to, those relating to (i) the ownership, maintenance, removal, sale and use of the piles and stock of waste coal material located on the Demised Premises and (ii) reclamation of

the Demised Premises and the treatment and discharge of runoff from the piles and ponds of waste coal material ("Licenses and Permits"). All presently existing Licenses and Permits are described on Exhibit C [List of Landlord's Permits and Licenses];

c. all water rights of Landlord, whether appurtenant to the Demised Premises or otherwise, insofar as the same are, in the sole discretion of Tenant, necessary or desirable for the maximum development and operation of the "Plants" (as hereinafter defined) or for the conduct of any other business or activity on the Demised Premises, including rights to withdraw, consume and/or discharge water all in such quantities as Tenant may deem appropriate from and into any streams, ponds, wells or mines existing on the Demised Premises, to create new streams or ponds and to sink new wells on the Demised Premises; and,

d. all rights, easements, licenses and rights of way which Landlord may now or hereafter have on, over, under, or pertaining to the properties of others, (excluding, however, any rights to mine or remove coal, oil, gas or other minerals) to the extent the same are necessary or desirable in Tenant's sole discretion, (i) for vehicular and pedestrian ingress and egress to and from the Demised Premises, (ii) for the installation, operation and maintenance of utility lines, conduits and systems serving the Demised Premises, (iii) for the erection, operation and maintenance of electrical transmission lines and systems and related apparatus between the Demised Premises and those of the

utility company or companies which may from time to time purchase electricity generated by the Plants and/or supply electricity or other utility products or services to the Plants, (iv) for the erection, operation and maintenance of steam pipelines, valves, systems and related apparatus between the Plants and the Kiln Facility (as hereinafter defined) and (v) as may be reasonably necessary for and related to any use made by Tenant of the Demised Premises or the proper and efficient operation of the Plants or the Kiln Facility or the conduct of any other business by Tenant.

e. all waste coal material located on the Grant Town Parcel and on the Joanna Parcel.

SUBJECT, HOWEVER, to the applicable provisions of this Lease, and the conditions, restrictions, agreements, limitations, encumbrances and easements, if any, shown on Exhibit D [Conditions, Restrictions, etc.].

Landlord shall have no right to use the Demised Premises except to the extent necessary to perform its obligations under this Lease. The use by Landlord of the Demised Premises permitted by this Lease is subject to the following conditions: (i) Landlord shall give Tenant not less than 30 days' prior notice of Landlord's exercise of such right or use and (ii) such right or use shall be under and subject to Tenant's rights under this Lease and may not be exercised in any manner which would interfere with Tenant's rights hereunder (including

the right to lateral and subjacent support for any structure, building or facility located on the Demised Premises), increase Tenant's obligations, or cause Tenant to incur any additional expense.

Landlord hereby represents, warrants, covenants and agrees that:

(i) the only land which North Marion owns which adjoins or is contiguous to, all or any part of the Grant Town Parcel or Joanna Parcel is the Adjacent Property, which is as described in the premises (i.e., the recitals) and the only property which Horizon owns is the Demised Premises;

(ii) no waste coal material is located on the Adjacent Property;

(iii) the Joanna Parcel contains all of the land covered by, or referenced in, Permit No. 0-21-83, as issued by the Department of Energy of the State of West Virginia;

(iv) Landlord has no knowledge concerning any contemplated or proposed use, taking, or purchase by, or under the threat of, condemnation, or any exercise of the power of eminent domain, of any part or all of the Demised Premises;

(v) Exhibit C [List of Landlord's Permits and Licenses] hereto contains a correct and complete description of all Licenses and Permits issued to or held or possessed by Landlord and pertaining to the Demised Premises. Such Licenses and Permits are all licenses, permits and other approvals of any

person or entity or administrative, governmental or quasi-governmental agency under any law, order or regulation necessary (A) for Landlord to be able to perform its obligations under this Lease and (B) with respect to (1) the waste coal material located on the Demised Premises, (2) reclamation of all or any part of the Demised Premises and (3) treatment of surface water runoff on or from the Demised Premises. There is no proceeding pending or, to the best knowledge of Landlord, threatened against Landlord that seeks, or may reasonably be expected, to rescind, terminate, modify or suspend any such License or Permit.

(vi) The descriptions of the Grant Town Parcel, the Joanna Parcel and the Adjacent Property contained in Exhibits A, A-1, and A-2, respectively, are accurate and are consistent with Landlord's other representations and warranties herein contained, the descriptions in the premises hereof, and the other provisions of this Lease.

(vii) Landlord (a) is solvent, (b) has no assets other than the Demised Premises and (c) has no material liabilities other than current real estate taxes payable with respect to the Demised Premises.

(viii) Landlord will not, so long as this Lease shall be in effect, (i) engage in any business other than the ownership and leasing of the Demised Premises, (ii) create or incur any indebtedness for money borrowed unless the lender thereof

expressly agrees in writing not to file any petition in bankruptcy in respect of Landlord, (iii) acquire any additional assets, or (iv) directly or indirectly guarantee any indebtedness or obligations of any other person or make any loans or other extensions of credit to any other person.

2. ACCEPTANCE OF DEMISE.

Tenant hereby rents, leases and hires the Demised Premises from Landlord, for the term and on and subject to the covenants, terms and conditions herein stated.

3. USE; PLANT DEVELOPMENT.

a. Grant Town Parcel. Subject to the provisions of this Section, during the term of this Lease, Tenant shall have the right, at any time or times, to use the Demised Premises (excluding therefrom the Joanna Parcel) for any and all lawful purposes ("Grant Town Permitted Uses") including, but not limited to:

(i) evaluating, designing, securing all required approvals, licenses and permits for, financing, developing, building, operating, maintaining, enhancing, upgrading, expanding, rebuilding, modernizing, and replacing -

A. one or more coal-fired or waste coal products-fired, fluidized bed, steam-powered electrical generating plants, or other steam or electrical generating plant systems as may be

substituted therefor, developed therefrom, or built in conjunction therewith (any and all such plants actually constructed from time to time are herein called individually and collectively, the "Plants"); and

- B. one or more industrial, commercial, wholesale, retail, residential, public use, convention or recreational facilities, including, but not limited to, a sawmill and lumber kiln drying facility that may purchase steam generated by the Initial Cogeneration Plant (the "Kiln Facility", which Kiln Facility will be owned by AKP (as defined in Section 7A [Subordination of Rent] hereof)), industrial parks, distribution centers, storage facilities, manufacturing or processing facilities, shopping centers, hotels, motels, restaurants, office facilities, medical, dental and health care facilities, nursing and retirement homes, apartments, condominiums, single-

family and other residential uses,  
public buildings and facilities;

(ii) consuming, using in any manner, relocating, storing, treating, handling, processing, permanently placing, removing and/or grading any waste coal material now or hereafter located on the Grant Town Parcel (including any waste coal material brought to the Grant Town Parcel from other locations) and performing any other actions incidental to reclamation of the Grant Town Parcel;

(iii) consuming, using in any manner, relocating, storing, treating, handling, dealing in, selling, processing, permanently placing, removing and/or grading ash and other waste or by-products generated by the Plants (including that resulting from the burning of "Foreign Fuel," as hereinafter defined) or resulting from any other use of the Demised Premises and using the same in a manufacturing, fabricating or chemical process;  
and

(iv) evaluating, designing, securing all required approvals, licenses and permits for, financing, developing, building, enhancing, upgrading, expanding, rebuilding, modernizing, replacing and operating on, across, over and under the Grant Town Parcel all roads, bridges, fences, utility lines, conveyance systems, pipelines and valves above or below ground, buildings and other improvements or easements of any kind which Tenant at its cost (i.e. at no cost to Landlord) may desire.



(v) cutting, milling, drying, storing and distributing lumber and conducting any other activities incidental to the operation of the Kiln Facility.

The sole restriction or limitation upon Tenant's right to use the Grant Town Parcel for any and all lawful purposes shall be that Tenant shall not mine or remove from the Grant Town Parcel, by strip mining, deep mining or other process (except for activities associated with normal construction of the Plants) coal, oil, gas, or other minerals.

b. Joanna Parcel. During the term of this Lease, Tenant shall have the right, at any time or times, to consume, use in any manner, relocate (thereon or to the Grant Town Parcel), store, treat, handle, process, permanently place, remove and/or grade any waste coal material presently located on the Joanna Parcel, to perform any other actions incidental to the reclamation of the Joanna Parcel and to use the Joanna Parcel for the purposes described in Subsection a(iv) of this Section to the extent the same are necessary or desirable to accomplish the foregoing or as required to discharge or effect any reclamation obligations of Tenant ("Joanna Permitted Uses").

c. The Grant Town Permitted Uses and the Joanna Permitted Uses are referred to collectively herein as "Permitted Uses".

d. Notwithstanding the provisions of Subsections a and b of this Section, until generation by a Plant of electricity

for sale, Tenant shall not have the right to use the Demised Premises for any purpose other than the development and operation of, and construction of facilities for, a Primary Business (as defined in Subsection c of Section 6 [Rent]) or the development, construction and operation of the Kiln Facility.

e. Tenant shall have the right to apply for, and maintain, in the name of Landlord or Tenant, the Licenses and Permits and all permits, approvals and other authorizations which Tenant, in its sole discretion, deems necessary or desirable in order to conduct any Permitted Use of the Demised Premises.

4. TERM; RENEWAL OPTION

a. The term of this Lease shall be for a period commencing as of the date specified in Subsection b. of this Section and ending at 12:01 A.M. on the day which is fifty (50) years after the Commencement Date. Provided that Tenant has paid all rent due and payable on the date of exercise in accordance with Section 7 [Rent Payment] of this Lease, Tenant shall have the option (to be exercised by Tenant's giving written notice of such exercise to Landlord at any time prior to the forty-ninth (49th) anniversary of the Commencement Date [as hereinafter defined]) to renew this Lease for a single additional term of fifty (50) years. The renewal shall be upon all of the terms and conditions of this Lease applicable during the initial term, except that the rent payable during the renewal term shall be as specified in Section 6 [Rent] hereof.

b. Landlord and Tenant agree that the Prior Lease commenced on December 1, 1987 ("Commencement Date").

5. TENANT'S RIGHT TO TERMINATE.

In addition to all other remedies available to Tenant under this Lease or at law or in equity, Tenant shall have the right at any time whatsoever to terminate this Lease prior to the expiration of the initial or renewal term of this Lease if:

(i) any representation or warranty made by Landlord herein is false or incomplete when made; or

(ii) Landlord shall default in the performance of any material term, covenant or condition of this Lease and such default remains uncured for a period of ninety (90) days after receipt by Landlord of notice of such default or, if such default cannot be cured within ninety (90) days, and such cure is not initiated within said ninety (90) days and pursued diligently thereafter until cured; or

(iii) Tenant determines in its sole and absolute discretion that the development, construction or continued operation of the Plants or any other business is not feasible or economical or is or may become no longer feasible or economical, as the case may be.

Tenant shall give Landlord at least fifteen (15) days' prior written notice of any such termination, which notice and termination, to be effective, must include the written consent of any Leasehold Mortgagee (as defined in Section 23 [Tenant

Financing; Leasehold Mortgages] hereof) to such termination. No such termination shall relieve Tenant from the obligations arising under this Lease prior to the date of such termination. In the event of such termination, Tenant shall comply with the provisions of Section 21 [Transfer on Termination].

6. RENT.

a. Subject to then applicable rules and regulations of the Federal Energy Regulatory Commission ("FERC") and of any other federal, state or local governmental body having jurisdiction thereover, Tenant shall have the right, but not the obligation, to generate electricity and steam at the Plants, to sell and market such electricity and steam to such customers, for such prices, in such quantities and under such terms and conditions as Tenant in its sole discretion may determine from time to time, and to discontinue, suspend and resume the generation of electricity and steam at the Plants at any time or times. Tenant presently anticipates that it will sell steam at an initial price of at least \$.52 per thousand pounds of steam. Tenant may use waste coal material or other energy sources from locations other than the Demised Premises ("Foreign Fuel") in order to generate electricity and steam at the Plants, along with, or in partial or total substitution for, waste coal material presently located on the Demised Premises ("Local Fuel"). As used herein, the term "Operating Reason" means that

Tenant, in its reasonable judgment, has determined that a percentage (partial or total) of Foreign Fuel is required for any one or more of the following reasons: (a) to achieve and maintain the manufacturer's rated output of any Plants on the Demised Premises; (b) to operate any Plants on the Demised Premises in a safe manner; (c) to operate the Initial Cogeneration Plant in compliance with the Electric Energy Purchase Agreement (the "EEPA") dated September 15, 1988 between Tenant and Monongahela Power Company ("Mon Power") or to operate any other Plants on the Demised Premises in compliance with the agreement with any utility concerning the purchase of electricity generated by such Plants; (d) to operate any Plants on the Demised Premises in compliance with any operation and maintenance manual prepared or modified by the person who, or entity which, designs, constructs, manufactures, repairs, modifies or improves the Plants or the equipment therein and all laws or regulations applicable to such Plants; (e) due to the inability of Tenant to use Local Fuel as a result of any law, rule, regulation or order of any court or ~~other administrative, governmental or quasi-governmental agency~~ or authority including, without limitation, as a result of the rejection of this Lease in bankruptcy; or (f) due to exhaustion of the usable waste coal material on the Demised Premises. As used herein, the term "Non-Operating Reason" means that Tenant has determined, in its sole judgment, to partially or exclusively use Foreign Fuel to the extent (i) such use is designed to reduce

*Capacities*  
*Income*

the cost of limestone usage by a Plant or (ii) there is no Operating Reason to do so. Any disputes between Tenant and Landlord with regard to whether the use of Foreign Fuel is for an Operating Reason or a Non-Operating Reason shall be submitted to the consulting engineer retained by the "Lenders" (as defined in Section 23 [Tenant Financing; Leasehold Mortgages]) or, if such consulting engineer refuses or is unable to serve in such capacity, by any qualified, competent engineer acceptable to Landlord and Tenant. The decision of the engineer to which the dispute is submitted shall be binding on both Landlord and Tenant.

d. Beginning on the earlier of (i) "Commencement of Construction" or (ii) January 1, 1988, and ending on the day on which "Startup" occurs, Tenant shall pay to Landlord, in the manner provided in Section 7 [Rent Payment], the amount of \$4,000 per month ("Pre-Startup Minimum Rent"), prorated for any portion of a month. As used herein (i) "Commencement of Construction" shall mean the day on which Tenant first begins pouring concrete or placing similar materials for the footings or foundation structures of the buildings which will house the electrical generators for the Plants and (ii) "Startup" shall mean the day on which Tenant first commercially sells electricity generated by the Plants.

e. During the initial fifty (50) year term of this Lease, Tenant shall pay to Landlord as and when provided in

Section 7 [Rent Payment], percentage rent ("Percentage Rent") for the Demised Premises, in an amount equal to the aggregate of all of the following:

(i) Three percent (3%) of all gross revenues actually received by Tenant from the sale, during the initial term, of electricity and steam generated at the Plants through the use of Local Fuel or through the use for Non-Operating Reasons of Foreign Fuel, together with one percent (1%) of all gross revenues actually received by Tenant from the sale during the initial term of electricity and steam generated at the Plants through use of Foreign Fuel for Operating Reasons (it being acknowledged by the parties that Tenant has calculated that it will incur additional costs for transporting and handling Foreign Fuel which costs are approximately equal to 2% of the gross revenues attributable to the burning of the Foreign Fuel). All allocations with regard to electricity and steam generated by Local Fuel and Foreign Fuel shall be made based on the relative BTU content of such fuels; and

(ii) Three percent (3%) of (a) all gross revenues actually received by Tenant from the sale to third parties during the initial term of ash, hot water, hot air (other than steam) or other products or energy directly and initially resulting from the burning of Local Fuel or the burning for Non-Operating Reasons of Foreign Fuel ("Local By-Products") and (b) the fair market value (determined with reference to recent sales of the same or similar products in the same or similar geographic area)

of Local By-Products used by Tenant in connection with any Secondary Business (as defined below) together with one percent (1%) of (a) all gross revenues actually received by Tenant from the sale to third parties during the initial term of ash, hot water, hot air (other than steam) or other products or energy directly and initially resulting from the burning of Foreign Fuel for Operating Reasons ("Foreign By-Products") and (b) the fair market value (determined with reference to recent sales of the same or similar products in the same or similar geographic area) of Foreign By-Products used by Tenant in connection with any Secondary Business (as defined below) (it being acknowledged by the parties that Tenant has calculated that it will incur additional costs for transporting and handling Foreign Fuel which costs are approximately equal to 2% of the gross revenues attributable to the burning of the Foreign Fuel).

Attached to and made a part of this Lease as Exhibit G [Calculation of Percentage Rent-Example] are examples, using hypothetical figures, of the operation of Sections 6.c.(i) and (ii).

The businesses described in Subsections c(i) and (ii) of this Section (other than Secondary Businesses) are referred to herein as "Primary Businesses." All other businesses conducted on the Demised Premises are referred to herein as "Secondary Businesses".



8. Beginning on the first day of the "First Fiscal Year" (as defined below) and continuing for each "Subsequent Fiscal Year" (as defined below) or portion thereof, Tenant shall pay to Landlord, in the manner provided in Section 7 [Rent Payment], in addition to any Percentage Rent earned during such fiscal year, an amount ("Post-Startup Minimum Rent") computed as follows:

(i) During the first 12 calendar months following the month in which Startup occurs ("First Fiscal Year"), the Post-Startup Minimum Rent shall equal the amount by which \$112,500 exceeds the aggregate Percentage Rent, if any, earned during the First Fiscal Year; and

(ii) During each successive 12 calendar month period following the First Fiscal Year (each of which is a "Subsequent Fiscal Year"), the Post-Startup Minimum Rent shall equal the amount by which \$225,000 exceeds the aggregate Percentage Rent, if any, earned during such Subsequent Fiscal Year, prorated for a portion of the last Subsequent Fiscal Year, if applicable.

The First Fiscal Year and all Subsequent Fiscal Years are referred to collectively herein as "Fiscal Years."

9. In the event Tenant shall renew the term of this Lease, the Percentage Rent payable during the renewal term shall

be calculated as set forth in Subsection c. of this Section except that each reference in subsection c of this Section to three percent (3%) shall be increased to four percent (4%).

d. All amounts and obligations which Tenant is to pay under the terms of this Lease in addition to the rental under this Section, shall be considered as further additional rent due hereunder. In the event of any failure on the part of Tenant to pay such further additional rent, Landlord shall have all its rights, powers and remedies provided for in this Lease in the case of nonpayment of rent.

7. RENT PAYMENT.

a. All payments of rent shall be paid to Landlord by Tenant without notice or demand. Payments shall be paid to Landlord at such place as Landlord may from time to time designate by written notice to Tenant. Until Tenant is notified otherwise, all payments of rent shall be at the address of Landlord set forth in Section 26 [Notice] hereof.

b. Subject to the provisions of Section 7A [Subordination of Rent], all Percentage Rent earned under Section 6 [Rent] shall be paid within ten (10) days after the date Tenant actually receives the revenue on which such Percentage Rent is based. All Pre-Startup Minimum Rent accrued under Section 6 [Rent] with respect to a calendar month (or portion thereof) shall be paid within ten (10) days after the end of that calendar

month. Subject to the provisions of Section 7A [Subordination of Rent], all Post-Startup Minimum Rent accrued under Section 6 [Rent] with respect to a Fiscal Year (or portion thereof) shall be paid, without interest, in 16 equal, consecutive, quarterly installments commencing on the first day of the fourth month following the end of such Fiscal Year and continuing quarterly thereafter until paid in full. The expiration or sooner termination of the term of this Lease shall not relieve the Tenant from its obligation hereunder to pay to Landlord Percentage Rent with respect to the gross revenue actually received by Tenant from the sale of electricity, steam or By-Products generated at the Demised Premises (or the fair market value of By-Products used by Tenant), if such sale or use occurred prior to the expiration or sooner termination of the term of this Lease.

c. Interest at the rate of ten percent (10%) per annum shall accrue on any Percentage Rent, Pre-Startup Minimum Rent and Post-Startup Minimum Rent which is due and unpaid commencing on the eleventh day after the same was due and payable until the earlier of (i) the date the same is paid, or (ii), if applicable, the Date of Subordination (as hereinafter defined) and in such latter case shall continue to accrue interest as specified in the following sentence. Interest shall accrue on Subordinated Rent (as defined in Section 7A [Subordination of

Rent]) which would have been payable to, or collectible by, Landlord but for the provisions of Section 7A [Subordination of Rent] ("Unpaid Accrued Subordinated Rent") commencing on the date such rent would have been due, payable and collectible but for the provisions of Section 7A [Subordination of Rent] ("Date of Subordination") until the date such rent is paid to Landlord at a rate equal to the average rate of interest payable from time to time under any then outstanding Project Bonds (as defined in Section 7A [Subordination of Rent]) and if no Project Bonds are then outstanding, at the average rate of interest in effect at the time of payment or satisfaction of the last Project Bonds paid or satisfied. To the fullest extent permitted by law, Unpaid Accrued Subordinated Rent shall remain due to Landlord by Tenant together with interest thereon as specified in this Subsection c and (in addition to the current payment of currently accruing rent) such Unpaid Accrued Subordinated Rent together with interest as aforesaid shall be paid in equal monthly installments equal to the greater of (i) \$33,333 per month or (ii) that amount which will repay all Unpaid Accrued Subordinated Rent plus any interest thereon (whether theretofor or thereafter accrued) in 96 equal monthly installments, commencing on the first day of the month immediately following the date on which such Unpaid Accrued Subordinated Rent becomes payable to, and retainable by, Landlord pursuant to Section 7A [Subordination of Rent]) until paid in full subject, however, to the terms of

Section 7A [Subordination of Rent]; provided, that if such monthly payments are interrupted because of the provisions of Section 7A [Subordination of Rent] the amount of the monthly installment shall be recalculated based on (i) the amount of Unpaid Accrued Subordinated Rent outstanding on the first day of the month immediately following the day on which Unpaid Accrued Subordinated Rent again becomes payable to, and retainable by, Landlord pursuant to Section 7A [Subordination of Rent] and (ii) a new 96 month amortization period. Amounts paid with respect to Unpaid Accrued Subordinated Rent shall first be applied to interest due and payable on such rent and then to such rent. There shall be no penalty for prepayments of any such amounts due. Any prepayment shall first be applied to interest due and payable on such rent and then to such rent in the inverse order of maturity of such rent.

d. Tenant agrees that it shall pay all rent due in accordance with this Section 7 prior to making distributions or payments (other than payments constituting "O&M Payments to Partners" [as hereinafter defined]) to its partners, including payments on notes issued by Tenant to its partners. As used herein, the term "O&M Payments to Partners" shall mean payments made by Tenant to partners of Tenant in connection with the operation and maintenance of the Initial Cogeneration Plant and the Kiln Facility less those portions of any such payments which represent net profit before taxes (as computed in accordance with

generally accepted accounting principles, consistently applied) to the partner or partners involved. Furthermore, the parties hereby agree that nothing in this Lease (i) shall be deemed to subordinate the payment of rent to any other payments (including payments constituting O&M Payments to Partners) except to the extent such payments constitute "Senior Debt" as defined in Section 7A [Subordination of Rent], or (ii) shall be deemed to waive any right of Landlord to collect, or commence an action to collect, rent which is due and unpaid, the payment of which is not prohibited by Section 7A [Subordination of Rent].

7A. SUBORDINATION OF RENT.

a. All Percentage Rent, any and all interest with respect to Percentage Rent and all Post-Startup Minimum Rent (hereinafter collectively called the "Subordinated Rent") is subordinated and subject in right of payment to the prior payment in full when due of all Senior Debt of Tenant in accordance with the provisions of this Section 7A. As used herein, the term "Senior Debt" shall mean all indebtedness, obligations, and liabilities of Tenant pursuant to all notes, letters of credit, loan agreements, reimbursement agreements and/or guarantees (collectively, "Credit Agreements") between (i) Tenant ~~or~~ American Kiln Partners, L.P., A Limited Partnership, a Delaware limited partnership, which will own the Kiln Facility ("AKP") and (ii) any banks or other financial institutions providing a letter of credit or other form of security or credit enhancement for the

tax-exempt bonds being used to finance a portion of the costs of the Initial Cogeneration Plant ("Project Bonds") and/or providing other financing for the Initial Cogeneration Plant or the Kiln Facility including, without limitation, all principal, premium (if any) and interest on all loans and other extensions of credit made pursuant to the Credit Agreements and any and all refinancings, renewals or extensions thereof (including any interest accruing subsequent to the commencement of bankruptcy, insolvency or similar proceedings with respect to Tenant); provided, however, that the term Senior Debt as used herein (i) shall be limited to an aggregate principal amount of indebtedness or liabilities not exceeding at any time the sum of <sup>155,000,000</sup> \$165,000,000, and (ii) shall not include any new loans or other extensions of credit made to Tenant or AKP pursuant to an amendment of any of the Credit Agreements after completion of the Initial Cogeneration Plant and the Kiln Facility unless the proceeds thereof are used for the purpose of operating, maintaining or improving the Initial Cogeneration Plant or the Kiln Facility and, in the case of loans or extensions of credit to Tenant, are approved by the Public Service Commission of West Virginia and further, in the case of loans or extensions of credit to AKP or relating to the Kiln Facility, the aggregate outstanding principal amount of indebtedness or liabilities of AKP or relating to the Kiln Facility shall not at any time exceed the sum of \$10,000,000. The aggregate principal amount of Senior

Debt shall be repayable (except in the case of (a) any refinancings, renewals or extensions thereof, (b) any new loans or other extensions of credit made in accordance with the provisions of clause (ii) of the preceding sentence, (c) the expiration of any letter of credit with respect thereto, (d) default in the payment thereof or (e) acceleration thereof due to an event of default) as set forth in the amortization schedule attached as Exhibit E [Base Case Amortization Schedule] hereto.

b. All rental payments shall be paid in accordance with Section 7 [Rent Payment] until and unless a default in payment of any Senior Debt when due shall occur. Unless and until all Senior Debt shall have been paid when due in full in accordance with its terms, Tenant shall not, directly or indirectly, make or agree to make any payment (in cash or property, by set-off or otherwise), direct or indirect, of or on account of any Subordinated Rent, and no such payment of Subordinated Rent shall be accepted by Landlord if at the time of such payment a default in payment of all or any installments of any Senior Debt when due in accordance with its terms (at its stated maturity, by acceleration or otherwise) shall have occurred and be continuing and Landlord shall have been notified of such default by Tenant or any Leasehold Mortgagee.

c. Upon any payment or distribution of assets of Tenant of any kind or character, whether in cash, property or securities, to creditors upon any dissolution or winding up or



total or partial liquidation or reorganization of Tenant, whether voluntary or involuntary or in bankruptcy, insolvency, receivership or other proceedings, then and in any such event all principal, premium (if any), and interest and all other amounts due or to become due upon all Senior Debt shall first be paid in full before Landlord shall be entitled to retain any assets so paid or distributed in respect of the Subordinated Rent; and, upon any such dissolution or winding up or liquidation or reorganization, any payment or distribution of assets of Tenant of any kind or character, whether in cash, property or securities to which Landlord would be entitled, except as otherwise provided herein, shall be paid by Tenant or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution, or by Landlord if received by it, directly to the holders of Senior Debt (pro rata to each such holder on the basis of the respective amounts of Senior Debt held by such holder) or their representatives, to the extent necessary to pay all Senior Debt in full when due in accordance with its terms (at its stated maturity, by acceleration or otherwise) , after giving effect to any concurrent payment or distribution to or for the holders of Senior Debt, before any payment or distribution is made to or retained by Landlord with respect to the Subordinated Rent.

d. Following confirmation or the effectiveness of any plan of reorganization of Tenant under the Federal Bankruptcy

Code, any state insolvency law or similar laws, "Senior Debt" as used herein shall refer to the Senior Debt as modified as to repayment or otherwise by such plan of reorganization and Subordinated Rent (as modified as to repayment or otherwise by such plan of reorganization) shall be due and payable to Landlord in accordance with the provisions of this Section 7A.

e. Landlord hereby irrevocably authorizes and empowers (without imposing any obligation on) each holder of Senior Debt and such holder's representatives, under the circumstances set forth in the immediately preceding paragraph, to demand, sue for, collect and receive every such payment or distribution described therein and give acquittance therefor, to file claims and proofs of claims in any statutory or nonstatutory proceeding, to vote such Senior Debt holder's ratable share of the full amount of the Subordinated Rent in its sole discretion in connection with any resolution, arrangement, plan of reorganization, compromise, settlement or extension and to take all such other action (including, without limitation, the right to participate in any composition of creditors and the right to vote such Senior Debt holder's ratable share of the Subordinated Rent at creditors' meetings for the election of trustees, acceptances of plans and otherwise), in the name of Landlord or otherwise, as such Senior Debt holder's representatives may deem necessary or desirable for the enforcement of the provisions of this Section 7A. Landlord shall execute and deliver to each

holder of Senior Debt and such holder's representatives all such further instruments confirming the foregoing authorization, and all such powers of attorney, proofs of claim, assignments of claim and other instruments, and shall take all such other action as may be requested by such holder or such holder's representatives in order to enable such holder to enforce all claims upon or in respect of such holder's ratable share of the Subordinated Rent.

f. Should any payment or distribution be collected or received by Landlord and such collection or receipt is not expressly permitted by the foregoing provisions of this Section 7A, Landlord shall forthwith turn over the same to the holders of the Senior Debt or their representatives in the form received (except for the endorsement or the assignment of Landlord when necessary) and, until so turned over, the same shall be held in trust by Landlord as the property of the holders of the Senior Debt; provided, however, that the provisions of this paragraph shall not be applicable to any payment or distribution received by Landlord in violation of paragraph b. of this Section 7A unless Landlord knows or shall receive notice of such violation within thirty (30) days after Landlord's receipt of such payment or distribution.

g. If any Senior Debt shall become or be declared to be immediately due and payable, all Subordinated Rent shall become immediately due and payable, notwithstanding any

inconsistent terms of this Lease. Unless and until all Senior Debt shall have been paid when due (at its stated maturity, by acceleration or otherwise) in full in accordance with its terms, Landlord shall not, without the prior written consent of the holders of Senior Debt, have any right to demand payment of, or institute any proceedings to enforce, any Subordinated Rent if at such time a default in payment of any Senior Debt when due shall have occurred and be continuing.

h. Until the Senior Debt shall have been paid when due in full in accordance with its terms (at its stated maturity, by acceleration or otherwise), Landlord will not, without the prior consent of the holders of the Senior Debt, commence or join with any other person in commencing any proceeding against Tenant or any other person with respect to the Subordinated Rent (or any other indebtedness of Tenant) under any bankruptcy, reorganization, readjustment of debt, dissolution, receivership, liquidation or insolvency law or statute now or hereafter in effect in any jurisdiction, nor shall Landlord, without the prior written consent of the holders of the Senior Debt, participate in any assignment for benefit of creditors, compositions, or arrangements with respect to Tenant's debts with respect to the Subordinated Rent.

i. Subject to the payment in full of all Senior Debt, Landlord shall be subrogated to the rights of the holders of Senior Debt to receive payments or distributions of assets of

Tenant made on the Senior Debt until the Subordinated Rent shall be paid in full; provided, however, that nothing herein contained shall be deemed to assign or grant to Landlord, or subrogate Landlord to, any right of a holder of Senior Debt as a mortgagee, secured party or other lien or pledgeholder to any property of Tenant which secures such Senior Debt.

j. Nothing contained in this Section 7A is intended or shall impair as between Tenant, its creditors other than the holders of Senior Debt, and Landlord, the obligation of Tenant, which is absolute and unconditional, to pay to Landlord, as and when the same shall become due and payable in accordance with its terms, the Subordinated Rent, subject to the rights of holders of Senior Debt as herein provided, or to affect the relative rights of Landlord and creditors of Tenant other than the holders of Senior Debt. Nothing contained in this Lease shall be construed to subject Landlord's fee title to the Demised Premises or to the waste coal material to any lien to secure repayment of the Senior Debt or any other obligations of the Tenant.

k. The terms of this Section 7A, the subordination effected thereby, and the rights of the holders of the Senior Debt, shall not be affected by (i) any amendment of or addition or supplement to any Credit Agreement or any Senior Debt or any mortgage, security agreement, instrument or other agreement relating thereto, (ii) any exercise or non-exercise of

any right, power or remedy under or in respect of any Credit Agreement or any Senior Debt or any mortgage, security agreement, instrument or other agreement relating thereto, or (iii) any waiver, consent, release, indulgence, extension, renewal, modification, delay, or other action, inaction or omission in respect of any Credit Agreement or any Senior Debt or any mortgage, security agreement, instrument or other agreement relating thereto, whether or not Landlord shall have had notice or knowledge of any of the foregoing.

8. TAXES.

a. As further additional rent during the term hereof, Tenant shall pay any increases in Real Estate Taxes (hereinafter defined) becoming due and payable on the Demised Premises during the term hereof, arising solely by reason of any additions or improvements which constitute a part of the real estate under local tax law and are made or placed on the Demised Premises by Tenant and not arising by reason of Tenant's use of the Demised Premises; provided, however, that Landlord shall remain responsible for and shall pay or cause to be paid, prior to the last date on which such payment can be made without penalty or interest, all other Real Estate Taxes becoming due and payable during the term hereof on the Demised Premises or any other real property included in any tax lot of which the Demised Premises or any portion thereof is a part including, without limitation, those arising by reason of Tenant's use of the Demised Premises

("Landlord's Real Estate Taxes"). Notwithstanding the foregoing, during any period that Landlord is prevented from accepting or collecting rent by Section 7A [Subordination of Rent] ("Rent Subordination Period"), Tenant shall pay Landlord's Real Estate Taxes (such amounts paid by Tenant are hereinafter called "Tenant Tax Advances"). Tenant shall be entitled to credit against rent and Unpaid Accrued Subordinated Rent for any Tenant Tax Advances paid by or on behalf of Tenant or any Leasehold Mortgagee together with interest thereon at the same rate, if any, charged by Landlord on the Unpaid Accrued Subordinated Rent. The credit shall be available and shall be first applied in the inverse order against Unpaid Accrued Subordinated Rent as it is paid; i.e., it shall be applied against the last amounts of Unpaid Accrued Subordinated Rent due and paid to Landlord. If for any reason following repayment of all Unpaid Accrued Subordinated Rent there is a remaining available credit, it shall be applied against rent then or next due under the Lease. Such Real Estate Taxes shall be payable as the Landlord directs, either to Landlord or the appropriate taxing authority, within thirty (30) days following written demand therefor (together with copies of the relevant tax bills) by Landlord or ten (10) days prior to the last day which will permit payment of such taxes by Landlord without interest or penalty, whichever is later. Within thirty (30) days after payment, Landlord will furnish to Tenant official receipts of the appropriate authority, or other proof

satisfactory to Tenant, evidencing the payment. Notwithstanding anything to the contrary herein contained and to effect a partial sharing by Tenant of Landlord's Real Estate Taxes, Tenant shall, in addition to any other amounts due hereunder, pay as Landlord directs, either to Landlord or directly to the appropriate taxing authority: (i) \$5,000 as Tenant's partial share of Landlord's Real Estate Taxes assessed during each whole or partial calendar year (pro-rated for any partial year) during the term of this Lease following Startup and payable in arrears in the tenth (10th) day of January of the year following the year in which assessed; and, in addition thereto, (ii) that amount by which Landlord's Real Estate Taxes assessed for any whole or partial calendar year (pro-rated for any partial year) during the term of this Lease following Startup exceeds fifty percent (50%) of the gross amount of all Post-Startup Minimum Rent and Percentage Rent accrued during such whole or partial calendar year, which amount shall be due and payable in arrears on the tenth (10th) day of February of the year which follows the calendar year during which such amount is accrued.

b. As further additional rent for the term hereof, Tenant shall pay directly to the appropriate authority all Impositions (hereinafter defined), if any, becoming due and payable with respect to the Demised Premises, the Tenant Property (as defined in Section 22 [Tenant Property]), or the operation thereof, during the term hereof. Any such Impositions shall be



due and payable on the last date which will permit payment thereof, before any interest or penalty attaches. Upon request, Tenant will furnish to Landlord official receipts of the appropriate authority, or other proof satisfactory to Landlord, evidencing the payment of each Imposition.

c. Tenant shall have the right, at its sole cost and expense, to contest the validity, application, or amount of any Imposition or Real Estate Tax payable by Tenant hereunder, and Landlord, at Tenant's expense, shall cooperate with Tenant and shall permit Landlord's name to be used in such contest and will execute and deliver any appropriate papers which may be necessary or proper with respect to such contest; provided, however, Tenant shall pay all such Impositions and Real Estate Taxes prior to the commencement of enforcement proceedings or foreclosure against, or sale of, the Demised Premises, or any part thereof or any interest therein, by any party seeking payment or enforcement of such Impositions or Real Estate Taxes.

d. As used in this Lease the term "Real Estate Taxes" shall mean all ad valorem taxes and assessments imposed upon the Demised Premises and commonly known as real property taxes, and any payments to the extent the same are intended to be a substitute for or in lieu of such taxes or assessments. As used in this Lease the term "Imposition" shall mean all personal property taxes payable with respect to the Tenant Property, all assessments or charges for public improvements, benefits or

utilities consumed or used by Tenant on the Demised Premises within the term hereof; water sewer or other rents, rates and charges; and all excises (including excise taxes imposed on the amount of rental received by Landlord under the terms of this Lease), levies, license fees, permit fees, inspection fees and other authorization fees and other similar charges. Neither Real Estate Taxes nor Impositions shall include any assessment arising in connection with any income, profit, franchise, transfer, capital stock or other like taxes determined on the basis of Landlord's capital stock, general income or revenues, which taxes or assessments shall be the responsibility and obligation of Landlord.

e. Landlord and Tenant agree to do all acts necessary to assure that Tenant or its designated nominee shall receive all bills or statements for Impositions. In the event any bill or statement for any Imposition is received by Landlord, Landlord shall promptly forward the bill or statement to Tenant or its designated nominee for payment by Tenant. If the bill for any Imposition includes not only the Demised Premises, but other lands and improvements as well, then Tenant shall pay the amount equitably allocated to the Demised Premises and Landlord shall pay the remainder and upon Tenant's request, Landlord, at Landlord's cost, shall take such actions as are necessary to cause the Demised Premises to comprise a separate tax lot without the inclusion of any other lands or improvements therein,

including without limitation any land subdivision proceedings as may be necessary. Landlord warrants and represents to Tenant that if the Demised Premises constitutes portions of separate tax lots, then the failure of any person or entity other than Landlord to pay any real estate tax with respect to any real property not a part of the Demised Premises shall not result in the sale of the Demised Premises or any part thereof for non-payment of such taxes. Landlord and Tenant shall cooperate to cause the appropriate authority to separately assess those items of Real Estate Taxes payable by Tenant from those payable by Landlord.

f. In the event any Real Property Taxes or Impositions relate to periods prior to the Commencement Date, or after the expiration or sooner termination of the term of this Lease, the same shall be adjusted and apportioned between Landlord and Tenant as of the Commencement Date or the date of expiration or termination of the term, as the case may be.

9. COMPLIANCE WITH LAWS.

a. Landlord hereby represents and warrants that on the date hereof and at the Commencement of Construction:

(i) The Demised Premises are and will be in full compliance with then applicable laws, orders and regulations of, and all permits and licenses applicable to the Demised Premises issued by, all federal, state, county and municipal authorities having jurisdiction, including such laws, orders, regulations,

permits and licenses, as relate to reclamation of all or any part of the Demised Premises and treatment of surface water runoff on or from the Demised Premises;

(ii) Neither the Demised Premises nor any activity conducted thereon is or will be the subject of any outstanding enforcement or compliance order issued by any federal, state, county or municipal authority having jurisdiction, nor does or will the Landlord have any knowledge or notice of any such enforcement or compliance order which is threatened or proposed; and

(iii) Consummation of the transactions contemplated by this Lease will not result in a violation of, or in any way impair, such laws, orders, regulations, permits and licenses.

b. The obligation to perform all testing, reclamation and restoration of the Demised Premises relating to the waste coal material and all treatment of surface water runoff on or from the Demised Premises that are required to be performed under the applicable Licenses and Permits, laws, orders and regulations of all federal, state, courts and municipal authorities having jurisdiction ("Reclamation Obligations") shall be borne by Landlord, at Tenant's expense, (to the extent provided in Section 4 [Term; Renewal Option] hereof) until the Commencement Date. From the Commencement Date and continuing after the expiration or other termination of this Lease (for whatever reason), Tenant shall be responsible for that portion of the Reclamation

Obligations ("Tenant's Continuing Obligations") to the extent that the same arise from (A) Tenant's conduct of Tenant's business or the operation of Tenant's equipment on the Demised Premises or (B) any condition on the Demised Premises created by Tenant. During the period from the Commencement Date until the expiration or other termination of this Lease (for whatever reason) the responsibility for, and cost of, all Reclamation Obligations other than Tenant's Continuing Obligations, but including Reclamation Obligations arising from any cause or condition existing as of the date of this Lease shall be borne by Landlord. After the expiration or other termination of this Lease (for whatever reason), Landlord shall be responsible for all Reclamation Obligations other than Tenant's Continuing Obligations, but including Reclamation Obligations arising from any cause or condition existing as of the date of this Lease.

c. Tenant shall give prompt notice to Landlord of any written notice it receives of the violation of any law or requirement of public authority, and during the term of the Lease, at its expense, shall comply with all applicable laws and regulations of public authorities that shall, with respect to the Demised Premises, the use and occupancy thereof, or the abatement of any nuisance, impose any violation, order, or duty on Landlord or Tenant, to the extent the same arise from: (i) Tenant's particular use of the Demised Premises; (ii) the manner of conduct of Tenant's business or operation of its equipment

therein; (iii) any cause or condition created by or at the instance of Tenant, or (iv) the breach of any of Tenant's obligations hereunder. Tenant need not comply with any such law or regulation of public authority for so long as Tenant shall be contesting the validity thereof, or the applicability thereof to the Demised Premises, in accordance with this Section. Landlord, at its expense, shall comply with all other such laws, orders and regulations of public authorities as shall affect the Demised Premises or relate to its use, but may similarly contest the same, subject to conditions reciprocal to subsections (i), (ii) (iii) and (iv) of Subsection d. of this Section.

d. Tenant may, at its expense (and, if necessary, in the name of, but without expense to, Landlord) contest, by appropriate proceedings prosecuted diligently and in good faith, the validity, or applicability to the Demised Premises, of any law or regulation of public authority, and Landlord shall cooperate with Tenant in such proceedings, provided that:

(i) Landlord shall not be subject to criminal penalty or to prosecution for a crime, nor shall the Demised Premises or any part thereof be subject to being condemned or vacated, by reason of Tenant's non-compliance or otherwise in connection with such contest;

(ii) Tenant shall defend, indemnify and hold Landlord harmless from and against all liability, loss or damage that Landlord shall suffer by reason of such non-compliance or

contest, including reasonable attorney's fees and other expenses reasonably incurred by Landlord;

(iii) Tenant shall defend, indemnify and hold Landlord harmless from and against all liability, loss or damage that Landlord shall suffer by reason of such non-compliance or contest, including reasonable attorney's fees and other expenses reasonably incurred by Landlord; and

(iv) Tenant shall keep Landlord advised as to the status of such proceedings.

Landlord shall be deemed subject to prosecution for a crime, within the meaning of this subsection, if Landlord, or any officer of Landlord, individually is charged with a crime of any kind or degree whatsoever, whether by service of a summons or otherwise, unless such charge is withdrawn before Landlord or such officer (as the case may be) is required to plead or answer thereto.

e. Hazardous Materials. Landlord represents, warrants and covenants that Landlord has not used or deposited or permitted others to use or deposit Hazardous Materials (as defined hereinafter) on, from, or affecting the Demised Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of Landlord's knowledge, no other person,

including prior owners of the Demised Premises or any tenants, subtenants, prior tenants or prior subtenants have deposited or used Hazardous Materials on, from, or affecting the Demised Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. To the best of Landlord's knowledge, no Hazardous Materials exist on the Demised Premises as of the Commencement Date. Landlord, with respect to its activities on the Demised Premises in connection with performance of its obligations under this Lease, and Tenant, with respect to its uses of the Demised Premises, shall keep or cause the Demised Premises to be kept free of Hazardous Materials. All Hazardous Materials (i) on, from or affecting the Demised Premises at the Commencement Date or resulting from conditions existing on the Demised Premises at the Commencement Date, or (ii) resulting from any activity of Landlord on the Demised Premises permitted by this Lease are referred to herein collectively as "Landlord's Hazardous Materials". All Hazardous Materials resulting from any use which Tenant may make of the Demised Premises are referred to herein as "Tenant's Hazardous Materials". Landlord's and Tenant's obligations with respect to Landlord's Hazardous Materials and Tenant's Hazardous Materials, respectively, shall be as follows: (a) to conduct and complete all investigations, studies, sampling and testing, and all



remedial, removal and other actions necessary to clean up and remove such Hazardous Materials, on, from, or affecting the Demised Premises (i) in accordance with all applicable federal, state and local laws, ordinances, rules, regulations and policies; (ii) to the satisfaction of the other party hereto; and (iii) in accordance with the orders and directives of all federal, state and local governmental authorities, and (b) to defend, indemnify and hold harmless the other party hereunder, its employees, agents, officers, directors and partners (as applicable), 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 (i) the presence, disposal, release or threatened release of such Hazardous Materials which are on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (iii) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials; (iv) any violation of laws, orders, regulations, requirements or demands of government authorities which are based upon or in any way related to such Hazardous Materials; and/or (v) any notice, complaint, order, citation, letter, inquiry, notice or other communication, whether written

or oral, from any governmental authority or other source in any way related to such Hazardous Materials; including, without limitation, attorney and consultant fees, investigation, laboratory and engineering fees, court costs and litigation expenses. For purposes of this subsection, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined 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.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule or regulation. The provisions of this subsection shall be in addition to any and all other obligations and liabilities Landlord may have to Tenant at common law, and shall survive the termination of this Lease.

10. ASSIGNMENT OR SUBLETTING; SEPARATE PARCELS; SEPARATION OF LEASEHOLD ESTATE.

a. Tenant (including any subsequent subtenant or assignee hereunder) shall have the right at any time or times to freely (i) assign, mortgage, pledge or encumber all or any part or parts of this Lease or any sublease (and following any

assignment to sublet all or any part or parts of the Demised Premises) and (ii) sublet all or any part or parts of the Demised Premises, in all cases without the consent of Landlord. Any assignee or subtenant shall, in Tenant's discretion, be entitled to all of the rights and benefits to which Tenant is entitled, and shall be subject to all of the liabilities and obligations to which Tenant is subject, under the terms of this Lease. In the event of any assignment of the entire Lease, any Tenant so assigning the Lease shall thereupon be released from further liability and Landlord shall look exclusively to such assignee for the performance of all of Tenant's covenants contained in this Lease.

b. To facilitate financing, or for property taxation or other purposes deemed necessary or desirable by Tenant at any time or times, Tenant shall have the right and option, upon written request to Landlord and with the written consent of each Leasehold Mortgagee, to require separation of the Grant Town Parcel and/or the Joanna Parcel (collectively, the "Real Estate") into two or more separate parcels, and any such separation may, at Tenant's option, be accomplished by separation of the fee estate (e.g., by deeds from Landlord to a nominee and back, subject to this Lease or any other lease with respect to the Real Estate), with or without separation of this Lease into separate leases. Any division pursuant to this Section 10(b) shall divide the Real Estate so that each portion thereof and the improvements

located thereon shall constitute a complete and separate functional unit with all necessary associated ingress, egress and appurtenances (any or all of which may be provided through easements, covenants or other agreements by an instrument or instruments as set forth in Section 10(d)). The costs of any division pursuant to this Section 10(b) shall be borne by Tenant.

c. At its option, exercisable at any time or times, Tenant may request separation of the Demised Premises or any part or parts thereof in any manner by means of separate leases which are independent of any other leases and are direct between Landlord and the tenant thereunder. Tenant, AKP and any one or more other persons affiliated with, or independent of, Tenant may be the tenant or lessee under such separate leases. The leases to cover the separate portions of the Demised Premises shall be substantially identical to this Lease in all relevant respects (i.e., shall incorporate all the provisions of this Lease including the provisions of this Section 10 and Section 23 [Tenant Financing; Leasehold Mortgages]) except as to the extent of the demised premises being leased, commencement date, termination date, rent, and obligations concerning reclamation and hazardous waste, each of which shall be provided for as follows:

(1) the commencement date for the separate leases shall be the date of the separation of the Demised Premises, unless otherwise mutually agreed by the parties;

(2) the initial term of all separate leases shall end on the same date notwithstanding that different commencement dates apply to those separate leases;

(3) the rent under leases for all the portions of the Demised Premises shall in the aggregate equal the rent provided for in this Lease with the amount to be paid by each tenant, and any resulting modifications of the rent provisions of this Lease, to be solely determined by Tenant; and, furthermore, the rent under each such lease shall be guaranteed as to payment by American Bituminous Power Partners, L.P., a Delaware limited partnership, without any obligation on the part of Landlord to first exhaust Landlord's remedies against the tenant under such separate lease;

(4) Tenant's obligations concerning reclamation and Hazardous Materials may be apportioned among the tenants of the separate portions of the Demised Premises as Tenant, in its sole discretion, may determine; and

(5) the extent of the demised premises to be leased shall, subject to any limitations imposed by this Lease, be determined by Tenant and Tenant, in its discretion, may impose limitations on the use of such property which are in addition to the limitations imposed by this Lease, which additional limitations shall benefit, and be enforceable by, Tenant only (and its successors and assigns) and not by Landlord.

One of the purposes of this Section 10(c) is to enable Tenant to create new, separate and independent leases so that (if desired by Tenant) each different use, structure or improvement on the Real Estate may be developed, operated, owned and financed independent of any other (e.g., separate leases could thereby be created for the portions of the Real Estate occupied by each of the Plants, the Kiln Facility, or any use, structure or improvement otherwise permitted under this Lease). Notwithstanding the foregoing, any portions of the Demised Premises on which waste coal material may from time to time be located shall be covered by the lease which covers the portion of the Demised Premises on which the Initial Cogeneration Plant is located. The cost of separating the Demised Premises pursuant to this Section 10(c) shall be borne by Tenant.

d. The agreements or instruments executed in connection with any sublet or separation of the Real Estate or the Demised Premises, whether horizontally, vertically or both, shall provide for all cross-easements, licenses or other rights, covenants, agreements or restrictions appurtenant to or running with such parcels, which Tenant shall deem necessary or appropriate, including but not limited to such matters as ingress, egress and access generally, foundations, subjacent and lateral support generally, common or encroaching facilities, if any, to be constructed (such as utility, electrical and mechanical systems), and maintenance responsibilities and rights

in connection with all of the foregoing. Such agreements and instruments shall be executed by all tenants having an interest in the rights being conferred as well as by Landlord. Any such instrument that provides a lessee under one lease (or any other party) any rights to use a portion of the improvements or Real Estate covered by a different lease or located upon a separate parcel, shall provide for a full and equitable sharing of all costs associated with such usage. Landlord agrees to execute and deliver any such instrument or instruments or consents thereto reasonably requested by Tenant at any time to implement the provisions of this Section 10, and shall not unreasonably withhold or delay such execution or consent. The costs of the agreements and instruments contemplated by this Section 10(d) shall be borne by Tenant.

11. MECHANICS' LIENS.

During the term hereof, Tenant shall discharge or contest within fifteen (15) days after receiving notice from Landlord of the filing of any suit to perfect and enforce any notice of a mechanic's lien filed against Landlord's interest in the Demised Premises or any part thereof, arising through Tenant, or any person who furnished work, labor, services or materials to the Demised Premises or the fixtures or equipment located thereon, and claiming directly or indirectly through or under Tenant, or through or under any act or omission of Tenant for or

on account of any labor or material furnished for any improvements, or any other matter or thing whatsoever.

12. NO CLAIMS AGAINST LANDLORD.

Unless expressly provided to the contrary herein, nothing contained in this Lease shall constitute a request by Landlord, express or implied, for the performance by Tenant or its agents of any labor or services or the furnishing of any materials or other property in respect of the Demised Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any labor or services or the furnishing of any materials or other property that would give rise to any claim against Landlord or to any liens against any rents or other sums payable to Landlord hereunder.

13. LIABILITY INSURANCE.

a. Tenant shall, at its own cost throughout the term of this Lease, provide policies of liability and similar insurance generally known as public liability policies insuring Tenant, any Leasehold Mortgagee, those persons designated by Tenant and Landlord against claims or demands for injuries received in connection with the development, use, operation and maintenance of the Demised Premises, or any part thereof by Tenant, with minimum limits of Five Million Dollars (\$5,000,000) on account of bodily injuries or death as the result of any one accident or disaster, and property damage insurance with minimum



limits of One Million Dollars (\$1,000,000). All such policies of insurance shall be with good and responsible insurance companies authorized to sell insurance in West Virginia, reasonably approved by Landlord, and shall not be subject to cancellation or modification except upon at least thirty (30) days' prior written notice to each additional insured. The original of such policies, or certificates of the issuance thereof, properly endorsed, shall be delivered to Landlord (before the expiration of any policies for which the same are a replacement) as evidence of the compliance by Tenant with the terms and provisions of this Section.

b. During such periods as Landlord is conducting activities on the Demised Premises which are permitted under this Lease, it shall, at its own cost, provide policies of liability and similar insurance generally known as public liability policies insuring Landlord, the Leasehold Mortgagees and Tenant against claims or demands for injuries received in connection with the conduct by Landlord of permitted activities on the Demised Premises with minimum limits of Five Million Dollars (\$5,000,000) on account of bodily injuries or death as the result of any one accident or disaster, and property damage insurance with minimum limits of One Million Dollars (\$1,000,000). All such policies of insurance shall be with good and responsible insurance companies authorized to sell insurance in West Virginia, reasonably approved by Tenant, and shall not be subject

to cancellation or modification except upon at least thirty (30) days' prior written notice to each additional insured. The original of such policies, or certificates of the issuance thereof, properly endorsed, shall be delivered to Tenant (before the expiration of any policies for which the same are a replacement) as evidence of the compliance by Landlord with the terms and provisions of this Section.

c. If Mon Power or any affiliate acquires title to the Demised Premises or otherwise succeeds to the rights of Tenant under this Lease, Mon Power may provide at its own cost throughout the remaining term of this Lease, in lieu of the insurance required by Subsection a. of this Section, a program of insurance (which may include self-insurance) insuring Mon Power or such affiliate, any Leasehold Mortgagee, those persons designated by Mon Power and Landlord against the risks and claims described in Subsection a. of this Section; provided that Mon Power, at its sole cost, demonstrates to the reasonable satisfaction of Landlord and each Leasehold Mortgagee that such program of insurance does not materially decrease the protections and rights that would be provided to Landlord and any Leasehold Mortgagee under policies of insurance meeting the requirements of Subsection a. of this Section.

14. DEFAULT BY TENANT AND LANDLORD'S REMEDIES.

a. Each of the following events shall constitute an "Event of Default" under this Lease:

(i) If Tenant shall default in the payment of rent or additional rent, or any part thereof, on the due date thereof and the default shall continue for a period of forty-five (45) days after receipt by Tenant of written notice of the default and demand for payment; or

(ii) If Tenant shall default in the performance of any of the other material terms, covenants and conditions in this Lease contained on the part of Tenant to be kept or performed, and said default remains uncured for a period of seventy-five (75) days after receipt by Tenant of written notice of such default or, if such default cannot, with the application of reasonable efforts, be cured within such seventy-five (75) day period and Tenant fails within such period to commence reasonable efforts to cure such default and thereafter to diligently pursue such efforts until cured.

b. Subject to Landlord's compliance with the provisions of Section 23 [Tenant Financing; Leasehold Mortgages], and also subject to the limitations set forth in Section 7A [Subordination of Rent] and subsection c. of this Section, Landlord may, upon the occurrence of an Event of Default, commence an action at law or in equity to recover all rent then owed Landlord without acceleration or other damages with respect

to such unpaid rent or, with respect to defaults other than nonpayment of rent, to obtain monetary damages for such default including the right to enforce and collect any judgment entered in a suit to recover such rent or damages or specific performance of the obligation in default.

c. Landlord agrees that its sole and exclusive remedies for any and all breaches by Tenant of this Lease shall be, subject to Landlord's compliance with the provisions of Section 23 [Tenant Financing; Leasehold Mortgages] and also subject to the limitations set forth in Section 7A [Subordination of Rent]), the right to sue for unpaid rent and for monetary damages for defaults other than the non-payment of rent including the right to enforce and collect any judgment entered in such suit and the right to obtain specific performance of Tenant's obligations hereunder. Notwithstanding anything to the contrary herein contained or now or hereafter provided by law or in equity, and as consideration for, and to induce Tenant to construct the Initial Cogeneration Plant, Landlord hereby expressly waives any and all rights or remedies granted by or under any present or future laws to re-enter the Demised Premises, to dispossess Tenant, any Leasehold Mortgagee, any assignee or any subtenant or any other occupant thereof or remove their effects not previously removed by them, to accelerate any rents, or to terminate this Lease for any reason or in any manner.

15. TENANT HOLDING OVER.

If Tenant shall not immediately surrender possession of the Demised Premises at the expiration or earlier termination by Tenant of this Lease, Tenant shall become a tenant from month to month, at the same rent payable with respect to the preceding term. Regardless of whether Tenant shall or shall not have become a tenant from month to month, Landlord shall continue to be entitled to retake possession of the Demised Premises at any time upon thirty (30) days prior written notice to Tenant. If Tenant shall fail to surrender possession of the Demised Premises immediately upon the expiration or earlier termination by Tenant of this Lease, all of the obligations of Tenant and all rights of Landlord applicable during the term of this Lease shall be equally applicable during such period of subsequent occupancy, whether or not a month to month tenancy shall have been created as aforesaid.

16. WAIVER.

Any waiver of any covenant or condition of this Lease shall extend to the particular case only, and only in the manner specified, and shall not be construed as applying to or in any way waiving any further or other rights hereunder. No provision of this Lease shall be deemed to have been waived, unless such waiver is in writing. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Lease in whole or in part unless the agreement is in

writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

17. ESTOPPEL CERTIFICATES AND OPERATING STATEMENTS.

a. Tenant shall from time to time, upon request of Landlord or any other person, firm, corporation or other entity having an interest in the Demised Premises, deliver or cause to be delivered to Landlord, such other person or any person designated by any of the foregoing, within thirty (30) days from the date of demand therefor, without charge, a written statement, duly executed and acknowledged in form for recording, certifying (i) that this Lease is valid and subsisting and in full force and effect as of the date of the certification and has not been amended, and if amended, the dates of such amendments, (ii) that Tenant has no knowledge of any default by Landlord under any of the terms of this Lease, or if Landlord is in default, the exact nature of the default, (iii) that Tenant is not in default under any of the terms of this Lease (except as may be expressly set forth by Tenant as a qualification of the certification), (iv) the date through which all rents hereunder have been paid, (v) the amount of any prepaid rents under this Lease and (vi) any other reasonably requested information which does not unreasonably burden or obligate Tenant or reduce or restrict Tenant's rights.

b. Landlord shall from time to time, upon request of Tenant, any Leasehold Mortgagee or any other person having an

interest in the Demised Premises, deliver or cause to be delivered to Tenant, such other person or any person designated by any of the foregoing within thirty (30) days from the date of demand, without charge, a written statement, duly executed and acknowledged in form for recording, certifying (i) that this Lease is valid and subsisting and in full force and effect as of the date of the certification and has not been amended, and if amended, the dates of such amendment, (ii) that Landlord has no knowledge of any default by Tenant under any of the terms of this Lease, or if Tenant is in default, the exact nature of the default, (iii) that Landlord is not in default under any of the terms of this Lease (except as may be expressly set forth by Landlord as a qualification of the certification), (iv) the date through which all rents hereunder have been paid, (v) the amount of any prepaid rents under this Lease and (vi) any other reasonably requested information which does not unreasonably burden or obligate Landlord or reduce or restrict Landlord's rights.

c. Tenant shall furnish to Landlord annual operating statements of Tenant with respect to the Demised Premises showing the gross receipts of Tenant with respect to Primary Businesses and O&M Payments to Partners certified by Tenant and prepared in a manner reasonably satisfactory to Landlord. All such operating statements shall be supplied not later than one hundred twenty (120) days after the end of each calendar year. Tenant agrees to

make those portions of its books, records and tax returns (federal, state and local) relating to the information contained on the operating statements available for inspection by Landlord and its agents and representatives upon request, at any reasonable time, but only once in any calendar year. Upon request, Tenant shall also furnish to Landlord any interim operating statements and information which Tenant otherwise prepares, as Landlord may from time to time reasonably require. Landlord may, at any reasonable time but only once in any calendar year, cause an audit of the information contained on the operating statements to be made by a certified public accountant to be selected by Landlord. If any annual statement of annual gross receipts made by Tenant to Landlord is found to be less by at least 5% than the annual gross receipts properly reported by any such audit, then Tenant shall, within ten (10) days of Landlord's submission of a statement therefor, pay the reasonable cost of such audit; otherwise the cost of such audit shall be paid by Landlord. If such audit demonstrates that additional rent is payable by Tenant to Landlord then Tenant shall, within ten (10) days of Landlord's submission of a statement therefor, pay such additional rent together with interest at the rate of ten percent (10%) per annum from the date the same should have been paid until the date paid. If such audit demonstrates that less rent was due and payable than was paid by Tenant to Landlord then Tenant shall be entitled to a credit for such overpaid rent



subrogation to the rights of Landlord against third parties, shall have the option and right but not the obligation, to restore, replace or rebuild the Demised Premises, or any part thereof, and Tenant shall continue to pay the rent reserved in this Lease as well as all other charges payable hereunder in accordance with the terms, covenants and conditions of this Lease, without abatement, diminution or reduction. Tenant shall not be required to remove damaged property or debris from, or to grade or landscape the damaged or destroyed portion of the Demised Premises.

19. MON POWER PROPERTY.

Landlord acknowledges and agrees that Mon Power may, from time to time during the term of this Lease, at its or Tenant's expense, make and construct, on, in, to and under the Demised Premises such site improvements as may, in Mon Power's discretion, be necessary or desirable to carry out Mon Power's obligations and rights under the EEPA. Under the terms of the EEPA, certain improvements made by Mon Power shall become the property of Tenant while other improvements shall remain the property of Mon Power ("Mon Power Property"). Exhibit F [Description of Mon Power Property] describes generally the improvements which Tenant anticipates will be Mon Power Property. Those improvements which shall become the property of Tenant shall be deemed Tenant Changes. Title to all Mon Power Property shall remain solely in Mon Power which shall be entitled to

exercise, with respect to all Mon Power Property, all the rights provided to Tenant under this Lease with respect to Tenant Changes and Tenant Property (as hereinafter defined) together with all rights of access necessary or desirable to permit exercise of such rights. In addition to the foregoing, Landlord shall immediately upon request execute and deliver such documents in recordable form as are necessary to grant to Mon Power or its subsidiaries or affiliates a permanent easement on, over and across the Demised Premises for the erection, construction, operation, maintenance, modification, repair or reconstruction of an electric transmission substation, electric transmission lines and road to gain access to the foregoing to be generally located as depicted on the Map attached as Exhibit F-1 [Mon Power Easement Map]. Such easement shall provide that at any time or times Tenant during the term of this Lease and Landlord following expiration or sooner termination of the term of this Lease may at Tenant's or Landlord's cost, respectively, cause any or all of the transmission lines and/or the road (or any parts thereof) and the easements relating thereto to be relocated to other areas on the Demised Premises in such a manner as will not unreasonably interfere with Mon Power's use thereof.

20. NONLIABILITY OF LANDLORD FOR DAMAGE OR THEFT.

Neither Landlord, nor Landlord's agents, shall be liable for any damage to property of Tenant, nor for loss of any property of Tenant or others by theft or otherwise except to the

extent occurring by reason of the negligence or willful act of Landlord or Landlord's agents.

21. TRANSFER ON TERMINATION.

Within ninety (90) days after the Termination Date (or the expiration or other sooner termination by Tenant of this Lease) Tenant shall pay Landlord all past due rent or additional rent and shall pay any other sums payable under this Lease. Within nine (9) months after the Termination Date (or the expiration or other sooner termination by Tenant of this Lease):

a. Tenant may but shall not be required to remove any "Tenant Property" (as defined in Section 22 [Tenant Property] hereof) (but excluding that portion of the same which represents any contribution of Landlord to the cost thereof) then remaining on the Demised Premises. Tenant's sole obligation to Landlord in connection with the removal of Tenant Property shall be to comply with the provisions of Section 9 [Compliance with Laws] up to, but not beyond, the Termination Date (or the expiration or other sooner termination by Tenant of this Lease). Except to the extent required by Section 9 [Compliance with Laws], Tenant shall not be required to restore the Demised Premises to its original condition, regrade the Demised Premises or remove from the Demised Premises any Tenant Changes or any Local By-Products, Foreign By-Products or other waste material deposited on the Demised Premises.

b. Tenant shall assign to Landlord (except as provided to the contrary in Sections 22 [Tenant Property] and 23 [Tenant Financing; Leasehold Mortgages] hereof) all of Tenant's right, title and interest in and to the Demised Premises and any Tenant Property except to the extent of Tenant Property actually removed as aforesaid (subject to any liens or encumbrances thereon, including, if then still outstanding, the Tenant Liens and any Leasehold Mortgage); and

c. Tenant shall assign to Landlord all of Tenant's right, title and interest in all permits, licenses and approvals, pertaining to the operation of the Plants on the Demised Premises (to the extent the same may be so assigned but subject to any liens or encumbrances thereon in favor of any Leasehold Mortgagees). Thereupon, Tenant shall have no, and shall thereupon be deemed released from, further liability or obligation to Landlord on account of this Lease, and all claims of Landlord on account of a breach or non-performance by the Tenant of the terms hereof (including any judgments arising with respect thereto) shall be extinguished. The rights of Landlord contained in this Section are subject to the limitations on their exercise contained in Section 23 [Tenant Financing; Leasehold Mortgages] of this Lease.

22. TENANT PROPERTY.

Title to all buildings, improvements, property or equipment and any alterations thereof and additions thereto

hereafter furnished by or at the expense of Tenant or to, for or on behalf of Tenant by others (including any Plants or Tenant Changes but excluding any Mon Power Property), whether or not the same shall be affixed to the Demised Premises ("Tenant Property"), shall remain solely in Tenant. All Tenant Property may be removed by Tenant at any time. Landlord hereby waives and subordinates any claim, demand or lien Landlord may have or acquire with respect to Tenant's Property in favor of any persons who at any time or times lend money or otherwise provide credit to Tenant for any reason or who hold a mortgage, deed of trust or a security interest in Tenant's Property. Upon Tenant's request Landlord shall execute such documents as reasonably required to confirm the foregoing waiver and subordination. Nothing in this Lease shall preclude or prevent Tenant's creditors or any other person holding a security interest in any Tenant Property from removing the same in the event of a default by Tenant under any Leasehold Mortgage or any security agreement relating thereto.

23. TENANT FINANCING; LEASEHOLD MORTGAGES.

a. Funding for the purchase, development, construction, maintenance and operation of the Initial Cogeneration Plant, any other Plants, the Kiln Facility or Tenant Property or for the conduct of any other Permitted Use may, at the sole option of Tenant and without Landlord's consent, now or at any time or times be obtained through a loan or loans to Tenant from third parties, or through other extensions of credit

to or for the benefit of Tenant by third parties (including, without limitation, the issuance of letters of credit for the account of Tenant), which third parties may be affiliates of Tenant, which loans or other extensions of credit may be refinanced by a loan or loans or other extensions of credit from those third parties or from others (all such lenders and other providers of credit are collectively, "Lenders"). Such loans or other extensions of credit may be evidenced by one or more notes, letters of credit, loan agreements and/or reimbursement agreements which may be replaced by one or more notes, letters of credit, loan agreements and/or reimbursement agreements (collectively, the "Notes"). In addition, such loans or other extensions of credit and Tenant's obligations ("Tenant's Utility Obligations") to any utility to whom electricity is sold by Tenant may be secured, in whole or in part, by one or more security interests, assignments, deeds of trust or mortgages (all of the foregoing are collectively included within the term "Leasehold Mortgage" as defined in Subsection 23 b. below) which are or will be liens or encumbrances on this Lease, Tenant's leasehold interest in the Demised Premises, or any part or parts of this Lease or Tenant's leasehold estate, and Tenant's ownership interest in the Initial Cogeneration Plant, any other Plants, the Kiln Facility, the Tenant Property, and other personal property of Tenant ("Tenant Liens") (but none of the foregoing shall constitute a lien or encumbrance of Landlord's

title or estate to the extent not included within the rights granted Tenant under this Lease). Any interest of Landlord in the Initial Cogeneration Plant, any other Plants, the Kiln Facility, or Tenant Property shall be subject and subordinate to the Tenant Liens and to any further or additional security interest created therein by Tenant to secure the Notes, Tenant's Utility Obligations and any replacement financing thereof. While this subordination shall be automatic, Landlord shall nevertheless execute and deliver from time to time such evidences of subordination as the Lenders, and any other holders of the Notes or the Tenant Liens or any replacements thereof (all of the foregoing are individually and collectively included within the term "Leasehold Mortgagee" as defined below in Subsection b. of this Section), may from time to time reasonably require.

b. Landlord shall, in the event Tenant at any time or times encumbers its leasehold interest and the estate hereby created in the Demised Premises or any part or parts thereof by way of a mortgage or deed of trust or mortgages or deeds of trust (individually and collectively, "Leasehold Mortgage"), if requested by the holder, beneficiary, or trustee under a Leasehold Mortgage (individually and collectively, "Leasehold Mortgagee"), deliver to the Leasehold Mortgagee (the name and address of which shall be furnished to Landlord by Tenant or by the Leasehold Mortgagee) copies of all notices sent to Tenant under and with respect to this Lease at the same time and in the

same form and manner as sent to Tenant. No such notice by Landlord to Tenant shall be deemed to have been given unless and until a copy thereof has been received by every Leasehold Mortgagee.

c. Landlord agrees and confirms to each Leasehold Mortgagee as follows:

(i) Upon the occurrence of any default or any Event of Default, Landlord shall notify in writing each Leasehold Mortgagee and, within ninety (90) days after the giving of the notice, the Leasehold Mortgagee shall have the right to cure the default for the account of Tenant and, if more than ninety (90) days shall be required to cure the default with reasonable diligence, the Leasehold Mortgagee shall have such additional time (beyond the ninety (90) days) as may be reasonably necessary to cure the default and during such period Landlord shall not exercise any of the remedies available to Landlord following an Event of Default.

(ii) If a default under this Lease is of such nature that it cannot practicably be cured without first taking possession of the Demised Premises or if such default is of such a nature that it is not susceptible of being cured by the Leasehold Mortgagee, then Landlord shall not be entitled to exercise its remedies under this Lease if and so long as the Leasehold Mortgagee shall proceed diligently to attempt to obtain possession of the Demised Premises pursuant to the rights of the



Leasehold Mortgagee under the Leasehold Mortgage, including possession by a receiver, and upon obtaining such possession, the Leasehold Mortgagee shall proceed diligently to cure such default within a reasonable period of time if such default is susceptible of being cured by the Leasehold Mortgagee. If the Leasehold Mortgagee is prohibited by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving the Tenant from commencing or prosecuting such foreclosure or other appropriate proceedings in the nature thereof, the foregoing requirements that the Leasehold Mortgagee proceed diligently to attempt to obtain possession of the Demised Premises shall be suspended for the period of such prohibition.

(iii) If the Leasehold Mortgagee or any nominee, or a purchaser at a foreclosure sale, shall acquire title to the Demised Premises and the Leasehold Mortgagee shall have taken all actions required of the Leasehold Mortgagee under the Leasehold Mortgage, then any default of Tenant hereunder that is uncurable by application of reasonable efforts by the Leasehold Mortgagee, or such purchaser, as the case may be, and which does not interfere with or prevent the completion or continued operation of the Plant, shall no longer be deemed to be a default under this Lease.

(iv) Landlord shall accept performance by or at the instigation of the Leasehold Mortgagee in connection with the

curing of a default as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Demised Premises by the Leasehold Mortgagee for such purpose.

(v) Landlord shall not be liable for failure to give notice, but if Landlord shall fail to notify the Leasehold Mortgagee of the existence of any default or any Event of Default hereunder, the time within which the Leasehold Mortgagee shall have the right to cure the default or Event of Default shall not commence to run until the Leasehold Mortgagee shall have received notice from Landlord.

d. Without the prior written consent of all Leasehold Mortgagees, there shall be no cancellation, surrender, termination or modification of this Lease.

e. Landlord agrees promptly after submission to it to execute, acknowledge and deliver any agreements modifying this Lease as may be reasonably requested by any Leasehold Mortgagee provided that such modification does not decrease the rent payable to the Landlord or materially decrease Tenant's obligations pursuant to this Lease.

f. Provided the Leasehold Mortgagee is The Conduit and Foundation Corporation, a Pennsylvania corporation ("Conduit"), Mon Power or a bank, savings and loan association, leasing corporation, insurance company, finance company, pension

plan, real estate investment trust, trust company, or other institutional lender (any of the above being hereinafter referred to as an "Institutional Mortgagee"), the proceeds otherwise payable to Tenant arising from a condemnation may (if so provided in any Leasehold Mortgage) be held by any Leasehold Mortgagee or pursuant to the provisions of the relevant Leasehold Mortgage. A Leasehold Mortgagee may reserve the right to apply to the mortgage debt all or any part of the proceeds pursuant to the terms of the Leasehold Mortgage.

g. The name of the Leasehold Mortgagee shall be added as a named insured under any insurance policy required to be carried by Tenant or Landlord hereunder. Provided the Leasehold Mortgagee is an Institutional Mortgagee, the proceeds of any insurance policies may be held by the Leasehold Mortgagee.

h. The making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder, but the purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold

estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

i. In the event any Leasehold Mortgagee shall acquire Tenant's interest in this Lease as a result of a sale under its Leasehold Mortgage pursuant to a foreclosure and sale, or through any transfer or assignment in lieu of foreclosure, or through settlement of or arising out of any pending or contemplated foreclosure action, or otherwise, the Leasehold Mortgagee shall have the privilege of transferring its interest in the Lease to any other person, firm or corporation, including, but not limited to, its nominee, all without the prior consent of Landlord and free and clear of any control of Tenant, and the Leasehold Mortgagee shall be relieved of any further liability under this Lease from and after such transfer and thereafter the transferee shall be liable for Tenant's obligations under this Lease.

j. In the event Landlord cures any default by Tenant under a Leasehold Mortgage, any sums expended therefor shall constitute additional rent hereunder and shall be payable by Tenant to Landlord within ten (10) days of demand. Any sums not

reimbursed to Landlord shall bear interest from the date of payment by Landlord at the rate of ten percent (10%) per annum.

k. Nothing contained in this Section shall release Tenant from the full and faithful observance and performance of any covenants and conditions in this Lease contained and on its part to be observed and performed (except that Landlord acknowledges that a cure by a Leasehold Mortgagee of a default by Tenant shall be deemed to have been accepted by Landlord as if the same had been done by the Tenant) or from any liability for the non-observance or non-performance thereof or be deemed to constitute a waiver of any rights of Landlord hereunder as against Tenant.

l. Landlord agrees with, and confirms to, Tenant and each Leasehold Mortgagee that (i) each representation, warranty, covenant, indemnity and agreement of Landlord in this Lease shall continue in full force and effect, inure to the benefit of and be enforceable by Tenant and also each Leasehold Mortgagee (and any transferee of each Leasehold Mortgagee's interest, any purchaser at a sale on foreclosure of the Leasehold Mortgage or any transferee of this Lease and the leasehold estate hereby created under any instrument of assignment) to the same extent as if each Leasehold Mortgagee or each such transferee were named in place of Tenant in this Lease, (ii) Landlord will make any payments due under this Lease without offset, abatement, withholding, reduction or other deduction arising at law or under any

agreement (including any other lease created pursuant to Subsection c. of Section 10 [Assignment, or Subletting; Separate Parcels; Separation of Leasehold Estate]) between Tenant and Landlord other than this Lease and (iii) Landlord will not assert any defense to or claim against any obligation or liability of Landlord under this Lease arising at law or under any agreement (including any other lease created pursuant to Subsection c. of Section 10 [Assignment, or Subletting; Separate Parcels; Separation of Leasehold Estate]) between Tenant and Landlord other than this Lease.

m. The provisions of this Section 23 are subject to the provisions of the Recognition Agreement by and among Mon Power, Tenant, the County of Marion, West Virginia, the Trustee under the Trust Indenture relating to the issuance of the Project Bonds, the agreement for the holders of the Senior Debt and other parties. In the event of any inconsistency between this Section 23 and the Recognition Agreement, the provisions of the Recognition Agreement shall govern.

#### 24. UTILITY SERVICES

a. Landlord shall not be required to furnish any services to the Demised Premises, including but not limited to, heat, sewer, water (other than as required by Section 1A c. [Demised Premises]), steam, gas, electricity, and power, and shall not be liable for any failure of water supply, provided that Landlord does nothing to interfere with the supply of the same.

b. Tenant agrees to pay to the utility companies furnishing same all charges for gas, electricity, water, light, heat, steam, sewer, power and/or other services used by Tenant in or about the Demised Premises, and shall indemnify Landlord against any and all liability on such account.

25. FURTHER ASSURANCES

Landlord and North Marion shall, at the request of Tenant, execute and deliver to Tenant in form capable of recording, any agreements and such other documents as Tenant shall reasonably consider necessary to carry out the intent and purpose of this Lease or which any title company may require in order to insure Tenant's title to its leasehold estate created hereunder. Landlord and North Marion shall, at the request of Tenant, deliver to Tenant such documents (either originals or true and correct copies thereof) as are in Landlord's custody or control as Tenant shall reasonably consider necessary to carry out the intent and purpose of this Lease, including, but not limited to, Licenses and Permits and any applications therefor, any reclamation bonds, etc. Landlord and North Marion shall, at Tenant's request and expense, cooperate with and assist Tenant in obtaining and maintaining all licenses, permits and governmental approvals, authorizations and consents as may, in Tenant's discretion, be necessary or desirable for the development and occupancy of the Demised Premises and the conduct by Tenant of any of the Permitted Uses.

26. NOTICE.

All notices, demands, declarations or consents required to be given by any party herein shall be in writing. In every case where, at the option of Landlord, or where Landlord is required to serve notice or demand on Tenant concerning this Lease, or any of the provisions or conditions thereof, it shall be sufficient service of the notice, demand or declaration, to deliver a copy thereof to Tenant, or mail a copy thereof by certified or registered mail, return receipt requested, addressed to American Bituminous Power Partners, L.P., 33 Rock Hill Road, Bala Cynwyd, Pennsylvania 19004-2010 or at such other place as Tenant may from time to time designate, and by delivering or mailing a copy of the same by certified or registered mail, return receipt requested, to any Leasehold Mortgagee, provided that any such Leasehold Mortgagee gives Landlord written notice of their existence together with, from time to time, the address to which any such notice is to be sent. For the purposes of this Section, "Tenant" shall include any person or entity who, pursuant to the provisions of Section 10 [Assignment or Subletting; Separate Parcels; Separation of Leasehold Estate] hereof, is then liable with Tenant for the performance of all of Tenant's covenants contained in this Lease. Tenant or any Leasehold Mortgagee may serve any notice, demand or declaration hereunder by delivering or mailing the same by certified or registered mail, return receipt requested, to North Marion at the following address:



North Marion Development, Inc.  
1729 Fairmont Avenue  
Fairmont, WV 26554  
ATTN: Stanley Sears, President

and, to Landlord at the following address:

Horizon Ventures of West Virginia, Inc.  
c/o Karras Painting  
2408 Eoff Street  
Wheeling, WV 26003  
ATTN: John Karras

or at such other place as North Marion or Landlord may from time to time designate in a notice to Tenant. Except as herein specifically provided to the contrary, any notice, demand or declaration sent by certified or registered mail shall be deemed to have been given on the date received by the addressee.

27. SUCCESSORS IN INTEREST.

This Lease, and the covenants and conditions herein contained, shall inure to the benefit of and be binding upon the Landlord, its successors and assigns, and shall inure to the benefit of, and (except as to any Leasehold Mortgagee) by binding upon, Tenant, its successors and assigns.

28. RETURN OF POSSESSION.

Subject only to Sections 18 [Tenant's Changes; Maintenance; Damage], 21 [Transfer on Termination], 22 [Tenant Property], and 23 [Tenant Financing; Leasehold Mortgages] hereof, Tenant shall surrender and deliver the Demised Premises at the expiration of the term of this Lease, or upon the sooner termination by Tenant of such term, in the condition Tenant is

required to maintain the same pursuant to the provisions of Section 18 [Tenant's Changes; Maintenance; Damage] hereof.

29. NO LIENS; CERTAIN RIGHTS: QUIET ENJOYMENT.

Landlord warrants and represents that it owns all personal and real property comprising the Demised Premises which are, except as set forth in Exhibit D [Conditions, Restrictions, etc.], presently free and clear of all mortgages, liens, claims, encumbrances and charges of every kind ("Landlord Liens") and Landlord's title to the Demised Premises is good and marketable. On and after the date hereof and during the term of this Lease, Landlord shall not encumber or subject or permit the Demised Premises or this Lease to be encumbered or subject to any Landlord Lien. Landlord further warrants and represents to Tenant that Landlord has the lawful and assignable right to sink wells and remove and consume water as contemplated by Subsection c. of Section 1A [Demised Premises].

Tenant, if and so long as it shall pay the rent and performs and observes the other term and covenants to be performed and kept by it as provided in this Lease, shall have the peaceable and quiet possession of the Demised Premises during the term of this Lease free of the claims of Landlord or of any other person.

30. WEST VIRGINIA LAW TO CONTROL.

This Lease shall be construed, interpreted and enforced according to the laws of the State of West Virginia, without regard to principles of conflict of laws.

31. WAIVER OF SUBROGATION.

Landlord and Tenant hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property covered by any insurance then in force, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided, however, that this release shall be applicable and in force and effect only to the extent of and with respect to any loss or damage occurring during such time as the policy or policies of insurance covering said loss shall contain a provision to the effect that this release shall not adversely affect or impair said insurance or prejudice the right of the insured to recover thereunder. If at any time the insurance carriers issuing policies to Landlord or Tenant shall exact an additional premium for the inclusion of such or similar provisions, the party whose insurance carrier has demanded the premium (the "Notifying Party") shall give the other party hereto notice thereof. In such event, if the other party requests, the Notifying Party shall require the inclusion of such or similar provisions by its insurance carrier, and the requesting other party shall reimburse the Notifying Party for

any such additional premiums during the remainder of the term of this Lease. If at any time any such insurance carrier shall not include such or similar provisions in any fire or extended coverage insurance policy, then the party whose policy no longer contains such provision shall notify the other party that the provision is no longer included in the policy and thereupon, as to loss covered by that policy, the release set forth in this Section shall be deemed of no further force or effect. During any period while the foregoing waivers of right of recovery are in effect, the party hereto as to whom such waivers are in effect shall look solely to the proceeds of such policies to compensate itself for any loss occasioned by any casualty which is an insured risk under such policies.

32. INDEMNITY.

a. In addition to any specific indemnities contained herein, Landlord shall indemnify and hold Tenant and each Leasehold Mortgagee and the officers, directors, shareholders, partners, employees and agents of either or any general or limited partner of either (collectively, "Tenant's Indemnified Parties") harmless against all claims, losses and liabilities (including reasonable attorney's fees incurred by any of Tenant's Indemnified Parties in defending any action, suit or proceeding) to third parties arising out of, or in any way connected with, the inaccuracy of any representation or warranty made by Landlord

hereunder or a failure of Landlord to satisfy and discharge its covenants and obligations hereunder.

b. In addition to any specific indemnities contained herein, Tenant shall indemnify and hold Landlord and the officers, directors, employees, shareholders and agents of Landlord (collectively, "Landlord's Indemnified Parties") harmless against all claims, losses and liabilities (including reasonable attorney's fees incurred by any of Landlord's Indemnified Parties in defending any action, suit or proceeding) to third parties arising out of, or in any way connected with, the inaccuracy of any representation or warranty made by Tenant hereunder or Tenant's failure to discharge and satisfy its obligations and covenants hereunder.

33. RIGHT TO CURE.

a. If Landlord shall be in default hereunder, after two weeks' notice from Tenant that Tenant intends to cure such default (or without notice if in Tenant's reasonable judgment an emergency shall exist), Tenant shall have the right, but not the obligation, to cure such default, and Landlord shall pay to Tenant upon demand the reasonable cost thereof and Tenant may deduct same from any payments for rent. Except when in Tenant's reasonable judgment an emergency shall exist, Tenant shall not commence to cure any default of such a nature that could not reasonably be cured within such aforesaid two (2) week period provided Landlord shall have commenced to cure the same within

said period and so long as Landlord continuously thereafter proceeds with reasonable diligence to cure such default.

b. If Tenant shall be in default hereunder, after two (2) weeks' notice from Landlord that Landlord intends to cure such default (or without notice if in Landlord's reasonable judgment an emergency shall exist), Landlord shall have the right, but not the obligation, to cure such default, and any reasonable sums expended therefor shall constitute additional rent hereunder and shall be payable to Landlord upon demand. Except when in Landlord's reasonable judgment an emergency shall exist, Landlord shall not commence to cure any default of such a nature that could not reasonably be cured within such aforesaid two (2) week period, provided Tenant shall have commenced to cure the same within said period and so long as Tenant continuously thereafter proceeds with reasonable diligence to cure such default.

34. SPECIAL REMEDIES OF TENANT.

Landlord shall, promptly after notice from Tenant, at Landlord's own cost and expense, bring and prosecute to completion an appropriate action or proceeding in a court of competent jurisdiction to restrain a violation by others (or to enforce performance by others) in respect of the provisions of this Lease or with respect to rights of Landlord which are included within the Demised Premises, obtaining, if possible, an injunction pendente lite. In addition to any other remedies

which Tenant may have at law or in equity, Tenant shall have the right to bring an action or proceeding against any occupant or occupants of any portion of the Demised Premises for injunctive or other relief, in its own name or in the name of Landlord, to enforce Tenant's rights under the provisions of this Lease, if either Landlord shall have refused, or after a reasonable period of time Landlord shall have failed to bring such action or proceeding. Within a reasonable time after demand therefor, Landlord shall execute and deliver to Tenant any documents required to enable Tenant to prosecute any such action or proceeding.

35. WAIVER OF DISTRAINT.

Notwithstanding anything to the contrary herein contained, Landlord hereby expressly waives any and all rights granted by or under any present or future laws to levy or distrain for rent, in arrears, in advance or both, upon all goods, merchandise, equipment, fixtures, furniture, Tenant Property and other personal property of, or in the custody of, Tenant or any subtenant or licensee of Tenant in the Demised Premises, delivered or to be delivered thereto.

36. BROKERS.

Landlord and Tenant each represent and warrant to the other that it has not dealt with any broker, agent, finder or other person other than Byron Buck ("Broker") in the negotiation for or the obtaining of this Lease and agrees to indemnify and

hold the other harmless from any and all costs (including reasonable attorney's fees) and liability for commissions or other compensation claimed by any such broker, agent, finder or other person, employed by it or claiming to have been engaged by it in connection with this Lease other than Broker. Tenant shall be responsible for any commission due Broker. The provisions of this Section shall survive the termination of this Lease.

37. NO RECOURSE AGAINST MON POWER OR PERSONS ASSOCIATED WITH TENANT OR MON POWER.

a. No recourse for the payment of any sums or the performance of any obligations hereunder, or for any claim based thereon or otherwise in respect thereof or relating thereto, shall be had against any employee, incorporator, shareholder, partner, officer or director, as such, past, present or future, of Tenant or any general or limited partner of Tenant or of any successor partnership or corporation of any of them, or against any direct or indirect parent corporation of Tenant or any general or limited partner of Tenant or any other subsidiary of any such direct or indirect parent corporation or any incorporator, shareholder, officer or director, as such, past, present or future, of any such parent or other subsidiary, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, it being understood that Tenant is a special purpose limited partnership formed for the purpose of developing and managing the



Initial Cogeneration Plant on the express understanding aforesaid; provided, however, that nothing in this Section 37 shall relieve any of the foregoing persons from liability for such person's willful misconduct. Nothing contained in this Subsection a. shall be construed to limit the exercise or enforcement, in accordance with the terms of this Lease, of rights and remedies against Tenant or the assets of Tenant, including the Initial Cogeneration Plant.

b. In the event Mon Power or any of its subsidiaries or affiliates ("Mon Power Group") become the Tenant under this Lease, then no recourse for the payment of any sums or the performance of any obligations hereunder, or for any claim based thereon or otherwise in respect thereof or relating thereto (whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise) shall be had against any assets of any member of the Mon Power Group other than the leasehold estate of Tenant under this Lease, the Tenant Property and the revenues and benefits derived from any of the foregoing; provided, however, that nothing in this Subsection b. shall relieve any of the foregoing persons from liability for such person's willful misconduct. Except as provided specifically to the contrary in the preceding sentence, nothing contained in this Subsection b. shall be construed to limit the exercise or enforcement in accordance with the terms of

this Lease, of rights and remedies against Tenant or the assets of Tenant, including the Initial Cogeneration Plant.

38. RELOCATION OF EASEMENTS.

Upon Tenant's request, Landlord shall at Tenant's expense cooperate with Tenant to remove or relocate any easements or rights of way or any other third party rights which in Tenant's sole opinion in any way inhibit or interfere with Tenant's use of the Demised Premises.

39. CERTAIN REPRESENTATIONS AND AGREEMENTS OF NORTH MARION AND HORIZON.

(a) North Marion and Horizon jointly and severally represent and warrant to, and agree with, Tenant, as follows:

(i) The Prior Lease, the Rent Assignment, Horizon Deed, Bill of Sale and Prior Lease Assignment constitute the only agreements, written or oral, between North Marion and Horizon with respect to the Demised Premises.

(ii) Each of North Marion and Horizon is a corporation duly incorporated, validly existing and in good standing under the laws of the State of West Virginia and each has full power and authority to execute, deliver and perform the Prior Lease, this Lease, the Rent Assignment, Horizon Deed, Bill of Sale, Prior Lease Assignment and all other agreements, instruments or documents hereafter executed by North Marion or Horizon in connection with this Lease (collectively the "Landlord and North Marion Documents").

(iii) Execution, delivery and performance of the Landlord and North Marion Documents have been duly authorized by all requisite corporate action on the part of North Marion and Horizon and each of the Landlord and North Marion Documents constitutes the legal, valid and binding obligation of North Marion and Horizon, enforceable by Tenant and its successors and assigns (including, without limitation, any Leasehold Mortgagee) against North Marion and Horizon (and their respective shareholders) in accordance with its terms.

(iv) The execution, delivery and performance of the Landlord and North Marion Documents will not (a) violate the Articles of Incorporation or Bylaws of North Marion or Horizon, (b) violate any applicable law or regulation, (c) result in a breach of or constitute a default under, or result in the creation of any lien upon any of their property under, any contract or agreement to which North Marion or Horizon is a party or by which their respective properties are bound, (d) violate any right of a shareholder or creditor of North Marion or Horizon or (e) require North Marion or Horizon to obtain, make or take, under existing laws or regulations, any consent or approval of, any notice to, any registration with, any recording or filing of any document with, or any other action in respect of, any Federal, state or other governmental commission, authority or agency which has not been obtained, made or taken, or may not be obtained, made or taken in the normal course of business.

(v) Horizon and North Marion will deliver, concurrently with the execution of this Lease, good standing certificates and corporate tax clearance certificates for North Marion and Horizon, an officer's certificate certifying and attaching true and correct copies of the Articles, Bylaws and duly adopted authorizing resolutions of Horizon and North Marion (including a consent or resolution of the shareholders of North Marion) and an opinion of counsel to Horizon and North Marion (addressed to Tenant and the Leasehold Mortgagees) opining as to the matters set forth in subsections (ii), (iii) and (iv) of this Section 39.

(vi) Notwithstanding anything to the contrary contained in the Prior Lease, all payments of rent and other sums due under the Prior Lease from Tenant to Landlord were payable solely to Horizon. Landlord and North Marion acknowledge and agree that payment as aforesaid constituted payment to Landlord in accordance with the Prior Lease and the Rent Assignment.

(vii) On or before December 10, 1989 Landlord and North Marion shall have obtained such final, non-appealable subdivision approvals as are required by applicable laws and regulations and as are necessary to permit the exclusion of the Adjacent Property and any other property from the Demised Premises in such a manner as will cause the Demised Premises to comprise a separate tax lot or lots without the inclusion therein of any other lands or improvements not located thereon, as will

not in any way diminish Tenant's rights hereunder, and as is otherwise satisfactory to Tenant in all respects.

40. CERTAIN REPRESENTATIONS OF TENANT.

Tenant represents and warrants to Landlord as follows:

(i) Tenant is a limited partnership duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute, deliver and perform the Prior Lease, the Prior Lease Assignment, this Lease and all other agreements, instruments or documents executed or to be executed by Tenant in connection therewith (collectively the "Tenant Documents").

(ii) The execution, delivery and performance of the Tenant Documents have been duly authorized by all requisite partnership action on the part of Tenant and each of the Tenant Documents constitutes the legal, valid and binding obligation of Tenant, enforceable against Tenant (and its partners) in accordance with its terms.

(iii) The execution, delivery and performance of the Tenant Documents will not (a) violate the Limited Partnership Agreement of Tenant, (b) violate any applicable law or regulation, (c) result in a breach of or constitute a default under, or result in the creation of any lien upon any of its property under, any contract or agreement to which Tenant is a party or by which Tenant's property is bound, (d) violate any right of a partner or creditor of Tenant or, (e) require Tenant

to obtain, make or take, under existing laws or regulations, any consent or approval of, any notice to, any registration with, any recording or filing of any document with, or any other action in respect of, any Federal, state or other governmental commission, authority or agency which has not been obtained, made or taken, or may not be obtained, made or taken in the normal course of business.

41. MISCELLANEOUS

a. The use of the singular herein shall include the plural and vice versa; and the use of any gender shall include all genders.

b. The captions and headings herein are for convenience and reference only and shall not be used to construe or interpret this Lease. The underlinings under the defined terms which appear at the place at which they are defined herein are only for convenience in locating such defined terms.

c. No modification of this Lease shall be binding unless such modification shall be in writing and signed by the party hereto against whom enforcement is sought.

d. This Lease shall not be redeemable under any provision of law heretofore or hereafter enacted.

e. The invalidity or unenforceability of any provision of this Lease, or any application thereof, shall not affect or impair any other provisions or the validity or

enforceability of the remainder of this Lease, or any other application thereof.

f. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant. Neither the computation of rent nor any other provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

g. As used in this Lease: (i) the term "rent" or "rental" shall mean and include any and all sums of money payable by Tenant to Landlord under the terms of this Lease, including, but not limited to, rent and additional rent and (ii) the term "day" shall mean a calendar day, except that if the end of any grace period or other lapse of time permitted hereunder ends on a day which is not a business day, such period shall be extended to the next business day.

h. In the event the leasehold interest hereunder shall ever be held by the same person or party who then holds the reversionary interest under this Lease, no merger shall result therefrom unless and until all persons having an interest in either the leasehold interest created by this Lease or the reversionary interest in the Demised Premises join in a written

instrument effecting such merger and such instrument is duly recorded, otherwise both the leasehold and reversionary interests shall continue, separate and distinct.

i. Landlord, North Marion, and Tenant agree to execute, acknowledge and deliver in recordable form to each other simultaneously with the execution and delivery of this Lease, a memorandum of the Prior Lease, the Prior Lease Assignment and this Lease for recording, and upon the request of either party, to execute, acknowledge and deliver to each other a memorandum of any future modifications or amendments of this Lease, each such memorandum to contain the information required by law for recording the same (and such other information, other than the rental terms, as either party may require) as to give notice of such modifications of this Lease. In addition to the foregoing, either Landlord or Tenant may at any time record this Lease, the Prior Lease or the Prior Lease Assignment and any future modifications or amendments hereto in their entirety all of which shall be executed and delivered by Landlord and Tenant in recordable form. Tenant shall pay all charges and taxes due upon or for the recording of this Lease, the Prior Lease, the Prior Lease Assignment, any modifications or amendments thereto or memorandums thereof regardless of when or by whom the same shall be recorded.



j. The version of a lease dated June 26, 1987 which was executed by Tenant but not North Marion is hereby declared null and void.

k. Attached to and made a part of this Lease are Exhibit A [Description and Survey of Grant Town Parcel], Exhibit A-1 [Description and Survey of Joanna Parcel], Exhibit A-2 [Description of Adjacent Property], Exhibit B-1 [Rent Assignment], Exhibit B-2 [Horizon Deed], Exhibit B-3 [Bill of Sale], Exhibit B-4 [Prior Lease Assignment], Exhibit C [List of Landlord's Permits and Licenses], Exhibit D [Conditions, Restrictions, Agreements, Limitations, Encumbrances and Easements], Exhibit E [Base Case Amortization Schedule], Exhibit F [Description of Mon Power Property] and Exhibit G [Calculation of Percentage Rent - Example].

m. Wherever the word "including" appears in this Lease without being followed by the words "without limitation," it shall be deemed to be followed by the words "without limitation."

n. Notwithstanding anything to the contrary contained in this Lease, nothing herein shall be construed to restrict or prevent in any manner the right or ability of North Marion to dispose or in any way alienate the Adjacent Property nor shall

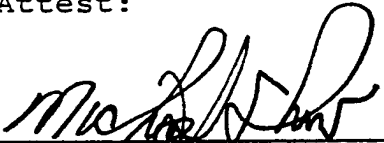
this Lease create any rights in Tenant with respect to the Adjacent Property.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.


LANDLORD

Attest:

HORIZON VENTURES OF WEST VIRGINIA, INC.

  
Name: Michael Shaw  
Title: ~~Secretary~~


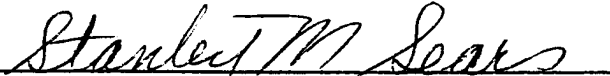
[Corporate Seal]

By:   
Name: Andrew Noshagya, Jr.  
Title: President

NORTH MARION

Attest:

NORTH MARION DEVELOPMENT, INC.

 By:   
Name: Andrew Noshagya, Jr. Name: Stanley M. Sears  
Title: Secretary Title: President

[Corporate Seal]


TENANT

AMERICAN BITUMINOUS POWER PARTNERS, L.P.,  
By its general partners:

AMERICAN HYDRO POWER COMPANY  
By its general partners:

Attest:

C & F Hydro Corp.

  
Name: Joseph W. Higgins  
Title: Secretary  
[Corporate Seal]

By:   
Richard J. Halloran  
President

Attest:

*C Susan Giles*  
Name: Susan Giles  
Title: Asst Sec.

[Corporate Seal]

Attest:

*Douglas B. Whitling*  
Name: Douglas B. Whitling  
Title: Assistant Secretary

[Corporate Seal]

and

Hydro Management Corp.

By: *Peter A. McGrath*  
Peter A. McGrath  
President

and

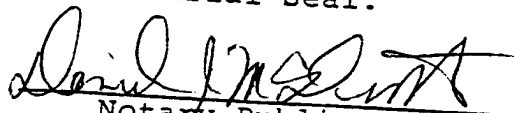
PLEASANT VALLEY ENERGY COMPANY

By: *Scott B. T. Sinclair*  
Name: Scott B. T. Sinclair  
Title: Vice President and Treasurer

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF PHILADELPHIA )

On this 8TH day of DEC, 1989, before the undersigned, a Notary Public, personally appeared RICHARD J. HALLORAN who, being duly sworn, acknowledged himself to be the President of C&F Hydro Corp., a general partner of American Hydro Power Company, and PETER A. McGRATH who, being duly sworn, acknowledged himself to be the President of Hydro Management Corp., the other general partner of American Hydro Power Company, and acknowledged that on behalf of those corporations as general partners of American Hydro Power Company, they, being fully authorized to do so, executed the foregoing Amended and Restated Lease for the purpose therein contained as the act and deed of American Hydro Power Company, a general partner of American Bituminous Power Partners, L.P. as the therein named Tenant.

WITNESS My hand and Notarial Seal.

  
Notary Public

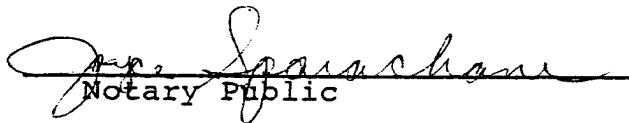
My Commission Expires:

NOTARIAL SEAL  
DANIEL J. McDEVITT, Notary Public  
Philadelphia, PA, Philadelphia County  
My Commission Expires Jan. 2, 1992

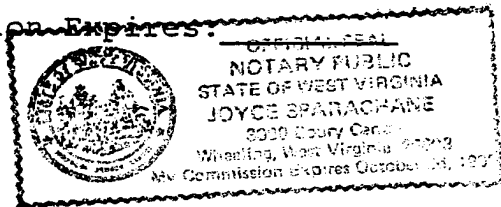
STATE OF WEST VIRGINIA )  
COUNTY OF COUNTY OF OHIO, ) TO-WIT:

On this 29th day of November, 1989, before the undersigned, a Notary Public, personally appeared Stanley M. Sears who, being duly sworn, acknowledged himself to be the President of North Marion Development, Inc., a West Virginia corporation and acknowledged that he, on behalf of this corporation being fully authorized to do so, executed the foregoing Amended and Restated Lease for the purpose therein contained as the act and deed of North Marion Development, Inc.

WITNESS My hand and Notarial Seal.

  
Notary Public

My Commission Expires:



STATE OF CALIFORNIA)

**SS.**

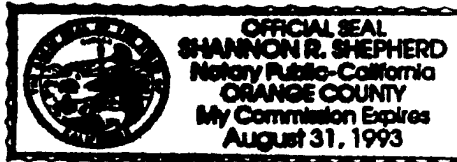
COUNTY OF ORANGE }

On this 13th day of December, 1989, before the undersigned, a Notary Public, personally appeared Scott B. T. Sinclair who, being duly sworn, acknowledged himself to be the Vice President of Pleasant Valley Energy Company, a general partner of American Bituminous Power Partners, L.P., and acknowledged that he, being fully authorized to do so, executed the foregoing Amended and Restated Lease for the purpose therein contained as the act and deed of Pleasant Valley Energy Company, a general partner of American Bituminous Power Partners, L.P. as the therein named Tenant.

WITNESS My hand and Notarial Seal.

Sharon R. Shepherd  
Notary Public

My Commission Expires: August 31, 1993



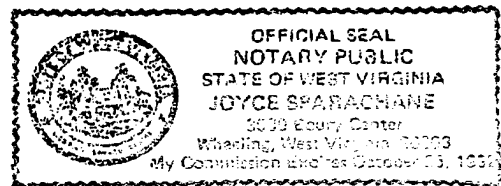
STATE OF WEST VIRGINIA )  
:  
COUNTY OF OHIO, TO-WIT: )

On this 29th day of November, 1989, before the undersigned, a Notary Public, personally appeared Andrew Noshagya, Jr. who, being duly sworn, acknowledged himself to be the President of Horizon Ventures of West Virginia, Inc., a West Virginia corporation and acknowledged that he, on behalf of this corporation being fully authorized to do so, executed the foregoing Amended and Restated Lease for the purpose therein contained as the act and deed of Horizon Ventures of West Virginia, Inc. as the therein named Landlord.

WITNESS My hand and Notarial Seal.

Joyce Sparachane  
Notary Public

My Commission Expires: \_\_\_\_\_



## EXHIBIT A

### Description and Survey of Grant Town Parcel

The Grant Town Parcel consists of all that property described in, and conveyed to Landlord by, Deed dated May 21, 1986 from Eastern Associated Coal Corp. to North Marion Development, Inc. recorded in the Recorder of Deeds Office in and for Marion County, West Virginia in Deed Book 868 page 429 which property is depicted on a Plat of Survey for American Power Partners ("Grant Town Survey") dated October 1987 and prepared by Stanley R. Harper, licensed Surveyor and which depicts a parcel containing 370.645 ± acres and which is also described as follows:

Beginning at a point shown as Corner No. 1 on said Plan being a corner of lands now or late of Peabody Coal Co.; thence extending from said point of beginning along the last mentioned lands north 5 degrees 34 minutes 5 seconds east 459.66 feet to a point at corner No. 2 on said plan; thence extending north 12 degrees 17 minutes 4 seconds east along lands now or late of Gary Brownlee 624.39 feet crossing over an iron pin set 25 feet from the center line of the road leading westwardly and southwardly from Hoodsville to Grant Town being Corner No. 3 on said plan; thence extending along Corner No. 3 south 72 degrees 58 minutes 30 seconds east 13.83 feet to a point Corner No. 4 on said plan; thence extending north 6 degrees 26 minutes 00 seconds west along lands now or late of Matt Kolar 458.51 feet to a point an iron pin set said point also being Corner No. 5 on said plan; thence extending along the last mentioned lands and along lands now or late of Waskis north 20 degrees 57 minutes 00 seconds west 443.14 feet to a point an iron pin set being Corner No. 6 on said; thence extending north 7 degrees 34 minutes 00 seconds east 173.58 feet to an iron pin set as corner No. 7 line of lands formerly of Alpheus Fluharty; thence extending north 79 degrees 53 minutes 27 seconds east along the last mentioned lands 454.38 feet to a post being Corner No. 8 on said plan; thence extending still along the last mentioned lands south 40 degrees 12 minutes 42 seconds east 355.26 feet to a point being Corner No. 9 on said plan; thence extending north 74 degrees 35 minutes 49 seconds east still along the last mentioned lands 417.45 feet to an iron pin set being Corner No. 10 on said plan; thence extending along lands now or late of Gary McHenry lands now or late of Grant Town Ball Park Area and lands now or late of Ralph Six south 86 degrees 40 minutes 05 seconds east 2440.34 feet to a point Corner No. 11 being shown as a maple tree with an 18 inch diameter; thence extending along the mentioned lands of Ralph Six south 0 degrees 30 minutes 29 seconds east 660.00 feet to a point Corner No. 12 an iron pin set; thence extending still along the last mentioned lands south 78 degrees 30 minutes 5 seconds west 292.05 feet to an iron pin set at Corner No. 13 on said plan; thence extending south 13 degrees 17 minutes 34 seconds east still along the last mentioned lands 105.60 feet being Corner No. 14 shown as a black oak tree; thence extending still along the mentioned lands south 6 degrees 38 minutes 43 seconds east 1139.52 feet to a point Corner No. 15 an iron pin set; thence extending south 02 degrees 30 minutes 43 seconds east still along the last mentioned lands 656.04 feet to a point



Corner No. 16 an iron pin set; thence extending south 88 degrees 53 minutes 21 seconds east still along the last mentioned lands 23.21 feet to a point  
Corner No. 17 an iron pin-set; thence extending south 5 degrees 34 minutes 17 seconds west still along the last mentioned lands 290.14 feet to a point  
Corner No. 18 being a stone(found); thence extending 7 degrees 11 minutes 46 seconds east along the last mentioned lands of Ralph Six 1061.66 feet  
Corner No. 19 being an iron pin set; thence extending south 66 degrees 23 minutes 01 seconds west along lands now or late of Sam Koch 157.18 feet to  
an iron pin being Corner No. 20 as shown on said plan; thence extending south 64 degrees 10 minutes 26 seconds west along the last mentioned lands 255.90 feet to an iron pin being Corner No. 21 on said plan; thence extending still along the last mentioned lands south 45 degrees 30 minutes 00 seconds west 239.86 feet to an iron pin set being Corner No. 22 on said plan;  
thence extending south 57 degrees 15 minutes 59 seconds west 701.42 feet to a concrete monument(found) being Corner No. 23 on said plan; thence extending south 48 degrees 37 minutes 00 seconds west along the last mentioned lands and along lands now or late of Haught 558.54 feet to an iron pin set being Corner No. 24 on said plan being at or near the northeast side of Paw Paw Creek; thence extending through the bed of and along the northeast side of said Paw Paw Creek the following courses and distances south 52 degrees 11 minutes 00 seconds west 23.55 feet to a point an iron pin being Corner No. 25 on said plan; thence extending north 37 degrees 39 minutes 00 seconds west 136.40 feet to a point in the railroad right-of-way being Corner No. 26 on said plan; thence extending northwestwardly on the arc of a circle curving to the left having a radius of 719.70 feet and the arc distance of 470.00 feet along said railroad right-of-way to a point being Corner No. 27 on said plan; thence extending north 75 degrees 04 minutes 00 seconds west along said railroad right-of-way 225.00 feet to a point being Corner No. 28 on said plan; thence extending north 26 degrees 16 minutes 00 seconds west 60.00 feet to a point in Paw Paw Creek; thence extending north 80 degrees 28 minutes 00 seconds west 40.40 feet to a point being Corner No. 29 & 30 on said plan; thence extending north 48 degrees 42 minutes 00 seconds west still through the bed of said Paw Paw Creek 517.48 feet to a point at the mouth of Arnett's Run being Corner No. 31 on said plan; thence extending south 42 degrees 30 minutes 00 seconds west 54.80 feet to a point being Corner No. 32 in Paw Paw Creek; thence extending north 53 degrees 03 minutes 37 seconds west still through the bed of Paw Paw Creek 1446.05 feet to a point of Paw Paw Creek being Corner No. 33 on said plan; thence extending north 82 degrees 07 minutes 47 seconds west through the bed of and crossing the northwestwardly side of Paw Paw Creek 179.58 feet to a point in the road being Corner No. 34; thence extending north 16 degrees 12 minutes 00 seconds west 697.24 feet to an iron pin set being Corner No. 35 on said plan; thence extending north 41 degrees 39 minutes 00 seconds east along Grant Town Corporate Line 1089.71 feet to an iron pin set being Corner No. 36 on said plan; thence extending north 13 degrees 55 minutes east 13.18 feet to an iron pin set in concrete being Corner No. 1 on said plan being the first mentioned point and place of beginning.

Containing an area of 370.645 acres more or less.

The Grant Town Survey is attached hereto and made a part of this Exhibit A.

EXHIBIT A (Continued)

[Attach Grant Town Survey to this page.]

EXHIBIT A-1

Description and Survey of Joanna Parcel

The Joanna Parcel consists of all that property depicted on a Plat of Survey for American Power Partners ("Joanna Survey") which is undated and prepared by Stanley R. Harper, Licensed Surveyor and which depicts the property in Lincoln District, Marion County shown containing 81.449 acres plus/minus and which is designated on the Plat of Survey as "Tax Map 06-21, Parcel No. 3" which Joanna Parcel is part of the property conveyed to Landlord by Deed dated October 29, 1985 from Eastern Associated Coal Corp. to North Marion Development, Inc. and recorded in the Office of the Recorder of Deeds in and for Marion County, West Virginia on October 31, 1985 in Deed Book 862 page 1062 and which is also described as follows:

Beginning at a point a hickory tree shown as Corner No. 1 on said plan also being a corner in line of lands now or late of Donald G. Dawson; thence extending from said point of beginning south 1 degree 34 minutes 44 seconds west 370.21 feet to an iron pin being Corner No. 2 on said plan; thence extending south 11 degrees 45 minutes 56 seconds east along lands now or late of Tommie D. Fluharty 531.62 feet to an iron pin being Corner No. 3 on said plan also in line of lands now or late of Mildred Billingsley; thence extending along last mentioned lands south 37 degrees 20 minutes 08 seconds west 741.13 feet to an iron pin being Corner No. 4 on said plan; thence extending along the last mentioned lands south 12 degrees 20 minutes 08 seconds west 177.38 feet to an iron pin being Corner No. 5 on said plan; thence extending north 67 degrees 39 minutes 20 seconds west along lands now or late of Red Dog Coal Inc. and also along lands now or late of the American Legion and crossing the easterly side of Marion County Highway No. 16 the distance of 1758.42 feet to a point in the center line of said road being Corner No. 6; thence extending along Marion County Highway No. 16 north 12 degrees 06 minutes 33 seconds east 927.09 feet to a point in the center line of said road being Corner No. 7 on said plan; thence extending north 2 degrees 46 minutes 10 seconds east along the center line of said Marion County Highway No. 16 the distance of 1138.38 feet to a point in the center line of said road being Corner No. 8 on said plan; thence extending south 62 degrees 34 minutes 37 seconds east crossing the easterly side of said road and along lands now or late of Jim Edgell 294.50 feet to a maple tree being Corner No. 9 on said plan; thence extending south 58 degrees 57 minutes 56 seconds east along lands now or late of North Marion Development and lands now or late of Donald G. Dawson 1765.36 feet to a point being a hickory tree being Corner No. 1 as shown on the said plan also being the first mentioned point and place of beginning.

Containing an area of 81.449 acres more or less.

The Joanna Survey is attached hereto and made a part of this Exhibit A-1.

EXHIBIT A-1 (Continued)

[Attach Joanna Survey to this page].

EXHIBIT A-2

Description of Adjacent Property

The Adjacent Property consists of all that property described as "Parcel No. 9" in, and conveyed to Landlord by, Deed dated October 29, 1985 from Eastern Associated Coal Corp. to North Marion Development, Inc. and recorded in the Office of the Recorder of Deeds in and for Marion County, West Virginia on October 31, 1985 in Deed Book 862 page 1062.

EXHIBIT B-1

Rent Assignment

The Rent Assignment follows this page.

ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the sum of One (\$1.00) Dollar, cash in hand paid, said parties good and lawful consideration and covenants and agreements well known to all, the receipt of all of which is hereby acknowledged, the undersigned, North Marion Development, Inc., a West Virginia corporation, does hereby grant, bargain, sell, assign, transfer and set out under the terms and conditions of what Virginia Inc., a West Virginia corporation, will of this property derived from that certain lease agreement dated the 1st day of January, 1947, and entered into by and between the said North Marion Development, Inc., a West Virginia corporation, and American Bituminous Power Partners, L.P., a Delaware limited partnership. The purpose of this assignment is for transfer all benefits, proceeds, income, revenue, and benefits of remuneration of any kind to be derived from the said agreement between the said North Marion Development, Inc., a West Virginia corporation, and American Bituminous Power Partners, L.P., a Delaware limited partnership, under the said lease agreement of West Virginia, Inc., a West Virginia corporation.

Provided, however, the parties acknowledge the fact that there will be certain administrative and insurance expenses, such, therefore, do hereby agree that North Marion Development, Inc., a West Virginia corporation, may retain \$ 1,000.00 of all such funds described herein for any and all expenses. Said amount may be increased by agreement of a majority of the four following persons:

1. Stanley Sears.
2. Andrew Noshingya.
3. John Kerra.
4. Michael Shaw.

Provided, further, that with respect to the jurisdiction contained in said contract between North Marion Development, Inc., a West Virginia corporation, and American Bituminous Power Partners, L.P., a Delaware limited partnership, regarding the payment of \$15,000.00 to North Marion Development, Inc., a West Virginia corporation for reclamation and other services, said sum may be retained by North Marion Development, Inc., a West Virginia corporation, as payment for such services rendered on the aforesaid.

BY: Stanley M. Sears  
Name:  
Title: PRESIDENT

STATE OF West Virginia

COUNTY OF Lincoln

TO-WIT:

I, Betty Peter's White, a Notary Public in and for said

County and State do hereby certify that Stanley M. Sears of  
whose name is signed to foregoing writing as President

North Marion Development, Inc., a West Virginia corporation, bearing date the  
1st day of July 1967, has this day in my said

County, before me, acknowledged the same to be the act and deed of said  
corporation.

Betty Peter's White  
Notary Public

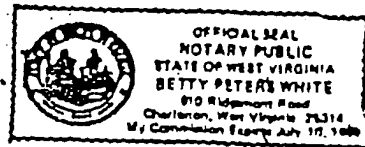




EXHIBIT B-2<sup>1</sup>

Horizon Deed

The Horizon Deed follows this page.

EXHIBIT B-3

Bill of Sale

The Bill of Sale follows this page.

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that NORTH MARION DEVELOPMENT, INC. (the "Seller"), a West Virginia corporation, for and in consideration of the sum of Dollars (\$ ) lawful money of the United States of America, and other good and valuable consideration receipt of which is hereby acknowledged, has sold, assigned, conveyed, transferred and set over and by these presents does hereby sell, assign, convey, transfer and set over unto HORIZON VENTURES OF WEST VIRGINIA, INC. (the "Purchaser"), a West Virginia corporation, and its successors and assigns all right, title and interest of the Seller in and to any and all property, whether tangible, intangible, real, personal or mixed, which comprises the "Demised Premises" as defined and described in that certain Lease dated June 30, 1987 between Seller as Landlord and American Bituminous Power Partners, L.P. as Tenant, including but not limited to all waste coal material which constitutes part of the Demised Premises.

TO HAVE AND TO HOLD the same unto the Purchaser, its successors and assigns forever.

The Seller does hereby further covenant and agree to execute and deliver to the Purchaser such further bills of sale and other

instruments of transfer as may be necessary to confirm the Purchaser's title to any of said property.

IN WITNESS WHEREOF, the Seller has hereunto set its hand and seal as of the 12th day of November, 1989.

Attest:

NORTH MARION DEVELOPMENT, INC.

By: Stanley M. Sears  
President

EXHIBIT B-4

Prior Lease Assignment

The Prior Lease Assignment follows this page.

ASSIGNMENT OF LEASE

ASSIGNMENT OF LEASE dated as of November 12, 1989 between NORTH MARION DEVELOPMENT, INC., a West Virginia corporation with its principal business address at 1729 Fairmont Avenue, Fairmont, West Virginia 26554, Attn: Stanley Sears, President ("Assignor"), HORIZON VENTURES OF WEST VIRGINIA, INC., a West Virginia corporation with its principal business address c/o Karras Painting, 2408 Eoff Street, Wheeling, West Virginia 26003, Attn: John Karras ("Assignee") and American Bituminous Power Partners L.P., a Delaware Limited Partnership transacting business in West Virginia as American Bituminous Power Partners, L.P., a Limited Partnership with its principal business address at 33 Rock Hill Road, Bala Cynwyd, Pennsylvania 19004-2010, Attn: Peter McGrath ("Lessee").

WHEREAS, by lease (the "Lease") dated June 30, 1987 between Assignor as lessor and Lessee as lessee, Assignor leased to Lessee certain real and personal property (the "Demised Premises" as defined and described in the Lease); and

WHEREAS, by assignment (the "Rent Assignment") dated July 1, 1987 Assignor assigned to Assignee all of the benefits, proceeds and revenues to be derived from the Lease.

WHEREAS, by deed dated November 12, 1989 and recorded on November 16, 1989, together with a bill of sale dated November 12, 1989, Assignor sold, transferred and conveyed to Assignee all of Assignor's right, title and interest in and to the Demised Premises.

WHEREAS, Assignor desires to assign the Lease to Assignee, and Assignee desires to accept the assignment thereof and has agreed to assume the liabilities thereunder.

NOW THEREFORE, in consideration of the mutual promises herein contained, and of other good and valuable consideration, the receipt of which is hereby acknowledged the parties hereto intending to be legally bound agree:

1. The parties acknowledge that attached hereto as Exhibit "A" is a true and correct copy of the Lease for the Demised Premises, including true and correct copies of all of the Exhibits thereto; that the Lease is in full force and effect as of the date hereof; that except as set forth herein, no amendments thereto are pending; and that except as otherwise provided herein, the Lease shall continue in full force and effect.

2. Assignor assigns and transfers to Assignee, its successors and assigns, as of the date first above written ("Date of Assignment") all of Assignor's right, title and interest in and to the Lease. Assignor represents and covenants to Assignee and Lessee that: (a) it is not in default under the Lease and no condition exists nor has any event occurred which, with notice or the passage of time or both, would cause Assignor to be in default of the Lease and, (b) the Lease is not encumbered by any prior transfer, assignment, mortgage or any other agreement or encumbrance to which Assignor is a party or which resulted from

any action on the part of Assignor and to the knowledge of Assignor the Lease is not encumbered by any other prior transfer, assignment, mortgage or any other agreement or encumbrance. Assignor shall indemnify and hold Assignee harmless and defend Assignee from and against any and all claims, losses, costs, damages, expenses or liabilities, including attorneys' fees, arising out of or resulting from the performance or non-performance of all the covenants and conditions contained in the Lease to be performed by Assignor which accrued before the Date of Assignment.

3. Assignee assumes the Lease as of the Date of Assignment, and shall perform all of the covenants and conditions therein contained to be performed by Assignor, which shall accrue from and after the Date of Assignment. Assignee shall indemnify and hold Assignor harmless and defend Assignor from and against any and all claims, losses, costs, damages, expenses or liabilities, including attorneys' fees, arising out of or resulting from the performance or non-performance of all the covenants and conditions contained in the Lease to be performed by Assignor, which accrue from and after the Date of Assignment.

4. Assignor and Assignee acknowledge that they are not aware of any defaults on the part of Lessee under the Lease as of the Date of Assignment.

5. Assignor and Assignee acknowledge and agree that all rent due and payable under the Lease to and including the Date of Assignment has been paid in full by Lessee.



6. Assignor and Assignee represent and warrant to each other and to Lessee that they are not in default under the Rent Assignment.

7. Until further notice as provided in the Lease, the address for giving of notice to Assignee under Section 26 of the Lease shall be the address stated after Assignee's name in the first paragraph of this Assignment of Lease.

8. Assignor has not heretofore given, and Lessee has not received, notice of termination pursuant to Section 14, [Default by Tenant and Landlord's Remedies] of the Lease.

9. If requested by any party hereto, all parties hereto shall execute, have acknowledged, and cause to be recorded, promptly after such request a memorandum of this Assignment of Lease in form and substance satisfactory to Assignee's and Lessee's legal counsel.

10. This Assignment of Lease may not be modified, discharged or terminated orally or in any manner other than by an agreement in writing signed by the parties hereto or their respective heirs, executors, administrators, successors or assigns. This Assignment of Lease shall be binding upon, and inure to the benefit of, the parties hereto, their heirs, executors, administrators, successors and assigns. The parties hereto further acknowledge that Lessee shall be deemed a third

party beneficiary of any and all representations, covenants, or agreements contained herein, whether made by Assignor or Assignee.

IN WITNESS WHEREOF, the parties have executed this Assignment of Lease as of the day and year first above written.

Attest: NORTH MARION DEVELOPMENT, INC.

Deana Kay Keshgegn BY Stanley M. Sears  
Name: Name:  
Title: assistant secretary Title: President

[Corporate Seal]

and

Attest: HORIZON VENTURES OF WEST VIRGINIA, INC.

Deana Kay Keshgegn BY Andrew Nashawata  
Name: Name:  
Title: assistant secretary Title: President

[Corporate Seal]

Acknowledged:

AMERICAN BITUMINOUS POWER PARTNERS, L.P.,  
By its general partners:

AMERICAN HYDRO POWER COMPANY  
By its general partners:

Attest:

C & F Hydro Corp.

Joseph W. Higgins  
Name:  
Title:

BY: Richard J. Halloran  
Richard J. Halloran  
President

[Corporate Seal]

and

Hydro Management Corp.

Attest:

*Susan Giles*  
Name: *Susan Giles*  
Title: *Asst Sec.*

[Corporate Seal]

Attest:

*Douglas B. Whiting*  
Name: *Douglas B. Whiting*  
Title: *Assistant Secretary*

[Corporate Seal]

By: *Peter A. McGrath*  
Peter A. McGrath  
President

and

PLEASANT VALLEY ENERGY COMPANY

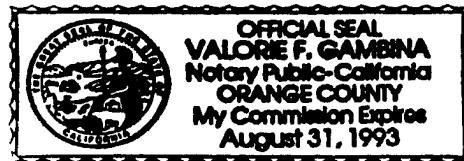
By: *Scott B. T. Sinclair*  
Name: *Scott B. T. Sinclair*  
Title: *Vice President and Treasurer*

STATE OF CALIFORNIA )  
 )  
COUNTY OF ORANGE )

On this 29th day of December, 1989, before me, the undersigned notary public, personally appeared Scott B. T. Sinclair, personally known to me to be the person who executed the within Assignment of Lease and who acknowledged that he is Vice President of Pleasant Valley Energy Company, a general partner of American Bituminous Power Partners, L.P., the limited partnership that executed the within Assignment of Lease and is duly authorized to execute documents on behalf of American Bituminous Power Partners, L.P., and that he executed the within Assignment of Lease for the purposes therein contained on behalf of American Bituminous Power Partners, L.P.

WITNESS my hand and official seal.

Valerie F. Gambina  
Notary Public



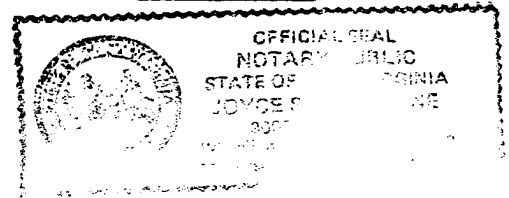
STATE OF WV )  
COUNTY OF Ohio )

On this 28<sup>th</sup> day of Dec, 1989, before the undersigned, a Notary Public, personally appeared Andrew Noshay who, being duly sworn, acknowledged himself to be the President of Horizon Ventures of West Virginia, Inc., a West Virginia corporation and acknowledged that he, on behalf of this corporation being fully authorized to do so, executed the foregoing Assignment of Lease for the purpose therein contained as the act and deed of Horizon Ventures of West Virginia, Inc. as the therein named Assignee.

WITNESS My hand and Notarial Seal.

Joyce Sparrow  
Notary Public

My Commission Expires: \_\_\_\_\_

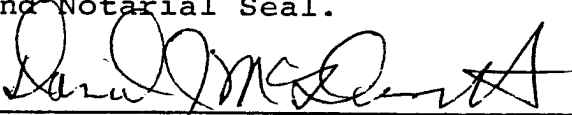


COMMONWEALTH OF PENNSYLVANIA )

COUNTY OF Philadelphia )

On this 30<sup>th</sup> day of December, 1989, before the undersigned, a Notary Public, personally appeared RICHARD J. HALLORAN who, being duly sworn, acknowledged himself to be the President of C&F Hydro Corp., a general partner of American Hydro Power Company, and PETER A. McGRATH who, being duly sworn, acknowledged himself to be the President of Hydro Management Corp., the other general partner of American Hydro Power Company, and acknowledged that on behalf of those corporations as general partners of American Hydro Power Company, they, being fully authorized to do so, executed the foregoing Assignment of Lease for the purpose therein contained as the act and deed of American Hydro Power Company, a general partner of American Bituminous Power Partners, L.P.

WITNESS My hand and Notarial Seal.

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

My Commission Expires: \_\_\_\_\_

NOTARIAL SEAL  
DANIEL J. McDEVITT, Notary Public  
Philadelphia, PA, Philadelphia County  
My Commission Expires Jan. 2, 1992

STATE OF WV )  
COUNTY OF Ohio )

On this 28 day of Dec, 1989, before the undersigned, a Notary Public, personally appeared Stanley M. Sears who, being duly sworn, acknowledged himself to be the President of North Marion Development, Inc., a West Virginia corporation and acknowledged that he, on behalf of this corporation being fully authorized to do so, executed the foregoing Assignment of Lease for the purpose therein contained as the act and deed of North Marion Development, Inc. as the therein named Assignor.

WITNESS My hand and Notarial Seal.

Joyce Sparano  
Notary Public

My Commission Expires: \_\_\_\_\_

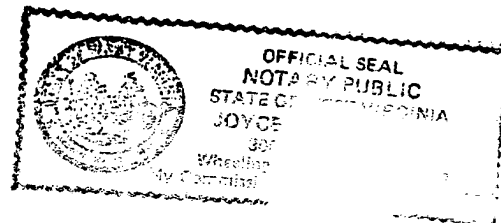


EXHIBIT A TO ASSIGNMENT OF LEASE  
IS ATTACHED HERETO



6/30/87

LEASE

THIS LEASE, made this 30th day of June, 1987, by and between NORTH MARION DEVELOPMENT, INC., a West Virginia corporation ("Landlord") and AMERICAN BITUMINOUS POWER PARTNERS, L.P., a Delaware limited partnership ("Tenant").

WHEREAS, Tenant has been organized for the purposes of, and intends to engage in, among other potential businesses, the business of developing, operating, leasing, selling and otherwise dealing in, for itself and/or on behalf of others, coal-fired, fluidized bed steam-powered electrical generating plants, the first of which Tenant anticipates, subject, inter alia, to on-site fuel availability, applicable laws and regulations and financing arrangements, will have a maximum generating capacity of approximately 80 megawatts.

WHEREAS, Landlord is the owner of two parcels of land (one containing approximately 350 acres ("Grant Town Parcel") and the other containing approximately 80 acres ("Joanna Parcel")) in Marion County, West Virginia which Tenant has identified as potentially appropriate and suitable for the development, construction and operation of one or more such plants. The Grant Town Parcel is more particularly described in Exhibit A. The Joanna Parcel is part of a large tract of land containing approximately 151.78 acres ("Joanna Tract"). The Joanna Tract is more particularly described in Exhibit A-1 and is bisected by a

paved public highway known as Mods Run Highway a/k/a Marion County Highway No. 16 ("Highway"). The entire Joanna Parcel is situated on the South side of the Highway and the entire remainder of the Joanna Tract ("Excepted Parcel") is situated on the North side of the Highway. Landlord also owns another parcel of ground all of which is situated on the South side of the Highway ("Adjacent Property"). The Adjacent Property is more particularly described in Exhibit A-2. The Grant Town Parcel and the Joanna Parcel together with other rights as hereinafter described are herein referred to collectively as the "Demised Premises."

WHEREAS, the Demised Premises contain solid bituminous coal waste materials located in piles on the surface of the land ("gob") and particulate bituminous coal waste materials suspended in water ("fines").

WHEREAS, Landlord is willing to lease the Demised Premises to Tenant, and Tenant is willing to lease the same from Landlord, for the rent, for the term and under the covenants, terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, Landlord and Tenant hereby covenant and agree as follows:

1. DEMISED PREMISES; RESERVED USE.

Landlord hereby leases, conveys and assigns the Demised Premises to Tenant for the term and on and subject to the

covenants, terms and conditions herein stated. Included as a part of the Demised Premises shall be:

a. all rights of Landlord appurtenant to or relating to the Grant Town Parcel and the Joanna Parcel;

b. all licenses and permits of Landlord, including all applications and supporting documents thereto and therefor, to the extent now or hereafter issued to, held by, or possessed by Landlord, pertaining to the Demised Premises, including but not limited to, those relating to (i) the ownership, maintenance, removal, sale and use of the piles and stock of gob and fines located on the Demised Premises and (ii) reclamation of the Demised Premises and the treatment and discharge of runoff from the gob piles and slurry ponds ("Licenses and Permits"). All presently existing Licenses and Permits are described on Exhibit B to this Lease;

c. all water rights of Landlord, whether appurtenant to the Demised Premises, the Adjacent Property or otherwise, insofar as the same are, in the sole discretion of Tenant, necessary or desirable for the maximum development and operation of the Plants or for the conduct of any other business or activity on the Demised Premises, including rights to withdraw, consume and/or discharge water all in such quantities as Tenant may deem appropriate from and into any streams, ponds, wells or mines existing on the Demised Premises, to create new streams or ponds and to sink new wells on the Demised Premises, including off set wells thereon but under the Adjacent Property; and,

d. all rights, easements, licenses and rights of way which Landlord may now or hereafter have on, over, under, or pertaining to the properties of others, or the Adjacent Property (excluding, however, any rights to mine or remove coal, oil, gas or other minerals) to the extent the same are necessary or desirable in Tenant's sole discretion, (i) for vehicular and pedestrian ingress and egress to and from the Demised Premises, (ii) for the installation, operation and maintenance of utility lines, conduits and systems serving the Demised Premises, (iii) for the erection, operation and maintenance of electrical transmission lines and systems and related apparatus between the Demised Premises and those of the utility company or companies which may from time to time purchase electricity generated by the Plants and/or supply electricity or other utility products or services to the Plants, and (iv) as may be reasonably necessary for and related to any use made by Tenant of the Demised Premises or the proper and efficient operation of the Plants or the conduct of any other business by Tenant.

SUBJECT, HOWEVER, to the applicable provisions of this Lease, and the conditions, restrictions, agreements, limitations, encumbrances and easements, if any, shown on Exhibit C attached hereto.

Landlord shall have the right to use or dispose of any property owned by Landlord and not included within the Demised Premises, in such manner and for such purposes as it shall see

fit; provided, however, that the same shall be made under and subject to Tenant's rights under this Lease and Landlord shall not utilize or dispose of the same in any manner which would interfere with Tenant's rights hereunder, increase Tenant's obligations, or cause Tenant to incur any additional expense.

Landlord hereby represents and warrants that:

(i) the only land which it owns which adjoins, or is contiguous to, all or any part of the Grant Town Parcel or Joanna Parcel are the Adjacent Property and the Excepted Parcel, both of which are as described in the premises;

(ii) no gob is located on either the Adjacent Property or the Excepted Parcel;

(iii) the Joanna Parcel contains all of the land covered by, or referenced in, Permit No. 0-21-83, as issued by the Department of Energy of the State of West Virginia;

(iv) no rights, easements, licenses or rights-of-way on, over, under or pertaining to the Excepted Parcel are necessary in order for Tenant to efficiently and economically conduct the "Joanna Permitted Uses" (as defined and described in Subsection b. of Section 3 [Use; Plant Development] hereto) or to efficiently and economically perform any present or future reclamation obligations of Tenant with respect to the Joanna Parcel;

(v) Landlord has no knowledge concerning any contemplated or proposed use, taking, or purchase by, or under

the threat of, condemnation, or any exercise of the power of eminent domain, of any part or all of the Demised Premises; and

(vi) Exhibit B hereto contains a correct and complete description of all Licenses and Permits issued to or held or possessed by Landlord and pertaining to the Demised Premises.

(vii) The descriptions of the Grant Town Parcel, the Joanna Tract and the Adjacent Property contained in Exhibits A, A-1, and A-2, respectively, are accurate and are consistent with Landlord's other representations and warranties herein contained, the descriptions in the premises hereof, and the other provisions of this Lease.

## 2. ACCEPTANCE OF DEMISE.

Tenant hereby rents, leases and hires the Demised Premises from Landlord, for the term and on and subject to the covenants, terms and conditions herein stated.

## 3. USE; PLANT DEVELOPMENT.

a. Grant Town Parcel. Subject to the provisions of this Section, during the term of this Lease, Tenant shall have the right, at any time or times, to use the Demised Premises (excluding therefrom the Joanna Parcel) for any and all lawful purposes ("Grant Town Permitted Uses") including, but not limited to:

(i) evaluating, designing, securing all required approvals, licenses and permits for, financing, developing,

building, operating, maintaining, enhancing, upgrading, expanding, rebuilding, modernizing, and replacing -

A. one or more coal-fired or waste coal products-fired, fluidized bed, steam-powered electrical generating plants, or other steam or electrical generating plant systems as may be substituted therefor, developed therefrom, or built in conjunction therewith (any and all such plants actually constructed from time to time are herein called individually and collectively, the "Plants"); and

B. one or more industrial, commercial, wholesale, retail, residential, public use, convention or recreational facilities, including, but not limited to, industrial parks, distribution centers, storage facilities, manufacturing or processing facilities, shopping centers, hotels, motels, restaurants, office facilities, medical, dental and health care facilities, nursing and retirement homes, apartments, condominiums, single-family and other residential uses, public buildings and facilities;

(ii) consuming, using in any manner, relocating, storing, treating, handling, processing, permanently placing,

removing, grading and reclaiming any gob or fines now or hereafter located on the Grant Town Parcel;

(iii) consuming, using in any manner, relocating, storing, treating, handling, dealing in, selling, processing, permanently placing, removing, grading and reclaiming ash and other waste or by-products generated by the Plants or resulting from any other use of the Demised Premises and using the same in a manufacturing, fabricating or chemical process; and

(iv) evaluating, designing, securing all required approvals, licenses and permits for, financing, developing, building, enhancing, upgrading, expanding, rebuilding, modernizing, replacing and operating on and under the Grant Town Parcel all roads, bridges, fences, utility lines, buildings and other improvements of any kind which Tenant may desire.

The sole restriction or limitation upon Tenant's right to use the Grant Town Parcel for any and all lawful purposes shall be that Tenant shall not mine or remove from the Grant Town Parcel, by strip mining, deep mining or other process, coal (excluding gob, fines or any other coal waste material), oil, gas, or other minerals.

b. Joanna Parcel. During the term of this Lease, Tenant shall have the right, at any time or times, to consume, use in any manner, relocate (thereon or to the Grant Town Parcel), store, treat, handle, process, permanently place,



remove, grade and reclaim any gob (but not fines) presently located on the Joanna Parcel and to use the Joanna Parcel for the purposes described in Subsection a(iv) of this Section to the extent the same are necessary or desirable to accomplish the foregoing or as required to discharge or effect any reclamation obligations of Tenant ("Joanna Permitted Uses").

c. The Grant Town Permitted Uses and the Joanna Permitted Uses are referred to collectively herein as "Permitted Uses."

d. Notwithstanding the provisions of Subsection a and b of this Section, until generation by a Plant of electricity for sale, Tenant shall not have the right to use the Demised Premises for any purpose other than a Primary Business (as defined in Subsection b of Section 6 [Rent]).

e. Tenant shall have the right to apply for, and maintain, in the name of Landlord or Tenant, the Licenses and Permits and all permits, approvals and other authorizations which Tenant, in its sole discretion, deems necessary or desirable in order to conduct any Permitted Use of the Demised Premises.

#### 4. TERM; RENEWAL OPTION.

a. The term of this Lease shall be for a period commencing as of the date specified in Subsection b. of this Section and ending at 12:01 A.M. on the day which is fifty (50) years after the Commencement Date. Provided that Tenant has paid all rent due and payable on the date of exercise in accordance

with Section 6 [Rent] of this Lease, Tenant shall have the option (to be exercised by Tenant's giving written notice of such exercise to Landlord before the expiration of the initial term) to renew this Lease for a single additional term of fifty (50) years. The renewal shall be upon all of the terms and conditions of this Lease applicable during the initial term, except that the rent payable during the renewal term shall be as specified in Section 6 [Rent] hereof.

b. Unless Tenant sooner notifies Landlord that it intends to terminate this Lease (as provided below in Subsection c. of this Section), this Lease shall commence ("Commencement Date") upon the earlier of (1) December 1, 1987 or (2) upon satisfaction of all of the following conditions (or waiver thereof by Tenant):

(i) Landlord, at Tenant's cost, shall have provided, or Tenant, at its cost, shall have obtained a physical survey of the Demised Premises by a registered civil engineer surveyor selected by Tenant together with a plat of survey duly certified by such engineer or surveyor ("Survey"). The Survey shall show the outlines of the Demised Premises, the area of the property in square feet, locations of any buildings, set back requirements, encroachments, rights of way, easements and other matters of interest with courses and distances so as to permit a description by metes and bounds of the boundaries of the Demised Premises and of any other items noted on the Survey. There shall

be no encroachments, rights of way and other conditions affecting the Demised Premises which are not specifically permitted by the provisions (if any) of other Sections of this Lease. The Survey shall be in compliance with the Minimum Standard Detail Requirements for Land Title Surveys as adopted by the American Title Association and the American Congressman Surveying & Mapping, 1962, as revised and in effect as of the date hereof, with a certificate of the surveyor and the legal description, and shall be certified in favor of Tenant and any other parties designated by Tenant.

(ii) Landlord, at Tenant's cost, shall have provided, or Tenant, at its cost, shall have obtained the commitments ("Title Commitments") of a title insurance company of good standing selected by the Tenant ("Title Company") to issue policies ("Title Policies") for leasehold owner's title insurance and leasehold mortgage title insurance on, respectively, a standard American Land Title Association Leasehold Owner's Policy and a standard American Land Title Association Leasehold Loan Policy (both on the form then in effect) with endorsements as are reasonably requested by Tenant covering Tenant's leasehold estate (and any leasehold mortgagee's lien on Tenant's leasehold estate), including all related water rights, easements, rights of access and other rights deemed necessary to insure Tenant's ability to operate the Demised Premises for any of the Permitted Uses independent of the rights of adjoining property owners.

Each of the Title Commitments is to be for a Title Policy of such amount as is reasonably selected by Tenant and the Title Commitments and Title Policies shall be subject only to: those matters shown in Exhibit C attached; such exceptions as are standard under extended coverage ALTA leasehold owners and loan policies (but such policies shall not be subject to a surveyor and mechanics lien exception); and, such other exceptions as shall be satisfactory to Tenant.

(iii) Landlord shall have executed and delivered to Tenant any agreements or documents which Landlord is required to execute and deliver pursuant to the provisions of Subsection f. of Section 22 [Tenant Financing; Leasehold Mortgages] and Section 24 [Further Assurances];

(iv) The representations and warranties made by Landlord herein shall be true and correct, and Landlord shall otherwise be in full compliance with the terms of this Lease, as of the Commencement Date;

(v) Tenant shall have executed an agreement with Peabody Coal Co. concerning the removal and consumption of water from, and the discharge of water into, Peabody's Federal No. 1 Mine, all on terms and conditions satisfactory to Tenant; and

(vi) Tenant shall have been given the opportunity to examine the Demised Premises and the Licenses and Permits and Tenant shall have determined that the extent and projected cost of any "Reclamation Obligations" (as defined in Section 9 - Compliance with Laws) imposed on Tenant are acceptable to Tenant.

(c) In addition to all other remedies available to Tenant under this Lease or at law or in equity, Tenant shall have the right without cause or reason at any time whatsoever to terminate this Lease prior to the Commencement Date upon giving Landlord not less than 48 hours advance written notice.

(d) Notwithstanding subsection b. of this Section, and subject to the limitations contained herein, Tenant shall reimburse Landlord for the reasonable, documented, out-of-pocket expenses incurred by Landlord during the period from the date of execution of this Lease until the earlier of the date of termination of this Lease, if applicable, or the Commencement Date, in performing such reclamation of the Demised Premises and such treatment of surface water runoff on or from the Demised Premises as is required to be performed under applicable laws, orders and regulations of federal, state and municipal courts and authorities. Tenant's obligation to reimburse Landlord hereunder shall not exceed a total of \$15,000 for the period from the date of execution of this Lease until the earlier of the date of termination of this Lease, if applicable, or the Commencement Date. Tenant shall pay Landlord for the foregoing expenses within 15 days of receiving documentation satisfactory to Tenant.

Although Tenant shall not have the right of possession of the Demised Premises prior to the Commencement Date, Tenant and its representatives shall have the right to enter the Demised Premises in order to survey the Demised Premises, to take soil

and other tests, including core borings, on the Demised Premises, and to remove reasonable quantities of gob, fines, soil or other materials from the Demised Premises for testing purposes.

5. TENANT'S RIGHT TO TERMINATE.

In addition to all other remedies available to Tenant under this Lease or at law or in equity, Tenant shall have the right at any time whatsoever to terminate this Lease prior to the expiration of the initial or renewal term of this Lease if:

(i) any representation or warranty made by Landlord herein is false or incomplete when made; or

(ii) Landlord shall default in the performance of any material term, covenant or condition of this Lease and such default remains uncured for a period of ninety (90) days after receipt by Landlord of notice of such default or, if such default cannot be cured within ninety (90) days, and such cure is not initiated within said ninety (90) days and pursued diligently thereafter until cured; or

(iii) Tenant determines in its sole and absolute discretion that the development, construction or continued operation of the Plants or any other business is not feasible or economical or is or may become no longer feasible or economical, as the case may be.

Tenant shall give Landlord at least fifteen (15) days' prior written notice of any such termination, which notice, to be effective, must include the consent of any Leasehold Mortgagee

(as defined in Section 22 [Tenant Financing; Leasehold Mortgages] hereof) to such termination. No such termination shall relieve Tenant from the obligations arising under this Lease prior to the date of such termination. In the event of such termination, Tenant shall comply with the provisions of Section 20 [Transfer on Termination].

6. RENT.

a. Subject to then applicable rules and regulations of the Federal Energy Regulatory Commission ("FERC") and of any other federal, state or local governmental body having jurisdiction thereover, Tenant shall have the right, but not the obligation, to generate electricity and steam at the Plants, to sell and market such electricity and steam to such customers, for such prices, in such quantities and under such terms and conditions as Tenant in its sole discretion may determine from time to time, and to discontinue, suspend and resume the generation of electricity and steam at the Plants at any time or times. Tenant may use gob, fines or other energy sources from locations other than the Demised Premises ("Foreign Fuel") in order to generate electricity and steam at the Plants, along with, or in partial or total substitution for, gob or fines presently located on the Demised Premises ("Local Fuel"). As used herein, the term "Operating Reason" means that Tenant, in its sole judgment, has determined that a percentage (partial or total) of Foreign Fuel is required to (a) achieve and maintain the manufacturer's rated

output of the Plant, (b) operate the Plant in a safe manner or (c) operate the Plant in compliance with applicable laws or regulations. As used herein, the term "Non-Operating Reason" means that Tenant has determined, in its sole judgment, to partially or exclusively use Foreign Fuel to the extent there is no Operating Reason to do so.

b. Beginning on the earlier of (i) "Commencement of Construction" or (ii) January 1, 1988, and ending on the day on which "Startup" occurs, Tenant shall pay to Landlord, in the manner provided in Section 7 [Rent Payment], the amount of \$4,000 per month ("Pre-Startup Minimum Rent"), prorated for any portion of a month. As used herein (i) "Commencement of Construction" shall mean the day on which Tenant first begins pouring concrete or placing similar materials for the footings or foundation structures of the buildings which will house the electrical generators for the Plants and (ii) "Startup" shall mean the day on which Tenant first commercially sells electricity generated by the Plants.

c. During the initial fifty (50) year term of this Lease, Tenant shall pay to Landlord as and when provided in Section 7 [Rent Payment], percentage rent ("Percentage Rent") for the Demised Premises, in an amount equal to the aggregate of all of the following:

(i) Three percent (3%) of all gross revenues actually received by Tenant from the sale, during the initial



term, of electricity and steam generated at the Plants through the use of Local Fuel or through the use for Non-Operating Reasons of Foreign Fuel. No Percentage Rent shall be payable with respect to electricity and steam generated at the Plants through use of Foreign Fuel for Operating Reasons; provided, however, that if Tenant uses Foreign Fuel for Operating Reasons during any month, then Landlord shall receive the greater of the amount determined pursuant to the first sentence of this subsection c. (i) or one percent (1%) of all gross revenues actually received by Tenant from the sale, during such month, of electricity and steam generated at the Plants through the use of all Local Fuel and Foreign Fuel. All allocations with regard to electricity and steam generated by Local Fuel and Foreign Fuel shall be made based on the relative BTU content of such fuels; and

(ii) Three percent (3%) of (a) all gross revenues actually received by Tenant from the sale to third parties during the initial term of ash, hot water, hot air (not steam) or other products or energy directly and initially resulting from the burning of Local Fuel ("Local By-Products") and (b) the fair market value (determined with reference to recent sales of the same or similar products in the same or similar geographic area) of Local By-Products used by Tenant in connection with any Secondary Business (as defined below). No Percentage Rent shall be payable with respect to sales to third parties or the use by

Tenant in connection with any Secondary Business, of ash, hot water or hot air (not steam) or other products or energy directly and initially resulting from the burning of Foreign Fuel ("Foreign By-Products") ; provided, however, that if Tenant sells Foreign By-Products to third parties or uses Foreign By-Products in connection with any Secondary Business, then Landlord shall receive the greater of the amount determined pursuant to the first sentence of this subsection c. (ii) or one percent (1%) of (a) all gross revenues actually received by Tenant from the sale to third parties during the initial term of Local By-Products and Foreign By-Products and (b) the fair market value (determined as noted above) of Local By-Products and Foreign By-Products used by Tenant in connection with any Secondary Business.

The businesses described in Subsections c(i) and (ii) of this Section (other than Secondary Businesses) are referred to herein as "Primary Businesses." All other businesses conducted on the Demised Premises are referred to herein as "Secondary Businesses".

d. Beginning on the first day of the "First Fiscal Year" (as defined below) and continuing for each "Subsequent Fiscal Year" (as defined below) or portion thereof, Tenant shall pay to Landlord, in the manner provided in Section 7 [Rent Payment], in addition to any Percentage Rent earned during such fiscal year, an amount ("Post-Startup Minimum Rent") computed as follows:

(i) During the first 12 calendar months following the month in which Startup occurs ("First Fiscal Year"), the Post-Startup Minimum Rent shall equal the amount by which \$112,500 exceeds the aggregate Percentage Rent, if any, earned during the First Fiscal Year; and

(ii) During each successive 12 calendar month period following the First Fiscal Year (each of which is a "Subsequent Fiscal Year"), the Post-Startup Minimum Rent shall equal the amount by which \$225,000 exceeds the aggregate Percentage Rent, if any, earned during such Subsequent Fiscal Year, prorated for a portion of the last Subsequent Fiscal Year, if applicable.

The First Fiscal Year and all Subsequent Fiscal Years are referred to collectively herein as "Fiscal Years."

e. In the event Tenant shall renew the term of this Lease, the Percentage Rent payable during the renewal term shall be calculated as set forth in Subsection c of this Section except that each reference in Subsection c of this Section to three percent (3%) shall be increased to four percent (4%).

f. Notwithstanding anything to the contrary herein contained, no Pre-Startup Minimum Rent shall be payable until the following conditions have been satisfied:

(i) Landlord shall have provided or Tenant shall have obtained the Survey and Title Commitments described in Subsections b.(i) and (ii), respectively, of Section 4 (Term; Renewal Option);

(ii) Landlord shall have executed and delivered to Tenant any agreements or documents which Landlord is required to execute and deliver pursuant to the provisions of Subsection f. of Section 22 [Tenant Financing; Leasehold Mortgages] and Section 24 [Further Assurances];

(iii) The representations and warranties made by Landlord herein shall be true and correct, and Landlord shall otherwise be in full compliance with the terms of this Lease, as of the first rent payment date; and

(iv) If required by applicable laws and regulations, Landlord shall have obtained final, non-appealable subdivision approvals permitting the exclusion of the Excepted Parcel from the Demised Premises and permitting the exclusion from the Demised Premises of those rights with respect to the Adjacent Property which are not included within the Demised Premises, both in such a manner as will not in any way diminish Tenant's rights hereunder and as is satisfactory to Tenant in all respects.

g. All amounts and obligations which Tenant is to pay under the terms of this Lease in addition to the rental under this Section, shall be considered as further additional rent due hereunder. In the event of any failure on the part of Tenant to pay such further additional rent, Landlord shall have all its rights, powers and remedies provided for in this Lease in the case of nonpayment of rent.

7. RENT PAYMENT.

a. All payments of rent shall be paid to Landlord by Tenant without notice or demand. Payments shall be paid to Landlord at such place as Landlord may from time to time designate by written notice to Tenant. Until Tenant is notified otherwise, all payments of rent shall be at the address of Landlord set forth in Section 25 [Notices] hereof.

b. All Percentage Rent earned under Section 6 [Rent] shall be paid within ten (10) days after the date Tenant actually receives the revenue on which such Percentage Rent is based. All Pre-Startup Minimum Rent accrued under Section 6 [Rent] with respect to a calendar month (or portion thereof) shall be paid within ten (10) days after the end of that calendar month. All Post-Startup Minimum Rent accrued under Section 6 [Rent] with respect to a Fiscal Year (or portion thereof) shall be paid, without interest, in 16 equal, consecutive, quarterly installments commencing on the first day of the fourth month following the end of such Fiscal Year and continuing on the first day of each fiscal quarter thereafter until paid in full. The expiration or sooner termination of the term of this Lease shall not relieve the Tenant from its obligation hereunder to pay to Landlord Percentage Rent with respect to the gross revenue actually received by Tenant from the sale of electricity, steam or By-Products generated at the Demised Premises (or the fair market value of By-Products used by Tenant), if such sale or use

occurred prior to the expiration or sooner termination of the term of this Lease.

8. TAXES.

a. As further additional rent during the term hereof, Tenant shall pay any increases in Real Estate Taxes (hereinafter defined) becoming due and payable on the Demised Premises during the term hereof, arising solely by reason of any additions, improvements or equipment made or placed on the Demised Premises by Tenant; provided, however, that Landlord shall remain responsible for and shall pay or cause to be paid, prior to the last date on which such payment can be made without penalty or interest, all other Real Estate Taxes becoming due and payable during the term hereof on the Demised Premises or any other real property included in any tax lot of which the Demised Premises or any portion thereof is a part. Such Real Estate Taxes shall be payable to Landlord within thirty (30) days following written demand therefor (together with copies of the relevant tax bills) by Landlord or ten (10) days prior to the last day which will permit payment of such taxes by Landlord without interest or penalty, whichever is later. Within thirty (30) days after payment, Landlord will furnish to Tenant official receipts of the appropriate authority, or other proof satisfactory to Tenant, evidencing the payment.

b. As further additional rent for the term hereof, Tenant shall pay directly to the appropriate authority all

Impositions (hereinafter defined), if any, becoming due and payable with respect to the Demised Premises, the Tenant Property (as defined in Section 21 [Tenant Property]), or the operation thereof, during the term hereof. Any such Impositions shall be due and payable on the last date which will permit payment thereof, before any interest or penalty attaches. Upon request, Tenant will furnish to Landlord official receipts of the appropriate authority, or other proof satisfactory to Landlord, evidencing the payment of each Imposition.

c. Tenant shall have the right, at its sole cost and expense, to contest the validity, application, or amount of any Imposition or Real Estate Tax payable by Tenant hereunder, and Landlord, at Tenant's expense, shall cooperate with Tenant and shall permit Landlord's name to be used in such contest and will execute and deliver any appropriate papers which may be necessary or proper with respect to such contest; provided, however, Tenant shall pay all such Impositions and Real Estate Taxes prior to the commencement of enforcement proceedings or foreclosure against, or sale of, the Demised Premises, or any part thereof or any interest therein, by any party seeking payment or enforcement of such Impositions or Real Estate Taxes.

d. As used in this Lease the term "Real Estate Taxes" shall mean all ad valorem taxes and assessments imposed upon the Demised Premises and commonly known as real property taxes, and any payments in lieu of such taxes. As used in this Lease the

term "Imposition" shall mean all personal property taxes payable with respect to the Tenant Property, all assessments or charges for public improvements, benefits or utilities, if commenced or completed within the term hereof, water sewer or other rents, rates and charges and all excises (including excise taxes imposed on the amount of rental received by Landlord under the terms of this Lease), levies, license fees, permit fees, inspection fees and other authorization fees and other charges. Neither Real Estate Taxes nor Impositions shall include any assessment arising in connection with any income, profit, franchise, transfer, capital stock or other like taxes determined on the basis of Landlord's capital stock, general income or revenues which taxes or assessments shall be the responsibility and obligation of Landlord.

e. Landlord and Tenant agree to do all acts necessary to assure that Tenant shall receive all bills or statements for Impositions. In the event any bill or statement for any Imposition is received by Landlord, Landlord shall promptly forward the bill or statement to Tenant for payment by Tenant. If the bill for any Imposition includes not only the Demised Premises, but other lands and improvements as well, then Tenant shall pay the amount equitably allocated to the Demised Premises and Landlord shall pay the remainder. Landlord warrants and represents to Tenant that if the Demised Premises constitutes portions of separate tax lots, then the failure of any person



other than Landlord to pay any real estate tax with respect to any real property not a part of the Demised Premises shall not result in the sale of the Demised Premises or any part thereof for non-payment of such taxes.

f. In the event any Real Property Taxes or Impositions relate to periods prior to the Commencement Date, or after the expiration or sooner termination of the term of this Lease, the same shall be adjusted and apportioned between Landlord and Tenant as of the Commencement Date or the date of expiration or termination of the term, as the case may be.

9. COMPLIANCE WITH LAWS.

a. Landlord hereby represents and warrants that on the date hereof and at the Commencement of Construction:

(i) The Demised Premises is and will be in full compliance with then applicable laws, orders and regulations of, and all permits and licenses applicable to the Demised Premises issued by, all federal, state, county and municipal authorities having jurisdiction, including such laws, orders, regulations, permits and licenses, as relate to reclamation of all or any part of the Demised Premises and treatment of surface water runoff on or from the Demised Premises;

(ii) Neither the Demised Premises nor any activity conducted thereon is or will be the subject of any outstanding enforcement or compliance order issued by any

federal, state, county or municipal authority having jurisdiction, nor does or will the Landlord have any knowledge or notice of any such enforcement or compliance order which is threatened or proposed; and

(iii) Consummation of the transactions contemplated by this Lease will not result in a violation of, or in any way impair, such laws, orders, regulations, permits and licenses.

b. The obligation to perform all testing, reclamation and restoration of the Demised Premises relating to the gob and fines and all treatment of surface water runoff on or from the Demised Premises that are required to be performed under the applicable Licenses and Permits, laws, orders and regulations of all federal, state, courts and municipal authorities having jurisdiction ("Reclamation Obligations") shall be borne by Landlord, at Tenant's expense, (to the extent provided in Section 4 [Term; Renewal Option] hereof) until the Commencement Date. From the Commencement Date and continuing after the expiration or other termination of this Lease (for whatever reason), Tenant shall be responsible for that portion of the Reclamation Obligations ("Tenant's Continuing Obligations") to the extent that the same arise from (A) Tenant's conduct of Tenant's business or the operation of Tenant's equipment on the Demised Premises or (B) any condition on the Demised Premises created by Tenant. During the period from the Commencement Date until the

expiration or other termination of this Lease (for whatever reason) the responsibility for, and cost of, all Reclamation Obligations other than Tenant's Continuing Obligations, but including Reclamation Obligations arising from any cause or condition existing as of the date of this Lease shall be borne by Landlord. After the expiration or other termination of this Lease (for whatever reason), Landlord shall be responsible for all Reclamation Obligations other than Tenant's Continuing Obligations, but including Reclamation Obligations arising from any cause or condition existing as of the date of this Lease.

c. Tenant shall give prompt notice to Landlord of any written notice it receives of the violation of any law or requirement of public authority, and during the term of the Lease, at its expense, shall comply with all applicable laws and regulations of public authorities that shall, with respect to the Demised Premises, the use and occupancy thereof, or the abatement of any nuisance, impose any violation, order, or duty on Landlord or Tenant, to the extent the same arise from: (i) Tenant's particular use of the Demised Premises; (ii) the manner of conduct of Tenant's business or operation of its equipment therein; (iii) any cause or condition created by or at the instance of Tenant, or (iv) the breach of any of Tenant's obligations hereunder. Tenant need not comply with any such law or regulation of public authority for so long as Tenant shall be contesting the validity thereof, or the applicability thereof to

the Demised Premises, in accordance with this Section. Landlord, at its expense, shall<sup>i</sup> comply with all other such laws, orders and regulations of public authorities as shall affect the Demised Premises or relate to its use and all such laws, orders and regulations of public authorities as shall affect the Adjacent Property or relate to its use, but may similarly contest the same, subject to conditions reciprocal to subsections (i), (ii) (iii) and (iv) of Subsection d. of this Section.

d. Tenant may, at its expense (and, if necessary, in the name of, but without expense to, Landlord) contest, by appropriate proceedings prosecuted diligently and in good faith, the validity, or applicability to the Demised Premises, of any law or regulation of public authority, and Landlord shall cooperate with Tenant in such proceedings, provided that:

(i) Landlord shall not be subject to criminal penalty or to prosecution for a crime, nor shall the Demised Premises or any part thereof be subject to being condemned or vacated, by reason of Tenant's non-compliance or otherwise in connection with such contest;

(ii) Tenant shall defend, indemnify and hold Landlord harmless from and against all liability, loss or damage that Landlord shall suffer by reason of such non-compliance or contest, including reasonable attorney's fees and other expenses reasonably incurred by Landlord;

the Demised Premises, in accordance with this Section. Landlord, at its expense, shall comply with all other such laws, orders and regulations of public authorities as shall affect the Demised Premises or relate to its use and all such laws, orders and regulations of public authorities as shall affect the Adjacent Property or relate to its use, but may similarly contest the same, subject to conditions reciprocal to subsections (i), (ii) (iii) and (iv) of Subsection d. of this Section.

d. Tenant may, at its expense (and, if necessary, in the name of, but without expense to, Landlord) contest, by appropriate proceedings prosecuted diligently and in good faith, the validity, or applicability to the Demised Premises, of any law or regulation of public authority, and Landlord shall cooperate with Tenant in such proceedings, provided that:

(i) Landlord shall not be subject to criminal penalty or to prosecution for a crime, nor shall the Demised Premises or any part thereof be subject to being condemned or vacated, by reason of Tenant's non-compliance or otherwise in connection with such contest;

(ii) Tenant shall defend, indemnify and hold Landlord harmless from and against all liability, loss or damage that Landlord shall suffer by reason of such non-compliance or contest, including reasonable attorney's fees and other expenses reasonably incurred by Landlord;

(iii) Tenant shall defend, indemnify and hold Landlord harmless from and against all liability, loss or damage that Landlord shall suffer by reason of such non-compliance or contest, including reasonable attorney's fees and other expenses reasonably incurred by Landlord; and

(iv) Tenant shall keep Landlord advised as to the status of such proceedings.

Landlord shall be deemed subject to prosecution for a crime, within the meaning of this subsection, if Landlord, or any officer of Landlord, individually is charged with a crime of any kind or degree whatsoever, whether by service of a summons or otherwise, unless such charge is withdrawn before Landlord or such officer (as the case may be) is required to plead or answer thereto.

e. Hazardous Materials. Landlord represents, warrants and covenants that Landlord has not used or deposited or permitted others to use or deposit Hazardous Materials (as defined hereinafter) on, from, or affecting the Demised Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials, and that, to the best of Landlord's knowledge, no other person, including prior owners of the Demised Premises or any tenants, subtenants, prior tenants or prior subtenants have deposited or

used Hazardous Materials on, from, or affecting the Demised Premises in any manner which violates federal, state or local laws, ordinances, rules, regulations, or policies governing the use, storage, treatment, transportation, manufacture, refinement, handling, production or disposal of Hazardous Materials. To the best of Landlord's knowledge, no Hazardous Materials exist on the Demised Premises as of the Commencement Date. Landlord, with respect to its uses of the Demised Premises, and Tenant, with respect to its uses of the Demised Premises, shall keep or cause the Demised Premises to be kept free of Hazardous Materials. All Hazardous Materials (i) on, from or affecting the Demised Premises at the Commencement Date or resulting from conditions existing on the Demised Premises at the Commencement Date, and (ii) resulting from any use which Landlord has made or may make of the Demised Premises are referred to herein collectively as "Landlord's Hazardous Materials". All Hazardous Materials resulting from any use which Tenant may make of the Demised Premises are referred to herein as "Tenant's Hazardous Materials". Landlord's and Tenant's obligations with respect to Landlord's Hazardous Materials and Tenant's Hazardous Materials, respectively, shall be as follows: (a) to conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove such Hazardous Materials, on, from, or affecting the Demised Premises (i) in accordance with all applicable federal,

state and local laws, ordinances, rules, regulations and policies; (ii) to the satisfaction of the other party hereto; and (iii) in accordance with the orders and directives of all federal, state and local governmental authorities, and (b) to defend, indemnify and hold harmless the other party hereunder, its employees, agents, officers, directors and partners (as applicable), 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 (i) the presence, disposal, release or threatened release of such Hazardous Materials which are on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals or otherwise; (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials; (iii) any lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials, and/or (iv) any violation of laws, orders, regulations, requirements or demands of government authorities which are based upon or in any way related to such Hazardous Materials including, without limitation, attorney and consultant fees, investigation, laboratory and engineering fees, court costs and litigation expenses. For purposes of this subsection, "Hazardous Materials" includes, without limit, any flammable explosives, radioactive materials, hazardous materials,



hazardous wastes, hazardous or toxic substances, or related materials defined 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 9601, et seq.), and in the regulations adopted and publications promulgated pursuant thereto, or any other Federal, state or local environmental law, ordinance, rule or regulation. The provisions of this subsection shall be in addition to any and all other obligations and liabilities Landlord may have to Tenant at common law, and shall survive the termination of this Lease.

10. ASSIGNMENT OR SUBLETTING.

Tenant (including any subsequent subtenant or assignee hereunder) shall have the right at any time or times to freely assign, mortgage, pledge or encumber all or any part or parts of this Lease or any sublease and may sublet all or any part of the Demised Premises, in all cases without the consent of Landlord. In the event of any assignment of the entire Lease, any Tenant so assigning the Lease shall thereupon be released from further liability and Landlord shall look exclusively to such assignee for the performance of all of Tenant's covenants contained in this Lease.

11. MECHANICS' LIENS.

During the term hereof, Tenant shall discharge or bond

within ninety (90) days after receiving notice from Landlord of the filing of any liens filed against Landlord's interest in the Demised Premises or any part thereof, arising through Tenant, or any person who furnished work, labor, services or materials to the Demised Premises or the fixtures or equipment located thereon, and claiming directly or indirectly through or under Tenant, or through or under any act or omission of Tenant for or on account of any labor or material furnished for any improvements, or any other matter or thing whatsoever.

12. NO CLAIMS AGAINST LANDLORD.

Nothing contained in this Lease shall constitute any consent or request by Landlord, express or implied, for the performance of any labor or services or the furnishing of any materials or other property in respect of the Demised Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any labor or services or the furnishing of any materials or other property that would give rise to any claim against Landlord or to any liens against any rents or other sums payable to Landlord hereunder.

13. LIABILITY INSURANCE.

a. Tenant shall, at its own cost throughout the term of this Lease, provide policies of liability and similar insurance generally known as public liability policies insuring

Tenant and Landlord against claims or demands for injuries received in connection with the development, use, operation and maintenance of the Demised Premises, or any part thereof by Tenant, with minimum limits of Five Million Dollars (\$5,000,000) on account of bodily injuries or death as the result of any one accident or disaster, and property damage insurance with minimum limits of One Million Dollars (\$1,000,000). All such policies of insurance shall be with good and responsible insurance companies licensed in West Virginia, reasonably approved by Landlord, and shall not be subject to cancellation or modification except upon at least thirty (30) days' prior written notice to each additional insured. The original of such policies, or certificates of the issuance thereof, properly endorsed, shall be delivered to Landlord (before the expiration of any policies for which the same are a replacement) as evidence of the compliance by Tenant with the terms and provisions of this Section.

b. During such periods as Landlord is conducting activities on the Demised Premises, it shall, at its own cost, provide policies of liability and similar insurance generally known as public liability policies insuring Landlord and Tenant against claims or demands for injuries received in connection with the development, use, operation and maintenance of the Demised Premises, or any part thereof by Landlord, with minimum limits of Five Million Dollars (\$5,000,000) on account of bodily

injuries or death as the result of any one accident or disaster, and property damage insurance with minimum limits of One Million Dollars (\$1,000,000). All such policies of insurance shall be with good and responsible insurance companies licensed in West Virginia, reasonably approved by Tenant, and shall not be subject to cancellation or modification except upon at least thirty (30) days' prior written notice to each additional insured. The original of such policies, or certificates of the issuance thereof, properly endorsed, shall be delivered to Tenant (before the expiration of any policies for which the same are a replacement) as evidence of the compliance by Landlord with the terms and provisions of this Section.

14. DEFAULT BY TENANT AND LANDLORD'S REMEDIES.

a. Each of the following events shall constitute an "Event of Default" under this Lease:

(i) If Tenant shall default in the payment of rent or additional rent, or any part thereof, on the due date thereof and the default shall continue for a period of sixty (60) days after receipt by Tenant of written notice of the default and demand for payment; or

(ii) If Tenant shall default in the performance of any of the other material terms, covenants and conditions in this Lease contained on the part of

Tenant to be kept or performed, and said default remains uncured for a period of ninety (90) days after receipt by Tenant of written notice of such default or, if such default cannot be cured within ninety (90) days and pursued diligently thereafter until cured;

b. Subject to Landlord's compliance with the provisions of Section 22 [Tenant Financing; Leasehold Mortgages], Landlord, at its option, may terminate this Lease upon the occurrence of an Event of Default; provided that Landlord gives Tenant a least thirty days advance written notice ("Termination Notice") of the date on which Landlord intends to terminate this Lease ("Termination Date"). During the period prior to the Termination Date, Tenant shall have the right to cure the default on which the Event of Default is based, or if such default cannot be cured by the Termination Date, the right to initiate such cure before the Termination Date and diligently pursue the same thereafter until cured. If Tenant does not effect a cure or initiate and diligently pursue a cure as provided above, then this Lease and the term hereof shall expire thereon and come to an end on the Termination Date, and Tenant shall then quit and surrender the Demised Premises to Landlord, and Landlord or his representatives may, without the necessity of any additional notice, re-enter the Demised Premises by force, summary

proceedings or otherwise, and remove all persons and contents therefrom, without being liable to prosecution therefor.

c. Landlord hereby expressly waives any and all rights or remedies granted by or under any present or future laws to re-enter the Demised Premises, to dispossess Tenant or any other occupant thereof or remove their effects not previously removed by them, to accelerate any rents, or to terminate this Lease for any reason or in any manner other than as set forth in this Section.

15. TENANT HOLDING OVER.

If Tenant shall not immediately surrender possession of the Demised Premises at the expiration or earlier termination of this Lease, Tenant shall become a tenant from month to month, at the same rent payable with respect to the preceding term. Regardless of whether Tenant shall or shall not have become a tenant from month to month, Landlord shall continue to be entitled to retake possession of the Demised Premises at any time upon thirty (30) days prior written notice to Tenant. If Tenant shall fail to surrender possession of the Demised Premises immediately upon the expiration or earlier termination of this Lease, all of the obligations of Tenant and all rights of Landlord applicable during the term of this Lease shall be equally applicable during such period of subsequent occupancy,

whether or not a month to month tenancy shall have been created as aforesaid.

16. WAIVER.

Any waiver of any covenant or condition of this Lease shall extend to the particular case only, and only in the manner specified, and shall not be construed as applying to or in any way waiving any further or other rights hereunder. No provision of this Lease shall be deemed to have been waived, unless such waiver is in writing. Any agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of this Lease in whole or in part unless the agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

17. ESTOPPEL CERTIFICATES AND OPERATING STATEMENTS.

a. Tenant shall from time to time, upon request of Landlord or any other person, firm, corporation or other entity having an interest in the Demised Premises, deliver or cause to be delivered to Landlord or such other person, within thirty (30) days from the date of demand therefor, without charge, a written statement, duly executed and acknowledged in form for recording, certifying (i) that this Lease is valid and subsisting and in full force and effect as of the date of the certification and has not been amended, and if amended, the dates of such amendments,

(ii) that Tenant has no knowledge of any default by Landlord under any of the terms of this Lease, or if Landlord is in default, the exact nature of the default, (iii) that Tenant is not in default under any of the terms of this Lease (except as may be expressly set forth by Tenant as a qualification of the certification), (iv) the date through which all rents hereunder have been paid, and (v) the amount of any prepaid rents under this Lease.

b. Landlord shall from time to time, upon request of Tenant, any Leasehold Mortgagee or any other person having an interest in the Demised Premises, deliver or cause to be delivered to Tenant, within thirty (30) days from the date of demand, without charge, a written statement, duly executed and acknowledged in form for recording, certifying (i) that this Lease is valid and subsisting and in full force and effect as of the date of the certification and has not been amended, and if amended, the dates of such amendment, (ii) that Landlord has no knowledge of any default by Tenant under any of the terms of this Lease, or if Tenant is in default, the exact nature of the default, (iii) that Landlord is not in default under any of the terms of this Lease (except as may be expressly set forth by Landlord as a qualification of the certification), (iv) the date through which all rents hereunder have been paid, and (v) the amount of any prepaid rents under this Lease.



c. Tenant shall furnish to Landlord annual operating statements of Tenant with respect to the Demised Premises showing the gross receipts of Tenant with respect to Primary Businesses certified by Tenant and prepared in a manner reasonably satisfactory to Landlord. All such operating statements shall be supplied not later than 120 days after the end of each calendar year. Tenant agrees to make its books and records relating to the information contained on the operating statements available for inspection by Landlord and its agents and representatives upon request, at any reasonable time. Upon request, Tenant shall also furnish to Landlord any interim operating statements and information which Tenant otherwise prepares, as Landlord may from time to time reasonably require.

18. TENANT'S CHANGES; MAINTENANCE; DAMAGE.

a. Tenant may, from time to time during the term of this Lease at its sole expense, make and construct on, in, to and under the Demised Premises such site improvements, roads, utility lines and service, on-site sewage and waste treatment facilities, buildings and improvements and any and all other improvements as Tenant may desire for the pursuit and conduct of any Permitted Uses and thereafter may make such alterations, additions, installations and substitutions, all as Tenant deems desirable for the pursuit and conduct of the Permitted Uses (collectively, "Tenant Changes").

b. Subject to the provisions of subsection c. of this Section, Tenant shall, at its own cost and expense but with full subrogation to the rights of Landlord against third parties, during the term of this Lease, operate, manage, repair and maintain the Demised Premises as required by the provisions of Section 9 [Compliance with Laws] and otherwise in such condition as Tenant in its sole discretion determines.

c. In case of any damage to or destruction of the Demised Premises, or any part thereof, occurring during the term of this Lease, Tenant, at its sole cost and expense but with full subrogation to the rights of Landlord against third parties, shall have the option and right but not the obligation, to restore, replace or rebuild the Demised Premises, or any part thereof, and Tenant shall continue to pay the rent reserved in this Lease as well as all other charges payable hereunder in accordance with the terms, covenants and conditions of this Lease, without abatement, diminution or reduction. Tenant shall not be required to remove damaged property or debris from, or to grade or landscape the damaged or destroyed portion of the Demised Premises.

19. NONLIABILITY OF LANDLORD FOR DAMAGE OR THEFT.

Neither Landlord, nor Landlord's agents, shall be liable for any damage to property of Tenant, nor for loss of any property of Tenant or others by theft or otherwise except to the

extent occurring by reason of the negligence or willful act of Landlord or Landlord's agents.

20. TRANSFER ON TERMINATION.

Within ninety (90) days of the Termination Date (or the expiration or other sooner termination of this Lease) Tenant shall pay Landlord all past due rent or additional rent and shall pay any other sums payable under this Lease. Within nine (9) months of the Termination Date (or the expiration or other sooner termination of this Lease):

a. Tenant may but shall not be required to remove any "Tenant Property" (as defined in Section 21 [Tenant Property] hereof) (but excluding that portion of the same which represents any contribution of Landlord to the cost thereof) then remaining on the Demised Premises. Tenant's sole obligation to Landlord in connection with the removal of Tenant Property shall be to comply with the provisions of Section 9 [Compliance with Laws] up to, but not beyond, the Termination Date (or the expiration or other sooner termination of this Lease). Except to the extent required by Section 9 [Compliance with Laws], Tenant shall not be required to restore the Demised Premises to its original condition, regrade the Demised Premises or remove from the Demised Premises any Tenant Changes or any Local By-Products, Foreign By-Products or other waste material deposited on the Demised Premises.

b. Tenant shall assign to Landlord (except as provided to the contrary in Sections 21 [Tenant Property] and 22 [Tenant Financing; Leasehold Mortgages] hereof) all of Tenant's right, title and interest in and to the Demised Premises and any Tenant Property except to the extent of Tenant Property actually removed as aforesaid (subject to any liens or encumbrances thereon, including, if then still outstanding, the Loan Liens and any Leasehold Mortgage); and

c. Tenant shall assign to Landlord all of Tenant's right, title and interest in all permits, licenses and approvals, pertaining to the operation of the Plants on the Demised Premises (to the extent the same may be so assigned but subject to any liens or encumbrances thereon in favor of any Leasehold Mortgagees). Thereupon, Tenant shall have no, and shall thereupon be deemed released from, further liability or obligation to Landlord on account of this Lease, and all claims of Landlord on account of a breach or non-performance by the Tenant of the terms hereof (including any judgments arising with respect thereto) shall be extinguished. The rights of Landlord contained in this Section are subject to the limitations on their exercise contained in Section 22 [Tenant Financing; Leasehold Mortgages] of this Lease.

21. TENANT PROPERTY.

Title to all buildings, improvements, property or equipment and any alterations thereof and additions thereto here-

Title to all buildings, improvements, property or equipment and any alterations thereof and additions thereto hereafter furnished by or at the expense of Tenant or to, for or on behalf of Tenant by others (including any Plants or Tenant Changes), whether or not the same shall be affixed to the Demised Premises ("Tenant Property"), shall remain solely in Tenant. All Tenant Property may be removed by Tenant at any time. Landlord hereby waives and subordinates in favor of any persons who at any time or times lend money to Tenant for any reason or hold a security interest in connection with the purchase of Tenant's Property or otherwise, any claim, demand or lien Landlord may have or acquire with respect to Tenant's Property. Upon Tenant's request Landlord shall execute such documents as reasonably required to confirm the foregoing waiver and subordination. Nothing in this Lease shall preclude or prevent Tenant's creditors or any other person holding a security interest in any Tenant Property from removing the same in the event of a default by Tenant under any Leasehold Mortgage or any security agreement relating thereto.

22. TENANT FINANCING; LEASEHOLD MORTGAGES.

a. Funding for the purchase, development, construction, maintenance and operation of the Plants, Tenant Property or the conduct of any other Permitted Use may, at the sole option of Tenant and without Landlord's consent, now or at any time or times be obtained through a loan or loans to Tenant

from third parties, which may be affiliates of Tenant, which loans may be refinanced by a loan or loans from those third parties or from others (all such lenders are collectively, "Lenders"). Such loans may be evidenced by a note or notes, which may be replaced by a note or notes (collectively, the "Notes") and may be secured, in whole or in part, by one or more security interests, assignments, deeds of trust or mortgages (all of the foregoing are collectively included within the term "Leasehold Mortgage" as defined in Subsection 22 b. below) which are or will be liens or encumbrances on this Lease, Tenant's leasehold interest in the Demised Premises, or any part or parts of this Lease or Tenant's leasehold estate, and Tenant's ownership interest in the Plants, the Tenant Property, and other personal property of Tenant ("Loan Liens") (but none of the foregoing shall constitute a lien or encumbrance of Landlord's title or estate to the extent not included within the Demised Premises). Any interest of Landlord in the Plants or Tenant Property shall be subject and subordinate to the Loan Liens and to any further or additional security interest created therein by Tenant to secure the Notes and any replacement financing thereof. While this subordination shall be automatic, Landlord shall nevertheless execute and deliver from time to time such evidences of subordination as the Lenders, and any other holders of the Notes or the Loan Liens or any replacements thereof (all of the foregoing are individually and collectively included within the

term "Leasehold Mortgagee" as defined below in Subsection b. of this Section), may from time to time reasonably require.

b. Landlord shall, in the event Tenant at any time or times encumbers its leasehold interest and the estate hereby created in the Demised Premises or any part or parts thereof by way of a mortgage or deed of trust or mortgages or deeds of trust (individually and collectively, "Leasehold Mortgage"), if requested by the holder, beneficiary, or trustee under a Leasehold Mortgage (individually and collectively, "Leasehold Mortgagee"), deliver to the Leasehold Mortgagee (the name and address of which shall be furnished to Landlord by Tenant or by the Leasehold Mortgagee) copies of all notices sent to Tenant under and with respect to this Lease at the same time and in the same form and manner as sent to Tenant. No such notice by Landlord to Tenant shall be deemed to have been given unless and until a copy thereof has been so provided to every Leasehold Mortgagee.

c. Upon the occurrence of any default or any Event of Default, Landlord shall notify in writing the Leasehold Mortgagee and, within ninety (90) days after the giving of the notice, the Leasehold Mortgagee shall have the right to cure the default for the account of Tenant and, if more than ninety (90) days shall be required to cure the default with reasonable diligence, the Leasehold Mortgagee shall have such additional time (beyond the ninety (90) days) as may be reasonably necessary to cure the

default. Landlord shall accept such performance by or at the instigation of the Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Demised Premises by the Leasehold Mortgagee for such purpose. Landlord shall not be liable for failure to give notice, but if Landlord shall fail to notify the Leasehold Mortgagee of the existence of any default or any Event of Default hereunder, the time within which the Leasehold Mortgagee shall have the right to cure the default or Event of Default shall not commence to run until the Leasehold Mortgagee shall have been notified by Landlord.

d. Without the prior written consent of any Leasehold Mortgagee, there shall be no cancellation or surrender of this Lease (whether pursuant to Section 5 [Tenant's Right to Terminate] hereof or otherwise) by the joint action of Landlord and Tenant, or any modification of this Lease by the joint action of Landlord and Tenant.

e. If Landlord shall elect to terminate this Lease by reason of any Event of Default, the Leasehold Mortgagee shall have the right to postpone and extend the date of the termination of this Lease for a period of not more than six (6) months provided that the Leasehold Mortgagee shall cure or cause to be cured any then existing default (other than non-monetary defaults which are not reasonably susceptible of being cured by the



Leasehold Mortgagee and provided the same does not and will not substantially and adversely effect Landlord's interests under this Lease) and pay the rent and any additional rent, and comply with and perform all of the other terms, conditions and provisions of this Lease on Tenant's part to be complied with and performed and provided further that, if not enjoined or stayed, the Leasehold Mortgagee shall forthwith take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or otherwise, and shall prosecute the same to completion with all due diligence. The time for completion by such Leasehold Mortgagee of its proceedings shall be extended for such period of time as such Leasehold Mortgagee may be enjoined or stayed from further action. Furthermore, if, at the end of the six month period, the Leasehold Mortgagee shall be actively engaged in steps to acquire or sell Tenant's interest herein, the time shall be extended for such period as may be reasonably necessary to complete such steps with reasonable diligence and continuity.

f. Landlord agrees promptly after submission to it to execute, acknowledge and deliver any agreements modifying this Lease as may be reasonably requested by any Leasehold Mortgagee provided that such modification does not decrease the rent payable to the Landlord or materially decrease Tenant's obligations pursuant to this Lease.

g. Provided the Leasehold Mortgagee is The Conduit and Foundation Corporation, a Pennsylvania corporation ("Conduit") or a bank, savings and loan association, leasing corporation, insurance company, finance company, pension plan, real estate investment trust, or similar institutional lender (any of the above being hereinafter referred to as an "Institutional Lender"), the proceeds otherwise payable to Tenant arising from a condemnation may (if so provided in any Leasehold Mortgage) be held by any Leasehold Mortgagee provided they are distributed pursuant to the provisions of this Lease. A Leasehold Mortgagee may reserve the right to apply to the mortgage debt all or any part of the proceeds pursuant to the terms of the Leasehold Mortgage.

h. The name of the Leasehold Mortgagee may be added as a named insured under any insurance policy required to be carried by Tenant hereunder provided the insurance proceeds are to be applied in whatever manner may be specified in this Lease, and that the Leasehold Mortgage so provides. Provided the Leasehold Mortgagee is an Institutional Lender, the proceeds of any insurance policies may be held by the Leasehold Mortgagee and distributed according to the provisions of this Lease. A Leasehold Mortgagee may reserve the right to apply to the mortgage debt all or any part of the proceeds pertaining to the Plants, Tenant Property or any replacements thereof.

i. In the event this Lease shall be terminated at any time during the term hereof by reason of an Event of Default, then Landlord, if requested by a Leasehold Mortgagee within thirty (30) days of the receipt by the Leasehold Mortgagee from the Landlord of written notice that the termination has occurred, shall enter into a new lease ("New Lease") with the Leasehold Mortgagee or with any nominee of the Leasehold Mortgagee, upon all the same terms and conditions as shall then be contained in this Lease; provided, however, that with respect to any rights of possession of Tenant or persons claiming by, through, or under Tenant, Landlord shall not warrant possession of the Demised Premises to the Leasehold Mortgagee or its nominee under the New Lease and the tenant under the New Lease shall be liable to perform the obligations imposed on the tenant by such New Lease only during the period such person has ownership of such leasehold estate. If more than one Leasehold Mortgagee shall request a New Lease pursuant to this subsection, Landlord shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is prior in lien, or with the designee of such Leasehold Mortgagee. Landlord, without liability to Tenant or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business within the state in which the Demised Premises are located as the basis for determining the

appropriate Leasehold Mortgagee who is entitled to such New Lease.

j. The making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate hereby created, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the leasehold estate hereby created so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of the Tenant to be performed hereunder (except as provided above in subsection e. of this Section), but the purchaser at any sale of this Lease and of the leasehold estate hereby created in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the leasehold estate hereby created under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage shall be deemed to be an assignee, and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of the Tenant to be performed hereunder from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the leasehold estate.

k. In the event any Leasehold Mortgagee shall acquire Tenant's interest in this Lease as a result of a sale under its Leasehold Mortgage pursuant to a foreclosure and sale, or through any transfer or assignment in lieu of foreclosure, or through

settlement of or arising out of any pending or contemplated foreclosure action, or otherwise, the Leasehold Mortgagee shall have the privilege of transferring its interest in the Lease to any other person, firm or corporation, including, but not limited to, its nominee, all without the prior consent of Landlord and free and clear of any control of Tenant, and the Leasehold Mortgagee shall be relieved of any further liability under this Lease from and after such transfer and thereafter the transferee shall be liable for Tenant's obligations under this Lease.

1. In the event Landlord cures any default by Tenant under a Leasehold Mortgage, any sums expended therefor shall constitute additional rent hereunder and shall be payable by Tenant to Landlord within ten (10) days of demand. Any sums not reimbursed to Landlord shall bear interest from the date of payment by Landlord at the rate of ten percent (10%) per annum.

m. Nothing contained in this Section shall release Tenant from the full and faithful observance and performance of any covenants and conditions in this Lease contained and on its part to be observed and performed (except that Landlord acknowledges that a cure by a Leasehold Mortgagee of a default by Tenant shall be deemed to have been accepted by Landlord as if the same had been done by the Tenant) or from any liability for the non-observance or non-performance thereof or to be deemed to constitute a waiver of any rights of Landlord hereunder as against Tenant.

### 23. UTILITY SERVICES

a. Landlord shall not be required to furnish any service to the Demised Premises, including but not limited to, heat, sewer, water (other than as required by Section 1 c. hereof), steam, gas, electricity, and power, and shall not be liable for any failure of water supply, provided that Landlord does nothing to interfere with the supply of the same.

b. Tenant agrees to pay to the utility companies furnishing same all charges for gas, electricity, water, light, heat, steam, sewer, power and/or other services used or charges imposed in or about or supplied to the Demised Premises, and shall indemnify Landlord against any and all liability on such account.

### 24. FURTHER ASSURANCES.

Landlord shall, at the request of Tenant, execute and deliver to Tenant in form capable of recording, any agreements and such other documents as Tenant shall reasonably consider necessary to carry out the intent and purpose of this Lease or which any title company may require in order to insure Tenant's title to its leasehold estate created hereunder. Landlord shall, at the request of Tenant, deliver to Tenant such documents (either originals or true and correct copies thereof) as are in Landlord's custody or control as Tenant shall reasonably consider necessary to carry out the intent and purpose of this Lease,

including, but not limited to, Licenses and Permits and any applications therefor, any reclamation bonds, etc.

25. NOTICE.

All notices or consents required to be given by any party herein shall be in writing. In every case where, at the option of Landlord, or where Landlord is required to serve notice or demand on Tenant concerning this Lease, or any of the provisions or conditions thereof, it shall be sufficient service of the notice, demand or declaration, to deliver a copy thereof to Tenant, or mail a copy thereof by certified or registered mail, return receipt requested, addressed to American Bituminous Power Partners, L.P., 33 Rock Hill Road, Bala Cynwyd, Pennsylvania, 19004-2010 or at such other place as Tenant may from time to time designate, and by delivering or mailing a copy of such notice by certified or registered mail, return receipt requested, to any Leasehold Mortgagee, provided that any such Leasehold Mortgagee gives Landlord written notice of their existence together with, from time to time, the address to which any such notice is to be sent. For the purposes of this Section, "Tenant" shall include any person or entity who, pursuant to the provisions of Section 10 [Assignment or Subletting] hereof, is then liable with Tenant for the performance of all of Tenant's covenants contained in this Lease. Tenant or any Leasehold Mortgagee may serve notice hereunder by delivering or mailing the same by certified or registered mail, return receipt requested, to Landlord at

, or at such other place as Landlord may from time to time designate in a notice to Tenant. Except as herein specifically provided to the contrary, any notice sent by certified or registered mail shall be deemed to have been given on the date received by the addressee.

26. SUCCESSORS IN INTEREST.

This Lease, and the covenants and conditions herein contained, shall inure to the benefit of and be binding upon the Landlord, its successors and assigns, and shall inure to the benefit of, and (except as to any Leasehold Mortgagee) be binding upon, Tenant, its successors and assigns.

27. RETURN OF POSSESSION.

Subject only to Sections 18 [Tenant's Changes; Maintenance; Damage], 20 [Transfer on Termination], 21 [Tenant Property], and 22 [Tenant Financing; Leasehold Mortgages] hereof, Tenant shall surrender and deliver the Demised Premises at the expiration of the term of this Lease, or upon the sooner termination of such term, in the condition Tenant is required to maintain the same pursuant to the provisions of Section 18 [Tenant's Changes; Maintenance; Damage] hereof.

28. NO LIENS; CERTAIN RIGHTS; QUIET ENJOYMENT.

Landlord warrants and represents that it owns the Demised Premises which are, except as set forth in Exhibit C, presently free and clear of all mortgages, liens, claims,



encumbrances and charges of every kind ("Landlord Liens") and Landlord's title to the Demised Premises is good and marketable. On and after the date hereof and during the term of this Lease, Landlord shall not encumber or subject or permit the Demised Premises or this Lease to be encumbered or subject to any Landlord Lien. Landlord further warrants and represents to Tenant that Landlord has the lawful and assignable right to sink wells and remove and consume water as contemplated by Subsection c. of Section 1 [Demised Premises; Reserved Use].

Tenant, if and so long as it shall pay the rent and performs and observes the other terms and covenants to be performed and kept by it as provided in this Lease, shall have the peaceable and quiet possession of the Demised Premises during the term of this Lease free of the claims of Landlord or of any other person.

29. WEST VIRGINIA LAW TO CONTROL.

This Lease shall be construed, interpreted and enforced according to the laws of the State of West Virginia, without regard to principles of conflict of laws.

30. WAIVER OF SUBROGATION.

Landlord and Tenant hereby release the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss or damage to property covered by any insurance then in force, even if such loss or damage shall have been caused by

the fault or negligence of the other party, or anyone for whom such party may be responsible, provided, however, that this release shall be applicable and in force and effect only to the extent of and with respect to any loss or damage occurring during such time as the policy or policies of insurance covering said loss shall contain a provision to the effect that this release shall not adversely affect or impair said insurance or prejudice the right of the insured to recover thereunder. If at any time the insurance carriers issuing policies to Landlord or Tenant shall exact an additional premium for the inclusion of such or similar provisions, the party whose insurance carrier has demanded the premium (the "Notifying Party") shall give the other party hereto notice thereof. In such event, if the other party requests, the Notifying Party shall require the inclusion of such or similar provisions by its insurance carrier, and the requesting other party shall reimburse the Notifying Party for any such additional premiums during the remainder of the term of this Lease. If at any time any such insurance carrier shall not include such or similar provisions in any fire or extended coverage insurance policy, then the party whose policy no longer contains such provision shall notify the other party that the provision is no longer included in the policy and thereupon, as to loss covered by that policy, the release set forth in this Section shall be deemed of no further force or effect. During any period while the foregoing waivers of right of recovery are

in effect, the party hereto as to whom such waivers are in effect shall look solely to the proceeds of such policies to compensate itself for any loss occasioned by any casualty which is an insured risk under such policies.

31. INDEMNITY.

a. In addition to any specific indemnities contained herein, Landlord shall indemnify and hold Tenant and the officers, partners, employees and agents of Tenant (collectively, "Tenant's Indemnified Parties") harmless against all claims, losses and liabilities (including reasonable attorney's fees incurred by any of Tenant's Indemnified Parties in defending any action, suit or proceeding) to third parties arising out of, or in any way connected with, the inaccuracy of any representation or warranty made by Landlord hereunder or a failure of Landlord to satisfy and discharge its covenants and obligations hereunder.

b. In addition to any specific indemnities contained herein, Tenant shall indemnify and hold Landlord and the officers, directors, employees and agents of Landlord (collectively, "Landlord's Indemnified Parties") harmless against all claims, losses and liabilities (including reasonable attorney's fees incurred by any of Landlord's Indemnified Parties in defending any action, suit or proceeding) to third parties arising out of, or in any way connected with, the inaccuracy of any representation or warranty made by Tenant hereunder or

Tenant's failure to discharge and satisfy its obligations and covenants hereunder.

32. RIGHT TO CURE.

a. If Landlord shall be in default hereunder, after two weeks' notice from Tenant that Tenant intends to cure such default (or without notice if in Tenant's reasonable judgment an emergency shall exist), Tenant shall have the right, but not the obligation, to cure such default, and Landlord shall pay to Tenant upon demand the reasonable cost thereof and Tenant may deduct same from any payments for rent. Except when in Tenant's reasonable judgment an emergency shall exist, Tenant shall not commence to cure any default of such a nature that could not reasonably be cured within such aforesaid two (2) week period provided Landlord shall have commenced to cure the same within said period and so long as Landlord continuously thereafter proceeds with reasonable diligence to cure such default.

b. If Tenant shall be in default hereunder, after two weeks' notice from Landlord that Landlord intends to cure such default (or without notice if in Landlord's reasonable judgment an emergency shall exist), Landlord shall have the right, but not the obligation, to cure such default, and any reasonable sums expended therefor shall constitute additional rent hereunder and shall be payable to Landlord upon demand. Except when in Landlord's reasonable judgment an emergency shall exist, Landlord shall not commence to cure any default of such a nature that

could not reasonably be cured within such aforesaid two (2) week period, provided Tenant shall have commenced to cure the same within said period and so long as Tenant continuously thereafter proceeds with reasonable diligence to cure such default.

33. SPECIAL REMEDIES OF TENANT.

Landlord shall, promptly after notice from Tenant, at Landlord's own cost and expense, bring and prosecute to completion an appropriate action or proceeding in a court of competent jurisdiction to restrain a violation by others (or to enforce performance by others) in respect of the provisions of this Lease or with respect of rights of Landlord which are included within the Demised Premises, obtaining, if possible, an injunction pendente lite. In addition to any other remedies which Tenant may have at law or in equity, Tenant shall have the right to bring an action or proceeding against any occupant or occupants of any portion of the Demised Premises for injunctive or other relief, in its own name or in the name of Landlord, to enforce Tenant's rights under the provisions of this Lease, if either Landlord shall have refused, or after a reasonable period of time Landlord shall have failed to bring such action or proceeding. Within a reasonable time after demand therefor, Landlord shall execute and deliver to Tenant any documents required to enable Tenant to prosecute any such action or proceeding.

34. WAIVER OF DISTRAINT.

Notwithstanding anything to the contrary herein contained, Landlord hereby expressly waives any and all rights granted by or under any present or future laws to levy or distrain for rent, in arrears, in advance or both, upon all goods, merchandise, equipment, fixtures, furniture, Tenant Property and other personal property of, or in the custody of, Tenant or any subtenant or licensee of Tenant in the Demised Premises, delivered or to be delivered thereto.

35. BROKERS.

Landlord and Tenant each represent and warrant to the other that it has not dealt with any broker, agent, finder or other person other than Byron Buck ("Broker") in the negotiation for or the obtaining of this Lease and agrees to indemnify and hold the other harmless from any and all costs (including reasonable attorney's fees) and liability for commissions or other compensation claimed by any such broker, agent, finder or other person, employed by it or claiming to have been engaged by it in connection with this Lease other than Broker. Tenant shall be responsible for any commission due Broker. The provisions of this Section shall survive the termination of this Lease.

36. MISCELLANEOUS.

a. The use of the singular herein shall include the plural and vice versa; and the use of any gender shall include all genders.

b. The captions and headings herein are for convenience and reference only and shall not be used to construe or interpret this Lease. The underlinings under the defined terms which appear at the place at which they are defined herein are only for convenience in locating such defined terms.

c. No modification of this Lease shall be binding unless such modification shall be in writing and signed by the parties hereto.

d. This Lease shall not be redeemable under any provision of law heretofore or hereafter enacted.

e. The invalidity or unenforceability of any provision of this Lease, or any application thereof, shall not affect or impair any other provisions or the validity or enforceability of the remainder of this Lease, or any other application thereof.

f. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant. Neither the computation of rent nor any other provisions contained in this Lease nor any act or acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

g. As used in this Lease, the term "rent" or "rental" shall mean and include any and all sums of money payable by

Tenant to Landlord under the terms of this Lease, including, but not limited to, rent and additional rent.

h. In the event the leasehold interest hereunder shall ever be held by the same person or party who then holds the reversionary interest under this Lease, no merger shall result therefrom unless and until all persons having an interest in either the leasehold interest created by this Lease or the reversionary interest in the Demised Premises join in a written instrument effecting such merger and such instrument is duly recorded, otherwise both the leasehold and reversionary interests shall continue, separate and distinct.

i. Landlord and Tenant agree to execute, acknowledge and deliver to each other simultaneously with the execution and delivery of this Lease, a notice of lease for recording, and upon the request of either party, to execute, acknowledge and deliver to each other a notice of any future modifications or amendments of this Lease, containing the information required by law for recording the same (and such other information, other than the rental terms, as either party may require) as to give notice of such modifications of this Lease. In addition to the foregoing, either Landlord or Tenant may at any time record this Lease and any future modifications or amendments hereto in their entirety all of which shall be executed and delivered by Landlord and Tenant in recordable form. Tenant shall pay all charges and



taxes due upon or for the recording of this Lease, regardless of when or by whom this Lease shall be recorded.

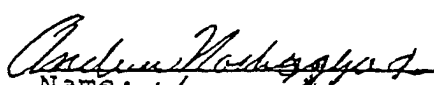
j. The version of this Lease dated June 26, 1987 which was executed by Tenant but not Landlord is hereby declared null and void.

k. This Lease shall be null and void unless executed and delivered by Landlord to Tenant on or before July 10.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

Attest:

NORTH MARION DEVELOPMENT, INC.

  
Name: Arthur Vashagyan  
Title: V. President

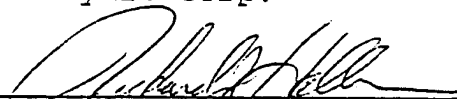
[Corporate Seal]

By:   
Name: Stanley M. Seaks  
Title: President

AMERICAN BITUMINOUS POWER PARTNERS, L.P.,  
By its general partner:

AMERICAN HYDRO POWER COMPANY  
By its general partners:

C & F Hydro Corp.

By:   
Richard G. Halloran  
President

and

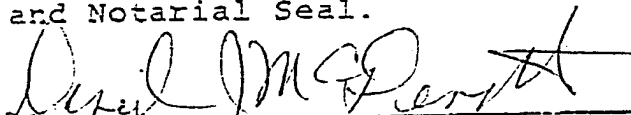
Hydro Management Corp.

By:   
Peter A. McGrath  
President

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF PHILADELPHIA )

On this 30th day of JOPE, 1987, before the undersigned, a Notary Public, personally appeared RICHARD J. HALLORAN who, being duly sworn, acknowledged himself to be the President of C&F Hydro Corp., a general partner of American Hydro Power Company, and PETER A. McGRATH who, being duly sworn, acknowledged himself to be the President of Hydro Management Corp., the other general partner of American Hydro Power Company, and acknowledged that on behalf of those corporations as general partners of American Hydro Power Company, they, being fully authorized to do so, executed the foregoing Lease for the purpose therein contained as the act and deed of American Bituminous Power Partners, L.P. as the therein named Tenant.

WITNESS My hand and Notarial Seal.

  
Notary Public

My Commission Expires: \_\_\_\_\_

DANIEL J. McDEVITT  
Notary Public, Phila., Phila. Co.  
My Commission Expires Jan. 2, 1988

STATE OF West Virginia )  
COUNTY OF Marion )

On this July day of July, 1987, before the undersigned, a Notary Public, personally appeared Stanley M. Sess who, being duly sworn, acknowledged himself to be the President of North Marion Development, Inc., a West Virginia corporation and acknowledged that he, on behalf of this corporation being fully authorized to do so, executed the foregoing Lease for the purpose therein contained as the act and deed of North Marion Development, Inc. as the therein named Landlord.

WITNESS My hand and Notarial Seal.

Ethel M. Siskel  
Notary Public

My Commission Expires: Sept. 15, 1992

EXHIBIT A

Description of Grant Town Parcel

The Grant Town Parcel consists of all that property described in, and conveyed to Landlord by, Deed dated May 21, 1986 from Eastern Associated Coal Corp. to North Marion Development, Inc. recorded in the Recorder of Deeds Office in and for Marion County, West Virginia in Deed Book 868 page 429 which property is depicted on a Plat of Survey for American Power Partners dated October 1987 and prepared by Stanley R. Harper, Licensed Surveyor and which depicts a parcel containing 370.645 +/- acres.

EXHIBIT A-1

Legal Description of Joanna Tract

The Joanna Tract consists of all that property described as "Parcel No. 8" in, and conveyed to Landlord by, Deed dated October 29, 1985 from Eastern Associated Coal Corp. to North Marion Development, Inc. and recorded in the Office of the Recorder of Deeds in and for Marion County, West Virginia on October 31, 1985 in Deed Book 862 page 1062.

EXHIBIT A-2

Legal Description of Adjacent Property

The Adjacent Property consists of all that property described as "Parcel No. 9" in, and conveyed to Landlord by, Deed dated October 29, 1985 from Eastern Associated Coal Corp. to North Marion Development, Inc. and recorded in the Office of the Recorder of Deeds in and for Marion County, West Virginia on October 31, 1985 in Deed Book 862 page 1062.

EXHIBIT B

List of Landlord's Permits and Licenses

[To Be Supplied By Landlord]

1. 0-5-83 Refuse AND Fines AT  
The Federal #1 site, Grantown, W. VA  
(Presently IN EACCorp NAME, To be  
transferred to ABPP.)
2. 0-24-83 Clean Coal Stockpile ALSO PART  
OF SEVERAL OTHER AREAS NOT OWNED  
BY North MARION Development.  
This Permit will be DIVIDED AND A  
NEW PERMIT NR. ISSUED to cover  
the Clean Coal Stock Pile.  
Fed #1 site, Grantown W. VA.
3. 0-21-83 Refuse site AT the JOANNE  
MINE. Covers 80 acres. This Permit  
IS IN North MARION Development  
NAME.

Note. Kim Hamilton AT Peabody Coal Co  
IS PREPARING DR-19A TRANSFER  
APPLICATION FOR PERMIT'S NR.'s  
0-5-83 AND the NEW PERMIT  
NR COVERING the CLEAN COAL  
Stock Pile which IS presently UNDER  
PERMIT NR 0-24-83.

N.M.D. will have to have PERMIT NR  
0-21-83 transferred to ABPP.

### EXHIBIT C

#### List of Landlord's Permits and Licenses

1. 0-5-83 Refuse and waste coal material at the federal #1 site, Grant Town, W.Va. (Presently in EAC Corp. name to be transferred to ABPP).
2. 0-24-83 Clean coal stockpile also part of several other areas not owned by North Marion Development. This permit will be divided and a new permit NR. issued to cover the clean coal stockpile. Federal #1 site, Grant Town, W.Va.
3. 0-21-83 Refuse site at the Joanna mine. Covers 80 acres. This permit is in North Marion Development name.

NOTE: Kim Hamilton at Peabody Coal Co. is preparing DR-19A transfer applications for permit's NR.'s 0-5-83 and the new permit NR. covering the clean coal stockpile which is presently under permit NR. 0-24-83.  
N.M.D. will have to have permit NR. 0-21-83 tranferred to ABPP.



EXHIBIT D

Conditions, Restrictions, Agreements, Limitations,  
Encumbrances and Easements (other than this Lease)

NONE

EXHIBIT E

Amortization Schedule of Senior Debt follows this  
page.

EXHIBIT E

AMERICAN BITUMINOUS POWER PARTNERS, L.P.  
AMERICAN KILN PARTNERS, L.P., A LIMITED PARTNERSHIP  
BASE CASE AMORTIZATION SCHEDULE  
(\$000's)

<u>Operation Year</u>	<u>Principal Payments*</u>
1**	
2	\$ 742 - 168
3	2,632 1,990
4	3,940 2,842
5	3,992 2,927
6	4,284 2,885
7	4,413
8	4,431
9	<del>4,999</del> 3,105
10	4,833
11	5,092
12	5,486
13	5,885
14	6,899
15	7,348
16	7,326
17	7,988
18	8,237
19	6,751
20	7,683
21	8,362
22	9,166
23	9,899
24	10,691
25	11,546
	<u>12,375</u> 12,575
	\$165,000

- \* Subject to change based upon actual amount of Project Bonds issued.
- \*\* Partial Year.

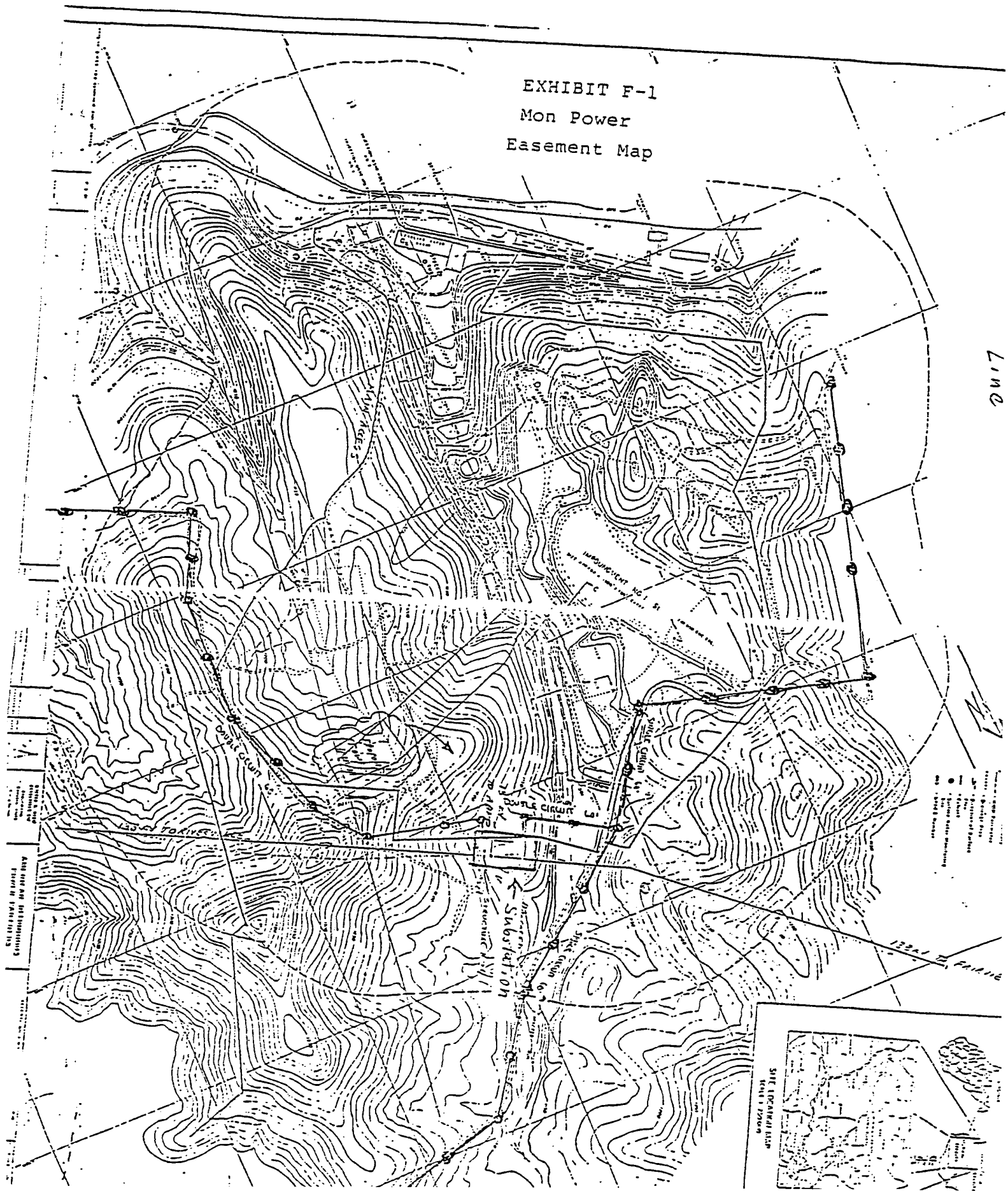
EXHIBIT F - Description of Mon Power Property

The following improvements to be made and constructed on, in, to and under the Demised Premises by Mon Power shall remain the property of Mon Power and be governed by Section 19 of the Lease:

1. The substation, protective relaying and metering equipment to be constructed by Mon Power at a point within approximately 1,000 feet of the Initial Cogeneration Plant which will represent the interconnection between the Initial Cogeneration Plant and Mon Power's utility system and all transformers, switchgear, controls, relaying equipment, towers, and wires as may be installed between such point of interconnection and Mon Power's Fairview-Rivesville line.
2. All instruments installed at the Initial Cogeneration Plant to measure, or to measure and record, the gross electric energy being generated by the Initial Cogeneration Plant and all possible sources of supply of, and the consumption by the Initial Cogeneration Plant of, electric energy for internal plant uses.
3. All control, telephonic or other telecommunications equipment as Mon Power may specify for installation at the Initial Cogeneration Plant for the transmission of data signals, in either direction, between the Initial Cogeneration Plant and Mon Power's control center in order to enable Mon Power to dispatch the Initial Cogeneration Plant.

# EXHIBIT F-1 Mon Power Easement Map

2017



Set forth below are two examples showing the Percentage Rent payable pursuant to Section 6c, based upon hypothetical amounts of local and foreign fuel burned at a Plant in a particular month, hypothetical average BTU content for such fuels and hypothetical revenues received through the burning of such fuels. These examples are provided solely to illustrate the operation of Section 6 c. and are not intended to be a projection of actual fuel usage, actual BTU content of fuel, revenues to be received or Percentage Rent to be paid. Actual results may vary substantially from the results in the examples.

Example 1 - Landlord would receive \$56,713 in this example.

### EXHIBIT C

#### Calculation of Percentage Rent - Example

(a) Fuel Source	(b) Tons Burned	(c) Average BTUs/Ton (in thous.)	(d) BTUs from Fuel Source (b)x(c) (in millions.)	(e) % of Total BTUs From All Fuel Sources	(f) Total Rev. from Sale of Elect. and Steam, (\$)	(g) Amt. of Total Revenue Attributable to Fuel Source (\$) (e)x(f)	(h) Appl'd. Rent Perc'tg.	(i) Tentative Rent (\$) (g)x(h)
1. Local Fuel	26,736	12,648	338.16	50%	2,268,566	1,134,283	3%	34,028
2. Foreign Fuel (Operating Reason)	12,556	13,466	169.08	25%	2,268,566	567,141	1%	5,671
3. Foreign Fuel (Nonoperating Reason)	12,556	13,466	169.08	25%	2,268,566	567,141	3%	17,014
4. Total from all sources	51,848	N/A	676.32	100%	2,268,566	2,268,566	N/A	56,713

Example 2 - Landlord would receive \$31,759 in this example.

EXHIBIT G (cont.)

(a) Fuel Source	(b) Tons Burned	(c) Average BTUs/Ton (1p thous.)	(d) BTUs from Fuel Source (b)x(c) (in millions.)	(e) % of Total BTUs From All Fuel Sources	(f) Total Rev. from Sale of Elect. and Steam, (\$)	(g) Amt. of Total Revenue Attributable to Fuel Source (\$) (e)x(f)	(h) Applc. Rent Pctg.	(i) Tentative Rent (\$) (g)x(h)
1. Local Fuel	5,347	12,648	67.6	10%	2,268,566	226,856	3%	6,805
2. Foreign Fuel (Operating Reason)	40,179	13,466	541.1	80%	2,268,566	1,814,854	1%	18,149
3. Foreign Fuel (Nonoperating Reason)	5,022	13,466	67.6	10%	2,268,566	226,856	3%	6,805
4. Total from all sources	50,548	N/A	676.3	100%	2,268,566	2,268,566	N/A	31,759

EXHIBIT C

Conditions, Restrictions, Agreements, Limitations,  
Encumbrances and Easements (other than this Lease)

NONE





AMENDMENT TO  
AMENDED AND RESTATED LEASE

THIS AMENDMENT (this "Amendment"), made as of this 28th day of December, 1989, by and between HORIZON VENTURES OF WEST VIRGINIA, INC., a West Virginia corporation (referred to herein as either "Landlord" or "Horizon"), AMERICAN BITUMINOUS POWER PARTNERS, L.P., a Delaware limited partnership transacting business in West Virginia as American Bituminous Power Partners, Limited Partnership ("Tenant"), and with respect only to the provisions of Section 6 [Amendments to Section 41 (Miscellaneous)], NORTH MARION DEVELOPMENT, INC., a West Virginia corporation ("North Marion"), amends the Amended and Restated Lease (the "ABPP Lease") dated as of November 29, 1989 by and between Landlord, Tenant and North Marion. Capitalized terms used but not defined herein shall have the meanings assigned to them in the ABPP Lease. Capitalized terms defined herein are hereby incorporated by reference into the ABPP Lease. All amendments referred to herein are amendments to the ABPP Lease.

WHEREAS, (i) ABPP has the right under Section 10 c. of the ABPP Lease to request separation of the Demised Premises by means of separate leases which are independent of any other leases and are direct between Landlord and the tenant under such separate leases and (ii) ABPP has requested separation of a portion of the Grant Town Parcel by means of two separate leases, i.e., a Lease dated the date hereof by and between Horizon, North Marion and American Kiln Partners, Limited Partnership, a Delaware limited

partnership ("AKP"), a copy of which is attached hereto as Exhibit A [AKP Lease] (the "AKP Lease"), and the ABPP Lease as amended by this Amendment.

WHEREAS, the parcel of land being separated from the Grant Town Parcel is referred to in the AKP Lease and herein as the "Kiln Facility Parcel" and the "Demised Premises" as defined in the AKP Lease is referred to herein as the "AKP Demised Premises."

WHEREAS, the Demised Premises and the AKP Demised Premises are referred to collectively herein as the "Total Demised Premises."

WHEREAS, AKP has been organized for the purposes of, and intends to engage in, among other potential businesses, the businesses of developing, operating, leasing, selling and otherwise dealing in, for itself and/or on behalf of others, sawmill and wood-drying kiln facilities ("Kiln Facilities"), as well as facilities for the processing of ash residue from the Plants.

WHEREAS, AKP intends to purchase steam generated by the Plants for use in kiln drying lumber and other wood products at AKP's initial sawmill and kiln drying facility which will be located on the Kiln Facility Parcel (the "Initial Kiln Facility"). Such steam shall be transported from the Initial Cogeneration Plant to the Initial Kiln Facility by pipes and related equipment which will be owned in part by ABPP and in part by AKP.

WHEREAS, the parties desire to amend the ABPP Lease to provide<sup>t</sup> for, among other things, (i) the separation of the Kiln Facility Parcel and certain easements, licenses and rights of way as provided in the AKP Lease, (ii) the amendment of Exhibit A-1 to the ABPP Lease to provide for more accurate property descriptions based upon information disclosed in surveys which are in preparation and to add to the Joanna Parcel an approximately twenty-four (24) acre parcel which was inadvertently excluded from the original description of the Joanna Parcel, and (iii) if required by surveys which are in preparation, the amendment of Exhibit A to the ABPP Lease to provide for more accurate property descriptions.

NOW, THEREFORE, in consideration of the premises (i.e., the recitals) and the mutual covenants herein contained, Landlord, North Marion and Tenant hereby covenant and agree as follows:

1. AMENDMENTS TO DEFINITION OF DEMISED PREMISES, EXHIBIT A-1 [DESCRIPTION AND SURVEY OF JOANNA PARCEL] AND EXHIBIT A [DESCRIPTION AND SURVEY OF GRANT TOWN PARCEL].

a. The last sentence of the second "Whereas" clause which contains the definition of the Demised Premises shall be amended to read in its entirety as follows:

"The Grant Town Parcel (excluding therefrom the Kiln Facility Parcel) and the Joanna Parcel together with other rights as hereinafter described, including those described in subsections a. through f. of Section 1A [Demised Premises] hereof are herein referred to collectively as the 'Demised Premises.'"

b. Exhibit A-1 [Description and Survey of Joanna Parcel] is amended to read in its entirety as set forth in Exhibit B hereto [Revised Exhibit A-1 to ABPP Lease].

c. Exhibit A [Description and Survey of Grant Town Parcel] is amended, if, and to the extent provided in, Exhibit B-1 hereto [Revisions to Exhibit A to ABPP Lease].

2. AMENDMENTS TO SECTION 1A [DEMISED PREMISES].

a. Clauses (iv) and (v) of subsection d. of Section 1A [Demised Premises] shall be amended to read in their entirety as follows:

"(iv) for the erection, operation and maintenance of steam pipelines, valves, systems and related apparatus between the Plants and the Initial Kiln Facility and any Kiln Facilities which Tenant may operate on the Demised Premises and (v) as may be reasonably necessary for and related to any use made by Tenant of the Demised Premises or the proper and efficient operation of the Plants or the Kiln Facilities or the conduct of any other business by Tenant."

b. Section 1A [Demised Premises] shall be amended by adding the following clauses after line 12 on page 6 and deleting from page 6 lines 13 through 16 inclusive:

"f. easements and rights of way (the 'Easements and Rights of Way') on, over, under, and pertaining to the Kiln Facility Parcel to the extent the same are necessary or desirable in Tenant's sole discretion, (i) for vehicular and pedestrian ingress and egress to and from the Demised Premises, (ii) for the installation, operation and maintenance of utility lines, conduits and systems serving the Demised Premises, (iii) for the erection, operation and maintenance of electrical transmission lines and systems and related apparatus between the Demised Premises and those of the utility company or companies which may from time to time purchase electricity generated by the Plants and/or supply electricity or other utility products or services to the Plants, (iv) for the erection, operation and maintenance of steam pipelines, valves, systems and related apparatus between the Initial Cogeneration Plant and the Initial Kiln Facility and (v) as may be reasonably necessary for and related to any use made by Tenant of the Demised Premises or the proper and efficient construction, operation and maintenance of the Initial Cogeneration Plant, the conduct of any other business by Tenant, the performance by Tenant of its obligations under

applicable licenses and permits or the removal of waste coal material from the Grant Town Parcel; provided, that Landlord agrees that the Easements and Rights of Way may be limited or restricted, at the option of Tenant, pursuant to agreements solely between Tenant and AKP.

SUBJECT, HOWEVER, to the applicable provisions of this Lease, and the conditions, restrictions, agreements, limitations, encumbrances and easements, if any, shown on Exhibit C [Conditions, Restrictions, etc]."

3. AMENDMENTS TO SECTION 3 [USE; PLANT DEVELOPMENT].

a. Section 3 [Use; Plant Development] shall be amended by substituting the following clause B for the clause B located on pages 10 and 11 of the ABPP Lease:

"B. one or more industrial, commercial, wholesale, retail, residential, public use, convention or recreational facilities, including, but not limited to, Kiln Facilities that may purchase steam generated by the Initial Cogeneration Plant, industrial parks, distribution centers, storage facilities, manufacturing or processing facilities, shopping centers, hotels, motels, restaurants, office facilities, medical, dental and health care facilities, nursing and retirement homes, apartments, condominiums, single-family and

other residential uses, public buildings and facilities;".

b. Section 3 [Use; Plant Development] shall be amended by substituting for the words "Kiln Facility" in the third line on page 12, the words "Kiln Facilities" and by substituting the word "a" for the word "the" in the fifth line on page 13.

4. AMENDMENTS TO SECTION 6 [RENT].

a. The Percentage Rent, Pre-Startup Minimum Rent and Post-Startup Minimum Rent which accrues or is due under Section 6 [Rent] shall be reduced by an amount equal to the "Basic Rent" and "Minimum Rent" under the AKP Lease actually paid by AKP or by ABPP.

b. Subsection c. of Section 6 [Rent] shall be amended by adding the words "(including AKP)" after the word "parties" in the second line of clause (ii) on page 18.

5. AMENDMENTS TO SECTION 7 [RENT PAYMENT].

Subsection d. of Section 7 [Rent Payment] shall be amended by inserting the word "Initial" before the words "Kiln Facility" in the second to the last line on page 24.

6. AMENDMENTS TO SECTION 7A [SUBORDINATION OF RENT].

a. Subsection a. of Section 7A [Subordination of Rent] shall be amended to read in its entirety as follows:

"a. All Percentage Rent, any and all interest with respect to Percentage Rent and all



Post-Startup Minimum Rent (hereinafter collectively called the 'Subordinated Rent') is subordinated and subject in right of payment to the prior payment in full when due of all Senior Debt of Tenant in accordance with the provisions of this Section 7A. As used herein, the term 'Senior Debt' shall mean all indebtedness, obligations, and liabilities of Tenant pursuant to all notes, letters of credit, loan agreements, reimbursement agreements and/or guarantees (collectively, 'Credit Agreements') between Tenant and any banks or other financial institutions providing a letter of credit or other form of security or credit enhancement for the tax-exempt bonds being used to finance a portion of the costs of the Initial Cogeneration Plant ('Project Bonds') and/or providing other financing for the Initial Cogeneration Plant including, without limitation, all principal, premium (if any) and interest on all loans and other extensions of credit made pursuant to the Credit Agreements and any and all refinancings, renewals or extensions thereof (including any interest accruing subsequent to the commencement of bankruptcy,

insolvency or similar proceedings with respect to Tenant); provided, however, that the term Senior Debt as used herein (i) shall be limited to an aggregate principal amount of indebtedness or liabilities not exceeding at any time the sum of \$155,000,000, and (ii) shall not include any new loans or other extensions of credit made to Tenant pursuant to an amendment of any of the Credit Agreements after completion of the Initial Cogeneration Plant unless the proceeds thereof are used for the purpose of operating, maintaining or improving the Initial Cogeneration Plant and are approved by the Public Service Commission of West Virginia. The aggregate principal amount of Senior Debt shall be repayable (except in the case of (a) any refinancings, renewals or extensions thereof, (b) any new loans or other extensions of credit made in accordance with the provisions of clause (ii) of the preceding sentence, (c) the expiration of any letter of credit with respect thereto, (d) default in the payment thereof or (e) acceleration thereof due to an event of default) as set forth in the amortization schedule attached as Exhibit E [Base Case Amortization Schedule] hereto."

b. Exhibit E [Base Case Amortization Schedule] shall be amended to read in its entirety as set forth in Exhibit C hereto [Revised Exhibit E to ABPP Lease].

7. AMENDMENTS TO SECTION 8 [TAXES].

The last sentence of subsection a. of Section 8 [Taxes] shall be amended to read in its entirety as follows:

"Notwithstanding anything to the contrary herein contained and to effect a partial sharing by Tenant of Landlord's Real Estate Taxes and 'Landlord's Real Estate Taxes' under subsection a. of Section 8 [Taxes] of the AKP Lease (collectively, 'Landlord's Total Real Estate Taxes'), Tenant shall, in addition to any other amounts due hereunder, pay as Landlord directs, either to Landlord or directly to the appropriate taxing authority: (i) \$5,000 as Tenant's partial share of Landlord's Total Real Estate Taxes assessed during each whole or partial calendar year (pro-rated for any partial year) during the term of this Lease following Startup and payable in arrears on the tenth (10th) day of January of the year following the year in which assessed; and, in addition thereto, (ii) that amount by

which Landlord's Total Real Estate Taxes assessed for any whole or partial calendar year (pro-rated for any partial year) during the term of this Lease following Startup exceeds fifty percent (50%) of the aggregate of (A) the gross amount of all Post-Startup Minimum Rent and Percentage Rent accrued during such whole or partial calendar year and (B) the gross amount of all Basic Rent and Minimum Rent under the AKP Lease accrued during such whole or partial calendar year, which amount shall be due and payable in arrears on the tenth (10th) day of February of the year which follows the calendar year during which such amount is accrued."

8. AMENDMENTS TO SECTION 10 [ASSIGNMENT OR SUBLETTING; SEPARATE PARCELS; SEPARATION OF LEASEHOLD ESTATE].

a. Subsection c. of Section 10 [Assignment or Subletting; Separate Parcels; Separation of Leasehold Estate] shall be amended by substituting the words "Kiln Facilities" for the words "Kiln Facility" in the seventh line on page 49.

b. Section 10 [Assignment or Subletting; Separate Parcels; Separation of Leasehold Estate] is amended by adding the

following subsection e. thereto.

"e. Separation of the Demised Premises by separate leases or otherwise shall occur only with the prior written consent of and subject to the lien of each Leasehold Mortgagee."

9. AMENDMENTS TO SECTION 23 [TENANT FINANCING; LEASEHOLD MORTGAGES].

a. Section 23 [Tenant Financing; Leasehold Mortgages] shall be amended by deleting the words "the Kiln Facility" from the twenty-first (21st) line on page 65, the third line from the bottom of page 66 and the third and fourth lines of page 67.

b. Subsection m. of Section 23 [Tenant Financing; Leasehold Mortgages] shall be amended by substituting the word "agent" for the word "agreement" in the fifth line of such subsection.

10. REMOVAL OF LOCAL FUEL.

The parties hereby agree that notwithstanding anything to the contrary contained in the ABPP Lease, Tenant shall not be permitted to remove Local Fuel from the Demised Premises.

11. AMENDMENTS TO SECTION 41 [MISCELLANEOUS].

a. Subsection c. of Section 41 [Miscellaneous] is amended by adding the following sentence thereto:

"Notwithstanding the foregoing, this Lease may be modified, amended or terminated

without the consent or agreement of North Marion provided only that such modification, amendment or termination (unless consented or agreed to by North Marion in writing) shall not alter, amend, modify or terminate North Marion's rights and obligations under the following sections and provisions of this Lease (collectively 'North Marion's Rights and Obligations'): the first sentence of subsection b. of Section 1 [Amendment of Prior Lease; Substitution of Horizon as Landlord], Section 25 [Further Assurances], Section 39 [Certain Representations and Agreements of North Marion and Horizon] and Subsections c., d., i., j., and n. of Section 41 [Misc.]."

b. The following Subsection o. shall be added to Section 41:

"o. Notwithstanding anything to the contrary contained in this Lease, North Marion's sole rights and obligations hereunder shall be North Marion's Rights and Obligations."

12. MISCELLANEOUS.

a. The use of the singular herein shall include the plural and vice versa; and the use of any gender shall include all genders.

b. The captions and headings herein are for convenience and reference only and shall not be used to construe or interpret this Amendment. The underlinings under the defined terms which appear at the place at which they are defined herein are only for convenience in locating such defined terms.

c. The invalidity or unenforceability of any provision of this Amendment, or any application thereof, shall not affect or impair any other provisions or the validity or enforceability of the remainder of this Amendment, or any other application thereof.

d. Nothing contained in this Amendment shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant. Neither the computation of rent nor any other provisions contained in this Amendment nor any act or acts of the parties hereto shall be deemed to create any relationship between Landlord and Tenant other than the relationship of landlord and tenant.

e. Landlord, North Marion, and Tenant agree to execute, acknowledge and deliver in recordable form to each other

simultaneously with the execution and delivery of this Amendment, a memorandum of this Amendment for recording, containing the information required by law for recording the same (and such other information, other than the rental terms, as either party may require) as to give notice of the terms of this Amendment. In addition to the foregoing, either Landlord or Tenant may at any time record this Amendment in its entirety. Tenant shall pay all charges and taxes due upon or for the recording of this Amendment or a memorandum thereof regardless of when or by whom the same shall be recorded.

f. This Amendment shall be construed, interpreted and enforced according to the laws of the State of West Virginia, without regard to principles of conflict of laws.

g. Landlord confirms that the representations and warranties made by Landlord in the ABPP Lease remain accurate in all respects.

h. The terms of the ABPP Lease shall remain in full force and effect except as specifically amended by the terms of this Amendment.

i. Landlord and Tenant agree that any exhibits which are not attached to this Amendment as of the date of execution may be attached after execution provided such exhibits are signed by Stanley Sears on behalf of the Landlord and by Peter McGrath on behalf of the Tenant. Tenant and Landlord represent, warrant, and agree that the foregoing individuals are authorized to sign



such exhibits on behalf of Tenant and Landlord, respectively, and that upon such signature, this Amendment and the Amended ABPP Lease, including those exhibits executed by Peter McGrath and Stanley Sears, shall be the valid and binding obligation of Landlord and Tenant respectively, enforceable against Landlord and Tenant, respectively, in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

LANDLORD

Attest:

HORIZON VENTURES OF WEST VIRGINIA, INC.

Deana Kay Westage  
Name:  
Title: assistant secretary

By: Peter McGrath  
Name:  
Title: President

[Corporate Seal]

NORTH MARION

Attest:

NORTH MARION DEVELOPMENT, INC.

Deana Kay Westage  
Name:  
Title: assistant secretary

By: Stanley M. Sears  
Name:  
Title: President

[Corporate Seal]

TENANT

AMERICAN BITUMINOUS POWER PARTNERS, L.P.,  
By its general partners:

AMERICAN HYDRO POWER COMPANY  
By its general partners:

Attest:

C & F Hydro Corp.

Joseph W. Higgins  
Name:  
Title:

By: Richard J. Halloran

Richard J. Halloran  
President

[Corporate Seal]

and

Attest:

Hydro Management Corp.

Susan Giles  
Name: Susan Giles  
Title: Asst Sec

By: Peter A. McGrath

Peter A. McGrath  
President

[Corporate Seal]

and

Attest:

PLEASANT VALLEY ENERGY COMPANY

Douglas B. Whiting  
Name: Douglas B. Whiting  
Title: Assistant Secretary

By: Scott B. T. Sinclair

Name: Scott B. T. Sinclair  
Title: Vice President and Treasurer

[Corporate Seal]

COMMONWEALTH OF PENNSYLVANIA)

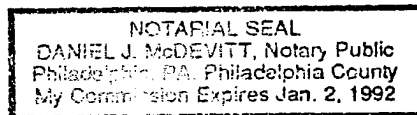
COUNTY OF Philadelphia ;

On this 30<sup>th</sup> day of December, 1989, before the undersigned, a Notary Public, personally appeared RICHARD J. HALLORAN who, being duly sworn, acknowledged himself to be the President of C&F Hydro Corp., a general partner of American Hydro Power Company, and PETER A. McGRATH who, being duly sworn, acknowledged himself to be the President of Hydro Management Corp., the other general partner of American Hydro Power Company, and acknowledged that on behalf of those corporations as general partners of American Hydro Power Company, they, being fully authorized to do so, executed the foregoing Amendment to Amended and Restated Lease for the purpose therein contained as the act and deed of American Hydro Power Company, a general partner of American Bituminous Power Partners, L.P. as the therein named Tenant.

WITNESS My hand and Notarial Seal.

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

My Commission Expires: \_\_\_\_\_



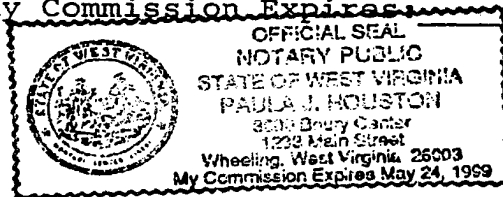
STATE OF West Virginia )  
COUNTY OF Ohio )

On this 28<sup>th</sup> day of December, 1989, before the undersigned, a Notary Public, personally appeared Stanley M. Sears who, being duly sworn, acknowledged himself to be the President of North Marion Development, Inc., a West Virginia corporation and acknowledged that he, on behalf of this corporation being fully authorized to do so, executed the foregoing Amendment to Amended and Restated Lease for the purpose therein contained as the act and deed of North Marion Development, Inc.

WITNESS My hand and Notarial Seal.

Paula J. Houston  
Notary Public

My Commission Expires:

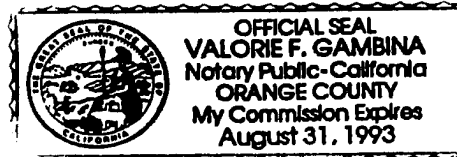


STATE OF CALIFORNIA )  
 )  
COUNTY OF ORANGE )

On this 29th day of December, 1989, before me, the undersigned notary public, personally appeared Scott B. T. Sinclair, personally known to me to be the person who executed the within Amendment to Amended and Restated Lease and who acknowledged that he is Vice President of Pleasant Valley Energy Company, a general partner of American Bituminous Power Partners, L.P., the limited partnership that executed the within Amendment to Amended and Restated Lease and is duly authorized to execute documents on behalf of American Bituminous Power Partners, L.P., and that he executed the within Amendment to Amended and Restated Lease for the purposes therein contained on behalf of American Bituminous Power Partners, L.P.

WITNESS my hand and official seal.

Valorie F. Gambina  
Notary Public



STATE OF West Virginia )  
COUNTY OF Ohio )

On this 28<sup>th</sup> day of December, 1989, before the undersigned, a Notary Public, personally appeared Andrew Noshagya who, being duly sworn, acknowledged himself to be the President of Horizon Ventures of West Virginia, Inc., a West Virginia corporation and acknowledged that he, on behalf of this corporation being fully authorized to do so, executed the foregoing Amendment to Amended and Restated Lease for the purpose therein contained as the act and deed of Horizon Ventures of West Virginia, Inc. as the therein named Landlord.

WITNESS My hand and Notarial Seal.

Paula J. Houston  
Notary Public

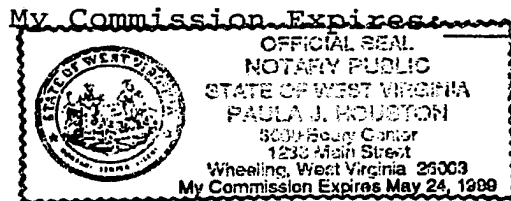


Exhibit A - AKP Lease

A copy of the execution draft of the AKP Lease is attached hereto.

Exhibit B - Revised Exhibit A-1 to ABPP Lease

Revised Exhibit A-1 to the ABPP Lease follows this  
page.



Exhibit B-1 - Revised Exhibit A to ABPP Lease

Revised Exhibit A to the ABPP Lease follows this page.

Exhibit C - Revised Exhibit E to ABPP Lease

A copy of the revised Base Case Amortization Schedule  
(Exhibit E to the ABPP Lease) is attached hereto.

Exhibit C- Revised  
Exhibit E to ABPP Lease  
AMERICAN BITUMINOUS POWER PARTNERS, L.P.

BASE CASE AMORTIZATION SCHEDULE

(\$000'S)

<u>Operation Year</u>	<u>Taxable Loans</u>	<u>Tax-Exempt Debt</u>	<u>Total</u>
1 (Partial year)	200	0	200
2	2,000	0	2,000
3	2,800	0	2,800
4	0	2,900	2,900
5	0	2,900	2,900
6	0	2,800	2,800
7	0	2,700	2,700
8	0	3,100	3,100
9	0	4,800	4,800
10	0	5,100	5,100
11	0	5,500	5,500
12	0	5,900	5,900
13	0	6,900	6,900
14	0	7,300	7,300
15	0	7,300	7,300
16	0	8,000	8,000
17	0	8,200	8,200
18	0	6,800	6,800
19	0	7,700	7,700
20	0	8,400	8,400
21	0	9,200	9,200
22	0	9,900	9,900
23	0	10,700	10,700
24	0	11,500	11,500
25	0	12,400	12,400
	<u>5,000</u>	<u>150,000</u>	<u>155,000</u>



SECOND AMENDMENT TO  
AMENDED AND RESTATED LEASE

THIS SECOND AMENDMENT (this "Second Amendment"), made as of this 11th day of January, 1990, by and between HORIZON VENTURES OF WEST VIRGINIA, INC., a West Virginia corporation (referred to herein as either "Landlord" or "Horizon") and AMERICAN BITUMINOUS POWER PARTNERS, L.P., a Delaware limited partnership transacting business in West Virginia as American Bituminous Power Partners, Limited Partnership ("Tenant") amends the Amended and Restated Lease dated as of November 29, 1989 by and between Landlord, Tenant and North Marion Development, Inc., as amended by an Amendment to Amended and Restated Lease (the "First Amendment") dated December 28, 1989 (as so amended, the "ABPP Lease"). Capitalized terms used but not defined herein shall have the meanings assigned to them in the ABPP Lease. Capitalized terms defined herein are hereby incorporated by reference into the ABPP Lease. All amendments referred to herein are amendments to the ABPP Lease.

WHEREAS, the parties desire to amend the ABPP Lease in certain respects as provided below.

NOW, THEREFORE, in consideration of the premises (i.e., the recitals) and the mutual covenants herein contained, Landlord and Tenant hereby covenant and agree as follows:

1. AMENDMENTS TO SECTION 1A [DEMISED PREMISES].

Subsection f. of Section 1A [Demised Premises] shall be amended by adding the words ", which agreements, in order to be effective, must be consented and agreed to in writing by each Leasehold Mortgagee." after the word "AKP" at the end of such subsection.

2. AMENDMENTS TO SECTION 7A [SUBORDINATION OF RENT].

a. Subsection b. of Section 7A [Subordination of Rent] shall be amended by adding the following two sentences at the end thereof:

"Landlord acknowledges and agrees that the occurrence of a Letter of Credit Expiration Event (as defined below) shall constitute a default in the payment of Senior Debt within the meaning of this subsection b. and the other provisions of this Section 7A until the Senior Debt is paid in full, and that after such event, pursuant to this subsection b., Tenant shall be prohibited from, directly or indirectly, making or agreeing to make any payment (in cash or property, by set-off or otherwise), direct or indirect, of or on account of any Subordinated Rent, and no such payment of Subordinated Rent shall be accepted by Landlord until the Senior Debt is paid in full. As used in this subsection b., the term 'Letter of Credit Expiration Event' means the expiration of the letter of credit securing the Project Bonds prior to

the payment in full of such Project Bonds and the making of refunding loans to pay the reimbursement obligations for the resulting draw on such letter of credit."

b. In connection with the foregoing amendment of Section 7A [Subordination of Rent], Tenant delivered to Landlord a certain letter dated January 10, 1990, a true and correct copy of which is attached hereto as Exhibit D [Tenant Letter of January 10, 1990].

3. AMENDMENT TO SECTION 41 [MISCELLANEOUS].

Subsection i. of Section 12 [Miscellaneous] of the First Amendment is hereby deleted in its entirety.

4. AMENDMENTS OF EXHIBITS TO FIRST AMENDMENT.

a. Landlord and Tenant acknowledge and agree that Exhibits B [Revised Exhibit A-1 to ABPP Lease] and B-1 [Revised Exhibit A to ABPP Lease] to the First Amendment, which Exhibits were not attached to the First Amendment at the time of execution, shall read in their entirety as set forth in Exhibits B [Exhibit B to Second Amendment] and B-1 [Exhibit B-1 to Second Amendment] hereto, respectively.

b. Exhibit E [Base Case Amortization Schedule], which was previously amended pursuant to Section 6 b. of the First Amendment, shall be further amended to read in its entirety as set forth in Exhibit A [Revised Exhibit E to ABPP Lease] hereto.

5. KILN FACILITY PARCEL.

Landlord and Tenant acknowledge and agree that the Kiln Facility Parcel as defined and used in the ABPP Lease shall be as described in Exhibit C [Kiln Facility Parcel] hereto.

4. MISCELLANEOUS.

a. The use of the singular herein shall include the plural and vice versa; and the use of any gender shall include all genders.

b. The captions and headings herein are for convenience and reference only and shall not be used to construe or interpret this Amendment. The underlinings under the defined terms which appear at the place at which they are defined herein are only for convenience in locating such defined terms.

c. The invalidity or unenforceability of any provision of this Second Amendment, or any application thereof, shall not affect or impair any other provisions or the validity or enforceability of the remainder of this Second Amendment, or any other application thereof.

d. Nothing contained in this Second Amendment shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant. Neither the computation of rent nor any other provisions contained in this Second Amendment nor any act or acts of the parties hereto shall be deemed to create any



relationship between Landlord and Tenant other than the relationship of landlord and tenant.

e. Landlord and Tenant agree to execute, acknowledge and deliver in recordable form to each other simultaneously with the execution and delivery of this Second Amendment, a memorandum of this Second Amendment for recording, containing the information required by law for recording the same (and such other information, other than the rental terms, as either party may require) as to give notice of the terms of this Second Amendment. In addition to the foregoing, either Landlord or Tenant may at any time record this Second Amendment in its entirety. Tenant shall pay all charges and taxes due upon or for the recording of this Second Amendment or a memorandum thereof regardless of when or by whom the same shall be recorded.

f. This Second Amendment shall be construed, interpreted and enforced according to the laws of the State of West Virginia, without regard to principles of conflict of laws.

g. Landlord confirms that the representations and warranties made by Landlord in the ABPP Lease remain accurate in all respects.

h. The terms of the ABPP Lease shall remain in full force and effect except as specifically amended by the terms of this Second Amendment.

IN WITNESS WHEREOF, the parties hereto have hereunto  
set their hands and seals the day and year first above written.

LANDLORD

Attest:

HORIZON VENTURES OF WEST VIRGINIA, INC.

*Diana Kay Koskayya*  
Name:  
Title: *Asst. Sec.*

By: *Richard Koskayya Jr.*  
Name:  
Title: *President*

[Corporate Seal]

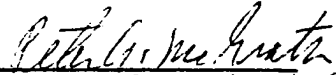
TENANT

AMERICAN BITUMINOUS POWER PARTNERS, L.P.,  
By its general partners:

AMERICAN HYDRO POWER COMPANY  
By its general partners:

Attest:

C & F Hydro Corp.

  
Name: Peter A. McGrath  
Title: Asst. Sec.

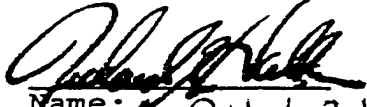
[Corporate Seal]

By:   
Richard J. Halloran  
President

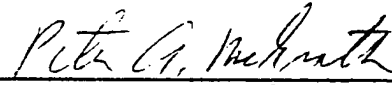
and

Attest:

Hydro Management Corp.

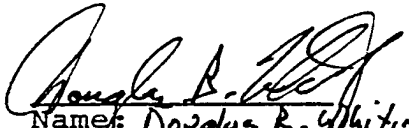
  
Name: Richard J. Halloran  
Title: Asst. Sec.

[Corporate Seal]

By:   
Peter A. McGrath  
President

Attest:

PLEASANT VALLEY ENERGY COMPANY

  
Name: Douglas B. Whitling  
Title: Assistant Secretary

[Corporate Seal]

By:   
Name: Scott B. T. Sinclair  
Title: Vice President and Treasurer

JOANNA PARCEL TWO

ALL THAT surface tract or piece of ground, SITUATE in Marion County, West Virginia, described according to a certain PLAN OF SURVEY made for American Bituminous Power Partners by Walter N. Haine Associates, Inc., dated January 4, 1990 and revised January 11, 1990 as follows to wit:

All that piece or parcel of land situate on the east side of Mods Run Road (also known as Route 16), near Rachel, Lincoln District, Marion County, West Virginia, and being more particularly described as follows, survey meridian courses based on the 2nd line of a 156 acre tract or parcel of ground conveyed to Eastern Associated Coal Corp. by deed dated the 2nd day of June, 1969 and recorded in deed book 738 page 283 in Parcel No. 7, Parcel One, one of the land records of Marion County, West Virginia, and horizontal distances being used throughout, to wit:

Beginning for the same at a 5/8 inch iron bar found on the west side of Mods Run Road said bar stands South 74 degrees 0 minutes 0 seconds East 75.39 feet from the beginning of the 2nd line of the said 156 acre Eastern Associated Coal Corp. Tract. THENCE with and binding on the remainder of the said 2nd line South 74 degrees 0 minutes 0 seconds East 1749.84 feet to the cortex of a 12" Maple tree found in a fenceline said maple stands at the end of the 5th line of a tract of ground conveyed to Clyde Billingsley by deed dated the 6th day of May 1959 and recorded in deed book 609 page 522, one of the land records of Marion County, West Virginia, said tract of ground now or formerly owned by Mildred B. Billingsley and recorded in will book 89 page 330, one of the will records of Marion County, West Virginia;

THENCE with and binding on the 5th and part of the 4th line reversed of the said Billingsley deed the following two courses and distances: South 20 degrees 24 minutes 10 seconds West 49.50 feet to a point;

THENCE South 32 degrees 35 minute 11 seconds West 63.71 feet to a 1 1/2" iron bar found, said bar stands at the end of the 4th line of that tract of ground conveyed to Andy Tekiele and Mary Tekiele by deed dated the 14th day of September 1953 and recorded in deed book 540 page 359, one of the land records of Marion County, West Virginia;

THENCE with and binding on the 4th through 2nd lines reversed of the said Tekiele deed the following 3 courses and distances: South 87 degrees 44 minutes 57 seconds West 812.69 feet to a 12" Hickory tree found a fenceline corner;

THENCE South 37 degrees 57 minutes 13 seconds West 289.99 feet to a 48" White Oak tree found at a fenceline corner;

THENCE South 5 degrees 43 minutes 1 seconds East 245.94 feet to a 24" Cherry tree found at the intersection of fencelines, said Cherry tree also stands in the line of The Rolling Hills Realty, Inc. Lot Subdivision, a plat of said Subdivision being recorded in deed book 475 page 2, one of the land records of Marion County, West Virginia;

THENCE with the lines of said Subdivision South 84 degrees 37 minutes 32 seconds West for 430.62 feet to a 5/8" iron bar set, said bar stands at the end of the 4th line of the first parcel of a tract of ground conveyed to Archie B. Ramage and Gaila B. Ramage by deed dated the 12th day of April 1971 and recorded in deed book 753 page 88, one of the land records of Marion County, West Virginia;

THENCE with and binding on the 4th and 3rd lines reversed of the said Ramage deed the following two courses and distances: North 21 degrees 53 minutes 45 seconds West 266.64 feet to a 5/8" iron bar set;

THENCE North 78 degrees 58 minutes 5 seconds West 206.33 feet to a P.K. nail set in the centerline of Mods Run Road;

THENCE with Mods Run Road the following 5 courses and distances: North 25 degrees 2 minutes 1 seconds East 49.50 feet to a point in said road;

THENCE North 9 degrees 18 minutes 43 seconds East 165.00 feet to a point in said road;

THENCE North 12 degrees 30 minutes 2 seconds West 198.00 feet to a point in said road;

THENCE North 5 degrees 4 minutes 23 seconds East 219.00 feet to a point in said road;

THENCE North 10 degrees 42 minutes 1 seconds East 225.94 feet to the beginning, containing 21.56 acres more or less, all of which is shown on the attached plat which is intended to be recorded as a part hereof.

Being all that tract or parcel of ground conveyed to Eastern Associated Coal Corp. by deed dated the 2nd day of June, 1969 and recorded in deed book 738, page 283 in Parcel No. 9, one of the land records of Marion County, West Virginia

Together with and subject to covenants, easements and restrictions of record.

Excepting all of the above described property which lies within the right of way of Mods Run Road.

Exhibit B-1 - Exhibit B-1 to First Amendment

Exhibit B-1 to First Amendment follows this page.

EXHIBIT B-1 TO SECOND AMENDMENT

GRANT TOWN PARCEL

ALL THAT Surface tract or piece of ground, SITUATE in Paw Paw District, Marion County, West Virginia, described according to a Plat of Survey Grant Town Site for American Bituminous Power Partners by Triad Engineering Consultants Inc. drawing #87289-1 dated December 12, 1989 and revised January 10, 1990 as follows to wit:

BEGINNING at a 1 inch pipe in concrete (found), said 1 inch pipe being the Point of Beginning and corner no. 1 of a 370.645 acre tract as shown on the unrecorded Plat of Survey for American Power Partners dated October 1987 as prepared by Stanley A. Harper, LLS #360; thence from said point of beginning North 05 degrees 31 minutes 53 seconds East crossing a 6 inch and 3 inch gas line, 459.14 feet to a Gas Line Marker (found), thence North 12 degrees 44 minutes 19 seconds East 624.31 feet to a point in road, WV 25/5 passing through a 1/2 inch iron rod in concrete (found) at 599.31 feet; thence South 72 degrees 58 minutes 30 seconds East 13.83 feet to a point in road, WV 25/5, thence North 6 degrees 26 minutes 00 seconds West 458.51 feet to a monument set, thence North 20 degrees 57 minutes 00 seconds West 443.14 feet to a monument set, thence North 7 degrees 34 minutes 00 seconds East 173.58 feet to a monument set, thence North 79 degrees 53 minutes 27 seconds East 454.38 feet to a fence post (found), thence South 40 degrees 57 minutes 01 second East 346.88 feet to a fence post (found), thence North 74 degrees 35 minutes 49 seconds East 417.45 feet to a monument set, thence South 86 degrees 40 minutes 05 seconds East, thence crossing 138 KV power line right of way to Mon Power Company, also recrossing the bed of WV Route 25/5, also crossing and recrossing a 3 inch gas line and crossing the Pittsburgh Coal Division Line and 2 inch gas line all as shown on said plan, 2440.34 feet to an 18 inch Maple Tree (found), thence crossing a 6 inch gas line South 00 degrees 05 minutes 38 seconds East 659.37 feet to a 5/8 inch iron rod (found), thence South 78 degrees 48 minutes 52 seconds West 291.99 feet to a 3/4 inch pipe (found), thence South 11 degrees 38 minutes 28 seconds East 109.02 feet to a 24 inch Black Oak Tree (found), thence South 6 degrees 19 minutes 32 seconds East recrossing the aforesaid 138 KV Power line right of way to Mon Power Company 1135.89 feet to a 1 inch pipe (found), thence South 2 degrees 30 minutes 43 seconds East 656.04 feet to a monument set, thence South 88 degrees 53 minutes 21 seconds East 23.21 feet to a monument set, thence South 5 degrees 34 minutes 17 seconds West 290.14 feet to a set stone (found), thence South 6 degrees 34 minutes 08 seconds East crossing a 3 inch gas line 1061.03 feet to a 3/4 inch pipe (found), thence South 66 degrees 23 minutes 01 second West 157.18 feet to a monument set, thence South 64 degrees 10 minutes 26 seconds West 255.90 feet to a monument set, thence South 45 degrees 30 minutes 00 seconds West 239.86 feet to a monument set, thence South 57 degrees 15 minutes 59 seconds West 701.42 feet to a monument set, thence South 48 degrees 37 minutes 00 seconds West 558.54 feet to a monument set, thence South 2 degrees 11 minutes 00 seconds West 23.55 feet to a monument set, thence North 37 degrees 39 minutes 00 seconds West 136.40 feet to a point in railroad right-of-way, thence along railroad curve to the left with radius of 719.70 feet and length of 470.00 feet to a point



in railroad right-of-way, thence North 74 degrees 40 minutes 23 seconds West 225.00 feet to a point in railroad right-of-way, thence North 25 degrees 52 minutes 23 seconds West 60.00 feet to a point in Paw Paw Creek, thence North 80 degrees 4 minutes 23 seconds West 40.40 feet to a point in Paw Paw Creek, thence crossing the bed of road WV Route 17 North 48 degrees 18 minutes 23 seconds West 517.48 feet to a point; thence South 42 degrees 53 minutes 37 seconds West 54.80 feet to a point in Paw Paw Creek, thence North 52 degrees 40 minutes 00 seconds West 1446.05 feet to a point in Paw Paw Creek, thence North 81 degrees 44 minutes 10 seconds West 179.58 feet to a point in road WV Route 17, thence North 15 degrees 48 minutes 23 seconds West crossing a 6 inch gas line and also crossing a 3 inch ML 134 gas line 697.24 feet to a 3/4 inch iron rod (found), thence North 42 degrees 06 minutes 19 seconds East, recrossing said 3 inch ML 134 gas line and recrossing said 6 inch gas line and crossing a water line 1093.72 feet to a 1/2 inch iron rod (found), thence North 17 degrees 07 minutes 16 seconds East 13.23 feet to an 1 inch pipe in concrete (found), being the Point of Beginning.

CONTAINING in total area approximately 367.76 acres as shown on the above mentioned plan.

EXCEPTING THEREOUT AND THEREFROM the above described surface tract the following described property:

ALL THAT Surface tract or piece of ground, SITUATE in Paw Paw District, Marion County, West Virginia, described according to a Plat of Survey Grant Town Site for American Bituminous Power Partners by Triad Engineering Consultants Inc. drawing #87289-1 dated December 12, 1989 and revised January 10, 1990, as follows, to wit:

BEGINNING at a 1/2 inch reinforcing rod (set) in the twenty-third line of the Fuel Area Tract, said rod having reference bearings of North 63 degrees 38 minutes 17 seconds West 887.48 feet and South 54 degrees 44 minutes 27 seconds West 952.68 feet from, respectively, a set stone and a 1 inch pipe (found) along the eastern lines of Harper's 370.645 acre tract; thence with ten (10) division lines South 04 degrees 09 minutes 26 seconds West 820.24 feet to a 1/2 inch reinforcing rod (set); thence South 11 degrees 17 minutes 17 seconds West 1290.08 feet to a 1/2 inch reinforcing rod (set); thence North 52 degrees 15 minutes 11 seconds West 882.19 feet to a 1/2 reinforcing rod (set); thence North 21 degrees 33 minutes 34 seconds East 970.32 feet to a 1/2 inch reinforcing rod (set), said rod being along the meanders of the Access Road's eastern right of way limits (20 feet); thence with the meanders of said right of way five (5) lines North 51 degrees 55 minutes 58 seconds East 74.31 feet to a point; thence North 71 degrees 25 minutes 06 seconds East 198.67 feet to a point; thence North 39 degrees 59 minutes 43 seconds East 195.81 feet to a point; thence North 11 degrees 51 minutes 48 seconds East 389.21 feet to a point; thence North 02 degrees 35 minutes 26 seconds East 36.86 feet to a point; thence leaving the meanders of the Access Road's eastern right of way limits with a portion of the Fuel Area Tract's line 23 reversed, South 79 degrees 41 minutes 42 seconds East passing through at fence post at 31.88 feet for a total of 201.90 feet to the Point of Beginning, containing approximately 24.215 acres, more or less.

Exhibit C - Kiln Facility Parcel

Exhibit C [Kiln Facility Parcel] follows this page.

EXHIBIT C TO SECOND AMENDMENT

KILN FACILITY PARCEL

ALL THAT Surface tract or piece of ground, SITUATE in Paw Paw District, Marion County, West Virginia, described according to a Plat of Survey Grant Town Site for American Bituminous Power Partners by Triad Engineering Consultants Inc. drawing #87289-1 dated December 12, 1989 and revised January 10, 1990, as follows, to wit:

BEGINNING at a 1/2 inch reinforcing rod (set) in the twenty-third line of the Fuel Area Tract, said rod having reference bearings of North 63 degrees 38 minutes 17 seconds West 887.48 feet and South 54 degrees 44 minutes 27 seconds West 952.68 feet from, respectively, a set stone and a 1 inch pipe (found) along the eastern lines of Harper's 370.645 acre tract; thence with ten (10) division lines South 04 degrees 09 minutes 26 seconds West 820.24 feet to a 1/2 inch reinforcing rod (set); thence South 11 degrees 17 minutes 17 seconds West 1290.08 feet to a 1/2 inch reinforcing rod (set); thence North 52 degrees 15 minutes 11 seconds West 882.19 feet to a 1/2 reinforcing rod (set); thence North 21 degrees 33 minutes 34 seconds East 970.32 feet to a 1/2 inch reinforcing rod (set), said rod being along the meanders of the Access Road's eastern right of way limits (20 feet); thence with the meanders of said right of way five (5) lines North 51 degrees 55 minutes 58 seconds East 74.31 feet to a point; thence North 71 degrees 25 minutes 06 seconds East 198.67 feet to a point; thence North 39 degrees 59 minutes 43 seconds East 195.81 feet to a point; thence North 11 degrees 51 minutes 48 seconds East 389.21 feet to a point; thence North 02 degrees 35 minutes 26 seconds East 36.86 feet to a point; thence leaving the meanders of the Access Road's eastern right of way limits with a portion of the Fuel Area Tract's line 23 reversed, South 79 degrees 41 minutes 42 seconds East passing through at fence post at 31.88 feet for a total of 201.90 feet to the Point of Beginning, containing approximately 24.215 acres, more or less.

Exhibit D - Tenant Letter of January 10, 1990

Exhibit D follows this page.

## American Bituminous Power Partners L.P.

33 Rock Hill Road  
Bala Cynwyd, PA 19004-2010

Fax (215) 668-0179

(215) 668-8143

January 10, 1990

Mr. John Karras  
Horizon Ventures of West Virginia  
2408 Eoff Street  
Wheeling, WV 26003

Re: Amended and Restated Lease of  
American Bituminous Power Partners, L.P.  
for Grant Town/Joanna Parcels  
Dated as of November 29, 1989, as Amended

Dear Mr. Karras:

Reference is made to Section 7A (Subordination of Rent)  
of the Lease referred to above.

As you know, the Project Bonds issued to finance a  
portion of the costs of the cogeneration plant will be in the  
amount of \$150,000,000 and the letter of credit backing the  
Project Bonds will be provided by National Westminster Bank,  
PLC, acting through its New York Branch. National  
Westminster Bank and other banks will also provide term loans  
in the amount of \$5,000,000.

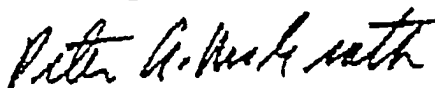
As we discussed with you in our conference call, it is  
possible to get a commitment for the letter of credit only  
for 7 1/2 years. Unless the letter of credit is extended,  
the Project Bonds would be paid from a drawing on the letter  
of credit, the amount drawn would then become refunding  
loans, and all available cash flow would be required to pay  
the debt. Even though the commitment for the letter of  
credit is only for 7 1/2 years, ABPP fully believes that if  
the Project is successful, the letter of credit will be  
renewed by National Westminster or, if National Westminster  
is no longer issuing letters of credit for some unforeseen  
reason, that a substitute letter of credit bank can be  
obtained.

It is certainly not in ABPP's interest to allow the  
refunding loans to come into effect, since, under those  
circumstances, not only would you not be entitled to receive  
rent payments, but also ABPP's partners would not be entitled  
to any distributions.

Mr. John Karras  
January 10, 1990  
Page 2

Additionally, please be assured that if the Project is financially successful, ABPP will not voluntarily seek to refinance the Project in a manner which would cause the amortization of the debt to be accelerated.

Sincerely,

A handwritten signature in cursive script, reading "Peter A. McGrath".

Peter A. McGrath  
Executive Director

PAMCG/seg

cc: Arthur M. Recht, Esq.

**CIVIL CASE INFORMATION STATEMENT  
CIVIL CASES**

In the Circuit Court of Ohio County, West Virginia

**I. CASE STYLE:**

HORIZON VENTURES  
OF WEST VIRGINIA, INC.  
1350 Washington Farms  
Wheeling, WV 26003

Plaintiff

vs.

CIVIL ACTION NO:

13-C-196

JUDGE

Martin J. Gaughan

	<u>Days to Answer</u>	<u>Type of Service</u>
AMERICAN BITUMINOUS POWER PARTNERS, L.P. c/o Corporation Service Company 209 West Washington Street Charleston, WV 25302	30	Certified Mail, Return Receipt Requested, Restricted Delivery Through the Clerk's Office
PLEASANT VALLEY ENERGY COMPANY CT Corporation System 5400 D Big Tyler Road Charleston, WV 25313	30	Certified Mail, Return Receipt Requested, Restricted Delivery Through the Clerk's Office
AMERICAN HYDRO POWER PARTNERS, L.P. 33 Rock Hill Road Bala Cynwyd PA 19004	30	Secretary of State

Defendants.

Original and 5 copies of **Complaint** furnished herewith.

CIRCUIT COURT  
OF OHIO COUNTY  
2013 JUN 17 PM 3 26

**PLAINTIFF:** HORIZON VENTURES OF WEST VIRGINIA, INC.  
**DEFENDANT:** AMERICAN BITUMINOUS POWER PARTERS, L.P.,  
et al.

CASE NUMBER:

II. TYPE OF CASE:

TORTS	OTHER	CIVIL
<input type="checkbox"/> Asbestos	<input type="checkbox"/> Adoption	<input type="checkbox"/> Appeal from Magistrate Court
<input type="checkbox"/> Professional Malpractice	<input checked="" type="checkbox"/> Contract	<input type="checkbox"/> Petition for Modification of Magistrate Sentence
<input type="checkbox"/> Personal Injury	<input type="checkbox"/> Real Property	<input type="checkbox"/> Miscellaneous Civil
<input type="checkbox"/> Product Liability	<input type="checkbox"/> Mental Health	<input type="checkbox"/> Other
<input type="checkbox"/> Other Tort	<input type="checkbox"/> Appeal of Administrative Agency	

III. JURY DEMAND: ☐ Yes ☒ No

IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?

☐ YES ☒ NO

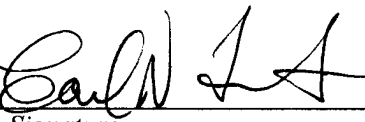
IF YES, PLEASE SPECIFY:

- ☐ Wheelchair accessible hearing room and other facilities  
☐ Interpreter or other auxiliary aid for the hearing impaired  
☐ Reader or other auxiliary aid for the visually impaired  
☐ Spokesperson or other auxiliary aid for the speech impaired  
☐ Other: \_\_\_\_\_

Attorney Name: Carl N. Frankovitch, Esq. (#4746)  
Kevin M. Pearl, Esq. (#8840)  
Firm: Frankovitch, Anetakis, Colantonio & Simon  
Address: 337 Penco Rd., Weirton, WV 26062  
Telephone: 304-723-4400

Representing: **Plaintiff**

Dated: 6/17/13

  
Signature



SUMMONS

IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

CIVIL CASE NO. 13-C-196

HORIZON VENTURES OF WEST  
VIRGINIA, INC., a West Virginia corporation

vs.

AMERICAN BITUMINOUS POWER PARTNERS, L.P.,  
a Delaware limited partnership, PLEASANT  
VALLEY ENERGY COMPANY, a California corporation,  
AMERICAN HYDRO POWER PARTNERS, L.P., a  
Pennsylvania limited partnership

Please Serve:

AMERICAN BITUMINOUS POWER PARTNERS, L.P.  
% CORPORATION SERVICE COMPANY  
209 WEST WASHINGTON STREET  
CHARLESTON, WV 25302

PLEASANT VALLEY ENERGY COMPANY  
CT CORPORATION SYSTEM  
5400 D BIG TYLER ROAD  
CHARLESTON, WV 25313

AMERICAN HYDRO POWER PARTNERS, L.P.  
33 ROCK HILL ROAD  
BALA CYNWYD, PA 19004

**TO THE ABOVE NAMED DEFENDANT(S):**

IN THE NAME OF THE STATE OF WEST VIRGINIA, YOU ARE HEREBY SUMMONED AND REQUIRED TO SERVE UPON CARL N. FRANKOVITCH, ESQUIRE, WHOSE ADDRESS IS FRANKOVITCH, ANETAKIS, COLANTONIO & SIMON, 337 PENCO ROAD, WEIRTON, WV 26062, AN ANSWER, INCLUDING ANY RELATED COUNTERCLAIM YOU MAY HAVE TO THE COMPLAINT FILED AGAINST YOU IN THE ABOVE STYLED CIVIL ACTION, A TRUE COPY OF WHICH IS HEREWITH DELIVERED TO YOU. YOU ARE REQUIRED TO SERVE YOUR ANSWER WITHIN **30** DAYS AFTER SERVICE OF THIS SUMMONS UPON YOU, EXCLUSIVE OF THE DAY OF SERVICE. IF YOU FAIL TO DO SO, JUDGMENT BY DEFAULT WILL BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT AND YOU WILL THEREAFTER BE BARRED FROM ASSERTING IN ANOTHER ACTION ANY CLAIM YOU MAY HAVE WHICH MUST BE ASSERTED BY COUNTERCLAIM IN THE ABOVE STYLED CIVIL ACTION.

June 17, 2013



BRENDA L. MILLER  
CLERK OF COURT

BY:

Donna Elam  
DEPUTY CLERK