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Via Hand Delivery and E-Mail

January 19, 2010

Luly E. Massaro
Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, Rhode Island 02888

RE: Docket 4111 - Town of New Shoreham Project

Dear Luly:

On behalf of the Rhode Island Economic Corporation, an intervenor please find enclosed an original and nine (9) copies of the testimony of Fred S. Hashway, plus exhibits.

I will also email these documents to the service list today.

Please let me know if you have any questions regarding this filing.

Respectfully Submitted,

Alan M. Shoer

CC: Service List

BEFORE THE
RHODE ISLAND PUBLIC UTILITIES COMMISSION

IN RE: NATIONAL GRID – REVIEW OF PROPOSED TOWN OF NEW SHOREHAM PROJECT PURSUANT TO R.I. GEN. LAWS § 39-26.1-1	)	**Docket No. 4111**

DIRECT TESTIMONY OF

FRED S. HASHWAY

***

ON BEHALF OF THE

RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION

January 19, 2010

1 **I. Introduction**

2 **Q. Please state your name and business address.**

3 A. My name is Fred S. Hashway and my business address is c/o Rhode Island Economic
4 Development Corporation ("RIEDC"), 315 Iron Horse Way, Suite 101, Providence,
5 Rhode Island 02908.

6 **Q. Please state your position with the RIEDC.**

7 A. I am the Director of Government Affairs, Policy, Communications and Innovation
8 Programs at the RIEDC. I am responsible for the strategic planning and day to day
9 management of several RIEDC departments, including Government Affairs, Policy and
10 Communications. I also manage the integration of the departments to ensure that
11 research, policy, government affairs and communications activities of the RIEDC are
12 coordinated.

13 **Q. Do you have any other responsibilities at the RIEDC that involve the development**
14 **of renewable energy programs?**

15 A. Yes. I also lead the RIEDC's efforts to implement the Renewable Energy Fund "REF"-an
16 annual $2.5 million electric ratepayer generated fund that is invested in the development
17 of renewable energy related projects in Rhode Island. The fund has contributed a
18 substantial amount of REF funds to the development of the Special Area Management
19 Plan ("SAMP"), which will identify the locations where an offshore wind farm may be
20 located. Along with RIEDC Interim Executive Director M. Saul, I also serve on the
21 federal Mineral Management Service's (division of US Department of Interior)
22 federal/state offshore wind permitting task force.

1 **Q. Please summarize your educational and professional background.**

2 A. I graduated from Georgetown University, in Washington, DC in 1978, with Bachelor of
3 Science in Government and Business Administration. After graduation from Georgetown
4 University, I was employed as a Special Assistant to Senator Claiborne Pell in
5 Washington, D.C., a position I held for eight years. After leaving Washington, D.C., I
6 moved to Providence and private industry working in business and in finance, first as
7 Executive Vice President with Coastal Capital Corporation, and then in my independent
8 firm of Hashway and Associates, specializing in business and real estate financing. More
9 recently I have held high level executive management positions in the financial industry
10 before joining the RIEDC in 2005. My detailed resume is attached as Exhibit "A."

11 **Q. Can you summarize the Rhode Island Economic Development Corporation's**
12 **interests in this proceeding?**

13 A. Yes. The RIEDC has worked closely with both the Governor's office (who chairs the
14 RIEDC Board), and with Deepwater Wind Rhode Island, LLC ("Deepwater"), to assist in
15 the implementation of the commitments that Deepwater has made to the economic
16 development of a renewable energy business in Rhode Island. As the Governor pointed
17 out in his October 29, 2009 letter to the Commission, the development of renewable
18 energy in Rhode Island is both a priority of his administration as well as a jointly
19 sponsored public policy objective of both the Governor and the General Assembly. I
20 refer the Commission to the Governor's October 29, 2009 letter, which I attach as Exhibit
21 "B" which describes the importance of this project to the development of stable energy
22 prices and the growth of a green power industry in Rhode Island.

1 As the Governor points out, this Block Island project is the first step toward achieving the
2 goals of placing Rhode Island at the center of renewable energy development on the East
3 Coast. The RIEDC's interest in this project is to help facilitate the commitments made by
4 both the General Assembly, and the Governor, and with Deepwater, towards the
5 development of a successful renewable energy sector in Rhode Island.

6 **Q. Please explain the development of this project by Deepwater, and what the type of**
7 **commitments have been made by Deepwater to the development of a renewable**
8 **energy sector in Rhode Island.**

9 A. Following the issuance of an RFP for the selection of the state's preferred developer,
10 Deepwater Wind responded with a proposal with a specific economic plan for Rhode
11 Island. This plan is identified in Section 7 of the submission; this document was also
12 provided to the Commission in response to the Division's Data Request 1-17. The
13 submission describes Deepwater's commitment to establishing manufacturing, training
14 and other facilities and other ongoing operations in Rhode Island, with a forecast for
15 "over 800 new Rhode Island jobs."

16 **Q. Please describe how this submission has been implemented in the form of**
17 **development agreements.**

18 A. Following the selection of Deepwater as the preferred developer Deepwater and the State
19 entered into a Joint Development Agreement ("JDA") on January 2, 2009, a copy of
20 which I attach as Exhibit "C." The JDA commits Deepwater to specific economic
21 development activities in Rhode Island, as more fully described in Section VIII to the
22 JDA and in response to Division Data Request 3-4. Deepwater further commits to
23 contracting for the manufacturing or assembly of the required vessels from vendors in

1 Rhode Island to support the project and for other projects up and down the east coast.
2 Deepwater also committed to negotiating an option to lease property from the Quonset
3 Development Corporation ("QDC") for purposes of facilitating the development of the
4 off-shore wind projects, including the Block Island project. I also point out that the JDC
5 further commits Deepwater towards the creation of approximately 800 jobs upon the fully
6 operational establishment of the facilities in Rhode Island.

7 **Q. Did Deepwater and the QDC enter into the agreements described in the JDA?**

8 A. Yes. On June 30, 2009 Deepwater and the QDC completed the terms of a Development
9 Agreement with Lease to implement the economic development actions described in the
10 JDA. I attach a copy of the Development Agreement and Lease as Exhibit "D."

11 **Q. Can you comment on the position RIEDC takes with regard to the price for power**
12 **that has been negotiated in the PPA?**

13 A. I understand that this proceeding has a particular focus on whether the price that is set in
14 the PPA meets certain standards for what an experienced power marketer would deem
15 commercially reasonable. I am not a power marketer, so I cannot offer an opinion on
16 whether the price meets that standard. However, while RIEDC takes no position on what
17 price is deemed a "commercially reasonable" price, as that term is used in the statute, the
18 RIEDC does have a special interest in the terms and implementation of the contract,
19 including its expeditious execution. From a policy perspective, the State has defined as a
20 goal the development of a robust renewable energy portfolio, of which off-shore wind
21 could play an important role. The Block Island Project supports the agency's mission to
22 develop the so-called green economy, to develop renewable energy resources in Rhode
23 Island, to fulfill the terms of the agreements to utilize the Quonset site for development of

1 off-shore power resources and to fulfill the mandate of the Renewable Energy
2 Development Fund. For all these reasons, the RIEDC supports the project that
3 Deepwater Wind has proposed, as represented in the PPA that is before the Commission
4 for review.

5 **II. <u>The Potential for Economic Development in Rhode Island</u>**

6 **Q. Can you explain how the Block Island project proposed by Deepwater Wind and**
7 **National Grid in this PPA would lead to economic development in Rhode Island?**

8 A. There are several important considerations that the Commission should consider in
9 determining whether this project will promote the development of jobs in the renewable
10 energy sector of our economy, which is a goal the Commission should consider as part of
11 its evaluation of the PPA for the Block Island project. Let me summarize:

12 1. <u>First Mover Advantages</u>:

13 This project represents significant "first mover" advantages with respect to off-shore
14 wind development and the development of a "green" economy. As is often stated, there
15 are no off shore renewable energy projects anywhere off the continental United States at
16 this time. The state that develops the first such project has the potential to leverage its
17 "first mover" status to position the state as a leader in the development of an off-shore
18 renewable energy business, and will have a distinct advantage in setting up the
19 infrastructure and workplace requirements (e.g., manufacturing, assembling, designing,
20 insuring, installing, etc.) required to support not just the development of this first project
21 but other projects that are likely to follow. Capitalizing on these first mover
22 opportunities will likely yield significant short term and long term economic
23 development benefits.

1 2. Capital Investment:

2 This project represents a significant capital investment to be made in the State, including
3 both public and private investment. While there is no guarantee that investment will lead
4 to the development of a large scale renewable energy sector, there are reliable indications
5 that investment capital, boosted by public investment, is an important first step in the
6 development of any new industry, including the renewable energy industry. For
7 example, on January 13, 2009 the Executive Office of the President's Council of
8 Economic Advisors released a report and economic analysis revealing that the infusion of
9 5 billion dollars in stimulus money for the development of a clean energy industry has
10 thus far created or saved approximately 52,000 clean energy jobs (including renewable
11 energy) with the expectation that by 2012 there will be a total of 719,000 clean energy
12 jobs created or saved as a result of just these public sponsored investments -- the full
13 report is available at the following link:
14 http://www.whitehouse.gov/sites/default/files/microsites/100113-economic-impact-arra-
15 second-quarterly-report.pdf.

16 In Rhode Island, through the commitments reached in the JDA and the Development
17 Agreement and Lease with QDC, Deepwater has already committed substantial capital
18 towards the development of a renewable energy sector in Rhode Island. The RIEDC has
19 also committed substantial funding towards the development of the SAMP, an important
20 piece in the proper siting of any off-shore renewable energy projects. These
21 commitments represent important steps in public and private investment towards a green
22 economy for the benefit of Rhode Island.

1 3. Regional Opportunity:

2 The off-shore wind market – just on the east coast – is a significant market opportunity
3 that Rhode Island is poised to take advantage of given its location and port access at
4 QDC. Estimates place the total development potential of east coast off-shore wind to be
5 upwards of 54 GW of electricity, and upwards of $50 billion dollars of development
6 activity. By capitalizing on this unique regional perspective, Rhode Island has an
7 opportunity to capitalize on new business in the State that will service this entire off-
8 shore wind power industry that could potentially service off-shore projects from Maine to
9 Virginia.

10 4. Job Creation:

11 Our experience shows that often times dollars directly invested in Rhode Island can lead
12 to the development of new jobs. For example, Deepwater was asked in data questions to
13 quantify the jobs that are expected to be developed by the Block Island project. In
14 response to Div.1-1 pointed out that the Block Island and utility scale project are
15 expected to "create the equivalent of approximately 600 or more direct jobs, and many
16 more indirect jobs" with the Block Island project alone expected to generate "between 35
17 and 50 direct local construction period jobs, and possibly more if assembly operations are
18 performed at Quonset. . ." Deepwater then states that they "estimate that post –
19 construction, operation and maintenance of eight (8) turbines making up the facility will
20 require approximately 6 permanent full time equivalent jobs."

21 I understand that without any off-shore projects in the United States this is difficult to
22 forecast. However, the experience in Europe is encouraging that off-shore renewable
23 energy projects can lead to the creation and sustainability of jobs. According to the

1 European Wind Energy Association (http://www.ewea.org/index.php?id=1861) in 2009 a
2 total of eight new wind farms consisting of 199 offshore wind turbines, with a combined
3 power generating capacity of 577 MW, were connected to the grid in Europe. According
4 to their publication "Wind Energy – The Facts" this industry is responsible for the direct
5 employment of 108,000 people and the indirect employment of more than 150,000 people
6 -- the report is available at
7 http://www.ewea.org/fileadmin/ewea_documents/documents/publications/WETF/1565_E
8 xSum_ENG.pdf. This European example is encouraging, and supports the notion that the
9 development of an off – shore wind project can create both direct and indirect jobs for
10 Rhode Island.
11 5. Price Stability:
12 While I will not comment specifically on whether the price that is proposed in the PPA is
13 a commercially reasonable price that a power marketer would adopt for an off shore
14 renewable energy project (I will leave that to the other experts), I do note that business
15 development is enhanced when the price of energy is stable, competitive and predictable.
16 This project (coupled with the utility scale project) offers the potential for long term price
17 stability to a significant portion of the States electricity use. Stability in pricing provides
18 a hedge against upward fluctuations in price, which can spur investment and economic
19 development. I certainly believe that the residents of Block Island will stand to benefit
20 from lower prices and more stable and reliable energy with this extra diversity associated
21 both with the off shore wind energy, as well as long-due connection to the mainland
22 power grid.

1 6. Indirect Benefits:

2 The project potentially brings about other indirect and important economic benefits –
3 which include support services, retail and local businesses that are used to support the
4 workers and project activities, as well as lower health costs where dependence on fossil
5 fuels for electricity use is reduced by the diversity of supply that can be met by a clean
6 type of energy generation. As for the other indirect types of jobs associated with the
7 development of a renewable energy sector, the American Wind Energy Association
8 reports that "about 85,000 people are employed in the wind industry today, up from
9 50,000 a year ago, and hold jobs in areas as varied as turbine component manufacturing,
10 construction and installation of wind turbines, wind turbine operations and maintenance,
11 legal and marketing services, and more." This report is found at the following link:
12 http://www.awea.org/valuechain/

13 7. Multiplier Effect:

14 The establishment of the Block Island project and the production of the facilities required
15 to establish the wind turbines both in Block Island and for the larger utility scale project
16 have the potential to serve as a magnet to other companies seeking to develop a
17 renewable energy presence in the region. This could lead to other similar businesses in
18 the renewable energy and green space seeking to "cluster" and locate and open new
19 businesses and offering more jobs to Rhode Island.

20 8. Educational Jobs and Benefits:

21 Rhode Island is uniquely positioned to take advantage of the knowledge economy, with
22 many fine educational institutions that are in our region. There is an opportunity to
23 develop in-state expertise within this nascent industry, but also to strengthen our

1 educational offerings through curriculum development at our States colleges and
2 universities. There is a growing level of expertise in renewable energy at our universities
3 and graduate and professional schools, and this expertise and the offerings of jobs in
4 academia to support this industry represents further economic development with this
5 project.

6 **Q. You have described many of the potential economic benefits that can occur. What**
7 **role does the Block Island project play in the economic development potential of the**
8 **utility scale project?**

9 A. I believe that the Commission must look at what the Block Island project means to the
10 development of the utility scale project. This investment is one that will provide short
11 term benefits through jobs, income and other revenue, but is part of a larger, more
12 strategic initiative. The Block Island project lays the foundation for the "larger" off-
13 shore wind project, which provides us with greater long-term economic development
14 benefits, some of which are above. I agree with the statement made by Deepwater in
15 response to Div 1-1 when they stated that the Block Island project is not intended by
16 itself to result in significant numbers of new jobs but that it is important to recognize that
17 the Block Island project is an important first step towards the development of a
18 significant new renewable energy industry in our state to attract business to flourish in
19 Rhode Island at all levels of the so-called supply chain to service wind turbines and other
20 component manufacturers for other renewable energy projects.

21 **Q. Can you point to any studies or analysis that have been developed to measure with**
22 **any precision the number and type of jobs that are expected by the development of**
23 **off shore wind projects such as the Block Island project?**

1 A. I understand that in response to Div 1-2 and 2-3 Deepwater Wind has pointed out that
2 there are no special studies that have been instituted at this time to precisely measure this
3 in Rhode Island. However, as indicated in response to Div 2-3 there are studies nearby in
4 New York, showing estimates of economic development to New York in the range of 2.4
5 million dollars per year, and the reports I describe above from the European example are
6 impressive. Again, this type of a project would be a first for the country and so the lack
7 of specific studies to Rhode Island is not surprising. However, I believe that there are
8 solid reasons to believe that there is real economic development potential by the support
9 for this project as represented in this PPA.

10 **Q. Does this conclude your testimony?**

11 A. Yes.

12

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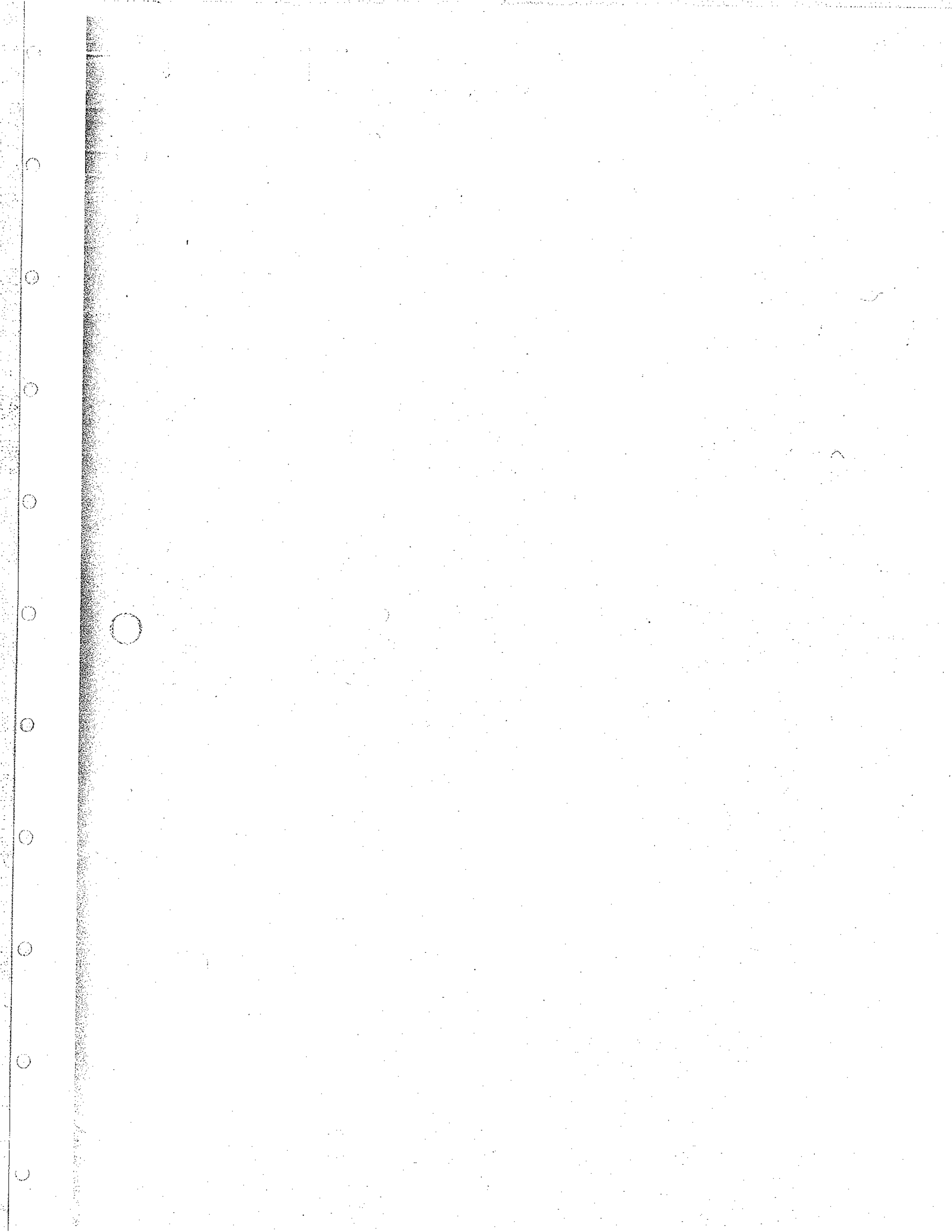


Fred S. Hashway, Jr.
67 Capwell Ave.
Pawtucket, RI 02860
(401) 725-2535 (H) (401) 440-1700 (C)
Email: fhash@cox.net

SKILLS

> 12 years senior management and leadership experience
> 17 years business and real estate lending experience
> Demonstrated sales and analytical skills
> Excellent verbal and written communication skills.
> Long-standing business and government relationships.

PROFESSIONAL EXPERIENCE

July 2005-Present

Rhode Island Economic Development Corporation
Providence, RI
Director Government Affairs, Policy, Communications and Innovation Programs

Rhode Island Economic Development Corporation "EDC" is a quasi-public corporation enacted by statute to manage various functions to help increase jobs and boost tax revenue for the State of Rhode Island.

I am responsible for the strategic planning and day to day managementof several EDC departments. Government Affairs, Policy and Communications are naturally connected by function. I manage the integration of the departments to insure that research, policy, government affairs and communications are in alignment.

I also lead other EDC initiatives:

Renewable Energy Fund "REF"-An annual $2.5 million electric ratepayer generated fund to invest in renewable energy. A major activity of the REF is tofund the Special Area Management Plan, which will indentify the locations where an offshore wind farm may be located. I along with EDC Executive Director M. Saul serve on the MMS (division of US Department of Interior) federal/state offshore wind permitting task force.

CCRI Commission for 21st Century Workforce Skills-I managed the drafting and passage of a legislatively mandated commission. The commission's directive is to advise the Governor and General Assembly on how to better align the community colege with employers.

Innovation Programs-Science and Technology Advisory Council- A legislatively mandated council formed to advise the Governor and the Legislature on Science and Technology with an emphasis on their relationship to technology transfer.

November 2004-June 2005

Octant Business Services, LLC

Marlborough MA

President and CEO

Octant Business Services "OBS" is a multi-credit union owned Credit Union Service Organization "CUSO". OBS was formed to satisfy a fast-growing need to provide credit unions with economical solutions, to offer commercial lending and deposit services. Credit Unions can now outsource their entire commercial lending department to CUSOs like OBS. CUSOs offer Credit Unions the opportunity leverage technology and commercial lending expertise without building an entire department.

Octant was formed November 2004. As President, of a start-up company I was responsible for building the entire organization. That included: budgets, personnel, policy and procedure,marketing and advertising and overall business strategy. I reported to an eight-member board of directors. The CUSO is owned by eight credit unions with over 6 billion of assets.

January 2001-November 2004

UPS Capital/First International Bank

Atlanta, GA/Hartford, CT

Senior Business Development Manager/Vice-President Commercial Lending:

First International Bank was acquired by UPS Capital (a fully- owned subsidiary of UPS) August 2001. UPS Capital is full service multinational commercial bank with30 offices located domestically and internationally. UPS Capital is the industry leader in USDA and Export-Import Bank guarantee lending. UPS Capital is a consistent top twenty (20) nationally ranked SBA guarantee lender.

As the senior lender in the Providence office I was responsible for an overall portfolio of $85MM. I was also responsible for all marketing and business development activities for the Rhode Island market.

February 1997-January 2001

Domestic Bank (Federal Savings Bank)

Cranston, RI

Vice-President Commercial Lending:

Domestic Bank is a full service (FDIC insured) commercial bank, with expertise in SBA/USDA government guarantee, traditional business and commercial real estate lending.

I was responsible for the day-to-day management of a department with annual lending of $30MM.

January 1994-February 1997

Hashway and Associates

Providence, RI 02903

Principal:

A real estate and business consulting company. As a consultant to a variety of private and public sector clients, Hashway and Associates offered an array of services; from loan application preparation to SBA/USDA lenders to sophisticated mortgage backed securities.

February 1988-December 1993

Coastal Capital Corporation

Providence, RI 02903

Executive Vice-President/ Senior Loan Officer:

Coastal Capital was a mortgage banking/brokerage company specializing in small business, commercial and real estate lending.

January 1980-January 1988
US Senator Claiborne Pell (RI)
Washington, DC 20510
Special Assistant for Senate Floor Activities:

I was appointed to a position by US Senator Claiborne Pell responsible for legislation and procedure on the floor of the US Senate.

EDUCATION

Georgetown University
Washington, DC
Bachelor of Science

Double major; Business Administration and Government

AFFILIATIONS

Rhode Island Legislative Redistricting Commission

Appointed to redistricting commission to redraw legislative and congressional districts and downsize the legislature based on 2000 US Census.

Talk Show Host

A weekly live radio call in talk show (WHJJ 920) discussing contemporary banking and real estate issues

Consultant to T. A. Realty

T. A. Reality manages over twelve billion dollars of real estate for public and private pension funds.

Board Member, Goodman and Co.

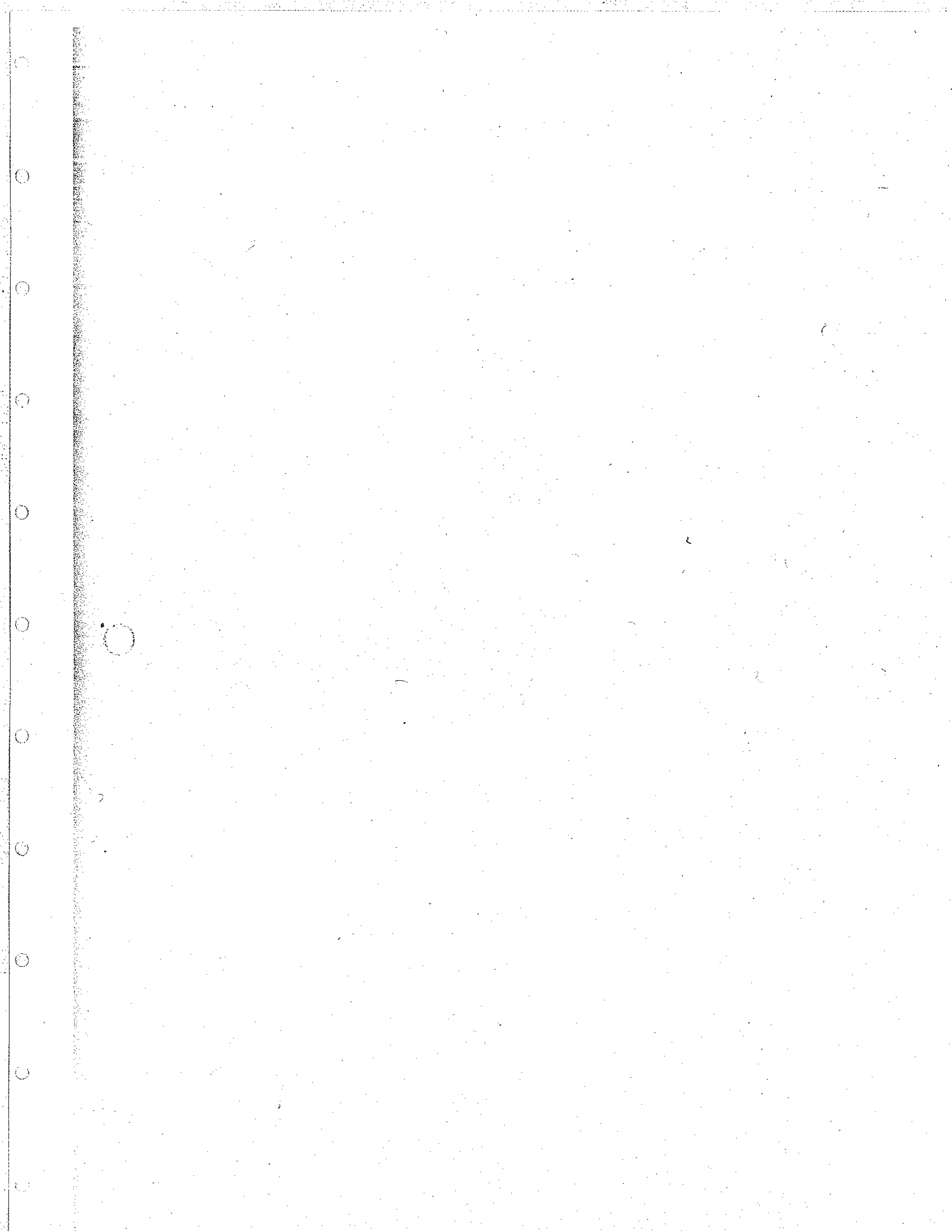
Goodman and Company was a Providence based public relations and advertising company.

Rhode Island Chairman, The Concord Coalition

The Concord Coalition is a national non-profit grass roots organization dedicated to balancing the federal budget.

Business Manager, For Sentimental Reasons

For Sentimental Reasons is a musical group dedicated to the music of the 1940's. The group started in 1994 and has performed for clients such as; Verizon, Liberty Mutual Insurance, US Navy and The Boston Globe.



State of Rhode Island and Providence Plantations
State House
Providence, Rhode Island 02903-1196
401-222-2080

Donald L. Carcieri
Governor

RECEIVED
2009 OCT 30 AM 8: 23
PUBLIC UTILITIES COMMISSION

October 29, 2009

Elia Germani, Chairman
Paul J. Roberti, Commissioner
Mary E. Bray, Commissioner
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, R.I. 02888

RE: Review of Proposed Town of New Shoreham Project Pursuant to R.I. General Laws 39-26.1-7, Docket No. 4111

Dear Chairman Germani and Commissioners Bray and Roberti:

I am writing to support and encourage the Commission in its important role in this proceeding to facilitate, as soon as reasonably possible, a long-term contract between National Grid and Deepwater Wind for the development of an off-shore renewable energy wind project to be located off the coast of Block Island specifically designed to help the citizens and economy of Rhode Island.

During its 2009 session, the General Assembly passed, and I signed into law, legislation to advance the development of new renewable energy resources through "commercially reasonable long-term contracts between electric distribution companies and developers." This landmark legislation was the culmination of more than two years of intense negotiations between the Executive and Legislative branches of government, as well as various other stakeholders and interested parties. In fact, it is this legislation that authorizes this very proceeding, and thus prompted me to write to you today.

In passing the Long-Term Contracting Standard for Renewable Energy, the State made a public policy decision to foster renewable energy development with the goals of "stabilizing long-term energy prices, enhancing environmental quality, creating jobs in the Rhode Island renewable energy sector, and facilitating the financing of renewable energy generation" that provides direct economic benefits to the State.

I believe it is important to consider all of these policy objectives – energy, environmental and economic development – when evaluating an eventual contract between Deepwater Wind and National

Grid for the Block Island off-shore wind demonstration project. It is equally important to recall that these enumerated objectives are consistent with previous legislative enactments, including the Renewable Energy Standard (RES) (R.I.G.L. Chapter 39-26), which reads in part: "the people and energy users of Rhode Island have an interest in having electricity supplied in the state from a diversity of energy sources including renewable sources" (R.I.G.L. §39-26-1). The RES requires public utilities to purchase 16 percent of the state's power supply from renewable energy sources. The long-term contracting law reinforces the RES, and further states that projects providing direct economic benefits to Rhode Island are the means to accomplishing the State's policy goals.

In previous decisions, the Commission has cited RES as evidence that "the General Assembly has set forth a policy to encourage investment in renewable energy supply." It went on to say that, "according to developers, commitments to purchase the energy are important for the financing of renewable energy development. (Docket No. 3659). In a subsequent order, the Commission reiterated its position and stated that "long-term contracts will be necessary for the success of the renewable energy supply." (Docket No. 3765). In short, the legislative record and the Commission's reading of that record are clear – long-term contracts for the purchase of renewable power are desirable and necessary in order to stabilize energy prices and grow a green industry domestically.

I am hopeful that such a clear statement of legislative intent will persuade all parties to work for the advancement of its goals, including Rhode Island's primary electric distribution company, National Grid. Rather than purchasing renewable power from New York and elsewhere, I urge them and the Commission to help Rhode Island grow its nascent renewable energy sector into a vibrant, innovative and job-creating industry.

The issue before the Commission is not whether the State should mandate National Grid to enter into long-term contracts for renewable energy development, but how to structure the contract in a way that protects ratepayers, while meeting the other enumerated goals – economic and environmental.

Make no mistake: I too believe that the energy price presently contained in the proposal before the Commission is excessive. I have always stated that I support cost-effective renewable energy, not renewable energy at any cost. That being said, I further believe that there are contributors to that price that are driven by National Grid's procurement process, not necessarily by the law.

I have always understood that creating a long term contract for the purchase of renewable energy for the energy needs of Rhode Island would not be easy and would require careful analysis and negotiation. Worthwhile and innovative endeavors are never easy, and thoroughness is appropriate. However, I also knew that a contract would be necessary, and might require the Commission's oversight and expertise to achieve. In fulfilling that role, I hope the Commission will look beyond price alone during its deliberations in Docket 4111 and will evaluate commercial reasonableness based on the myriad aspects of this proposal and the context of its submission, specifically that it is a demonstration project for wind power.

The public policy of the State is to support long-term contracts for "newly developed renewable energy resources" that are consistent with the policy objectives discussed above. The State believes that such contracts can serve as a hedge against the volatile prices of fossil fuels, and therefore provide more stability to our residential, industrial and commercial ratepayers. The Block Island project was proposed as a specific carve out in the recently enacted legislation, because policy makers believe the Town of New Shoreham should benefit from lower electricity rates, but also because the State believes the project can and will be an important demonstration project that will prove out the feasibility and commercially reasonable nature of this resource, and fulfill the promise and future that off-shore wind electric generation will bring to our ratepayers and economy.

If the State is ever to reach its goal of acquiring 16 percent of its electricity from home grown renewable energy projects, it must stop talking and start acting. Rhode Island has limited indigenous energy resources, but an abundance of wind just off our shores. Until that precious resource is tapped and utilized, Rhode Island will make little or no progress in advancing its goals of stabilizing energy prices and growing jobs – both critically important. A necessary step in achieving these goals, and in any great endeavor no matter how big or small, is the first one. That is why I believe it is critically important that Rhode Island's first foray into this area be a relatively small scale off-shore wind project. The proposed project is large enough to put Rhode Island on the map as a leader in this $50 billion industry, and small enough to mitigate potential risks to ratepayers, the developer and the State's utility monopoly. The Block Island project will serve to demonstrate this concept, a very important step in an industry that is often adverse to risk and innovation. Developers and regulators alike can learn best practices and better prepare for the utility scale projects.

In addition, because the proposed project is a demonstration project, it must be remembered that the economics of the project are far different than would occur with a subsequent, utility scale project. The price negotiated here for a long term contract should in no way be viewed as establishing a precedent or indicating what the energy price may be in connection with future wind energy projects. What is commercially reasonable with respect to this project and what is commercially reasonable with respect to future projects are very different matters.

I understand there remain some important matters, such as cable ownership; size of the project, etc. that will require further negotiation, and I am hopeful that Deepwater Wind and National Grid will continue to sit at the negotiating table. I am confident the Commission will do everything in its power to further encourage, facilitate and if necessary arbitrate the terms of a long-term power purchase agreement that is commercially reasonable, stabilizes energy prices, enhances environmental quality and makes Rhode Island a leader in the emerging green economy.

The Commission has in the past stepped forward to take on new challenges in the electric industry, such as the implementation efforts required to satisfy landmark legislation which restructured the industry a decade ago. The Commission, once again, is now called upon to use its expertise over utility matters to ensure that a long-term power purchase agreement for a first-of-of-its kind renewable energy project is implemented.

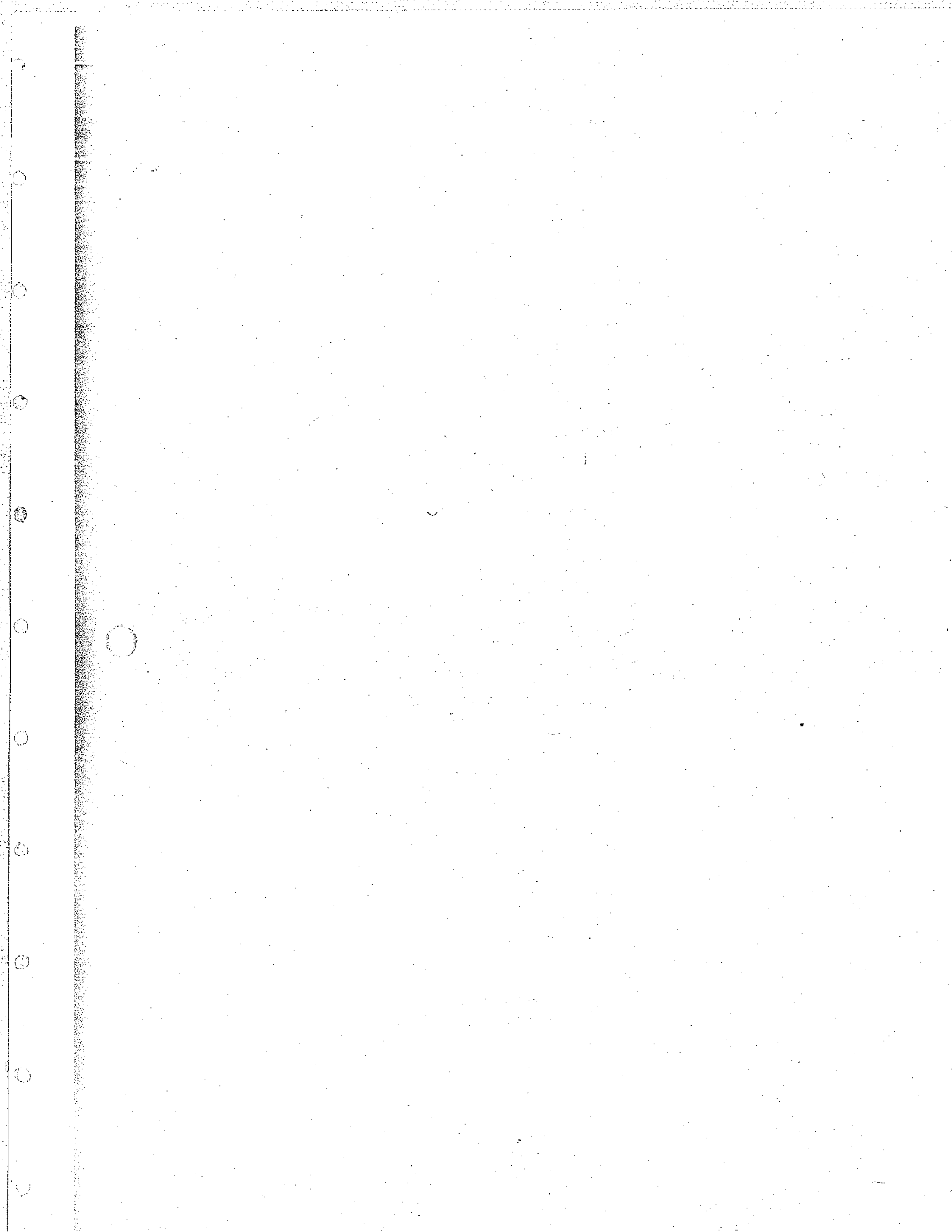
As I stated when this law was enacted, this important effort will accelerate our efforts to be the first state in the nation to take our energy needs into our own hands, through the development of clean, sustainable renewable energy off our shores. This legislation places Rhode Island at the epicenter for renewable energy on the East Coast, where we have estimated planned projects (beginning with this Block Island project) to produce well over $1.5 billion in private investment in Rhode Island and the creation of a minimum of 800 jobs with estimated annual wages of $60 million. The Block Island project is the first step toward energy security as well as achieving our environmental and economic goals. Our focus must be to ensure that the long term contract between National Grid and the developer is completed expeditiously.

I will make my administration fully available to assist in any way needed so that we can together fulfill the goals of this important effort to lead the way toward the development of renewable energy projects for the benefit of Rhode Island. I know you will move forward as quickly as possible to resolve this critical matter.

Sincerely,

Donald L. Carcieri
Governor

cc: The Honorable M. Teresa Paiva Weed, Senate President
The Honorable Daniel P. Connors, Senate Majority Leader
The Honorable Dennis L. Algiere, Senate Minority Leader
The Honorable William J. Murphy, Speaker
The Honorable Gordon D. Fox, House Majority Leader
The Honorable Robert A. Watson, House Minority Leader



EXECUTION COPY

JOINT DEVELOPMENT AGREEMENT

BETWEEN

THE STATE OF RHODE ISLAND
AND
DEEPWATER WIND RHODE ISLAND, LLC

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Joint Development Agreement
between the State of Rhode Island
and Deepwater Wind Rhode Island, LLC

This Joint Development Agreement ("**Agreement**") between the State of Rhode Island and the Rhode Island Department of Administration, (collectively, "**State**") and Deepwater Wind Rhode Island, LLC ("**DWW**" and together, the "**Parties**") sets forth the rights and obligations of the Parties in connection with the Project and certain Economic Development Activities, as defined respectively in Section I.T. herein and Section I.G. herein.

RECITALS

WHEREAS: The State through its Office of Energy Resources, in January, 2006, established its RIWINDS program with the goal of producing approximately 1.32 million MW hours per year to meet 15% of the State's renewable electric power requirements;

WHEREAS: The Office of Energy Resources commissioned a study, "RIWINDS Phase I Wind Energy Siting Study" ("RIWINDS Study"), to assess the feasibility of meeting RIWINDS program objectives from wind resources in Rhode Island;

WHEREAS: The RIWINDS Study concluded that 95% of Rhode Island's wind energy potential was located in areas offshore of Rhode Island;

WHEREAS: As a result of the RIWINDS Study the Office of Energy Resources convened stakeholder groups around the State to assess the acceptability to the Rhode Island community of the development of commercial grade windfarms in offshore waters;

WHEREAS: As a result of the RIWINDS Study and the stakeholder meetings in connection therewith, the State by its Office of Energy Resources and Department of Administration issued a Request for Proposals for its Rhode Island Energy Independence I Project ("RFP #7067847" or "RFP") on April 3, 2008;

WHEREAS: The RFP solicited proposals from the national and international wind energy development community for the development of a commercial grade wind farm in waters of the State or in waters of the United States offshore of the State or in a combination of State and national waters and proposals for Economic Development Activities in the State related to the development and operation of offshore wind farms;

WHEREAS: The State received seven proposals in response to the RFP, opened the proposals on May 30, 2008 and proceeded to evaluate the proposals utilizing personnel of the Office of Energy Resources, the Rhode Island Economic Development Corporation and the Department of Administration and consultants with expertise in offshore wind energy technologies, project economics and power markets in New England;

WHEREAS: On September 25, 2008 the State announced that DWW had been selected as the preferred developer and on October 3, 2008 the Department of Administration by letter

formally notified DWW that it had been selected as the preferred developer for the Rhode Island Energy Independence I Project and that the State would enter into negotiations with DWW for a development agreement; and

WHEREAS: As a result of the negotiations between the State and its representatives from the Office of Energy Resources and the Rhode Island Economic Development Corporation and representatives of DWW, the Parties enter into this JDA.

I. DEFINITIONS

The following terms when used in this JDA shall have their corresponding meanings:

A. **Acceptable Power and REC Offtake Arrangements** – Agreements or arrangements pursuant to which the electrical output of the Project (or any Phase of the Project, as applicable), and RECs are marketed to others such that the Revenue Stream from such agreements or arrangements is sufficient to enable DWW to obtain adequate debt and equity financing for the Project or any Phase of the Project, as applicable, on reasonable terms. Any such Acceptable Power and REC Offtake Arrangements shall be structured so that the electric energy generated by Phase I and Phase II of the Project shall be attributable to and meet approximately 1.32 million megawatt hours of the electric energy requirements of retail consumers of electric energy in Rhode Island.

B. **Affiliate** - means any person that directly or indirectly controls, or is controlled by, or is under common control with, DWW, and "control" as used herein shall mean possession, directly or indirectly, of the powers to direct or cause the direction of the management policies of DWW, whether through the ownership of voting securities, partnership interests or by contract or otherwise.

C. **Application** – a filing or other writing that seeks approval of an activity related to the development of the Project from Federal Agencies or State Agencies and which filing or writing DWW reasonably believes in good faith will be accepted for filing by the relevant Federal or State Agency.

D. **Block Island Power Company ("BIPCO")** – The electric utility or its successor entity that provides electric service to retail customers on Block Island, Rhode Island.

E. **Certificate of Critical Economic Concern** – The certificate that, upon application by DWW, may be issued by EDC pursuant to RIGL, Title 42, Chapter 117 and rules and regulations issued pursuant thereto by EDC and that will assist DWW in expediting the permitting and approval processes of State Agencies for the Project and Economic Development Activities to be undertaken pursuant to this JDA.

F. **The Coastal Resources Management Council** ("CRMC") – The Agency authorized and empowered by the State as its Coastal Zone Management Agency and that shall

undertake the development of the Ocean/Offshore Renewable Energy Special Area Management Plan (SAMP).

G. **Confidential Information** – Trade secrets, commercial information or financial information of DWW of a privileged or confidential nature as defined in the Rhode Island Access to Public Records Act, R.I.G.L. §38 et seq.

H. **Discontinued** - means, with respect to either Phase I or Phase II, as applicable, that the development of such Phase by DWW has been discontinued pursuant to Section VII.B.C, or, with respect to an Economic Development Activity, that such Economic Development Activity by DWW has been discontinued pursuant to Section IX.B.

I. **Rhode Island Department of Administration** – The State agency authorized, among its other functions, to designate the preferred developer pursuant to Section IV of this JDA.

J. **Economic Development Activities** -- The economic development initiatives, activities and investments of DWW as set forth in Section VIII of this JDA.

K. **Federal Agencies** – Agencies of the United States Government including but not limited to the Minerals Management Service of the Department of Interior ("MMS"), the Army Corps of Engineers ("ACOE"), the United States Coast Guard ("USCG"), the National Marine Fisheries Service ("NMFS"), the United States Fish and Wildlife Service ("USFWS"), National Oceanic and Atmospheric Administration ("NOAA"), the Environmental Protection Agency ("EPA") and the Federal Energy Regulatory Commission that may have to be consulted or from whom permits or approvals may have to be obtained in connection with the development of the Project.

L. **Fully Developed Project** – The completion of all development activities in connection with Phase I or Phase II of the Project and the Project has secured debt and equity financing for the development, engineering, construction, startup and operation of the respective Phases of the Project.

M. **The Independent System Operator for New England ("ISO-NE")** – The organization authorized by the Federal Energy Regulatory Commission to establish and administer transmission tariffs and wholesale electric power markets in the New England balancing area.

N. **Intellectual Property** – Trade secrets, confidential knowledge or information containing proprietary technologies, processes, financial arrangements, engineering or design techniques or processes owned by DWW or licensed to DWW by a third party.

O. **Job** - A full time employee, which, for the purposes of this Agreement, shall mean at least 1500 hours of employment of an individual in a year by DWW, or any Affiliate, employed in Rhode Island, which hours of employment shall include vacation time, sick time, disability time, personal time or other time for which DWW or its Affiliate must pay the

employee plus benefits typical of those services provided by the employee for DWW or its Affiliate. For purposes of this Agreement, "Job" shall include, without limitation, (a) employees of service providers for outsourcing and (b) temporary employees retained through an employment agency in Rhode Island meeting the same criteria for the benefit of DWW or its Affiliate as if that employee were employed directly by DWW. For employees who are not paid on an hourly basis, each full-time salaried employee employed for a full year shall be deemed to work at least 1500 hours per year. The hours attributed to salaried employees shall be pro-rated for any employees who are employed for less than a full year.

P. **Milestone Date** – The date by which a Milestone Event is scheduled to occur as set forth in Section VII. and Section IX of this JDA.

Q. **Milestone Event** – An event the occurrence of which is necessary for the Parties to realize the purpose and objectives of this JDA as set forth in Section VII and Section IX of this JDA.

R. **The New England Generation Information System ("NEGIS")** – The system established to track and report the generating characteristics of electric generating resources located in New England, including those generating characteristics that create renewable energy certificates due to the renewable energy generating characteristics of generating resources.

S. **Office of Energy Resources ("OER")** – The agency of the State charged with the responsibility of overseeing the development of the Project and implementing this JDA.

T. **Phase I of the Project ("Phase I")** – A wind power project to be located in state waters having approximately twenty (20) MWs of nameplate capacity and interconnected to both the electric power systems of BIPCO and mainland Rhode Island.

U. **Phase II of the Project ("Phase II")** – A wind power project to be located within the SAMP area in United States waters off of the coast of Rhode Island having approximately three hundred eighty five (385) MWs of nameplate capacity and interconnected to the electric power systems of mainland Rhode Island, and which, in the event Phase I is Discontinued, is also interconnected to the electric power system of BIPCO.

V. **Power Purchase Agreement ("PPA")** – An agreement having a term not less than 15 years pursuant to which the electrical output of the Project (or any Phase of the Project, as applicable) and RECs are sold to a creditworthy purchaser such that the Revenue Stream(s) to the Project from such an agreement or combination of PPAs enables DWW to obtain adequate debt and equity financing for the Project or any Phase of the Project, as applicable, on reasonable terms. Any such PPA shall be structured so that the electric energy generated by Phase I and Phase II of the Project shall be attributable to and meet approximately 1.32 million megawatt hours of the electric energy requirements of retail consumers of electric energy in Rhode Island.

W. **Project** – The development of offshore wind power facilities in Rhode Island state waters and adjacent waters of the United States within the area covered by the SAMP consisting of Phase I and Phase II and having the capability of generating an estimated one

million three hundred twenty thousand (1.32 million) megawatt hours of electricity per year to be delivered into the electric power systems of Rhode Island.

X. **Quonset Development Corporation ("QDC")** –Quonset Development Corporation: a public corporation of the State, having a distinct legal existence from the State and not constituting a department of State government, which is a governmental agency, and a subsidiary of the Rhode Island Economic Development Corporation, that is charged and empowered with the authority to manage and administer the Quonset Business Park, located in North Kingstown, Rhode Island.

Y. **Renewable Energy Certificates ("RECs")** – All certificates, electronic records or other forms of records reflecting or embodying the environmental attributes of the Project that are allocated, assigned or otherwise awarded or certified by the NEGIS or successor entity and any other allowances, awards or certifications that have monetary value due to the Project's environmental attributes and may be available to the Project from time to time.

Z. **Revenue Stream** – The value in dollars of revenue or tax savings derived by the Project or its owners from the sales of electric power (energy, capacity and ancillary services), RECs, state or federal tax credits and incentives. The Revenue Stream shall be assessed on an annual basis over a period coterminous with the term in years of any PPA or Acceptable Power and REC Offtake Arrangements and over period sufficient to assess the acceptability of the Revenue Stream derived from the Project to potential financings.

AA. **Rhode Island Economic Development Corporation ("EDC")** –Rhode Island Economic Development Corporation: a public corporation of the State, having a distinct legal existence from the State and not constituting a department of State government, which is a governmental agency and public instrumentality empowered with certain functions as the State's lead agency for economic development, to promote and encourage the development of new and existing industry, business, commerce, agriculture, tourism, and recreational facilities in the State which will promote economic development in the State.

BB. **Special Area Management Plan ("SAMP")** – The "Ocean/Offshore Renewable Energy Special Area Management Plan" to be conducted under the supervision of the CRMC, the purpose and objectives of which are to (1) streamline cumbersome federal and state permitting processes and establish a more cost-effective permitting environment for investors; (2) promote a balanced approach to considering the development and protection of area-based resources; (3) complete the necessary studies to yield the most accurate and current ocean-based scientific data to build knowledge critical for supporting the permitting process; and (4) foster a well-informed and committed public constituency.

CC. **State, Regional and Local Agencies and Instrumentalities ("State Agencies")** – With the exception of the CRMC, agencies and instrumentalities of the State or regional or local political subdivisions thereof having regulatory or consultative authority with respect to the Project and the Economic Development Activities and including, but not limited to, the Rhode Island Department of Environmental Management, the Rhode Island Public Utilities Commission, the Rhode Island State Historic Preservation Office, the Rhode Island Energy

Facility Siting Board and towns and counties that may have to be consulted or from whom permits or approvals may have to be obtained in connection with the development of the Project or the Economic Development Activities. The CRMC, in connection with the Project, has a special function to prepare the SAMP pursuant to its unique authorization under state law and pursuant to Section V of this JDA.

DD. **Transmission Provider** – National Grid, Narragansett Electric Company, BIPCO, the successor entities thereto, or any other entity authorized to provide electric transmission service into, within and out of Rhode Island pursuant to tariffs approved by the Federal Energy Regulatory Commission and administered by ISO-NE or tariffs and regulations authorized and promulgated by the Rhode Island Public Utilities Commission.

EE. **Work Product** - all inventions, improvements, copyrightable material, plans, analyses, studies, reports, materials, surveys, assessments, financial projections, market information, wind studies, data, turbine performance and related information and any other intellectual property, trade secrets, designs and processes or any other work product developed, produced or commissioned by DWW with respect to the Project.

II. GENERAL OBLIGATIONS

A. **DWW's Obligation**. DWW shall utilize good industry and engineering practice and commercially reasonable efforts to complete either Phase I or Phase II or both Phases of a Fully Developed Project, to commence construction of and to operate either Phase I or Phase II or both Phases of the Project, and to undertake the Economic Development Activities prescribed by Section VIII of this JDA.

B. **Specified Activities of DWW.** Consistent with the standards under Section II.A. of this JDA, DWW shall:

1. Obtain all necessary permits and approvals from Federal Agencies and State Agencies;

2. Execute one or more PPAs or enter into Acceptable Power and REC Offtake Arrangements for the sale, in aggregate, of all of the electricity generated by the Project and all associated RECs attributable to the Project. The Parties acknowledge and agree that any such PPA, PPAs or Acceptable Power and REC Offtake Arrangements shall reflect siting, engineering or environmental information collected during the permitting process and shall further reflect commercial conditions in the offshore wind industry.

3. Secure, by way of ownership or lease, suitable and adequate real property within Rhode Island for the receipt, staging, assembly, and construction of the components comprising the Project and the delivery of such components to the Project sites;

4. Secure suitable and adequate state and/or federal leases for the Phase I and Phase II Project sites and suitable and adequate state and/or federal leases and/or rights of way to transmit the electric power generated into the electric systems of the Transmission Provider(s);

5. To the extent services, equipment, materials and facilities can be procured from Rhode Island businesses and vendors at commercially reasonable terms, procure such services, equipment, materials and facilities from Rhode Island businesses and vendors in the development of Phase I;

6. Procure technology licenses, wind turbines and related equipment;

7. Obtain Federal Agency, State Agency, interconnection approvals and agreements for the electric power generated by the Project and arrange with ISO-NE and the Transmission Providers for transmission of the electric power produced by the Project into the Rhode Island electric power system and from Block Island to the electric power systems of the Transmission Providers on mainland Rhode Island.;

8. Execute an engineering, procurement and construction contract;

9. Secure adequate debt and equity financing for the development, engineering, construction, startup, and operation of the Project; and

10. Undertake, upon commercially reasonable terms and conditions, the performance of its obligations with respect to the Economic Development Activities prescribed by Section VIII of this JDA.

C. <u>State's Obligations</u>. The State through its OER and EDC shall make all reasonable efforts to assist DWW to complete a Fully Developed Project for Phase I and II and to achieve the Economic Development Activities as set forth in Section VIII of this JDA. The OER and EDC shall, to the extent that it is lawful and within their authority to procure or influence any outcome relevant thereto, assist among other matters relating to the development of the Project and Economic Development Activities, in (i) expediting permitting and approvals during all phases of the Project; and (ii) assisting DWW in securing one or more PPAs, or Acceptable Power and REC Offtake Arrangements, as applicable, including taking appropriate administrative, judicial, and legislative actions reasonably requested by DWW to secure such PPA or PPAs, or Acceptable Power and REC Offtake Arrangements, as applicable.

D. <u>Certificate of Critical Economic Concern</u>. DWW, at its option, may submit to the EDC a completed application for a Certificate of Critical Economic Concern for the Project pursuant to R.I.G.L. Title 42, Chapter 117, and the rules and regulations adopted pursuant thereto by the EDC. In the event DWW submits an application for a Certificate of Critical Economic Concern for the Project to the EDC, the State shall utilize its reasonable best efforts to facilitate the prompt and efficient review of DWW's application for such a Certificate. Once a Certificate of Critical Economic Concern for the Project has been issued to DWW, the State shall, for so

long as this JDA is in effect, utilize its reasonable best efforts to facilitate the renewal of such Certificate upon the expiry thereof.

E. **DWW's Obligation with Respect to Other Incentives**. DWW will not seek through the Rhode Island General Assembly any additional or new tax incentives or state-paid subsidies for DWW's obligations under this Agreement or for the Project. Notwithstanding the foregoing, however, DWW may avail itself of any tax or financial provisions currently existing under Rhode Island law and DWW may avail itself of any tax or financial provisions under Rhode Island law that become available after the date hereof that are of general applicability to entities doing business in Rhode Island or to other entities in the energy production and transmission industry. Furthermore, any restrictions with respect to DWW's rights to economic development or tax incentives shall have no application to legislation or other governmental action related to any PPA or any Acceptable Power and REC Offtake Arrangements that is otherwise expressly contemplated by this Agreement.

III. PROJECT MANAGEMENT

A. **Periodic Project Updates.** DWW shall provide the State with periodic project updates on development activities related to the Project. The Parties shall exchange information concerning events and conditions affecting the development of the Project in a timely manner.

B. **Project Milestones, Relevant Programs.**
The Parties acknowledge and agree that the accomplishment of the milestones described and set forth in Section VII. of this JDA and Section IX. of this JDA may be delayed. Pursuant to the procedures set forth in Section VII.B. and Section IX.B. of this JDA, the Parties shall meet and endeavor to agree upon new milestone schedules.

DWW, in addition to exchanging information and permitting the State's representatives to monitor development of the Project, shall provide for comment by the State's representatives DWW's proposed stakeholder and community outreach program. DWW shall also advise state representatives of its risk management, health and safety, and quality assurance and control programs when such programs are to be implemented by DWW.

C. **DWW Management Authority.** Nothing in this JDA shall restrict DWW's authority to manage and direct the Project or make any decision regarding the development, engineering, construction, startup or operation of the Project subject to its obligations under this JDA.

IV. PREFERRED DEVELOPER

The State by and through its Department of Administration shall designate DWW as the State's preferred developer of offshore wind power within the SAMP. Consistent with this designation, while this JDA is in effect and, until DWW has completed a Fully Developed Project for Phase II, the State through the OER and Department of Administration shall object in any appropriate state or federal forum to any offshore wind power project or any electric power transmission facility, whether within or outside the SAMP, that would interfere with the Project.

In further support of this designation, the State shall use all reasonable efforts within its lawful authority (x) to cause CRMC to grant to DWW upon DWW acquiring all necessary permits and approvals for Phase I and at commercially reasonable terms the right to use the submerged lands of the State in support of Phase I and (y) to cause CRMC not to permit any use of those submerged lands that interfere with the Project.

V. THE SAMP

A. **The CRMC to Adopt the SAMP**. The CRMC shall adopt the SAMP.

B. **State Cooperation**. The CRMC shall make all reasonable efforts to expedite the SAMP and to obtain all associated necessary federal, state, and local government permits and approvals. The State shall advocate on behalf of the Project, where appropriate, with Federal Agencies and State Agencies.

C. **SAMP Studies**. DWW hereby agrees that all plans, analyses, studies, reports, materials, surveys, assessments, wind studies and related information or any work product developed, produced or commissioned by the CRMC, any State Representative or URI in connection with the SAMP, other than the Work Product (collectively "**SAMP Studies**") shall constitute the property of, and shall be owned by, the CRMC. The State grants to DWW a non-exclusive, perpetual license to use the SAMP Studies for any purpose in connection with the Project.

D. **State-Federal Coordination**. The State shall enter into cooperative working relationships with Federal Agencies in connection with the SAMP and the development of the Project.

E. **SAMP Costs**. DWW shall reimburse the State, through the Rhode Island Renewable Energy Fund, for costs reasonably expended by the CRMC in connection with the SAMP during the period August 1, 2008 through July 31, 2010, up to a maximum of $3.2 million as follows:

1. The Parties shall work together in good faith to negotiate and execute an escrow agreement incorporating the principal terms set forth on Exhibit A within 30 days.

2. Contemporaneously with the execution by the Parties of the escrow agreement referenced in Section V.E.1. above, DWW shall deposit, in accordance with the escrow agreement, the principal amount of$3.2 million for purposes of reimbursing expenditures by CRMC for the SAMP

3. The obligations of the Parties with respect to the remittance to RIEDC, or the refund to DWW, of all or any portion of the principal amount of $3.2 million described in this Section V.E., and any interest accrued in respect of such principal amount, shall be governed by the terms of the escrow arrangement described in Section V.E.1 above.

F. **Access to Meteorological Tower**. Provided a meteorological tower is installed by DWW for the purposes of the Project, and subject to (i) the granting of any applicable permits and approvals, (ii) the construction and installation thereof (the timing and location of which shall be determined by DWW), and (iii) the delivery of mutually acceptable indemnity arrangements with respect to damage caused to the meteorological tower and a corresponding satisfactory liability insurance policy DWW agrees to provide to the University of Rhode Island ("**URI**"), for research purposes, use of the meteorological tower installed by DWW for the collection of data with respect to the Project and summary data collected by DWW at such meteorological tower (the scope of which shall be established by DWW and which shall comprise Confidential Information for the purposes of Section X). Such use of the meteorological tower by URI shall be subject to DWW's prior approval and reasonable conditions on the use of such tower and summary data. DWW shall not unreasonably withhold its consent to such use, but may for reasonable commercial reasons deny such use or place appropriate conditions on such use.

VI. POWER SALES

A. **Power Purchase Agreements and Acceptable Power and REC Offtake Arrangements**. The State through its OER shall make all reasonable efforts to assist DWW to secure for each of Phase I and II of the Project one or more PPAs, or Acceptable Power and REC Offtake Arrangements, including taking all appropriate administrative actions and providing appropriate support of legislative efforts to encourage such PPA or PPAs or Acceptable Power and REC Offtake Arrangements, as applicable. DWW shall negotiate the terms of such PPA or PPAs, or Acceptable Power and REC Offtake Arrangements, as applicable, in good faith with any potential counterparty thereto mutually agreed by the Parties.

B. **BIPCO**. DWW shall interconnect Phase I or, if Phase I is Discontinued, Phase II with the electric power system of BIPCO and shall offer BIPCO electricity on commercially reasonable terms. DWW and the State through its OER shall cooperate with and assist in arranging transmission from Block Island to mainland Rhode Island and to Block Island from mainland Rhode Island. DWW and the State through its OER shall endeavor to reduce the costs of any such transmission to a minimum and arrange an equitable sharing of the costs of such transmission among BIPCO, the Project and the relevant Transmission Provider. DWW and the State through its OER shall assist BIPCO in proceedings with ISO-NE and any regulatory proceedings governing such transmission to and from mainland Rhode Island.

VII. MILESTONE EVENTS AND MILESTONE DATES FOR PHASES I AND II OF THE PROJECT, PROCEDURES

A. **Milestones Events and Milestone Dates** – The following are Milestone Events with their corresponding Milestone Dates.

1. Application by DWW for all necessary federal, state and local permits and approvals, including application for a lease or permit to use a selected site within state waters for Phase I: Milestone Date: December 31, 2009.

2. The execution and approval by State or Federal agencies, if necessary, of one or more PPAs or Acceptable Power and REC Offtake Arrangements having Revenue Streams sufficient to support financing for Phase I of the Project: Milestone Date: June 30, 2009.

3. The execution of and approval by State and Federal Agencies, if necessary, of interconnection agreements with BIPCO and the Transmission Provider for Phase I: Milestone Date June 30, 2011.

4. Grant by CRMC to DWW, on commercially reasonable terms, of the right to use the submerged lands of the State in support of Phase I: October 31, 2009.

5. Grant by CRMC to DWW of all necessary permits and approvals for Phase I: July 31, 2010.

6. The completion of a Fully Developed Project for Phase I: Milestone Date: June 30, 2012.

7. Completion and adoption of the SAMP by the CRMC: Milestone Date: July 31, 2010.

8. Promulgation by MMS of rules pertaining to the lease of federal submerged lands for Phase II: June 30, 2009.

9. Application to MMS for the lease of federal submerged lands for Phase II: Milestone Date: within 6 months of the promulgation by MMS of rules pertaining to the lease of federal submerged lands for Phase II.

10. Approval by MMS of DWW's application for the lease of federal submerged lands for Phase II: within 12 months of the submission of such application by DWW.

11. Application for all necessary federal, state and local permits and approvals for Phase II (other than the application to MMS for the lease of submerged lands for Phase II): Milestone Date: within 6 months of the approval by MMS of DWW's application for the lease of federal submerged lands for Phase II.

12. The execution and approval by State and Federal Agencies, if necessary, of one or more PPAs or Acceptable Power and Offtake Arrangements for Phase II of the Project: Milestone Date: June 30, 2010.

13. The execution and approval by State and Federal Agencies, if necessary, of interconnection agreements for Phase II with the Transmission Provider: Milestone Date: December 31, 2011.

14. The completion of a Fully Developed Project for Phase II: Milestone Date: within 3 years of the approval by MMS of DWW's application for the lease of federal submerged lands for Phase II.

B. Extensions of Milestone Dates

1. As of the date of the execution of this JDA the Parties acknowledge and agree that the Milestone Dates set forth in Section VII.A above are reasonable estimates of the time periods during which the Milestone Events may be achieved. The Parties also acknowledge and agree that achievement of Milestone Events and their attendant Milestone Date may be delayed due to events or actions by State or Federal agencies, regulatory bodies or legislative or judicial authorities over which neither Party has control. In anticipation of any such delays due to events or actions by State or Federal agencies, regulatory bodies or legislative or judicial authorities beyond the Parties' control, Milestone Dates shall be automatically extended by the period of any such delay. By way of example, if the execution and approval of one or more PPAs or acceptable Power and REC Offtake Arrangements for Phase I (Section VII A.2) is delayed two months the Milestone Date for that Milestone Date shall be shifted by two months to August 31, 2009.

2. The Parties further acknowledge and agree that the time when a Milestone Date if delayed by events or actions by State or Federal agencies, regulatory bodies or legislative or judicial authorities beyond their control, the period of delay may not be readily ascertainable. If such is the case, unless a Party objects to a further delay or delays in the Milestone Date, the Milestone Date shall be extended to accommodate any such delay (an indefinite delay). If a Party objects to an indefinite delay, the Parties shall proceed to utilize the procedures set forth in Section VII.C. below to resolve the objection to an indefinitely extended Milestone Date. A Party that objects to an extended Milestone Date pursuant to this Section VII.B.2 shall notify the other Party of its reasons for objection pursuant to notice provisions set forth in Section XVII.A. of this JDA.

C. Procedures For Assessing Progress Toward Meeting Milestone Dates, Discontinuation Of Development Of Phase I And/Or Phase II For Failure To Meet Milestone Dates. Subject to the procedures set forth in Section VII.B. above for the automatic extension of Milestone Dates that are delayed due to events or actions of State or Federal agencies, regulatory bodies or legislative or judicial authorities over which the Parties have no control, the following procedures shall be utilized with respect to Milestone Events and their attendant Milestone Dates:

1. The Parties shall periodically assess progress toward meeting the Milestone Dates set forth in Section VII., 1-14, above. In the event that either Party concludes that a particular Milestone Date cannot reasonably be expected to

be met, the Parties shall use good faith efforts to agree to a delayed Milestone Date or Dates. Upon agreement by the Parties to a delayed Milestone Date or Dates, the agreed upon delayed Milestone Date or Dates shall be substituted for the applicable Milestone Date or Dates set forth in Section VII., 1-14 above.

2. If the Parties conclude that under no circumstances can a Milestone Date or delayed Milestone Date be met for Phase I of the Project, or cannot agree to delay a Milestone Date for Phase I of the Project, upon expiration of the Milestone Date, DWW may discontinue development of Phase I of the Project, provided however, that within a reasonable period of time after DWW has discontinued development of Phase I. Upon Discontinuation of Phase I by DWW, DWW shall have no further obligations, liabilities or responsibilities to the State to develop Phase I under this JDA except for any removal and demobilization obligations set forth in a permit or other contract with a State agency, the obligation to interconnect Phase II with and supply electric power to BIPCO from Phase II, and to meet its obligations for Phase II and to provide the Economic Development Activities as set forth in Section VIII of this JDA.

3. If the Parties conclude that under no circumstances can a Milestone Date or delayed Milestone Date be met for Phase II of the Project, or the Parties cannot agree to delay a Milestone Date for Phase II of the Project, upon expiration of the Milestone Date, DWW may discontinue development of Phase II of the Project, provided however, that within a reasonable period of time after DWW has discontinued development of Phase II. Upon Discontinuation of the development of Phase II, DWW shall have no further obligations, liabilities or responsibilities to the State to develop Phase II under this JDA except for any removal and demobilization obligations set forth in a permit or other contract with a State agency and to meet its obligations for Phase I and to provide Economic Development Activities as set forth in Section VIII of this JDA.

4. In the event that DWW discontinues development of Phase I pursuant to the terms and conditions of this Section VII., the State shall have no further obligations, liabilities or responsibilities to DWW in connection with the development of Phase I, except to cooperate with DWW to enable DWW to meet any removal and demobilization responsibilities it may have in connection with Phase I and to continue to cooperate with and assist DWW in any continuing activities relating to Phase II and the Economic Development Activities.

5. In the event that DWW discontinues development of Phase II pursuant to the terms and conditions of this Section IX., the State shall have no further obligations, liabilities or responsibilities to DWW in connection with the development of Phase II and DWW shall no longer be the Preferred Developer within the SAMP, except that the State shall cooperate with DWW to enable DWW to meet any removal and demobilization responsibilities it may have in connection with Phase I and to continue to cooperate with and assist DWW in any continuing activities relating to Phase I or the Economic Development Activities.

VIII. ECONOMIC DEVELOPMENT ACTIVITIES

Consistent with the standards under Section II.A. of this JDA, DWW shall undertake the following:

A. **Corporate Manufacturing Headquarters**. DWW and the wholly-owned subsidiaries of its parent, Deepwater Wind Holdings, LLC shall locate their Corporate Manufacturing Headquarters in Rhode Island consisting of (i) foundation manufacturing, assembly and logistics operations for the Project and (ii) foundation manufacturing operations for offshore wind electricity generation projects of the wholly-owned subsidiaries of DWW and its parent, Deepwater Wind Holdings, LLC located in the northeast United States (defined generally as offshore areas from Delaware to Maine).

B. **Regional Development Headquarters.** DWW shall locate within Rhode Island, either at the Corporate Manufacturing Headquarters described in Subsection A. of this Section VIII. above or at another location within Rhode Island, its Regional Development Headquarters. The Regional Development Headquarters shall house project development managers and administrative personnel who will provide project development and other services for the Project.

C. **Quonset Business Park.** Subject to negotiating mutually agreeable terms with QDC, DWW shall enter into an option or options to lease from QDC land and facilities at the Quonset Business Park in North Kingstown, Rhode Island. Such lease or leases of land and facilities shall be sufficient to enable DWW and the wholly-owned subsidiaries of its parent, Deepwater Wind Holdings, LLC to establish the Corporate Manufacturing Headquarters and, if DWW so chooses, its Regional Development Headquarters as described respectively in Subsections A. and B. of this Section VIII. above. Upon entering into a lease option or options pursuant to this Subsection C, DWW shall pay to QDC an option price of no less than 10% of the annual cost of leasing the land and facilities of QDC.

D. **Other Rhode Island Operations**. DWW shall contract for the manufacturing or assembly of any required vessel(s) to support the Project from one or more vendors in Rhode Island; and DWW and the wholly-owned subsidiaries of its parent, Deepwater Wind Holdings, LLC shall encourage any and all component manufacturers for the Project and other offshore wind power projects sponsored by DWW or the wholly-owned subsidiaries of its parent, Deepwater Wind Holdings, LLC and located in the northeast United States (defined generally as offshore areas from Delaware to Maine) to locate its operations to Rhode Island. Notwithstanding the foregoing, DWW shall be entitled to utilize a manufacturer, assembler or other provider of vessels to support the Project located outside Rhode Island if such supply of manufacturing, assembly or other product is not reasonably available in Rhode Island.

E. **Project Labor Agreement**. DWW shall cause its vendors to negotiate in good faith a labor agreement for local labor used by DWW in the construction and operation of the Project.

F. Consultation on Employment Matters. The Parties acknowledge and agree that when the Corporate Manufacturing Headquarters and Regional Development Headquarters are fully operational, these two facilities will create approximately 800 Jobs. The Parties, commencing on June 30, 2009, shall regularly consult with one another concerning levels of Jobs created at the Corporate Manufacturing Headquarters and Regional Development Headquarters, reasonably expected levels of Jobs to be created and other Jobs or employment related matters.

IX. MILESTONE EVENTS AND MILESTONE DATES FOR ECONOMIC DEVELOPMENT ACTIVITIES, PROCEDURES

A. Milestone Events and Milestone Dates

The following are the Milestone Events and corresponding Milestone Dates for the Economic Development Activities set forth in Section VIII. of this JDA.

1. Location of Regional Development Headquarters as prescribed in Section VIII, Subsection B, above: Milestone Date: within 120 days of execution by the Parties of this JDA.

2. Execution of lease option for land and facilities at the Quonset Business Park and payment of the option price for such lease option as prescribed by Section VIII.C. above. Milestone Date: within ninety (180) days of the execution of this JDA.

B. Procedures for Assessing Progress Toward Meeting Milestone Dates, Discontinuation of Economic Development Activities for Failure to Meet Milestone Dates

1. The Parties shall periodically assess progress toward meeting the Milestone Dates set forth in Section IX., 1-2 above. In the event that the Parties conclude that a particular Milestone Date cannot reasonably be expected to be met, the Parties shall use good faith efforts to agree to a delayed Milestone Date or Dates. The agreed upon delayed Milestone Date shall be substituted for the applicable Milestone Date or Dates set forth in Section IX., 1-2 above.

2. If the Parties conclude that under no circumstances can a Milestone Date or delayed Milestone Date be met for an Economic Development Activity, or cannot agree to delay a Milestone Date for an Economic Development Activity, upon expiration of the Milestone Date, DWW may discontinue the Economic Development Activity relating to the Milestone Date in question, provided however, that in the event DWW discontinues the particular Economic Development Activity, DWW shall not be relieved of its obligations to pursue development of Phase I or Phase II of the Project as prescribed by this JDA or other Economic Development Activities prescribed by Section VIII. of this JDA.

3. In the event that DWW discontinues an Economic Development Activity or Activities pursuant to Section IX.B.2. above, DWW shall have no further obligation,

liabilities or responsibilities to the State in connection with the Economic Development Activity that was the subject of the Milestone Event and Date(s).

4. In the event that DWW discontinues an Economic Development Activity or Activities pursuant to Section IX.B.2. above, the State shall have no further obligation, liabilities or responsibilities to DWW with respect to the Economic Development Activity that was the subject of the Milestone Event and Date(s).

5. DWW may discontinue the Economic Development Activities in Section VIII in the event both Phase I and Phase II have been Discontinued.

X. CONFIDENTIALITY.

DWW may deliver to the State certain trade secrets, commercial information or financial information of a privileged or confidential nature regarding the Project. Trade secrets, commercial information or financial information of a privileged or confidential nature with respect to the Project, clearly marked as such by DWW, shall be deemed "Confidential Information." Confidential Information shall not be deemed a public record by the State pursuant to the Rhode Island Access To Public Records Act, specifically R.I.G.L. §38-2-2 (4) (B). To the extent permitted by the Rhode Island Access To Public Records Act, the State agrees that all Confidential Information shall be kept confidential by the State and that such Confidential Information shall not be disclosed by the State to any third party without the prior written consent of DWW. Notwithstanding the foregoing, (a) Confidential Information may be disclosed to the extent reasonably necessary in connection with the State's enforcement of its rights under this Agreement; and (b) Confidential Information may be disclosed by the State pursuant to any Court or judicial order or any order or request of any governmental regulatory authority or to comply with the Rhode Island Access To Public Records Act or any other applicable law, rule or regulation. In the event that the State receives a request for public records regarding the Project pursuant to the Rhode Island Access To Public Records Act, or any other applicable law, rule or regulation, prior to making the disclosure of such Confidential Information, the State shall notify DWW of such request and, if reasonably requested by DWW in a timely manner, assist DWW, at DWW's expense, in seeking a protective order to prevent the requested disclosure.

XI. TERM, TERMINATION FOR BREACH

A. **Term**. This JDA shall remain in full force and effect until (i) DWW has commenced construction of both Phase I and Phase II of the Project and has met its obligations to provide the Economic Development Activities pursuant to Section VIII of this JDA (or, if not performed, such obligations of DWW have been excused as a result of the Discontinuation of Phase I, Phase II or any Economic Development Activity); (ii) this JDA is terminated by mutual agreement of the Parties, or (iii) this JDA is terminated pursuant to subsections B, C and D of this Section XI below.

B. **Termination.**

1. The State may terminate this JDA if it is not in material breach of any of the provisions of this JDA and if by no later than three (3) years from the date of execution of this JDA, DWW has not met any of the Milestone Dates or agreed-upon delayed Milestone Dates set forth in Sections VII.B and IX.B above.

2. The State may terminate this JDA if it is not in material breach of any of the provisions of this JDA and if by no later than five (5) years from the date of execution of this JDA DWW has met only two (2) or less of the Milestone Dates or agreed-upon Milestone Dates set forth in Section VII.B and IX.B above.

3. The State may terminate this JDA if it is not in material breach of any of the provisions of this JDA if DWW does not commence construction of Phase II by December 31, 2016, provided, however, that the provisions of this JDA relating to Phase I and the State's obligations with respect to Phase I shall survive such termination if, at such time, the Milestone Dates with respect to Phase I have been delayed and such Milestone Dates have not elapsed.

4. The State may terminate this JDA if it is not in material breach of any of the provisions of this JDA and DWW has not exercised the option agreement between DWW and QDC described in Section VIII.C prior to the expiration thereof.

C. Failure to Perform. The non-breaching Party may terminate this JDA as follows:

1. The State may terminate this JDA if DWW has failed to deposit $3.2 million pursuant to Section V.E.1.

2. Either Party may terminate this JDA in the event of a breach of the Representations made by the other Party as set forth in Section XIV of this JDA.

3. The State may terminate this JDA if DWW is in material breach of any provision of this JDA (except to the extent DWW's non-performance of its obligations hereunder is attributable to the non-performance by the State of its obligations hereunder).

4. DWW may terminate this JDA if the State is in material breach of any provision of this JDA (except to the extent the State's non-performance of its obligations hereunder is attributable to the non-performance by DWW of its obligations hereunder).

5. DWW may terminate this Agreement if the State (i) fails to make any objection required under Section IV; (ii) fails to advocate on behalf of the Project as required under Section V.B, or (iii) contests or objects to the license granted to DWW pursuant to Section V.C.

6. DWW may terminate this Agreement if CRMC (i) takes any action which, in the reasonable opinion of DWW, materially and adversely affects either Phase I or

Phase II of the Project; (ii) does not perform the actions described in Section V.B.; or (iii) contests or objects to the license granted to DWW pursuant to Section V.C.

7. DWW may terminate this Agreement if the Certificate of Critical Economic Concern is not issued in favor of DWW within ninety (90) days of the application therefor or, if such Certificate of Critical Economic Concern is issued to DWW, such Certificate is not renewed within thirty (30) days of the expiry thereof.

D. **Notice of Termination and Opportunity to Cure** In the event that DWW fails to deposit $3.2 million pursuant to Section V.E.1, upon notice by the State to DWW, DWW shall have ten (10) days from receipt of notice from the State to deposit such funds in accordance with such escrow agreement. In the event DWW fails to make such a deposit within the ten (10) day period prescribed by this paragraph, the state may terminate this JDA.

In the event either Party seeks to terminate this JDA pursuant to Section XI.C.2-7 above, the terminating Party shall provide written notice to the other Party describing the basis for the termination. Unless otherwise agreed to by the Parties, the Party receiving the notice of termination shall have sixty (60) days from receipt of the notice to cure the claimed material breach. If the Party receiving the notice fails to cure the material breach within the cure period, this JDA shall terminate automatically upon the expiration of such sixty (60) day period.

E. **Separability of Obligations Under this JDA.** For the avoidance of doubt, the Parties acknowledge and agree that the development of Phase I, Phase II and the provisions for Economic Development Activities as prescribed in Section VIII are separable. In the absence of a material breach by one of the Parties to this JDA, Phase I and Phase II and the Economic Development Activities are separable to the following extent:

1. The obligations of the Parties with respect to Phase I shall remain in full force and effect even if Phase II is Discontinued pursuant to the provisions of Section VII.B.3. of this JDA;

2. The obligations of the Parties with respect to Phase II shall remain in full force and effect even if Phase I is Discontinued pursuant to the provisions of Section VII.B.2. of this JDA:

3. The obligations of the Parties with respect to the Economic Development Activities as prescribed by Section VIII of this JDA shall remain in full force and effect notwithstanding either Phase I or Phase II have been discontinued; and

4. The obligations of the Parties with respect to Phase I and Phase II shall proceed notwithstanding an Economic Development Activity is Discontinued pursuant to Section IX.B. of this JDA.

F. **Effect of Termination.** Upon termination of this JDA pursuant to this Section XI., all obligations of the Parties to each other shall cease.

XII. DAMAGES

A. **Monetary Damages**. No monetary damages shall be payable by either Party to the other Party under this JDA.

B. **Limitation on Damages**. NOTWITHSTANDING ANY OTHER PROVISION OF THIS JDA, NEITHER THE STATE , ITS OFFICERS, OFFICIALS EMPLOYEES , REPRESENTATIVES, ATTORNEYS OR AGENTS OR DWW, ITS AFFILIATES OR THEIR RESPECTIVE DIRECT OR INDIRECT MEMBERS, SHAREHOLDERS, INVESTORS, DIRECTORS, OFFICERS, EMPLOYEES, RERESENTATIVES, ATTORNEYS OR AGENTS SHALL BE LIABLE, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS JDA OR ANY FAILURE OF PERFORMANCE RELATED HERETO, HOWSOEVER CAUSED, WHETHER ARISING FROM SUCH PERSON'S SOLE, JOINT OR CONCURRENT NEGLIGENCE.

XIII. AMENDMENTS

This JDA may be amended only in writing and by mutual consent of the Parties. No waiver of any of the rights or obligations of the Parties under this JDA shall be implied by any action or course of conduct of a Party unless such waiver is in writing and agreed to by the Parties.

XIV. REPRESENTATIONS OF THE PARTIES

Each Party represents to the other Party that it has full power and authority to enter into this JDA and to undertake the obligations and responsibilities set forth herein.

XV. ASSIGNMENT

DWW may, upon the consent of the State, which consent shall not unreasonably be withheld, assign this JDA to another entity (it being understood that it shall be unreasonable to withhold consent for the sole reason that the assignment is made to an Affiliate of DWW Upon any such assignment the assignee shall assume all obligations, liabilities and responsibilities of DWW under this JDA.

XVI. GOVERNING LAW AND JURISDICTION

A. **Governing Law** – The law of the State of Rhode Island, without regard to conflicts of law rules, shall govern the interpretation and performance of the Parties to this JDA.

B. **Jurisdiction** – Any claims or disputes arising under this JDA shall be brought in the Superior Court of Rhode Island, for Providence County and the Parties hereby agree and consent to litigate any such claims or disputes in this forum. The Parties hereby waive any defense of lack of in personam jurisdiction, forum non conveniens or improper venue in any such action or claim.

XVII. MISCELLANEOUS

A. Notice – All notice required under this JDA shall be in writing and may be transmitted by electronic mail or other suitable means of delivery to the designated representatives of the Parties.

B. **Designated Representatives** – The designated representatives of the State shall be:

Andrew Dzykewicz, Commissioner
Rhode Island Office of Energy Resources
One Capitol Hill
Fourth Floor Executive Suite
Providence, RI 02908
Office:401-574-9123
Mobile:401-641-1124
e-mail:Adzykewicz@energy.ri.gov

The designated representative of the DWW shall be:

Christopher Wissemann
Chief Operating Officer
36-42 Newark St., Suite 402
Hoboken, NJ 07030
Tel: (201) 850-1714

Each Party, upon written notice to the other, may substitute any or all of its designated representatives at any time during the term of this JDA.

C. **Survival of Rights and Obligations** – Sections I, X, XII, XIII, XVI and XVII shall survive the expiration of termination of this JDA.

D. **Entire Agreement**. This Agreement, together with the escrow agreement described in Section V.E.1, constitutes the entire agreement of the Parties relating to the Project and supersedes all prior contracts or agreements with respect to the Project, whether oral or written.

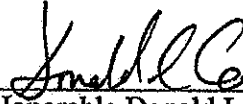
E. **Effect of Waiver or Consent**. A waiver or consent, express or implied, to or of any breach or default by any Party in the performance by that Party of its obligations under this JDA is not a consent or waiver to or of any other breach or default in the performance by that Party of the same or any other obligations of that Party under this JDA. Failure on the part of a Party to complain of any act of any other Party or to declare such Party in default, irrespective of how long that failure continues, does not constitute a waiver by that Party of its rights with respect to that default until the applicable statute-of-limitations period has run.

F. **Counterparts**. This Agreement may be executed in any number of counterparts (including facsimile counterparts), all of which together shall constitute a single instrument.

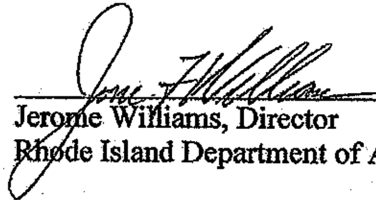
G. **DWW Work Product.** All Work Product shall constitute the property of, and shall be owned by, DWW and that no license to such Work Product is hereby granted to the State or any third party.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of this 2nd day of January, 2009 set forth above.

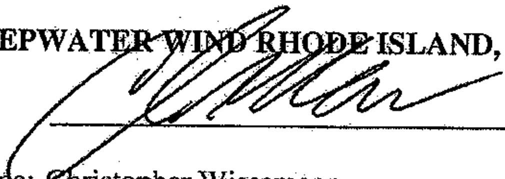


The Honorable Donald L. Carcieri
Governor, State of Rhode Island



Jerome Williams, Director
Rhode Island Department of Administration

DEEPWATER WIND RHODE ISLAND, LLC



By: ______________________

Name: Christopher Wissemann
Title: Chief Operating Officer

EXHIBIT A

ESCROW AGREEMENT PRINCIPAL TERMS

PARTIES: RIEDC
DWW

TERMS:

1. DWW shall deposit $3.2 million (the "Principal") with the escrow agent upon execution of the escrow agreement.

2. If DWW and QDC have not executed mutually agreeable lease options for land at the Quonset Business Park (the "Quonset Lease") within 180 days of the execution of the JDA, then, the escrow agent shall release the Principal to DWW within two (2) business days of the receipt of such notice.

3. If DWW and QDC have executed the Quonset Lease within 180 days of the execution of the JDA, the escrow agent shall release the Principal to RIEDC as provided below.

4. RIEDC may draw the following amounts from the Principal: (i) upon execution of the Quonset Lease, an amount equal to actual disbursements made from the REF to CRMC/URI for SAMP expenses from August 1, 2008 through the date of execution of the Quonset Lease and (ii) within five (5) days of the end of each calendar month thereafter, an amount equal to actual disbursements made from the REF to CRMC/URI for SAMP expenses pursuant to the SAMP funding agreement between RIEDC and CRMC and budgets associated therewith with respect to the immediately preceding calendar month, such amounts capped at the lesser of (i) $250,000 per month and (ii) 120% of the monthly budget submitted by URI to CRMC.

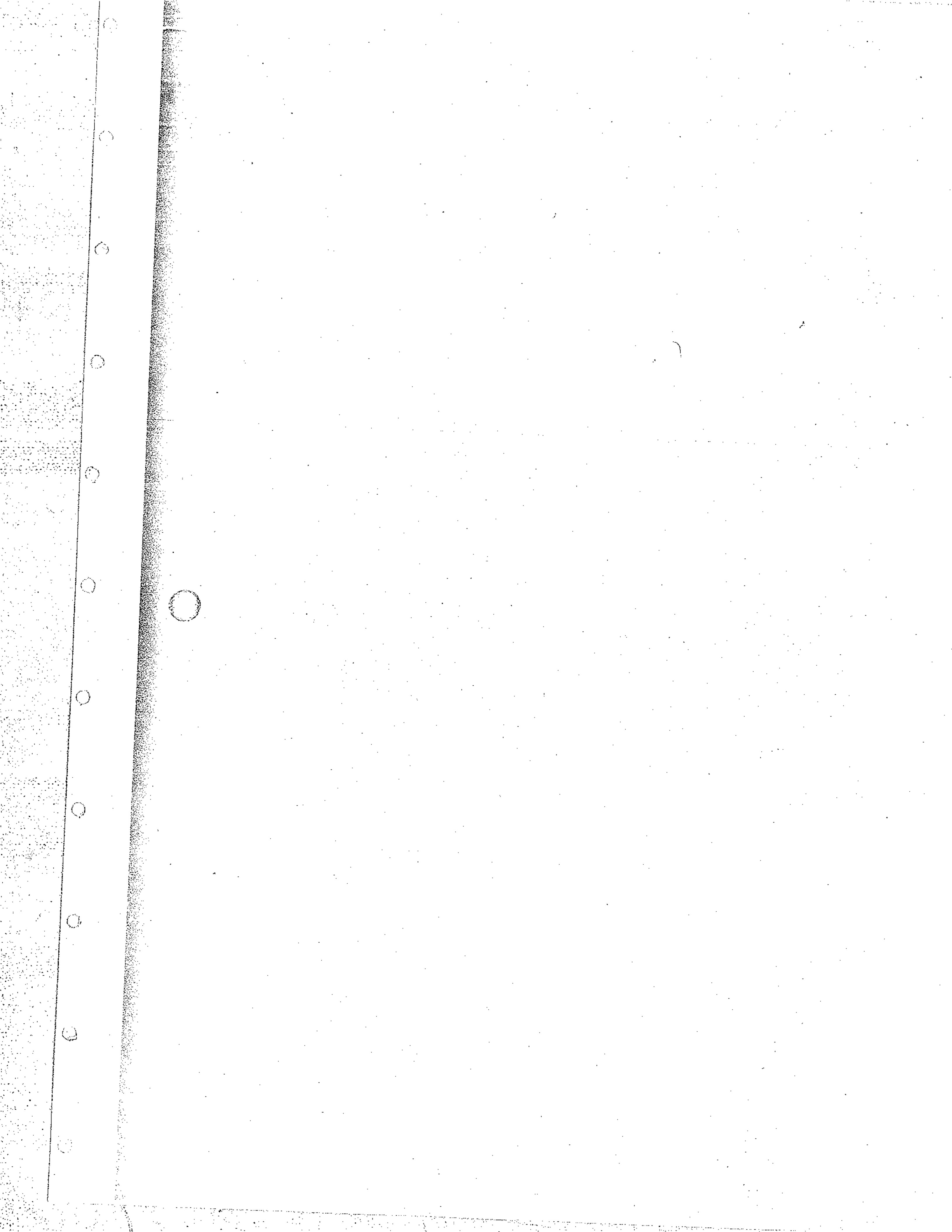
5. RIEDC will not approve any new budgets for year 2 of SAMP without first reviewing same (with notice) to DWW.

6. The escrow amounts shall be placed into an interest-bearing account, with interest payable to DWW, and the escrow agent shall pay such interest to DWW within five (5) Business Days of such interest being deposited in the escrow account.

7. If the JDA is terminated for any reason prior to the Principal being expended, the balance, with interest accrued thereupon, shall be returned to DWW.

ESCROW AGENT: Options

(a) Joint Hinckley, Allen and Adler, Pollack
(b) Title Company
(c) EDC



Execution Copy

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is entered into as of the 30th day of June, 2009, by and between the Quonset Development Corporation, a public corporation established pursuant to the laws of the State of Rhode Island (the "Corporation"), and Deepwater Wind Rhode Island, LLC, a limited liability company organized under the laws of the State of Delaware, with a principal place of business at 36-42 Newark Street, Suite 402, Hoboken, NJ 07030 (the "Developer").

RECITALS

Whereas, the State of Rhode Island and the Rhode Island Department of Administration (collectively, the "State") and the Developer entered into a Joint Development Agreement (the "JDA") dated as of January 2, 2009 for the development of offshore wind power facilities in Rhode Island, state waters and adjacent waters of the United States (the "Project");

Whereas, the offshore wind power facilities are anticipated to have the capability of generating an estimated 1.32 million megawatt hours of electricity per year to be delivered into the electric power systems of Rhode Island;

Whereas, the Developer, pursuant to the terms of the JDA, is obligated to undertake certain economic development activities in connection with the Project, including (a) locating the corporate manufacturing headquarters (the "Corporate Manufacturing Headquarters") of the Developer and the wholly-owned subsidiaries of its parent, Deepwater Wind Holdings, LLC ("Deepwater"), in Rhode Island consisting of (i) foundation manufacturing, assembly, and logistics operations for the Project and (ii) foundation manufacturing operations for offshore wind electricity generation projects of the wholly-owned subsidiaries of the Developer and Deepwater located in the northeast United States and (b) locating the Developer's regional development headquarters (the "Regional Development Headquarters") in Rhode Island which will house project development managers and administrative personnel who will provide project development and other services for the Project;

Whereas, the Corporate Manufacturing Headquarters and the Regional Development Headquarters, once fully operational, are anticipated to increase employment in the State of Rhode Island;

Whereas, the JDA sets forth terms pursuant to which the Developer shall negotiate options to lease and sublease from the Corporation land and facilities at the Quonset Business Park in North Kingstown, Rhode Island (the "Park") sufficient to enable the Developer and Deepwater to establish the Corporate Manufacturing Headquarters and, if Developer chooses, its Regional Development Headquarters;

Whereas, under the terms of a letter of intent (the "LOI") entered into by and between the Developer and the Corporation dated April 29, 2009, the Corporation will grant to the Developer an option to lease and sublease those certain three (3) parcels of land consisting of approximately 117 acres located in the Park at Commerce Park, North Davisville and the Port of Davisville identified on the maps attached hereto as **Exhibit A** (the "Property") for purposes of developing of the Corporate Manufacturing Headquarters and the Regional Development Headquarters in accordance with the terms of the JDA and this Agreement; and

Whereas, the parties hereto wish to enter into this Agreement to set forth their understandings and agreements with respect to the development and the option to lease and sublease the Property for the construction of the Corporate Manufacturing Headquarters and the Regional Development Headquarters and the further expansion of employment by Developer in the State of Rhode Island.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Corporation and the Developer hereby agree as follows:

ARTICLE I
OPTION TO LEASE

1.1 Option to Lease. Pursuant to the terms of this Agreement, the Corporation grants to Developer an exclusive option (the "Option") to lease and sublease the Property.

1.2 Term. The initial term of this Option (the "Initial Term") shall be for one (1) year commencing as of the date hereof and terminating on June 30, 2010, unless terminated earlier pursuant to the terms hereof.

1.3 Renewal Terms.

(a) Provided that (i) the Developer has submitted the Concept Plan as defined in Article II below; (ii) the Developer has submitted the Master Plan (as defined and set forth in Article II below); (iii) the Developer has submitted the ERF (as defined and set forth in Article II below) to the Corporation; and (iv) the Developer is not in default under this Agreement, the Developer may extend the Initial Term for one (1) additional term of one (1) year (the "First Extension Term") on the same terms and conditions, except for the option payments set forth in Section 1.4, upon giving the Corporation written notice of extension prior to the expiration of the Initial Term.

(b) Provided that (i) the Developer has submitted the Development Plan (as defined and set forth in Article II below) and Project Plans (as defined and set forth in Article II below) to the Corporation; (ii) the Developer has applied for required Governmental Approvals (as defined and set forth in

Article II below); and (iii) the Developer is not in default under this Agreement, the Developer may extend the First Extension Term for one (1) additional term of one (1) year (the "Second Extension Term") on the same terms and conditions, except for the option payments set forth in Section 1.4, upon giving the Corporation written notice of the extension prior to the expiration of the First Extension Term.

(c) The Initial Term, the First Extension Term and the Second Extension Term shall hereinafter collectively be referred to as the "Term".

1.4 Option Payments. In consideration of the Corporation granting the Developer the Option, the Developer shall make option payments (the "Option Payments") to the Corporation as follows: (i) during the Initial Term, the Developer shall make Option Payments in an amount equal to One Hundred Thousand Dollars ($100,000.00) to be paid in advance in quarterly installments in the amount of Twenty Five Thousand Dollars ($25,000.00) each; (ii) during the First Extension Term, the Developer shall make Option Payments in an amount equal to One Hundred Fifty Thousand Dollars ($150,000.00) to be paid in advance in quarterly installments in the amount of Thirty Seven Thousand Five Hundred Dollars ($37,500.00) each and (iii) during the Second Extension Term, the Developer shall make Option Payments in an amount equal to Three Hundred Twenty Five Thousand Dollars ($325,000.00) to be paid in advance in quarterly installments in the amount of Eighty One Thousand Two Hundred Fifty Dollars ($81,250.00) each. The Option Payments shall be made on July 1, October 1, January 1 and April 1 of each year during the Term of this Agreement.

1.5 Ground Lease and Sublease. Provided that the Developer has performed all of its Obligations (as defined in Article II below) hereunder and that the Pre-Conditions (defined in Section 3.1 below) have been satisfied, the Developer may exercise the Option at any time during the Term by providing the Corporation with written notice of its intention to exercise the Option. Within ninety (90) days after the Corporation receives the Developer's written notice of its intention to exercise the Option, the parties shall enter into a ground lease and sublease (the "Lease"), the material terms of which are set forth in **Exhibit B** attached hereto. The Corporation and the Developer acknowledge that the circumstances of the Project, the Developer's due diligence regarding the Property, and their respective business goals, including without limitation, the satisfaction of permitting requirements, the securing of financing for the Project, the avoidance of environmental liabilities, and the creation of jobs may require adjustments to the terms of the Exhibit B prior to its execution and each of them agree hereby to work in good faith with each other to reasonably accommodate any such adjustments. The Lease shall be subject to various rights, restrictions and encumbrances as set forth in the Lease and are public record.

ARTICLE II
DEVELOPER'S DEVELOPMENT OBLIGATIONS

So long as this Agreement has not been terminated, then Developer and the Corporation shall perform the following:

2.1 Concept Plan. Within 90 days of the date of this Agreement, the Developer shall submit to the Corporation a plan describing Developer's utilization of the Property and conceptual layout, design and infrastructure needs and improvements with respect to the Property (the "Concept Plan"). The Corporation and the Developer shall utilize the Concept Plan for both parties to collaborate toward identifying for the Developer site limitations, permitting requirements, rights of way and such other issues as the parties, whether jointly or individually, may determine. In order to facilitate the due diligence necessary for Developer to proceed with its exercise of the Option, the parties shall, after submission of the Concept Plan, commence the following activities:

(a) The Corporation shall make available to the Developer all records in the Corporation's possession associated with the Property and the piers, wharves, docks and other port infrastructure related to the Property, and shall make its staff available at reasonable times and for reasonable durations to assist Developer's due diligence and accessing appropriate records related thereto;

(b) Developer shall commence environmental analysis and review of the Property;

(c) The parties shall collaborate to identify any necessary rights of way and easements that might be required to allow ingress, egress and access between the various parcels comprising the Property;

(d) The parties shall collaborate to identify necessary utilities and other infrastructure improvements and operating guidelines necessary for Developer's intended use of the Property and the related port facilities in the event it exercises the Option; and

(e) The parties shall identify any conflicts of use with other tenants of the Quonset Business Park, and collaborate on creating strategies for resolving such conflicts should any exist.

2.2 Master Plan. Prior to June 30, 2010, the Developer shall prepare and submit to the Corporation for its review a Master Plan for the development of the Property, including all on-site and off-site improvements, and the conceptual logistics for the movement of goods and materials between the separate parcels constituting the Property (the "Master Plan"). For the purposes of this Agreement, off-site improvements shall mean and include all property and improvements required for the Developer's intended development and intended use of the Property located within the Park, but not

leased to the Developer pursuant to the Lease. The Master Plan shall address the overall design, infrastructure, rights of way, phases of development and all other matters essential to the intended development of the Property. The Master Plan will be submitted to the Corporation for review by its Technical Review Committee ("TRC") in accordance with the Corporation's Regulations dated September, 2005 (the "Regulations") which are hereby incorporated by reference.

2.3 Environmental Review Form. Prior to June 30, 2010, the Developer shall submit to the Corporation the environmental review form (the "ERF") required by the Regulations to be reviewed in accordance with the Regulations and applicable law.

2.4 Development Plan. Prior to June 30, 2011, Developer shall submit to the Corporation for its review a development plan (the "Development Plan") setting forth the Developer's proposal for the acquisition, development, permitting and use of any and all off-site improvements necessary in accordance with the Master Plan. The Development Plan shall also describe all rights of way enhancements necessary for the Developer's intended development and use of the Property.

2.5 Project Plans and Governmental Approvals. Prior to June 30, 2011, the Developer shall develop and submit to the Corporation engineering and development plans for the development of the Property in accordance with the Master Plan (the "Project Plans") in a form and substance acceptable for submission by the Developer to all appropriate authorities, agencies, boards, panels or any other governmental entities with jurisdiction over the Property and Developer's use thereof. The Developer shall thereupon, at its sole cost and expense, apply for all required federal, State and local development and construction permits and approvals including, without limitation, all building, environmental, zoning, subdivision, traffic control, utility, sewer, electrical, mechanical, plumbing, curb cut and other permits and approvals to the extent necessary for such development, construction and operation of the Property, including all on-site and off-site improvements. The Corporation shall cooperate with and use reasonable efforts to cause other necessary State and municipal agencies and departments to cooperate in obtaining such permits and approvals, and each party shall execute all applications which require its signature, provided that the Corporation shall not incur any liability or expense in doing so. All such permits and approvals are collectively referred to herein as the "Governmental Approvals".

2.6 Business and Financial Plan. Periodically, but no less frequently than annually during the Term hereof, the Developer shall provide to the Corporation a business plan in accordance with the Corporation's standard "Sample Business Plan Outline" that is incorporated herein by reference with such financial data and information as may be reasonably be required by the Corporation to determine the ability of the Developer to implement the Project, develop the Property in accordance with the terms hereof and perform the Lease. Any confidential or proprietary information of the Developer shall be marked as such prior to delivery to the Corporation and will not be considered by the Corporation to be public records. Additionally, the Developer may determine in its sole and absolute discretion to make financial information of the Developer available the Corporation through its agents and attorneys without providing

copies to the Corporation. In such event, the Corporation shall have reasonable access to such financial information at the offices of the Developer, its agents or attorneys.

2.7 Obligations and Obtaining Approvals. The Concept Plan, Master Plan, ERF, Development Plan, Project Plans and obtaining Governmental Approvals in final form shall hereinafter collectively be referred to as the "Obligations". The dates set forth in Sections 2.2 through 2.6 above are premised on the parties, and to the extent applicable, third parties, performing their respective obligations (including delivery of documents and the review of the applications and submissions) in a timely fashion.

ARTICLE III
PRE-CONDITIONS TO EXECUTION OF LEASE

3.1 Pre-Conditions to Execution of Lease. The obligation of each of the Corporation and the Developer under this Agreement to execute the Lease is subject to the Corporation's satisfaction of the following pre-conditions (the "Pre-conditions"):

(a) Governmental Approvals. The Developer shall have received final approvals, with all appeals periods having expired, for all Governmental Approvals necessary for the development of the Property in accordance with the Project Plans and Governmental Approvals.

(b) Financing. The Developer shall have obtained a commitment for financing necessary for the development of the Property in accordance with the Project Plans and Governmental Approvals.

(c) Compliance with JDA. The JDA shall be in full force and effect as certified by the State; provided, however, that in the event the Developer desires to proceed with its development of the Property in order to develop offshore wind power facilities in the waters adjacent to states other than Rhode Island and has otherwise conformed with the terms of this Agreement, then in such event the Developer may exercise its Option hereunder with the written consent of the Corporation which shall not be unreasonably withheld or delayed.

(d) Power Purchase Agreement. The Power Purchase Agreement as set forth in the JDA has been executed.

ARTICLE IV
DEPOSIT

4.1 Deposit.

(a) The Corporation and the Developer acknowledge that the Developer has made a deposit in the amount of Twenty Thousand Dollars ($20,000.00) (the "Deposit") pursuant to the LOI. The parties agree that upon the mutual execution of this Agreement, the Deposit under the LOI shall be converted into a "Deposit" under this Agreement.

(b) The Deposit shall be applied to rent payments due under the Lease.

ARTICLE V
ACCESS

5.1 Access.

(a) During the Term of this Agreement and subject to at least forty-eight (48) hours prior written notice to the Corporation, the Developer and its authorized agents and representatives, at Developer's sole risk and expense, shall be entitled to enter the Property for purposes of performing the Obligations.

(b) The Developer shall indemnify, defend, and hold the Corporation harmless from all losses, costs, liens, claims, causes of action, liability, damages and expenses, including, without limitation, reasonable attorneys' fees incurred by the Corporation as a result of the entry upon the Property by or on behalf of the Developer for purposes of performing the Obligations. The provisions of this Section 5.1(b) shall survive the termination of this Agreement, unless Developer's obligations are assumed in the Lease.

(c) Prior to entering the Property for purposes of performing the Obligations, the Developer and its authorized agents and representatives shall provide the Corporation with evidence of comprehensive general liability insurance naming the Corporation as an additional insured in terms and amounts reasonably acceptable to the Corporation covering any accident arising in connection with the presence of the Developer, its authorized agents and representatives on the Property.

ARTICLE VI
EMPLOYMENT MATTERS AND PROJECT REPORTS

6.1 Employment Matters.

(a) The Corporation and the Developer acknowledge and agree that when the Corporate Manufacturing Headquarters and the Regional Development Headquarters are fully operational, the Developer shall endeavor to create approximately 800 full time jobs with benefits (the "Employment Requirement") for individuals in the State of Rhode Island.

(b) For purposes of this Agreement, the term "job" shall mean a full time employee employed by the Developer, or any affiliate, in Rhode Island with at least 1500 hours of employment in a year, which hours of employment shall include vacation time, sick time, disability time, personal time or other time for which Developer, of its affiliate, must pay the employee plus, at a minimum, benefits typical of those services provided by the employee for the Developer or its affiliates for similar services provided in Rhode

Island. The term "job" shall include, without limitation, (a) employees of service providers for outsourcing; (b) temporary retained through an employment agency in Rhode Island meeting the same criteria for the benefit of the Developer, or its affiliate, as if that employee were employed directly by the Developer; and (c) jobs that otherwise would not exist or be maintained but for the activities of the Developer. For employees who are not paid on an hourly basis, each full-time salaried employee employed for a full year shall be deemed to work at least 1500 hours per year. The hours attributed to salaried employees shall be prorated for any employees who are employed for less than a full year.

6.2 Project Reports. During the Term of this Agreement, the Developer shall meet with the Corporation's staff not less frequently than monthly concerning (i) the status of Developer's progress toward meeting the Obligation's and (ii) the levels of jobs that the Developer anticipates will be created at the Property, at the Corporate Manufacturing Headquarters and/ or the Regional Development Headquarters or any other employment related matters. At the request of the Corporation, the Developer shall meet with the Corporation's Board of Director's to provide an update on the status of the Project and the Developer's progress in fulfilling the Obligations.

ARTICLE VII
REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE DEVELOPER

7.1 Representations and Warranties of Developer. The Developer hereby represents and warrants as follows:

(a) The Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business in the State of Rhode Island, with full power and authority to enter into this Agreement and the transactions contemplated hereby.

(b) The execution and delivery of this Agreement and the performance of Developer's obligations hereunder have been duly authorized by all required action of Developer, including any action required by Developer's members. This Agreement has been duly authorized, executed and delivered by Developer and is the legal, valid and binding obligation of Developer, enforceable in accordance with its terms.

7.2 Maintenance of Existence. During the term of this Agreement, Developer shall continue to do all things necessary to preserve, renew, and keep in full force and effect its limited liability company existence, its qualification to do business in Rhode Island, and rights necessary to continue such business and preserve and keep in force and effect all licenses and permits necessary for the proper conduct of its business.

7.3 Conduct of Business. Developer shall conduct and maintain its business in compliance in all material respects with all laws, regulations and ordinances.

7.4 Compliance with Agreements. Developer shall comply with all material provisions of all contracts, agreements, undertakings or other instruments to which it is a party relating to or affecting the transactions contemplated hereby.

7.5 Notification of Disputes. Developer shall promptly notify the Corporation of any materially adverse claims, actions or proceedings affecting its ability to perform its obligations under this Agreement.

7.6 Notification of Attachments. Developer shall promptly notify the Corporation of any levy, attachment, execution or other process against its assets that will materially adversely affect its ability to perform its obligations under this Agreement.

7.7 Further Assurances. Upon request from the Corporation, the Developer shall execute and deliver, or cause to be executed and delivered, such further instruments and do or cause to be done such further acts as may reasonably be necessary or proper to carry out the intent and purposes of this Agreement.

7.8 Equal Employment Opportunity. Developer shall comply with all applicable federal, state and local laws in effect from time to time pertaining to equal employment, anti-discrimination and affirmative action, including executive orders and rules and regulations or appropriate federal, State and local agencies unless otherwise exempt therefrom.

ARTICLE VIII
REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE CORPORATION

8.1 Representations and Warranties of the Corporation. The Corporation hereby represents and warrants as follows:

(a) The Corporation is a public corporation of the State of Rhode Island, validly existing and in good standing under the laws of the State of Rhode Island, with full power and authority to enter into this Agreement and the transactions contemplated hereby.

(b) The execution and delivery of this Agreement and the performance of the Corporation's obligations hereunder have been duly authorized by all required corporate action of the Corporation. This Agreement has been duly authorized, executed and delivered by the Corporation and is the legal, valid and binding obligation of the Corporation, enforceable in accordance with its terms.

(c) There is no suit, action, proceeding or investigation, other than with respect to environmental matters, pending or threatened against the Corporation or the Property that to the Corporation's knowledge relates to the Property.

(d) There is no condemnation or eminent domain proceeding affecting the Property pending or threatened; and

(e) The Corporation will provide and will have provided to the Developer access to all documents, records and records of proceedings in possession of the Corporation with respect to the Property.

(f) The Corporation has, or will have, prior to the execution of the Lease, adequate rights in the Property to grant a marketable leasehold interest (subject to matters of record) to the Developer.

8.2 Further Assurances. Upon request from the Developer, the Corporation shall execute and deliver, or cause to be executed and delivered, such further instruments and do or cause to be done such further acts as may reasonably be necessary or proper to carry out the intent and purposes of this Agreement.

ARTICLE IX
TERMINATION; DEFAULT; APPLICATION OF DEPOSIT LIQUIDATED DAMAGES

9.1 Termination. The Developer may terminate this Agreement at its sole discretion by written notice to the Corporation prior to December 31, 2009. In the event the Developer terminates this Agreement prior to December 31, 2009, the Corporation shall return any Option Payments and the Deposit made prior thereto and the parties shall have no further obligations under this Agreement; provided, however, except as set forth in this Section 9.1, the Option Payments shall be non-refundable.

9.2 Option Payments. In the event the Developer fails to make any of the Option Payments due at the times and in the manner set forth in Section 1.4 of this Agreement, such failure having continued for a period of five (5) days following written notice to the Developer, the Corporation may terminate this Option and the Corporation may retain the Option Payments and the Deposit as liquidated damages and as the Corporation's sole and exclusive monetary damages. In the event the Developer does not exercise either the First Extension Term or the Second Extension Term, this Agreement shall be deemed terminated and all Option Payments made by Developer shall be non-refundable.

9.3 Environmental Issues. The parties recognize and agree that the Developer will not, by virtue of the execution of this Agreement assume any ownership or other interest in the Property that could give rise to liability for any existing environmental liabilities affecting the Property and will have no liability to the Corporation for any environmental issues that pre-date the Commencement Date of the Lease. Further, the parties recognize that environmental issues may cause the parties to agree to change, alter, amend or otherwise adjust the terms of the Lease prior to its execution, including but not limited to changes, alterations, amendments and/or adjustments to the description of the Property and/or economic terms of the Lease. In furtherance of the same, the

parties acknowledge and agree that if the Developer, in its sole and absolute discretion, determines that leasing all or a portion of the Property could result in Developer having liability for environmental remediation, then the Developer shall have the right to (i) negotiate with the Corporation a lease for only a portion of the Property or (ii) terminate this Agreement and decline to enter into the Lease.

ARTICLE X
MISCELLANEOUS

10.1 Assignment by the Developer. The Developer shall not assign this Agreement or any right, title or interest hereunder without the prior consent of the Corporation, which consent may be withheld for any or no reason; provided, however that the Developer may assign this agreement to a third party with the Corporation's consent, which will not be unreasonably withheld, conditioned or delayed if (i) the assignee is qualified to do business in Rhode Island; (ii) the assignee and its principals have not been disbarred from state contracting, are not in default of tax obligations to the State of Rhode Island or in litigation with the Rhode Island Economic Development Corporation or the Corporation; (iii) the assignee has a net worth that is equal to or greater than the net worth of Developer; and (iv) the assignee otherwise has the financial capability and experience to perform the Lease; and provided, further, that the Developer may assign this agreement to an affiliate of the Developer that is owned or controlled with a majority ownership and controlling interest that is the same as the majority ownership and controlling interest of the Developer upon with the written consent of the Corporation, which consent shall not be unreasonably withheld or delayed.

10.2 Authorized Representatives. Each of the Corporation and the Developer shall designate by notice to the other from time to time one or more representatives who shall be authorized to negotiate and to give consents and approvals on behalf of the Corporation or the Developer, respectively (each such representative, an "Authorized Representative"). The Corporation hereby designates Steven J. King, P.E., Managing Director as its Authorized Representative, and the Developer hereby designates Chris Wissemann as its Authorized Representative. Each party may rely on the designation of an Authorized Representative made by the other party until a subsequent designation is made.

10.3 Relationship of Parties. This Agreement is not to be construed to create a partnership or joint venture between the Developer and the Corporation.

10.4 Notices. Whenever it is provided herein that notice, demand, request, consent, approval or other communication (a "notice") shall or may be given to, or served upon, either of the parties by the other, or whenever either of the parties desires to give or serve upon the other any notice, each such notice shall be in writing and shall be effective for any purpose only when received or refused, and if given or served by

personal delivery, or by recognized overnight courier, in either instance as evidenced by acknowledgment of receipt, or by facsimile with automated acknowledgement of receipt showing the date, time and telephone number of the recipient, or sent by overnight delivery service or by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to the Corporation:	Quonset Development Corporation 95 Cripe Street North Kingstown, RI 02852 Attn: Steven J. King, P.E., Managing Director
with a copy to:	Adler Pollock & Sheehan P.C. One Citizens Plaza, 8th Floor Providence, RI 02903-1345 Attn: Robert I Stolzman, Esq.
If to the Developer:	Deepwater Wind Rhode Island, LLC 36-42 Newark Street Suite 402 Hoboken, NJ 07030 Attn: General Counsel
with a copy to:	Hinckley Allen & Snyder, LLP 50 Kennedy Plaza, Suite 1500 Providence, RI 02903 Attn: Jeffrey M. Grybowski, Esq.

Any party may by notice to the other party to change the address to which notices to such party shall thereafter be given. Copies of all notices given to Developer or Corporation under this Agreement shall be delivered concurrently to lenders to the Developer at the address so provided by such lenders from time to time.

10.6 Negotiated Document. The parties acknowledge that the provisions and language of this Agreement have been negotiated, and agree that no provision of this Agreement shall be construed against any party by reason of such party having drafted such provision or this Agreement.

10.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Rhode Island.

10.8 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

10.9 Captions. The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

10.10 Gender, etc. As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular, as the context may require.

10.11 No Third Party Beneficiaries. Except as may be expressly provided to the contrary in this Agreement, nothing contained in this Agreement shall, or shall be construed to confer, upon any person other than the Developer or the Corporation, any rights, remedies, privileges, benefits or causes of action to any extent whatsoever.

10.12 Successors and Assigns. The agreements, terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the Corporation and the Developer, their respective permitted successors and assigns.

10.13 Separability. Unenforceability for any reason of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement and if any term or provision of this Agreement, or the application thereof to any person or circumstance, shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances to which it is valid or enforceable, shall not be limited, impaired or otherwise affected thereby, and each term and provision of this Agreement shall be valid and enforced to the extent permitted by law.

10.14 Confidentiality. The parties acknowledge that the Corporation is a public instrumentality of the State of Rhode Island and is subject to the Rhode Island Access to Public Records Act and other public disclosure laws and regulations. Accordingly, in the event the Developer submits to the Corporation any trade secrets, confidential financial information or other records it deems not to be public records, it shall so mark such records "confidential/not public record" and the Corporation shall use its reasonable best efforts to assure that such records are not deemed public records. In the event any third party makes a request of such submitted and marked records or otherwise challenges the Developer's claim that such records are not public record, the Corporation shall promptly notify the Developer of such inquiry.

10.15 Full Understandin g, Amendment, Additions and Deletions to Agreement. Any alterations or deletions herein were made in the Agreement before execution and any additional provisions to which the parties have agreed and which are added herein or in any addenda attached hereto shall be considered a part hereof. This Agreement

represents the full understanding of the parties hereto with respect to the matters set forth herein and any representations of the parties made prior to or subsequent to the execution and delivery of this Agreement shall be deemed merged into this Agreement without limitation. This Agreement may not be altered, modified or amended unless such alteration, modification or amendment is in writing executed by both Corporation and Developer.

ARTICLE XI
INTERIM USE

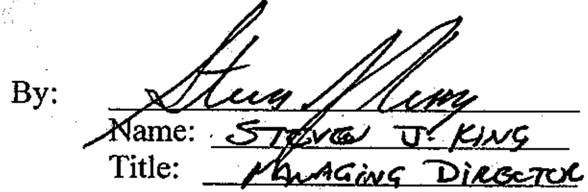
11.1 By the Corporation. During the Term of this Agreement, the Corporation may use the Property for short term leases to other businesses; provided, that (a) the Corporation shall require that the Property is vacated within sixty (60) days notice from the Corporation to any interim user; (b) any such other uses of the Property shall not interfere with the parties' respective obligations to perform the terms of this Agreement; and (c) the Property shall not be impaired or diminished in any way that interferes with or otherwise requires repair to be used by the Developer unless the Corporation causes such repair at its sole cost and expense.

11.2 By the Developer. During the Term of this Agreement, the Developer agrees to utilize its reasonable best efforts to perform as many of its Phase I Activities, as hereinafter defined, as are commercially reasonable for the Developer, at the Park or elsewhere in Rhode Island. For purposes hereof, Phase I Activities shall mean the staging, assembly and deployment of offshore wind power facilities with respect to Phase I of the Project, as defined in the JDA (i.e., the portion of the Project serving Block Island and as more particularly defined in the JDA). The performance of the terms of this Section 11.2 by the Developer is subject to the Corporation and the Developer agreeing on commercially reasonable terms pursuant to which the Developer shall utilize any land and/or facilities at the Park.

[Signatures to appear on next page]

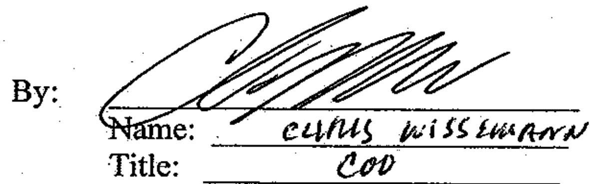
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

QUONSET DEVELOPMENT CORPORATION



By: ____________________
Name: STEVEN J. KING
Title: MANAGING DIRECTOR

DEEPWATER WIND RHODE ISLAND, LLC



By: ____________________
Name: CHRIS WISSEMANN
Title: COO

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EXHIBIT A

PROPERTY

DEEPWATER WIND

53.8 AC. COMMERCE PARK

49 AC. NORTH DAVISVILLE

14.5 AC. DAVISVILLE PIER AREA

117.3 AC. TOTAL AREA

QUONSET

APPROVED

Exhibit A-1

Deepwater Wind

Development Agreement

Total Area 117 Acres±

Quonset Business Park,

SHEET NO. 1

EXHIBIT B

LEASE

493698_11.doc

Exhibit B

FORM OF

GROUND LEASE AND SUBLEASE

BY AND BETWEEN

RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION ACTING BY AND THROUGH ITS AGENT AND ATTORNEY IN FACT QUONSET DEVELOPMENT CORPORATION

LANDLORD

AND

DEEPWATER WIND RHODE ISLAND, LLC

TENANT

Dated: _____, 20__

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GROUND LEASE AND SUBLEASE AGREEMENT

This Ground Lease and Sublease Agreement (the **"Lease"**) is made and entered into as of the_____ day of _______________, 20___ by and between the Rhode Island Economic Development Corporation acting by and through its agent and attorney in fact, Quonset Development Corporation (**"QDC"**), pursuant to R.I.G.L. 42-64.10 et. seq. (**"Landlord"**) and Deepwater Wind Rhode Island, LLC, a Delaware limited liability company with a principal place if business at 1209 Orange Street, Wilmington, Delaware 19801 (**"Tenant"**);

1. LEASE SUMMARY.

1.1 <u>Premises</u>. Those certain three (3) parcels of land consisting of approximately 117 acres, together with any buildings and improvements now situated on or to be erected, known as Commerce Park, North Davisville and the Port of Davisville in the Town of North Kingstown, State of Rhode Island, and further described on **Exhibit A**(the **"Premises"**). The Premises constitute a portion of a certain tract of land known as Quonset Business Park and owned or leased by Landlord (the **"Park"**).

1.2 Term. The term of this Lease (the "Term") shall be for ten (10) years.

A. Commencement Date: [____________, 20___]

B. Termination Date: [____________, 20___]

1.3 Base Rent. Annual Base Rent during the Term for the Premises is payable as follows:

Commerce Park

	Per Acre	Annual	Monthly
_______, 20___ - _____, 20___	$17,000	$901,000	$75,083.33
_______, 20___ - _____, 20___	$19,550	$1,036,150	$86,345.83

North Davisville

	Per Acre	Annual	Monthly
________, 20___ - _______, 20___	$15,000.00	$750,000.00	$62,500.00
________, 20___ - _______, 20___	$17,250.00	$862,500.00	$71,875.00

Port of Davisville

	Per Acre	Annual	Monthly
_______, 20___ - ______, 20___	$20,000.00	$280,000.00	$23,333.33
_______, 20___ - ______, 20___	$23,000.00	$322,000.00	$26,833.33

TOTAL RENT

	ANNUAL	MONTHLY
________, 20___ - ______, 20___	$1,931,000.00	$160,916.66
________, 20___ - ______, 20___	$2,220,650.00	$185,054.16

2. PREMISES

2.1 Grant of Premises. In consideration of the rents and covenants hereof, Landlord hereby leases to Tenant upon and subject to the terms and conditions of this Lease and Tenant hereby takes from Landlord the Premises. Landlord also grants Tenant the rights of way described in **Section 10**.

2.2 No Lease Beyond Premises. Nothing contained herein shall be construed as a grant, rental or license by Landlord to Tenant of any land or improvements adjacent to or beyond the Premises; except as may be specifically provided otherwise in this Lease.

2.3 Title. The Premises are leased subject to those items enumerated in **Exhibit B** (the **"Permitted Encumbrances"**), and with respect to the Premises (as defined herein) in its present state and condition, without representation or warranty of any kind by Landlord except as otherwise specifically provided in this Lease. Tenant represents and warrants that it has examined and familiarized itself with the state of title to the Premises, has obtained a lease title commitment and Tenant has found such title, subject to the Permitted Encumbrances listed on **Exhibit B** to be satisfactory.

3. TERM.

The term (the **"Term"**) of this Lease shall be for ten (10) years and will commence as of [____________, 20___] (the **"Commencement Date"**) and, unless extended pursuant to the terms hereof, will end on [_____________, 20___] (the **"Scheduled Termination Date"**) or such earlier date pursuant to any of the conditions, limitations or other provisions of this Lease or pursuant to law (collectively with the Scheduled Termination Date, the **"Termination Date"**).

4. RENT.

4.1 **Base Rent.** Tenant agrees to pay Landlord at the address provided in **Section 29 -- Notices** or at such other place or to such other Person (as defined herein) as Landlord may designate, annual base rent for the Premises in the amount set forth in Section 1.3 hereof (the **"Base Rent"**) payable in equal monthly installments on the first day of each month during the Term of this Lease. Notwithstanding the foregoing, Landlord is holding a deposit in the amount of $20,000 that is to be applied to the first installment of Base Rent.

4.2 **Additional Rent.** All amounts other than the Base Rent which Tenant is required to pay pursuant to this Lease, including the payment of Taxes (as defined herein), together with interest, costs, fines and penalties which may be added for nonpayment or late payment, shall constitute additional rent (**"Additional Rent"**); and if Tenant fails to pay any Additional Rent when due, Landlord shall have the right to pay the same if applicable, and shall have all rights, powers and remedies with respect thereto as are provided herein for the nonpayment of the Base Rent or by law. The Base Rent and the Additional Rent shall sometimes be collectively referred to herein as the **"Rent"**.

4.3 **Interest.** Tenant shall also pay to Landlord, on demand, as Additional Rent, interest at the lesser rate of twelve percent (12%) per annum or the then highest rate allowable under law, on all overdue installments of Rent not paid within ten (10) days after written notice from the Landlord that any installment of Rent has not been paid, until paid in full, together with all costs of collection thereof, including a reasonable attorney's fee.

4.4 **Survival of Adjustments.** Tenant's obligation to pay any and all Rents, common area charges, and adjustments under this Lease, if any, shall continue and shall cover all periods up to the actual date of termination of this Lease whether by expiration of time or otherwise. Landlord's and Tenant's obligations to make the adjustments herein referred to shall survive any expiration or termination of this Lease. Any delay or failure of Landlord in billing any Rent adjustments herein provided for shall not constitute a waiver of or in any way impair the continuing obligation of Tenant to pay such Rent adjustments hereunder.

4.5 **Net Lease.** Except as otherwise provided in this Lease, this Lease is a **"Net Lease"**, it being understood that Landlord shall receive the Rent and all other sums payable under this Lease to or on behalf of Landlord free and clear of any and all impositions, taxes, pilot payments, real estate taxes, liens, charges or expenses of any nature whatsoever in connection with the ownership and operation of the Premises.

4.6 **Payment of Rent.** The Rent shall be paid in advance in lawful money of the United States of America, without notice or demand, and without set-off, counterclaims, abatement, suspension, deduction or defense except as specifically provided otherwise in this Lease. Upon termination or expiration of the Term, the Rent for any fractional year will be prorated.

5. IMPROVEMENTS, REPAIRS, ADDITIONS, REPLACEMENTS.

5.1 Construction of Improvements.

(a) It is anticipated that Tenant shall initially construct [________] (   ) square feet manufacturing and office facilities (the "Facilities") upon the Premises, all as more particularly shown on **Exhibit C** together with such other improvements on the Premises which are ancillary thereto (the Facilities, together with the improvements, are sometimes collectively referred to hereto as the **"Improvements"**). The construction of the Improvements on the Premises (collectively the **"Construction Project"**) shall be in accordance with the approvals obtained for such Construction Project pursuant to the Quonset Development Package adopted by the QDC Board in October 3, 2005, a copy of which is on file with the Rhode Island Secretary of State and has been provided to Tenant, as the same may be amended from time to time (the **"Development Regulations"**).

(b) All such work shall be done in a first class and workmanlike manner employing first class materials so as to conform to all requirements imposed under the Development Package and associated approvals. The construction of the (i) Construction Project shall commence within ninety (90) days of the Commencement Date; and will be pursued to completion with commercially reasonable diligence and subject to Force Majeure delay. If such construction is not commenced within such period, as the same may be extended pursuant to a Force Majeure Delay, Landlord may notify Tenant of such failure. If Tenant shall fail to commence construction within thirty (30) days after such notice from Landlord, Landlord may at its option terminate this Lease by giving five (5) days prior written notice of such termination to Tenant, and this Lease shall terminate after the expiration of such five (5) day period. "Force Majeure Delay" shall mean a delay in the performance of Tenant's construction obligations due to unusual and unanticipated adverse weather conditions of a degree which cause delay, strikes and labor unrest, embargoes and governmental regulations, acts of God, war or other civil unrest, or delays in construction of any Improvements due to unavailability of material or unavailability of labor resulting from strikes or labor unrest.

(c) Subject to Landlord's prior written approval, each approval not to be unreasonably withheld, Tenant may construct improvements on the Premises. The construction of improvements on the Premises shall be in accordance with the **Development Regulations.**

5.2 Maintenance by Tenant. Tenant shall, at all times during the Term, and at its sole cost and expense, keep and maintain or cause to be kept and maintained in repair and good condition (ordinary wear and tear excepted), all Improvements at any time situated or erected on the Premises, including the Facilities, drives, walkways and parking areas, utility services (including all water pipes, pumping machinery and equipment; all electric, telephone and television poles, wires, cables and conduits; all septic and sewage disposal systems; all heating, air conditioning and lighting fixtures and equipment), and shall use all commercially reasonable precautions to prevent waste, damage or injury. Tenant shall make all necessary replacements and repairs to the same (whether ordinary, extraordinary, structural, nonstructural, foreseen or unforeseen). All material replacements which are not substantially equivalent in make, quality and design to the items being replaced shall be subject to Landlord's prior approval, such

approval not to be unreasonably withheld or delayed. Except as otherwise specifically provided herein, Landlord shall not be required to furnish any services or facilities or to make any improvements, repairs or alterations in or to the Premises or Improvements during the Term of this Lease.

5.3 **Tenant's Repairs.** Except as otherwise provided under this Lease, Tenant will promptly make all structural and nonstructural, foreseen and unforeseen, and ordinary and extraordinary repairs of every kind and nature which may be reasonably required to be made upon or in connection with the Premises and Improvements. All repairs made by Tenant shall be at least equal to the original work in class and quality. Notwithstanding the foregoing, in lieu of making any extraordinary repairs to the Improvements during the last three (3) years of the then current term, Tenant may at its election demolish such structures and return the portion of the Premises in question to Landlord in its original condition upon the expiration of the Term.

5.4 **Alterations.** Tenant may, without the need for Landlord approval, at its option and at its own cost and expense, at any time and from time to time, make such alterations, changes, replacements, improvements and additions in and to the Premises and any improvements located thereon, including the demolition of any Improvement that now or hereafter may be situated or erected on the Premises or the realignment of drives and walkways, provided that such alterations do not effect a material change to the Premises or Improvements or otherwise materially impair the value of the Premises or Improvements. The foregoing notwithstanding, all such alterations, changes, improvements, demolition and additions shall be subject to the Development Regulations and approvals required thereunder to the extent applicable.

5.5 **Required Work.** If Tenant proceeds with any construction, alterations or repairs, all such work shall be performed in compliance with all laws, statutes, ordinances, rules, regulations and orders applicable thereto, including without limitation, the Development Regulations (**"Laws"**). Such work shall also be performed in a workmanlike manner employing new materials, shall not lessen the market value of the Premises or Improvements, and shall conform to the orders, rules and regulations of private insurance rating bureaus, or any body hereafter constituted exercising similar functions. General public liability insurance, builder's risk insurance and worker's compensation insurance, for the benefit of Landlord, and Tenant, as their interests may appear, with the coverages approved in advance by Landlord, shall be maintained by Tenant at all times when any such work is in process. Tenant shall promptly pay for all such work, shall discharge or bond against any and all liens filed against the Premises arising out of such work; and upon request of Landlord, Tenant shall obtain a surety bond or other security satisfactory to Landlord to assure the completion of any such work. Tenant shall procure and pay for all required permits, certificates and licenses in connection with such work.

5.6 **Ownership of Improvements.** Until the expiration or sooner termination of this Lease, title to any Improvements constructed by Tenant and the equipment and other items installed thereon, and any alteration, change or addition thereto shall remain solely in Tenant and Tenant, alone shall be entitled to deduct all depreciation on Tenant's income tax returns for any such Improvements, building equipment and/or other alteration, change or addition. Upon the expiration or sooner termination of this Lease title to any Improvements shall vest in Landlord.

6. TAXES.

6.1 **Payment of Taxes.** Tenant shall pay Landlord, within ten (10) days of demand, as Additional Rent, all real estate taxes, both general and special, capital assessments, all sewer, water and fire protection assessments, rental, occupancy or use taxes and all similar taxes and assessments or any other charges or taxes for which Landlord is responsible by reason of or in any manner connected with or arising out of the ownership, possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Premises or Improvements, levied or assessed with respect to the Premises and Improvements, whether such taxes are general or special, ordinary or extraordinary, or foreseen, or unforeseen (hereinafter collectively referred to as **"Taxes"**). "Taxes" shall include (a) all taxes, assessments, levies, fees, water and sewer rents, charges, licenses, permit fees and all other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, which, at any time during the Term hereof; (i) are imposed or levied upon or assessed against or measured by (A) the Premises and Improvements, (B) any Base Rent, Additional Rent or other sum payable hereunder, or (C) this Lease or the leasehold estate in the Premises hereby created (**"Leasehold Estate"**); or (ii) arise in respect of the operation, possession or use of the Premises; (b) all sales, value added, use and similar taxes at any time levied, assessed or payable on account of the acquisition, leasing or use of the Premises; and (c) all taxes, assessments, levies, charges, fees or payments in lieu of or as a substitute for the charges or payments referred to in clauses (a) through (c) above or any part thereof, including specifically any PILOT (as defined herein). To the extent that Tenant is billed directly for any Taxes, Tenant will pay such Taxes when due and promptly provide evidence of such payment to Landlord. The Landlord shall not assess any fees or assessments against the Tenant during the Term of this Lease, except for charges set forth herein.

6.2 **Change in Method of Taxation.**

(a) Tenant will make payments in lieu of taxes (**"PILOT"**) to Landlord pursuant to terms and conditions contained in a certain payment in lieu of taxes agreement dated December 14, 2004 or any subsequent agreement regarding payments in lieu of taxes to the Town of North Kingstown (**"PILOT Agreement"**) between the Town of North Kingstown and Landlord. Tenant will make the payment due hereunder to Landlord in accordance with Landlord's customary billing practices and Landlord will pay to the Town of North Kingstown the payments received from the Tenant.

(b) If at any time during the Term of this Lease, the present PILOT Agreement is changed, renewed, or replaced, or another capital levy, other tax, or other charge in lieu of or in addition to any Taxes, is levied, assessed or imposed on Landlord by any governmental or quasi-governmental authority directly on this Lease or the Rent received hereunder under a generally applicable tax in Rhode Island or North Kingstown, then all such taxes, assessments, levies, or charges will be deemed to be included within the term "Taxes" for the purposes hereof.

6.3 **Tax Contests.** Subject to the additional conditions specified in **Section 33** – Permitted Contests, Tenant or its nominees shall have the right to contest or review all such Taxes by legal proceedings, or in such other manner as it may deem suitable, and, if necessary, in the name of and with the cooperation of Landlord. In the event of any reduction, cancellation or

discharge, Tenant shall pay the amount finally levied or assessed against the Premises and Improvements or adjudicated to be due and payable on any such contested Taxes.

6.4 **Tax Refunds.** Landlord covenants and agrees that if there shall be any refunds or rebates on account of the Taxes paid by Tenant under the provisions of this Lease, such refund or rebate shall belong to Tenant. Any refunds received by Landlord shall be deemed trust funds and as such are to be received by Landlord in trust and promptly paid to Tenant. Landlord will, upon the request of Tenant, sign any receipts which may be necessary to secure the payment of any such refund or rebate, and will pay over to Tenant such refund or rebate as received by Landlord.

6.5 **Personal Property Taxes.**

(a) Tenant shall pay prior to delinquency, all taxes assessed against and levied upon any trade fixtures, furnishings, equipment and all other personal property of Tenant, contained in or upon the Improvements or elsewhere (which amount shall also be included within the definition of Taxes). Tenant shall use reasonable efforts to cause the Improvements, trade fixtures, furnishings, equipment and all other personal property to be assessed and billed in Tenant's name separately from the real property of Landlord.

(b) If any of Tenant's personal property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant's property within ten (10) days after receipt of a written statement setting forth the Taxes applicable to Tenant's personal property. Landlord will furnish Tenant upon request a copy of a receipted tax bill for any such taxes paid by Tenant.

6.6 **Proof of Payment.** Tenant will furnish to Landlord promptly after demand therefor, proof of the payment of any Taxes which are payable by Tenant as provided in this **Section 6**.

6.7 **Tax Proration.** Upon the expiration or earlier termination of this Lease, Taxes which shall be levied, assessed or become due upon the Premises or Improvements shall be prorated to the date of such expiration or earlier termination. If any such tax, levy, assessment or charge may legally be paid in installments, Tenant may pay such tax, levy, assessment or charge in installments; and in such event, Tenant shall be liable only for installments which become due and payable during the Term hereof, apportioned to the end of the Term of this Lease.

6.8 **Landlord Tax Obligations.** Nothing contained in this **Section 6** shall obligate Tenant to pay to or on behalf of Landlord, Landlord's assignees, transferees or successors (a) any United States federal tax on net income and items of tax preference or federal tax in lieu of a net income tax; (b) any state tax imposed on or measured by net income, or any state franchise or similar tax in lieu of a net income or franchise tax; (c) any county, municipal or local tax imposed on or measured by net income; and (d) any transfer, mortgage recording, income or capital gains taxes payable by Landlord upon sale or disposition by it of the Premises.

7. SECURITY.

Tenant shall provide, or cause to be provided, all security services necessary to assure security and safety within the Premises. Tenant shall comply with all Homeland Security and Port Security regulations, as the same may be lawfully adopted or imposed and amended from time to time, by any federal, state or municipal government agency or board, including without limitation, such port and other security measures adopted by Landlord, its successors and assignees, in connection with the operation of the Port of Davisville.

8. ESTOPPEL STATEMENTS.

Each of Landlord and Tenant shall at any time upon not less than ten (10) business days prior written notice from the other, execute, acknowledge and deliver a statement in writing (a) setting forth the Commencement and Termination Dates of this Lease; (b) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and that date to which the Rent, and other charges, if any, are paid in advance; (c) acknowledging that there are not, to such Party's knowledge, any uncured defaults on the part of either Landlord or Tenant hereunder, or specifying such defaults, if any, which are claimed; (d) certifying that Tenant has no claims for setoff against the Rent nor any other agreements or rental concessions with Landlord which would reduce the Rent payable hereunder; or setting forth such claims, agreements or concessions, if any; and (e) setting forth such other matters pertaining to this Lease as may be reasonably requested. Any such statement may be conclusively relied upon by any prospective purchaser of Landlord's fee interest in the Premises, and their respective successors and assigns.

9. UTILITIES; CONTRACTS.

9.1 <u>Tenant's Duties</u>. Tenant will pay directly all charges incurred for all gas, electricity, telephone, water, sewer, heat, power, cable, trash removal and all other services and utilities used on or from the Premises, and any maintenance charges for utilities, and will furnish all replacement electric light bulbs and tubes used by Tenant on the Premises. Landlord will in no event be required to furnish or be liable for any interruption or failure of any utility services to the Premises.

9.2 <u>Contracts</u>. Tenant shall duly and punctually observe, perform and comply with the provisions of any applicable Permitted Encumbrance or other agreement consented to by Tenant that is binding on Landlord and that affects the Premises, or any part thereof or the ownership, occupancy or use thereof (collectively **"Contracts"**), and Tenant further covenants and agrees that it will not, directly or indirectly, do any act or suffer or permit any condition or thing to occur which would constitute a default under any of the Contracts that would have a material adverse effect on the Premises.

9.3 <u>Landlord's Right to Cure</u>. If Tenant fails to pay for any of the charges, or perform any of the obligations, described in this **Section 9** for thirty (30) calendar days after such charges shall have become payable, and provided that Tenant is not then conducting a Permitted Contest of such payments, Landlord, after thirty (30) calendar days' written notice to Tenant may,

but shall not be obligated to, pay or perform the same and the amount so paid, with interest thereon, shall be deemed Additional Rent payable by Tenant to Landlord under the provisions of this Lease, and shall on demand be promptly paid by Tenant to Landlord, but it is expressly understood that payment by Landlord of any such charges shall not be deemed to waive or release the default in the payment thereof by Tenant.

10. RIGHTS OF WAY; COMMON AREAS; AND COMMON AREA MAINTENANCE CHARGE.

10.1 Rights of Way. Landlord and Tenant agree that Tenant shall have certain rights of way for pedestrian and vehicular access for the purpose of transporting materials and equipment to and from the three (3) separate parcels of the Property, piers and waterfront areas, necessary for the construction of the Improvements and Tenant's intended Use (as defined in Section 17.1) of the Property. The public area rights of way are shown on **Exhibit D-1** and the transportation rights of way connecting the three (3) parcels of the Property are shown on **Exhibit D-2.** Notwithstanding the foregoing, rights of way set forth in this Section 10.1 shall be subject to that certain Access and Services Agreement between Landlord and the United States of America dated [197-] ("the Access and Services Agreement") [This Section 10.1 shall need to be completed to reflect rights of way improvements and uses based upon Tenant's Master Plan and Development Plan pursuant to that certain Development Agreement between Landlord and Tenant dated July 1, 2009.]

10.2 Common Areas. The "Common Areas" are defined as all areas and facilities outside the Premises which are owned, managed, controlled or operated by the Landlord and designated for the general use and convenience of Tenant and other tenants or owners of properties located in the Park and are not leased to other Tenants. Common Areas may include, but are not limited to, pedestrian sidewalks, landscaped areas, and roadways and are primarily intended to include vehicular and pedestrian ingress from public roads through the Common Areas to the Premises and egress from the Premises through the Common Areas to public roads. During the Term of this Lease, the Landlord shall operate, manage and maintain the Common Areas as contemplated by the Quonset Davisville Port and Commerce Park Master Plan 2003 Revision of 2001 Update (the "Quonset Master Plan"), the Access and Services Agreement and such other reasonable regulations of general application to all parties occupying the Park as Landlord shall make from time to time. Tenant shall be permitted during the Term of this Lease to use the Common Areas in common with such other parties as are entitled to such use, subject to the terms and conditions set forth in the Quonset Master Plan, the Access and Services Agreement and any regulations of Landlord pursuant to this Section 10.2.

10.3 Common Area Maintenance Expense Charge. Tenant, as Additional Rent, shall pay Landlord an annual amount of Five Hundred Dollars ($500.00)/per acre of the Premises as a maintenance expense charge (the "Common Area Maintenance Charge") for Landlord's maintenance of the rights of way defined in Section 10.1 above. One twelfth of the Common Area Maintenance Charge shall be payable in equal monthly installments on the first day of each month during the Term of this Lease.

11. INSPECTION AND ACCESS.

11.1 __Inspection__. Landlord and Landlord's agents and representatives will have the right to enter and inspect the Premises at any reasonable time during business hours after not less than twenty-four (24) hours written notice to Tenant, or at any time in case of emergency, for the purpose of ascertaining the condition of the Improvements or, if in accordance with the provisions of this Lease, curing any default on the part of Tenant or making repairs to the Improvements. During the last six (6) months prior to the Scheduled Termination Date, Landlord and Landlord's agents and representatives will have the right to enter the Improvements at any reasonable time during business hours for the purpose of showing the Improvements and will have the right to erect at the Premises a suitable sign indicating that the Improvements is available "For Sale" or "For Lease".

11.2 __Access__. In addition to access permitted under **Subsection 17.7** -Environmental Protection and Subsection 11.1, at all reasonable times throughout the Term of this Lease, the Landlord shall be allowed access to the Premises for any reasonable and legitimate purposes upon notice to the Tenant. Landlord normally will give Tenant 24-hour prior written notice of its intention to enter the Premises unless it reasonably determines that entry is required for safety, environmental, operations or security purposes. So long as such access is in accordance with the provisions of this Lease and the Landlord or any officer, agent, employee or contractor thereof, does not cause any damage to the Premises as a result of its negligent or willful actions, Tenant shall have no claim on account of any entries against the Landlord or any officer, agent, employee or contractor thereof.

12. CASUALTY DAMAGE.

12.1 __Duty to Repair__. If at any time during the Term of this Lease, the Improvements shall be destroyed or damaged in whole or in part by fire or other cause, then Tenant shall, at its own cost and expense, and subject to the provisions of Section 12.2, cause the same to be repaired, replaced or rebuilt within a period of time which, under all prevailing circumstances, shall be reasonable.

12.2 __Election to Terminate__. If, at any time during the Term of this Lease, the Improvements on the Premises shall have been damaged or destroyed by fire or any other cause whatsoever, then, notwithstanding the provisions of **Section 12.1** or any other provisions of this Lease:

(a) If the aggregate floor area of all of Tenant's buildings are rendered unusable as a result of such fire or other cause shall exceed fifty percent (50%) of the aggregate floor area of all of Tenant's Buildings immediately prior to such damage or destruction, Tenant shall have the right, but not the obligation, to elect __not__ to repair, replace or rebuild such building, as the case may be, and to (i) terminate this Lease; or (ii) continue this Lease in effect, but without any obligation to construct or maintain any Improvements on the Premises by giving written notice of termination to Landlord within ninety (90) days after the date of such damage or destruction.

(b) If Tenant shall have elected not to rebuild in accordance with the provisions of this **Section 12**, then it shall, at Landlord's request, promptly demolish any remaining portions of the building, clear all rubble and debris, and leave the land comprising the Premises in a level condition at grade with the adjoining streets, all at Tenant's sole cost and expense, all such work to be completed within one hundred eighty (180) days of Tenant's election not to rebuild.

13. CONDEMNATION.

13.1 **<u>Lease Termination</u>.** If the whole of the Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain or by private purchase (**"or purchase"**) in lieu thereof, then this Lease shall automatically terminate as of the date that such occurrence results in the loss of possession by Tenant. In the event of a partial taking (or purchase) of the Premises pursuant to which more than thirty percent (30%) of the Premises are so taken (or so purchased), then Tenant shall have the right, but not the obligation, to terminate this Lease by giving written notice of such termination to Landlord on or prior to the date ninety (90) days after the date of such taking (or purchase). Upon the giving of such notice, the Termination Date under this Lease shall be the last day of the calendar month in which such notice is given.

13.2 **<u>Application of Award</u>.** In the event of a taking (or purchase) resulting in the termination of this Lease pursuant to the provisions of **Section 13.1**, Landlord will be entitled to the portion of the award applicable to the land and Tenant shall be entitled to the portion of the award applicable to the Improvements. Tenant shall be entitled to recover for its moving expenses and for business interruption or termination.

13.3 **<u>Partial Taking</u>.**

(a) In the event of a partial taking (or purchase) not resulting in the termination of this Lease, pursuant to the provisions of Section 13.1, Tenant shall, at its own cost and expense, make all repairs to the Improvements affected by such taking (or purchase) to the extent necessary to restore the same (to the extent permitted, however, taking into consideration the amount of land remaining after any such taking or purchase), provided, however, that Tenant shall not be obligated to expend an amount in excess of the proceeds of the net award (together with any insurance proceeds) available to Tenant for such purposes, as hereinafter provided.

(b) All compensation available or paid to Landlord and Tenant upon such a partial taking (or purchase) for the Improvements shall be applied towards the cost of such restoration, or, if the Parties hereto agree that only a portion of the aggregate award is sufficient to so restore, then only such portion as agreed upon shall be paid to Tenant for such purpose; provided, however, that all amounts allocable to any portion of the land covered by this Lease (as distinguished from the Improvements) shall be payable to Landlord.

(c) All compensation for any temporary taking during the Term of this Lease shall be distributed to Tenant without participation by Landlord.

(d) After an occurrence of the character referred to in this **Section 13.3.**, this Lease shall continue in full force and effect, and each installment of Base Rent shall be reduced by an amount determined by multiplying such installment of Base Rent by a fraction, the numerator of which fraction shall be the number of square feet of the land area of the Premises taken, and the denominator of which shall be the number of square feet of the land area of the Premises subject to this Lease at the time of the condemnation. In the event of any temporary taking, this Lease shall remain in full effect (without rent abatement except as provided herein) and Tenant shall be entitled to receive the entire net condemnation proceeds allocable to such temporary taking.

14. LIMIT OF LANDLORD LIABILITY, LANDLORD'S DEFAULT.

14.1 <u>Exemption</u>. If Landlord shall fail to, or not properly, perform any covenant, term or condition of this Lease upon Landlord's part to be performed, Tenant shall be entitled to exercise all of its rights and remedies at law and equity against Landlord. If Tenant in exercising such remedies, recovers a money judgment against Landlord, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of Landlord in the Premises and out of net income from such property received by Landlord, including without limitation, the right to set off Base Rent against such obligations or out of the consideration received by Landlord from the sale or other disposition of all or any part of Landlord's right, title and interest in the Premises, subject, nevertheless, to the rights of Landlord's mortgagee, and neither Landlord nor entities which constitute the ownership interest of Landlord shall be liable for any deficiency. Further, Tenant hereby agrees that unless through its negligence or willful misconduct Landlord shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant, or any other Person in or about the Premises nor, unless through its negligence or willful misconduct, shall Landlord be liable for injury to the person of Tenant, whether the said damage or injury results from conditions arising upon the Premises, or from other sources or places.

14.2 <u>Limitation Default by Landlord</u>. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event until thirty (30) days after written notice by Tenant to Landlord specifying therein the obligation which Landlord has failed to perform; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, and then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

15. INSURANCE.

15.1 <u>Tenant Liability Insurance</u>. Tenant, at its own expense, shall provide and keep in force a single limit comprehensive commercial general liability insurance policy against liability for bodily injury and property damage in the amount of not less than Five Million Dollars ($5,000,000.00) with respect to injuries to or death of more than one Person in any one occurrence, such limits to be for any greater amounts as may be reasonably indicated by circumstances from time to time existing. Such insurance shall include an endorsement of the Insurance Services Offices broad form general liability or its equivalent. In addition, Tenant

shall maintain in full force and effect, Workers' Compensation insurance as required by all applicable Laws, including an All-States endorsement. Tenant shall furnish Landlord and/or any Leasehold Mortgagee with certificates of such policies on or before the Commencement Date of this Lease and whenever required shall satisfy Landlord that such policies are in full force and effect. Limits of such insurance shall be reviewed at least every three (3) years and increased if independent insurance advisors selected by Landlord advise that such changes are required to reflect then standard limits and types of coverage generally required by landlords for similar commercial properties in Rhode Island. To the extent that industry-wide standards of insurance coverage, exclusions from such coverage, or the terminology utilized to describe such coverage, should subsequently change, Tenant agrees to obtain equivalent coverage to the extent commercially available.

15.2 **Tenant Property Insurance.** Tenant shall maintain in full force and effect on the Improvements a policy or policies of fire and extended coverage insurance on the Insurance Services Offices "Causes of Loss – Special Form" with standard coverage vandalism, malicious mischief, special extended perils (all risk) endorsements to the extent of the replacement value thereof. Tenant shall maintain during any period of construction upon the Premises builder's risk, completed value, non-reporting form, with permission to complete and occupy and worker's compensation coverage.

15.3 **Tenant Personal Property Insurance.** Tenant, at its own cost and expense, shall provide and keep in force and effect on its own furniture, furnishings, fixtures and equipment located in the Premises, with companies acceptable to Landlord, policies of fire and extended coverage insurance with standard coverage vandalism, malicious mischief, special extended perils (all risk) and difference in conditions coverages and against such other risks or hazards and in such amounts as Landlord shall require from time to time.

15.4 **Replacement Cost; Additional Insurance.** The insurance specified in **Sections 15.2 and 15.3** above shall be maintained by Tenant during the entire Term of this Lease for a sum not less than 100% of the full replacement cost (without deduction for depreciation or obsolescence) and shall name Landlord and Tenant as their interest may appear. Tenant shall immediately give notice to Landlord of the acquisition of any additional insurance or the increasing of any of the amounts of insurance in excess of the minimum requirements set forth in this **Section 15** and agrees that all such additional insurance or increased amounts of insurance shall be governed by the requirements contained in this Lease.

15.5 **Miscellaneous Requirements.** All insurance provided for in this **Section 15** shall be affected under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do business in the State of Rhode Island and which have been approved in writing by Landlord, as to the qualifications of insurers and the amounts of insurance to be written by each. Upon the execution of this Lease, and thereafter not less than thirty (30) days prior to the expiration dates of the expiring policies heretofore furnished pursuant to this **Section 15**, originals of the policies, or certificates thereof in the case of bodily injury and property damage liability insurance, bearing notations evidencing the payment of premiums or accompanied by other evidence of such payment, shall be delivered by Tenant to the Landlord. All such policies shall contain a waiver of the right of subrogation as to Landlord and Tenant,

and their respective affiliates, successors and assigns as required by **Section 16 – Waiver of Subrogation**, and an agreement by the insurer that such policy shall not be cancelled, or non-renewed or reduced in coverage in any material respect without at least thirty (30) days prior written notice to Landlord named as an insured party, and that no act or omission of any insured party shall invalidate the policy or the coverage of any such insured party.

15.6 **Insurance Endorsement.** Each policy of insurance obtained by Tenant to provide the coverage mentioned in **Sections 15.1, 15.2** and **15.3** shall name Landlord as an additional insured, and each property insurance policy under **Section 15.2** shall name Landlord to the extent of its interest in the applicable Improvements; if any. Subject to the provisions of Section 15.7 below, all such policies shall be primary and non-contributing with any insurance carried by Landlord, and shall have attached thereto endorsements (a) that such policy shall not be cancelled, modified, reduced or surrendered accepted without at least thirty (30) days' prior written notice to Landlord; and (b) that no act or omission of Tenant shall invalidate the interest of Landlord.

15.7 **Application of Proceeds.** All such policies or certificates of insurance shall be held by Landlord. If by reason of any damage or destruction mentioned herein, any sums are paid under any applicable insurance policy in the amount of less than One Hundred Thousand and 00/100 ($100,000.00) Dollars, such sums shall be paid over to Tenant, unless required by the express terms of any Leasehold Mortgage to be paid to a Leasehold Mortgagee, in which event they shall be so paid; and such sums so paid to Tenant shall, in the case of any restoration or other construction work, be held as a trust fund to be used in accordance with the covenants, terms and conditions of this Lease. Insurance proceeds for any damage or claim in excess of One Hundred Thousand and 00/100 ($100,000.00) Dollars shall be paid to and held by the hereinafter described insurance trustee (the "Insurance Trustee"). The Insurance Trustee shall be any one of the following entities in the listed order of priority:

(a) Tenant's Leasehold Mortgagee; or

(b) A financial institution with offices in the State of Rhode Island, selected by Tenant, and approved by Landlord, which approval will not be unreasonably withheld.

The terms and conditions upon which the insurance proceeds which are held in trust by the Insurance Trustee shall be applied to restore the Premises and the buildings and improvements are as follows:

(a) Tenant shall, prior to the commencement of any construction work, if requested by the Landlord, submit to Landlord complete plans and specifications which shall be designed to restore the buildings and improvements to a comparable size and condition as existed immediately prior to such destruction or damage and as completely similar in character as is practicable and reasonable. The site plan including the footprint for the buildings and improvements shall be subject to the Landlord's approval. Landlord within fifteen (15) days after submission thereof shall either Consent to the same or serve written notice upon Tenant of disapproval thereof and its objections thereto, in default of which such plans and specifications shall be deemed to be approved by Landlord.

(b) During the process of restoration at the end of each month, and upon the written request of Tenant, the Insurance Trustee, shall, at its option, pay to Tenant or to the contractors and materialmen of Tenant for the account of Tenant, out of such proceeds, an amount which shall be that proportion of such proceeds held in trust which ninety five percent (95%) of the payment to be made for such work done, materials supplied and services rendered during such month bears to the total contract price, or if the restoration is managed by Tenant, then that portion of the insurance proceeds held in trust which ninety five percent (95%) of the estimated cost of the work done, materials supplied and services rendered during that month bears to the total estimated cost; and at the completion of the restoration, the balance of such insurance proceeds to the extent of and as required to complete the payment of restoration costs shall be paid to Tenant.

(c) At the time of each such request for an advance by Tenant and as a condition precedent thereto, Tenant shall also submit the following to both the Insurance Trustee and Landlord:

1. A certificate signed by Tenant and the independent architect or engineer of Tenant not more than ten (10) days prior to such request setting forth the following:

That the sum then requested either has been paid by Tenant or is justly due based upon work performed or materials installed or delivered to contractors, subcontractors, materialmen, engineers, architects or other persons who have rendered services or furnished materials for the restoration therein specified; the names and addresses of such persons, a brief description of such services and materials, the several amounts so paid or due to each of said persons in respect thereof; that no part of such expenditures has been or is being made the basis, in any previous or then pending request, for the withdrawal of insurance money or has been made out of the proceeds of insurance received by Tenant; and that the sum then requested does not exceed the value of the services and materials described in the certificate.

That, except for the sum then requested in such certificate stated to be due for services or materials, he is not aware of any unpaid amounts due for labor, wages, materials, supplies or services in connection with such restoration which, if unpaid, might become the basis of a vendor's mechanic's, laborer's, or materialmen's statutory or similar lien upon such restoration or upon the Premises or the building and improvements on the Premises or any part thereof or upon Landlord's fee interest or Tenant's leasehold interest therein.

That the cost, as estimated by the persons signing such certificate, of the restoration required to be done subsequent to the date of such certificate in order to complete the same, does not exceed the insurance money, plus any amount deposited by Tenant to defray such cost and remaining in the hands of the Insurance trustee after payment of the sum requested in such certificate.

That all of the work of the restoration so far completed is proper and of substantially the qualify and class at least equal to the original work and substantially in accordance with the plans and specifications.

In the event the requirements of the Leasehold Mortgagee acting as the Insurance Trustee are comparable to the foregoing provisions of this clause 1, the Tenant may comply only with such provisions provided the Tenant provides upon Landlord's request reasonable documentation to the Landlord to confirm same.

2. An opinion of counsel (who may be selected by Tenant), title company or other documentary evidence, reasonably satisfactory to Landlord, showing that there has not been filed with respect to the Premises or the buildings and improvements on the Premises or any part thereof or upon Landlord's fee interest or Tenant's leasehold interest therein any vendors, mechanic's, laborer's, materialmen's or other similar lien, which has not been discharged of record, except such as will be discharged by payment of the amount then requested.

(d) At the completion of the restoration and following disbursement of the final advance to Tenant required to complete the payment of restoration costs and after receipt of final unconditional lien releases from all suppliers of labor, materials and services and the expiration of the statutory lien period without any lien being filed, any such insurance proceeds remaining shall be paid by the Insurance Trustee to Tenant. In no event, however, shall Landlord be liable for any amount with respect to the restoration and the work and cost related thereto, and in the event that the cost of the restoration exceeds the proceeds of insurance so held, Tenant shall pay such additional costs.

15.8 **Landlord Self-Help.** Landlord may, within five (5) days of notifying Tenant in writing of Tenant's failure to carry any insurance coverage required under this **Section 15**, obtain such insurance coverage on behalf of Tenant, unless Tenant has within such period furnished Landlord with reasonably satisfactory evidence of such coverage by Tenant. Such insurance obtained by Landlord shall be terminated by Landlord upon Tenant's supplying evidence of such insurance. Tenant agrees to pay to Landlord as Additional Rent the cost of all such insurance maintained by Landlord. Any such insurance obtained by Landlord may be furnished by Landlord under any blanket policy carried by it or under an umbrella policy or a separate policy or policies.

16. WAIVER OF SUBROGATION.

Landlord and Tenant hereby mutually waive any and all rights of recovery against one another for real or personal property loss or damage occurring to the Premises or any part thereof or any personal property therein from perils insured against under the all risk coverage and other property insurance policies existing for the benefit of the respective Parties and will assure that such insurance permits waiver of liability and contains a waiver of subrogation.

17. USE; COMPLIANCE WITH LAW.

17.1 **Use.** The Premises shall be used and occupied only for office space and heavy manufacturing and logistics related to utility-scale wind-farm construction, renewable energy or energy conservation industries, and uses ancillary thereto.

17.2 Compliance with Law and Restrictive Covenants. Tenant shall, at Tenant's expense, comply promptly with, and shall not use the Premises in violation of, any Laws, insurance company requirements and restrictive covenants regulating the use by Tenant of the Premises and shall at Tenant's expense obtain any and all licenses and permits necessary for any use of the Premises. Such compliance with any Laws shall include, without limitation, the making of any structural, unforeseen or extraordinary changes mandated by such Laws, whether or not any such Laws hereafter enacted involve a change of policy on the part of the governmental body enacting the same. Tenant shall not use or permit the use of the Premises in any manner that will tend to create waste or a public or private nuisance. Tenant shall, promptly upon discovery of any such use or occupancy, take all necessary steps to discontinue or to compel (to the extent same is within Tenant's control) the discontinuance of such use, at its own cost and expense.

17.3 Preservation of Licenses, Etc. Tenant shall observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions and nonconforming uses), privileges, franchises and concessions which are now applicable to the Premises or which have been granted to or contracted for by Landlord in connection with any existing or presently contemplated use of the Premises.

17.4 Right to Contest. Subject to the additional conditions specified in **Section 33 – Permitted Contests**, Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, or Landlord (if legally required), or both (if legally required), without cost or expense to Landlord, the validity or application of any Law or requirement of the nature referred to in **Section 17.2** and, if by the terms thereof, compliance therewith may legally be delayed pending the prosecution of any such proceeding, Tenant may delay such compliance therewith until the final determination of such proceeding. Landlord agrees to execute and deliver any appropriate papers or other instruments which may be necessary or proper to permit Tenant to so contest the validity or application of any Law or requirement and to fully cooperate with Tenant in such contest.

17.5 Hazardous Use. Except to the extent permitted by applicable law, Tenant shall not (i) use or allow the Premises to be used for the Release, storage, use, treatment, disposal or other handling of any Hazardous Substance, (ii) receive, store or otherwise handle any product, material or merchandise which is explosive or highly flammable, or (iii) use or permit the Premises (to the extent within Tenant's control) for any purpose which would render the insurance thereon void or cause the increase in the premiums for such insurance. Notwithstanding the foregoing, Tenant may, without obtaining such consent, use, store and bring upon the Premises incidental amounts of such chemicals (a) contained in commercial cleaning agents that are customarily used in the ordinary course of Tenant's business, and (b) customarily used in the maintenance of building systems (including without limitation, hvac, electrical, plumbing, etc.) (c) gasoline in the fuel tanks of cars or vehicles brought on the Premises. Tenant shall comply with the requirements of all policies of public liability, fire and other insurance at any time in force with respect to the Premises. The term **"Release"** shall have the same meaning as is ascribed to it in the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended, (**"CERCLA"**). The term **"Hazardous Substance "**

means (x) any substance defined as a "hazardous substance" under CERCLA, (y) petroleum, petroleum products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas, and (z) any other substance or material deemed to be hazardous, dangerous, toxic, or a pollutant under any federal, state or local law, code, ordinance or regulation.

17.6 Tenant shall: (i) give prior notice to Landlord of any activity or operation to be conducted by Tenant at the Premises which involves the Release, use, handling, generation, treatment, storage, or disposal of any Hazardous Substance (**"Tenant's Hazardous Substance Activity"**), (ii) comply in all material respects with all applicable federal, state, and local laws, codes, ordinances, regulations, permits and licensing conditions governing the Release, discharge, emission, or disposal of any Hazardous Substance and prescribing methods for or other limitations on storing, handling, or otherwise managing Hazardous Substances, (iii) at its own expense, promptly contain and remediate any Release of Hazardous Substances arising from or related to Tenant's Hazardous Substance Activity on the Premises, or in the environment and remediate and pay for any resultant damage to property, Persons, and/or the environment, (iv) give prompt notice to Landlord, and all appropriate regulatory authorities, of any Release of any Hazardous Substance on the Premises, or in the environment arising from or related to Tenant's Hazardous Substance Activity, which Release is not made pursuant to and in conformance with the terms of any permit or license duly issued by appropriate governmental authorities, any such notice to include a description of measures taken or proposed to be taken by Tenant to contain and remediate the Release and any resultant damage to property, Persons, or the environment, (v) if a Release has occurred, or if Landlord has a reasonable belief that a Release has occurred, in or about the Premises based upon objective and quantifiable data, retain an independent engineer or other qualified consultant or expert acceptable to Landlord, to conduct, at Tenant's expense, an environmental audit of the Premises, and the scope of work to be performed by such engineer, consultant, or expert shall be approved in advance by Landlord, and all of the engineer's, consultant's, or expert's work product shall be made available to Landlord, (vi) at Landlord's request from time to time in connection with any proposed sale or refinancing of the Premises or any requirement or request of any governmental entity, or if a Release has occurred during the Term of this Lease, or if Landlord has a reasonable belief that a Release has occurred or is about to occur, in or about the Premises, executed affidavits, representations and the like concerning Tenant's best knowledge and belief regarding the presence of Hazardous Substances in the Premises, and (vii) reimburse to Landlord, upon demand, the reasonable cost of any testing for the purpose of ascertaining if there has been any Release of Hazardous Substances in or from the Premises during the Term of this Lease, (provided that Tenant shall have no obligation to reimburse Landlord for such testing costs if Landlord is determined to be the cause of the Release or if Landlord performed such testing without having first requested that Tenant performs such testing, or if such testing was either not necessary or was greater in scope and expense than reasonably required to investigate the particular Release), and (viii) upon expiration or termination of this Lease, surrender the Premises to Landlord free from the presence and contamination of any Hazardous Substance placed on the Premises by Tenant, its agents, employees or invitees.

17.7 Environmental Protection/Access.

(a) The Tenant and its contractors hereby assume responsibilities for protection of the environment as related to the Tenant's or its contractor's use of the Premises. The Tenant and its contractors shall be responsible for compliance with all applicable Federal, state and local laws, regulations, and standards that are or may become applicable to Tenant's activities on the Premises and to the environment.

(b) The Tenant shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under this Lease, independent of any existing permits held by the Landlord. Any and all environmental permits required for any of Tenant's operations or activities will be subject to prior concurrence of Landlord, which shall not be unreasonably withheld or delayed.

(c) The Landlord's rights under this Lease specifically include the right for Landlord to inspect upon reasonable written notice the Premises for compliance with environmental, safety, and occupational health laws and regulations. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. Tenant shall have no claim on account of any entries against the Landlord or any officer, agent, employee, contractor or subcontractor thereof, except for the negligence or willful misconduct of Landlord or its officers, agents, employees, or contractors. The Tenant shall not be responsible for the cost of such inspections unless the Landlord has a reasonable belief that a release has occurred which is attributable to the Tenant.

(d) If environmentally sensitive materials or substances are to be utilized within the Premises under this Lease, the Tenant and its contractors or sublessees will provide a Hazardous Waste Management Plan to the Landlord for review and approval prior to commencement of any action. The Tenant shall apply for and obtain its own Resource Conservation and Recovery Act (RCRA) generator identification number. Any hazardous waste permit under the RCRA, or its Rhode Island equivalent, shall be limited to generation and transportation. The Tenant shall not, under any circumstances, allow any hazardous waste to remain on or about the Leased Premises for any period in excess of 90 days. Any violation of this requirement shall be deemed a material breach of this Lease.

(e) Landlord and Tenant acknowledge that NCBC Davisville has been identified as a National Priorities List (NPL) Site under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) of 1980, as amended. The Tenant acknowledges that the Landlord has provided it with a copy of the NCBC Davisville Federal Facility Agreement ("FFA") entered into by the U.S. EPA Region I, the State of Rhode Island, and the Navy and effective on 8 July 1992. Landlord and Tenant agree that should any conflict arise between the terms of the FFA as it presently exists or may be amended and the provisions of this Lease, the terms of the FFA will take precedence. Landlord and Tenant agree to comply with the terms of the FFA. The Tenant further agrees that notwithstanding any other provisions of this Lease, the Landlord assumes no liability to the Tenant should implementation of the FFA interfere with the Tenant's use of the Premises, provided however, in the event that the Tenant is deprived of beneficial use of a portion of the Premises for more than seven (7) consecutive days, Rent shall be abated for that portion of the Premises as provided in Section 13.3(d) hereto. The

Tenant shall have no claim on account of any such interference against the Landlord or any officer, agent, employee, or contractor thereof, other than for abatement of rent.

(f) The Landlord, EPA, and the Rhode Island Department of Environmental Management (RIDEM) and their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable written notice to the Tenant, to enter upon the Leased Premises for the purposes enumerated herein and for such other purposes consistent with any provision of the FFA:

(i) To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, testpitting, testing soil borings and other activities related to the NCBC Davisville Installation Restoration Program (IRP) and FFA.

(ii) To inspect field activities employed in implementing the NCBC Davisville IRP and FFA.

(iii) To conduct any test or survey required by the EPA or RIDEM relating to the implementation of the IRP and FFA or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or RIDEM relating to such conditions.

(iv) To construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the NCBC Davisville IRP and FFA including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

A. The Tenant agrees to comply with the provisions of any health or safety plan in effect under the IRP and FFA during the course of any of the above described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by Tenant. Tenant shall have no claim on account of such entries against the Landlord or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the Tenant shall comply with all applicable Federal, state, and local occupational safety and health regulations.

The Tenant shall not conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Landlord, which consent shall not be unreasonably withheld.

17.8 **<u>Indemnity</u>.** Tenant further agrees, in addition to the foregoing and not in limitation thereof, to indemnify, defend and hold harmless Landlord from and against any and all claims, demands, liabilities, costs, expense, penalties, damages and losses including, without limitation, attorney's fees, as incurred, (payable quarterly upon written demand) resulting from or related to any environmental condition (as hereinafter defined) or any violation of any Environmental Law (as hereinafter defined) in connection with the Premises including, but not limited to any claim for personal injury or property damage arising from any such Environmental Condition or violation of any Environmental Law asserted by third parties against Landlord, any liabilities sustained or incurred by Landlord for the containment, removal, remedy, cleanup or abatement of any contamination arising from any Environmental Condition or any violation of

any Environmental Law, arising from the introduction onto the Premises of Hazardous Materials by Tenant or any subtenant, or any officer, agent or employee of Tenant. The term "Environmental Law" shall mean any law, regulation, rule or order of any governmental entity relating to pollution or protection of the environment (including ambient air, surface water, ground water, land surface or subsurface strata), including without limitation CERCLA, as amended, RCRA, as amended and other laws, regulation, rules and ordinances relating to emissions, discharges or releases of pollutants, contaminants, chemicals, industrial, toxic or hazardous substances or solid or hazardous wastes or oil or gas or any substance detrimental to the environment (collectively "Polluting Substances") or the manufacture, processing, distribution, use, treatment, handling storage, disposal and transportation of Polluting Substances. It is understood expressly that the Tenant shall not be responsible to indemnify the Landlord for any costs resulting from any environmental condition occurring prior to Tenant's occupancy or resulting from the action of Landlord or any prior owner or operator of the Premises.

The term "Environmental Condition" shall mean the presence, whether discovered or undiscovered, in surface water, ground water, drinking water supply, land surface, subsurface strata, above ground and underground tanks or other containers, or ambient air of any Polluting Substances arising out of or otherwise related to the operations or other activities (including the disposition of such materials or substances) conducted or undertaken at the Premises by Tenant.

18. TENANT'S MORTGAGES.

18.1. <u>Mortgaging of Leasehold Estate</u>. Subject to the requirements set forth below, Tenant and every successor and assignee of Tenant, and any sublessee of all of the Premises shall have the absolute and unconditional right, without Landlord's consent, from time to time, to mortgage and finance and refinance its interest in this Lease, or any part or parts thereof, and in any sublease without limitation as to amount and without limitation as to what the mortgage secures, under one or more leasehold mortgages ("Leasehold Mortgage"), and the right to assign unconditionally, collaterally or otherwise, this Lease and any sublease as collateral security for such Leasehold Mortgage, and in connection therewith, to grant and convey Tenant's interest in the buildings and any building service equipment in such form as the holder of the Leasehold Mortgage determines. Any such Leasehold Mortgage shall be subject and subordinate to the rights of Landlord hereunder. All proceeds of any Leasehold Mortgage shall belong to Tenant. For purposes of this Lease, "Leasehold Mortgagee" shall mean the holder of a Leasehold Mortgage who shall have (i) agreed in writing to be bound by, and to comply with, the provisions of this Lease hereof from and after the time as Leasehold Mortgagee forecloses on the Leasehold Mortgage and for so long as Leasehold Mortgagee has the leasehold interest in the Premises, (ii) given notice to Landlord of the granting of such Leasehold Mortgage, identifying the name and address of such Leasehold Mortgagee, and (iii) shall be limited to an institutional lender such as an insurance company, bank or trust company, pension or retirement fund or other lender whose loans on real estate are regulated by state or federal law.

(a) No Leasehold Mortgagee shall be entitled to enjoy the rights or benefits mentioned herein, nor shall the provisions of this Lease pertaining to Leasehold Mortgages be binding upon Landlord, unless Landlord shall have been given written notice of the name and

address of the Leasehold Mortgagee together with a true and correct copy of the Leasehold Mortgage and the note secured thereby.

(b) For the purposes of this Article, the term "mortgage" shall include mortgages, deeds of trust, assignments of the sublessor interest, and all similar instruments, as well as security interests, including security interests in personal property, and pledges and assignments of the lessee's interest in this Lease, and modifications, replacements and consolidations of any of the foregoing, and the term "the Premises" shall include the land demised by this Lease and all improvements, fixtures and equipment thereon.

18.2. Provisions Regarding Leasehold Mortgages. The following shall apply in connection with Leasehold Mortgages:

(a) There shall be no cancellation, surrender or modification of this Lease by joint action of Landlord and Tenant, without the prior consent in writing of the Leasehold Mortgagee, provided that nothing contained in this Section 18 shall prevent Landlord from exercising its rights to terminate this Lease upon the occurrence of an Event of Default.

(b) Landlord shall, upon serving Tenant with any notice of an Event of Default, simultaneously serve a copy of such notice upon the Leasehold Mortgagee; provided, Landlord shall have no obligation if Landlord has not been apprised in writing of the name and address of such Leasehold Mortgagee. The Leasehold Mortgagee shall thereupon have the right to remedy or cause to be remedied the defaults complained of, including reimbursement to Landlord for any costs or expenses incurred if payable by Tenant under such circumstances, within the period allowed Tenant to cure such Event of Default in accordance with the terms of this Lease plus an additional thirty (30) days and Landlord shall accept such performance by or at the instigation of the Leasehold Mortgagee as if the same had been done by Tenant, provided, however, that the Leasehold Mortgagee shall never be obligated so to do.

(c) Landlord shall take no action to effect a termination of this Lease by reason of any Event of Default, without first giving to the Leasehold Mortgagee a reasonable time within which either (i) to cure such Event of Default in accordance with the terms of this Lease, in the case of a default which can be cured by the Leasehold Mortgagee without the commencement of foreclosure proceedings or obtaining possession of the Premises; or (ii) in the case of a default which cannot be cured unless and until the Leasehold Mortgagee has obtained possession of the Premises, to obtain possession of the Premises (including possession by a receiver), and thereafter to cure such Event of Default in accordance with the terms of this Lease; or (iii) to institute foreclosure proceedings, as expeditiously as is reasonable and prudent under the circumstances, subject to such delays as are beyond the Leasehold Mortgagee's reasonable control, and thereafter to cure such Event of Default in accordance with the terms of this Lease; provided, however, that (x) in the case of a default in the payment of money, a reasonable time to cure the same shall be fifteen (15) days following receipt of notice thereof and a reasonable time under subsection (ii) and (iii) above shall not exceed six (6) months.; (y) the Leasehold Mortgagee shall not be required to continue such possession or such foreclosure proceedings which may theretofore have been instituted following a curing of any such Event of Default in accordance with the terms of this Lease by the Tenant; and (z) nothing herein shall preclude the

Landlord from exercising any rights or remedies under this Lease, other than the right of termination which is to be governed by this Section, with respect to any other Event of Default by the Tenant during any period of such forbearance. So long as any such Event of Default is cured in accordance with the terms of this Lease within the time hereinbefore provided the Landlord shall not effect a termination of this Lease by reason of any such default so cured.

(d) In the event of the termination of this Lease for any reason whatsoever, including, without limitation, Event of Default of Tenant, Landlord shall, except as hereinafter provided, enter into a new lease with the Leasehold Mortgagee or its nominee for the remainder of the Term of this Lease effective as of the date of such termination of this Lease, at the rent and upon the covenants, agreements, terms, provisions and limitations herein contained, provided (i) such Leasehold Mortgagee makes written request for such new lease within twenty (20) days from the date of notice of such termination, (ii) such Leasehold Mortgagee pays or causes to be paid to Landlord at the time of the execution and delivery of such new lease any and all sums which would at the time of the execution and delivery thereof be due under this Lease but for such termination, and pays or causes to be paid any and all reasonable expenses, including reasonable counsel fees, court costs and costs and disbursements incurred by the Landlord in connection with any such termination, (iii) cures any and all other defaults under this Lease reasonably susceptible of being cured by such holder (only defaults which can be cured by the expenditure of money being deemed reasonably susceptible of being so cured). Any such new lease shall be and remain an encumbrance on the Premises having the same priority thereon as this Lease and shall be and remain subordinate to any lien, charge or encumbrance of the fee of the Premises created by Landlord. The Leasehold Mortgagee, as tenant under such new lease, shall have the same rights, title and interest in and to the buildings and improvements on the Premises as Tenant had under this Lease. If the Leasehold Mortgagee becomes the holder of the Tenant's interest, and if the Leasehold Mortgagee shall thereafter assign its interest in this Lease, then so long as the assignee shall have a net worth of not less than Five Million Dollars ($5,000,000), the Leasehold Mortgagee shall be released of all further liability from and after the date of any assignment of such lessee interest.

(e) Landlord agrees that the name of the Leasehold Mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant hereunder. The proceeds from any insurance policies are to be held by any Leasehold Mortgagee and distributed pursuant to the provisions of this Lease, but the Leasehold Mortgagee may reserve its rights to apply to the mortgage debt all, or any part, of Tenant's share of such proceeds pursuant to such Leasehold Mortgage, subject to the payment of all costs and expenses to place the Premises in a safe condition in compliance with all applicable laws, ordinances, rules and regulations.

(f) The failure by any such Leasehold Mortgagee to exercise the right under any provision of this Lease shall not be deemed a waiver of its right under any other provision hereof.

(g) The right of a Leasehold Mortgagee to foreclose a Leasehold Mortgage and to sell or assign the leasehold interest in this Lease is expressly recognized and shall never be

deemed a violation of any provision of this Lease provided such assignment is in compliance with and shall be subject to all of the terms and provisions of this Lease.

18.3. **Further Assurances.** Landlord will, upon request of Tenant, execute, acknowledge, seal and deliver any and all of the instruments to be executed by it, reasonably necessary or required to effectuate the provisions of this Article, but nothing herein contained shall require Landlord to be or become liable on any promissory note evidencing the indebtedness secured by any Leasehold Mortgage.

19. LIENS AND ENCUMBRANCE.

19.1 **No Encumbrance of Landlord's Title.** Tenant will not cause, suffer or permit any liens or encumbrances, nor do any act, which will in any way encumber or impair the title of Landlord in and to the Premises, nor will the interest or estate of Landlord in the Premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant. Any claim to, or lien upon, the Premises arising from any act or omission of Tenant, including, but not limited to, claims or liens arising by reason of any work, labor, services or materials done for, or supplied, or claimed to have been done for, or supplied to Tenant, or anyone else occupying the Premises, or any part thereof, through or under Tenant, will accrue only against the Leasehold Estate of Tenant and will be subject and subordinate to the paramount title and rights of Landlord in and to the Premises.

19.2 **Discharge of Lien.** If any such lien is at any time filed against the Premises, Tenant will cause the same to be discharged of record within thirty (30) days after written notice of the same, by any of payment, deposit or bond. If Tenant fails to discharge any such lien within such period, then, in addition to any other right or remedy of Landlord, Landlord may, but will not be obligated to, procure the discharge of the lien either by paying the amount claimed to be due by deposit in court or bonding. Any amount paid or deposited by Landlord for any of the aforesaid purposes, and all legal and other expenses of Landlord, including reasonable attorneys' fees, in defending any such action or procuring the discharge of such lien, with all necessary disbursements in connection therewith, together with interest thereon at the rate of either twelve percent (12%) per annum or the highest rate permitted by law, whichever is less, shall become due and payable as Additional Rent on the date of Landlord's notice to Tenant of such payment or deposit.

19.3 **No Landlord Liability.** Nothing in this Lease will be deemed to be, or construed in any way as constituting, the consent or request of Landlord, express or implied, by inference or otherwise, to any Person for the performance of any labor or the furnishing of any materials for any construction, rebuilding, alteration or repair of or to the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials which might in any way give rise to the right to file any lien against Landlord's interest in the Premises.

19.4 **Notice to Mechanics.** All materialmen, contractors, artisans, mechanics, laborers and other parties hereafter contracting with Tenant for the furnishing of any labor, services, materials, supplies or equipment with respect to any portion of the Premises are hereby charged with notice that they must look solely to Tenant for payment for same.

20. ASSIGNMENT AND SUBLETTING.

Tenant agrees not to assign or in any manner transfer this Lease or any estate or interest therein, and not to lease or sublet the Premises, or any part or parts thereof, or any right or privilege appurtenant thereto, through or under it, in all cases either by voluntary or involuntary act of Tenant or by operation of law or otherwise, without Landlord's prior written consent, which may be withheld for any reason, or unless as otherwise permitted pursuant to this **Section 20**. Without limiting any of the other provisions contained in this **Section 20**, the restrictions of this **Section 20** shall apply to any merger, consolidation or other reorganization of Tenant or of any entity which directly or indirectly controls Tenant, and any such merger, consolidation or other reorganization shall be deemed to be an assignment of this Lease within the meaning of this **Section 20**. The restrictions are as follows:

(a) If Tenant is a corporation, the sale, issuance or transfer, in one or any series of transactions, of any voting capital stock of Tenant, or any voting capital stock of any corporate entity which directly or indirectly controls Tenant, or any interests in any non-corporate entity which directly or indirectly controls Tenant, which results in a change in the direct or indirect voting control (or a change in the identity of any Person or Persons with the voting control) of Tenant, or any corporate or non-corporate entity which directly or indirectly controls Tenant, shall be deemed to be an assignment of this Lease within the meaning of this **Section 20**.

(b) If Tenant is a partnership, trust, limited liability company or an unincorporated association, then the sale, issuance or transfer, in any one or series of transactions, of a controlling interest therein, or the transfer of a majority interest in or a change in the voting control of any partnership, trust, unincorporated association, limited liability company, or corporation which directly or indirectly controls Tenant, or the transfer of any portion of any general partnership or managing interest in Tenant, or in any such entity shall be deemed to an assignment of this Lease within the meaning of this **Section 20**.

(c) Notwithstanding the provisions of this **Section 20** to the contrary, the issuance or trading of stock on a U.S. Government regulated and recognized exchange, or on the NASDAQ over the counter market shall not be deemed to result in a prohibited assignment or sublease hereunder. (d) An assignment or sublease of this Lease to a parent entity of Tenant, to a wholly owned subsidiary of Tenant, or to an entity which is under common ownership and control with Tenant shall be deemed to be an assignment of this Lease within the meaning of this Section 20 and shall require Landlord's prior written consent, which consent shall not be unreasonably withheld or delayed. Landlord and Tenant hereby agree that, in the event Landlord consents to such assignment, (a) such assignee shall agree in writing to perform all of the unperformed terms, covenants and conditions of this Lease (whether accruing prior to, on, or after the effective date of the assignment), and (b) Tenant shall agree in writing to remain primarily obligated for the performance of the terms, covenants and conditions of this Lease.

(e)As used in this **Section 20**, the term "control" shall mean the ownership of and the power to vote more than fifty percent (50%) of the voting stock of a corporation or more than fifty percent (50%) of the ownership interests in any partnership, limited liability company, or other business entity.

(f)Landlord has specifically relied on the identity and special skill of Tenant to complete construction of and operate the Premises, and the foregoing prohibition on assignment or subletting or the like is expressly agreed to by Tenant as an inducement to Landlord to lease to Tenant. Accordingly (a) any such prohibited act shall be null and void, and (b) if Tenant fails to rescind any such prohibited act (whether effected voluntarily, involuntarily, by operation of law, or otherwise) within thirty (30) days after receipt of written notice from Landlord, then Landlord shall have the option to terminate this Lease. Tenant hereby acknowledges that the foregoing provisions of this **Section 20** constitute a freely negotiated restraint on alienation.

(g) Notwithstanding the foregoing provisions of this **Section 20**, in the case of any subletting of the Premises by Tenant whereby Tenant maintains control of the Premises and subtenant expressly agrees in writing to perform all of the unperformed terms of this Lease, except for the payment of Rent to Landlord so long as Tenant is not in Default on Rent payments, then in such event Landlord shall not unreasonably withhold or delay its consent to such sublease.

21. DEFAULT.

21.1 **Event of Default.** The occurrence of any one or more of the following events will constitute a default hereunder: (a)(i) With respect to a non-payment of any installment of Base Rent payable by Tenant pursuant to the terms of this Lease, Tenant shall be in default if Tenant shall not have made such payment within ten (10) business days of its due date, whether or not the same shall or shall not have been demanded; and

(ii) With respect to a non-payment of Additional Rent or any other sum payable by Tenant pursuant to the terms of this Lease, Tenant shall not have remedied such alleged default within ten (10) days after receipt of such notice.

(b). Tenant fails to create at least two hundred fifty (250) jobs (as defined in Section 36 hereof) by the third anniversary of the Commencement Date, and thereafter maintain at least an average of two hundred fifty (250) jobs (the "Minimum Jobs Requirement") for any three year period commencing after the third anniversary of the Commencement Date and through the remainder of the Term hereof. Notwithstanding the foregoing and any other terms in this Lease to the contrary, Tenant shall have four (4) successive periods of six (6) months each (each such six (6) month period being referred to herein as a "Minimum Jobs Requirement Cure Period") in which to cure such default and attain the Minimum Jobs Requirement. Tenant may exercise the first Minimum Jobs Requirement Cure Period by written notice to Landlord within ten (10) business days of a notice of default from Landlord that Tenant is in default of the Minimum Jobs Requirement. Tenant may thereafter exercise the second Minimum Jobs Requirement Cure Period by written notice to Landlord and the payment to Landlord as Additional Rent an amount equal to Five Hundred Thousand Dollars ($500,000) prior to the first day of the second Minimum Jobs Requirement Cure Period. Tenant may thereafter exercise the third Minimum Jobs Requirement Cure Period by written notice to Landlord and the payment to Landlord as Additional Rent an amount equal to One Million Dollars ($1,000,000) prior to the first day of the third Minimum Jobs Requirement Cure Period. Tenant may thereafter exercise the fourth and final Minimum Jobs Requirement Cure Period by written notice to Landlord and

the payment to Landlord as Additional Rent an amount equal to One Million Five Hundred Thousand Dollars ($1,500,000) prior to the first day of the fourth and final Minimum Jobs Requirement Cure Period.

(c) Tenant fails to observe or perform any of the other covenants, conditions or provisions of this Lease to be observed or performed by Tenant, and Tenant fails to cure such default within thirty (30) days after notice thereof in writing to Tenant, or if such default cannot be reasonably cured within such thirty (30) day period, unless Tenant begins such cure within such thirty (30) day period and diligently pursues such cure to completion, but not more than one hundred and ninety (190) days.

(d) Tenant (i) files a petition (a) commencing a voluntary case under any provisions of the United States Bankruptcy Code or any similar or successor statute, code or act (the **"Bankruptcy Code")**, or (b) for liquidation, reorganization or for an arrangement pursuant to any other federal or state bankruptcy law or any similar federal or state law, or (ii) shall be adjudicated a debtor or be declared bankrupt or insolvent under the Bankruptcy Code, or any other federal or state law as now or hereafter in effect relating to bankruptcy, insolvency, reorganization, winding-up or adjustment of debts, or (iii) shall make an assignment for the benefit of creditors, or fails to pay its debts generally as they become due, or shall admit in writing its inability to pay its debts generally as they become due, or (iv) if a petition commencing an involuntary case under the Bankruptcy Code or an answer proposing the adjudication of Tenant as a debtor or a bankrupt or proposing its liquidation or reorganization pursuant to the Bankruptcy Code, any other federal or state bankruptcy law or any similar federal or state law shall be filed in any court and (x) Tenant shall consent to or acquiesce in the filing thereof, or (y) such petition or answer shall not be discharged or denied within ninety (90) days after the filing thereof.

(e) A custodian, receiver, U.S. Trustee, trustee or liquidator of Tenant, or of all or substantially all of the assets of Tenant, or of the Premises or Tenant's estate therein, is appointed in any proceeding brought by Tenant, or if any such custodian, receiver, U.S. Trustee, trustee or liquidator shall be appointed in any proceeding brought against Tenant, and in either instance shall not be discharged or dismissed within ninety (90) days after such appointment; or if Tenant shall consent to or acquiesce in such appointments.

(f) The voluntary dissolution of Tenant, or with respect to an involuntary judicial dissolution, the entry of a final, non-appealable judgment of dissolution against Tenant.

22. REMEDIES.

Upon the occurrence of any one or more such events of default, Landlord may at its election, either terminate this Lease or terminate Tenant's right to possession only, without terminating this Lease, pursuant to the following provisions:

22.1 <u>Termination of Lease.</u>

(a) Landlord shall have the right, at its election, to terminate the Term of this Lease on a date specified in a notice from Landlord to Tenant. Upon the giving of such notice,

the Termination Date under this Lease shall be the date specified in such notice. On such date, all right, title and interest of Tenant hereunder shall expire, and Tenant shall then peaceably and quietly quit the Premises and surrender the same to Landlord, but Tenant shall remain liable as hereafter provided. If any such notice is given, Landlord shall have the immediate right of re-entry and possession of the Premises and the right, pursuant to the provisions of **Section 22.3**, to remove all Persons and other property therefrom.

(b) Upon termination of this Lease, Landlord at its option shall be entitled to recover all Rent and other sums due and payable by Tenant on the date of termination; such specific amounts as are allowed pursuant to this **Section 22**, and all other amounts to which Landlord is entitled under Rhode Island law. Tenant's economic obligations under this **Section 22.1.B** shall survive the termination of this Lease and shall be due and payable by Tenant immediately upon demand by Landlord.

22.2 Termination of Possession.

(a) Landlord shall have the right at its election to terminate Tenant's right of possession only, without terminating this Lease, on a date specified in a notice from Landlord to Tenant, and on the date specified in such notice, all rights of Tenant with respect to possession of the Premises shall expire. Upon such date, Landlord may, at its option, repossess the Premises pursuant to the provisions of **Section 22.3**, without such entry and possession terminating this Lease or releasing Tenant, in whole or in part, from Tenant's obligations to pay the Rent hereunder for the full Term or for any other of its obligations under this Lease. No such re-entry or taking of possession of the Premises by Landlord shall be construed as an election on Landlord's part to terminate Tenant's economic and monetary obligations under this Lease unless express written notice of such intention be given to Tenant, or unless the termination thereof be decreed by a court of competent jurisdiction.

(b) Landlord will make a reasonable attempt to relet all or any part of the Premises for such rent and upon terms satisfactory to Landlord (including the right to relet the Premises for a term greater or lesser than that remaining under the Lease term, the right to relet the Premises as a part of a larger area, the right to change the character or use made of the Premises and the right to grant rent concessions). If Landlord does not relet the Premises, Tenant will periodically pay Landlord when due all amounts due from Tenant to Landlord under this Lease for the remainder of the Lease Term. If the Premises are relet and a sufficient sum is not realized from such reletting (after paying all of the reletting costs and the collection of the rental accruing therefrom) to satisfy the Rent herein provided to be paid for the remainder of the Lease Term, Tenant will be liable for the difference in rent and shall pay same as it becomes due upon demand to Landlord. Tenant agrees that Landlord may commence successive actions to recover any sums falling due under the terms of this **Section 22.2.B**, and all reasonable costs and expenses of Landlord, including attorney's fees and costs incurred in connection with such suits shall be paid by Tenant. Landlord shall not be liable or responsible for its failure to relet the Premises, or in the event that the Premises are relet, for its failure to collect the rent thereof under such reletting, but Landlord represents that it will make reasonable efforts to do so.

22.3 Repossession of Premises. Upon termination of this Lease or of Tenant's right to possession, Landlord may peacefully take possession of and re-enter the Premises by summary

proceedings, ejectment, or any other legal action, or in any other manner Landlord determines to be necessary or desirable, and remove all fixtures, chattels, signs, and other evidence of Tenant's tenancy therefrom. Landlord will not be liable for any damages resulting therefrom unless caused by Landlord's intentional misconduct. Upon such repossession, Landlord may enter upon the Premises, and again have, repossess and enjoy the same as if this Lease had not been made, and in any such event, neither Tenant nor any Person claiming through or under Tenant by virtue of any statute or of an order of any court shall be entitled to possession or to remain in possession of any part of the Premises, but shall immediately quit and surrender same. Landlord may thereafter, for the purpose of reletting the Premises at its option under **Section 22.1**, or as required under **Section 22.2**, decorate or make any repairs, changes, alterations or additions in or to the Premises as may be necessary, in Landlord's reasonable discretion. Landlord shall also have the right to expend reasonable fees of attorneys, architects, and other experts, and also any other legitimate expenses or commissions related to such reletting. All of the expenses incurred by Landlord hereunder shall be referred to as **"Reletting Costs"**. No such re-entry or repossession of the Premises shall be construed as an election by Landlord to terminate the Term of this Lease unless a notice of such termination is given to Tenant pursuant to **Section 22.1**.

22.4 <u>Miscellaneous Remedy Provisions</u>.

(a) Nothing herein shall limit or prejudice the right of Landlord to prove for and obtain in proceedings for bankruptcy or insolvency by reason of any such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, the damages are to be proved, whether or not the amount be greater, equal to or less than the amount of the loss or damage referred to above.

(b) Any and all property belonging to Tenant, or to which Tenant is or may be entitled, which may be removed from the Premises by Landlord pursuant to the authority of this Lease or applicable law, may be handled, removed or stored in a commercial warehouse or otherwise by Landlord at Tenant's risk, cost and expense, and Landlord shall in no event be responsible for the value, preservation or safekeeping thereof. Tenant shall pay to Landlord, upon demand, any and all expenses incurred in such removal and all storage charges for such property so long as the same shall be in Landlord's possession or under Landlord's control.

(c) Landlord's re-entry upon the Premises or demand for possession thereof, or Landlord's notice to Tenant that the tenancy hereby created will be terminated on the date therein set forth or the institution of an action for forcible detainer or ejectment or summary process or the entering of a judgment for possession in such action or any other act or acts resulting in the termination of Tenant's right to possession of the Premises, shall not relieve Tenant from Tenant's obligation to pay all sums due hereunder during the balance of the Term or any extension thereof, except as herein expressly provided. Landlord may collect and receive any Rent due from Tenant, and the payment thereof shall not: (i) constitute a waiver of or affect any notice or demand given, suit instituted or judgment obtained by Landlord; (ii) serve to reinstate, continue or extend the Lease Term; or (iii) be held to waive, affect, change, modify or alter the rights or remedies which Landlord has against Tenant in equity or at law or by virtue of this Lease, unless any such rights are specifically waived by Landlord in writing.

(d) Subject to Tenant's rights with respect to Permitted Contests under **Section 33**, if Tenant at any time fails to make any payment or perform any other act on its part to be made or performed under this Lease, Landlord may, but shall not be obligated to, after reasonable notice or demand and without waiving or releasing Tenant from any obligation under this Lease, make such payment or perform such other act to the extent Landlord may deem desirable and in connection therewith pay expenses and employ counsel. All sums so paid by Landlord shall be deemed Additional Rent and shall be payable upon demand, together with interest thereon at the rate of twelve percent (12%) per annum or the highest rate permitted by law, whichever is less, and Landlord shall have the same rights and remedies for the non-payment thereof as in the case of default in the payment of Rent hereunder. Unless caused by Landlord's intentional misconduct, Landlord shall not in any event be liable for any damages incurred by Tenant by reason of Landlord's performance hereunder.

(e) Nothing herein contained shall be deemed to require Landlord to wait to begin such action or other legal proceedings until the date when this Lease would have expired had there been no such default by Tenant.

23. BANKRUPTCY OR INSOLVENCY.

23.1 **Rejection of Lease.** If Tenant shall become a debtor under Chapter 7 of the Bankruptcy Code and Tenant's trustee or Tenant shall elect to assume this Lease for the purpose of assigning the same or otherwise, such election and assignment may be made only if all of the provisions of **Sections 23.2** and **23.4** are satisfied. If Tenant or Tenant's trustee shall fail to elect to assume this Lease within sixty (60) days after the filing of a petition, or such additional time as provided by the court within such sixty (60)-day period, this Lease shall be deemed to have been rejected. Immediately thereupon, Landlord shall be entitled to possession of the Premises without further obligation to Tenant or Tenant's trustee, and this Lease shall terminate, but Landlord's rights to be compensated for damages in any such proceeding shall survive.

23.2 **Assumption of Lease.** If a petition for reorganization or adjustment of debts is filed concerning Tenant under Chapter 11 of the Bankruptcy Code, or a proceeding is filed under Chapter 7 of the Bankruptcy Code and is transferred to Chapter 11, Tenant's trustee or Tenant, as debtor-in-possession, must elect to assume this Lease within the earlier of (x) confirmation of the plan or (y) one hundred and twenty (120) days from the date of the filing of the petition under Chapter 11 or such transfer thereto, or Tenant's trustee or Tenant, as debtor-in-possession, shall be deemed to have rejected this Lease. If Tenant's trustee or Tenant, as debtor-in-possession, has failed to perform all of Tenant's obligations under this Lease within the time periods (excluding grace periods) required for such performance, no election by Tenant's trustee or by Tenant, as debtor-in-possession, to assume this Lease, whether under Chapter 7 or Chapter 11, shall be effective unless each of the following conditions has been satisfied:

(a) Tenant's trustee or Tenant, as debtor-in-possession, has cured, or has provided Landlord with Assurance (as defined below) that it will cure, (i) all monetary defaults under this Lease within ten (10) days from the date of such assumption, and (ii) all non-monetary defaults under this Lease within thirty (30) days from the date of such assumption;

(b) Tenant's trustee or Tenant, as debtor-in-possession, has compensated, or has provided Landlord with Assurance that within ten (10) days from the date of such assumption it will compensate, Landlord for any actual pecuniary loss incurred by Landlord arising from the default of Tenant, as debtor-in-possession, or Tenant's trustee, as indicated in any statement of actual pecuniary loss sent by Landlord to Tenant's trustee or to Tenant, as debtor-in-possession; and

(c) Tenant's trustee or Tenant, as debtor-in-possession, has provided Landlord with Assurance of the future performance of each of the obligations of Tenant under this Lease of Tenant, and Tenant's trustee or Tenant, as debtor-in-possession, has (A) deposited with Landlord, as security for the timely payment of Rent hereunder, an amount equal to three (3) months of Base Rent and (B) paid in advance to Landlord on the date Base Rent, is due and payable, one-twelfth (1/12) of Tenant's annual obligations for Additional Rent pursuant to this Lease.

The above obligations imposed upon Tenant's trustee or Tenant, as debtor-in-possession, shall continue with respect to Tenant or any assignee of Tenant's interests in this Lease after the completion of bankruptcy proceedings.

23.3 <u>Assurance</u>. For purposes of this **<u>Section 23</u>**, Landlord and Tenant acknowledge and agree that **"Assurance"** shall mean no less than that each of the following conditions has been satisfied:

(a) Tenant's trustee or Tenant, as debtor-in-possession, has and will continue to have sufficient unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease, and

(b) The Bankruptcy Court shall have entered an order segregating sufficient cash payable to Landlord, and/or Tenant's trustee or Tenant, as debtor-in-possession, shall have granted a valid and perfected first lien and security interest and/or mortgage in property of Tenant, Tenant's trustee or Tenant, as debtor-in-possession, acceptable as to value and kind to Landlord, to secure to Landlord the obligation of Tenant's trustee or Tenant, as debtor-in-possession, to cure the defaults under this Lease, monetary and non-monetary, within the time periods set forth above.

23.4 <u>Subsequent Tenant Bankruptcy</u>. If this Lease is assumed in accordance with **<u>Section 23.2</u>** and thereafter Tenant is liquidated or files or has filed against it a subsequent petition for reorganization or adjustment of debts under Chapter 11 of the Bankruptcy Code, Landlord may, at its option, terminate this Lease and all rights of Tenant hereunder, by giving Tenant notice of its election so to terminate within thirty (30) days after the occurrence of either of such events.

23.5 <u>Adequate Assurance</u>. If Tenant's trustee or Tenant, as debtor-in-possession, has assumed this Lease pursuant to the terms and provisions of **Sections 23.1** or **23.2** for the purpose of assigning (or elects to assign) this Lease, this Lease may be so assigned only if the proposed assignee has provided adequate assurance of future performance of all of the terms, covenants and conditions of this Lease to be performed by Tenant. Landlord shall be entitled to receive all

cash proceeds of any such assignment. As used herein, "**adequate assurance of future performance**" shall mean no less than that each of the following conditions has been satisfied:

(a) The proposed assignee has furnished Landlord with either (i) a current financial statement audited by a certified public accountant indicating a cash flow that Landlord reasonably determines to be sufficient to assure the future performance by such assignee of Tenant's obligations under this Lease, or (ii) a guarantee or guarantees in form and substance satisfactory to Landlord from one or more Persons with sufficient cash flow to meet all current obligations plus obligations under this Lease; and

(b) Landlord has obtained all consents or waivers from others required by any lease, mortgage, financing arrangement or other agreement by which Landlord is bound to permit Landlord to consent to such assignment.

23.6. Reasonable Use and Occupancy Charges. When, pursuant to the Bankruptcy Code, Tenant's trustee or Tenant, as debtor-in-possession, shall be obliged to pay reasonable use and occupancy charges for the use of the Premises, such charges shall not be less than the Base Rent and Additional Rent payable by Tenant under this Lease.

23.7 No Deemed Landlord Consent to Assignment. Neither the whole nor any portion of Tenant's interest in this Lease or its estate in the Premises shall pass to any U.S. trustee, receiver, assignee for the benefit of creditors, or any other Person, or otherwise by operation of law under the laws of any state having jurisdiction of the person or property of Tenant unless Landlord shall have consented to such transfer in writing. No acceptance by Landlord of Rent or any other payments from any such U.S. trustee, receiver, assignee, or Person shall be deemed to constitute such consent by Landlord nor shall it be deemed a waiver of Landlord's rights to terminate this Lease for any transfer of Tenant's interest under this Lease without such consent.

23.8 Applicable Law. To the extent that any of the terms and provisions of this **Section 23** impose additional obligations and restrictions on Tenant, or Tenant's trustee in bankruptcy, than would otherwise be imposed under the Bankruptcy Code, such provisions shall not be operative to the extent that the Bankruptcy Code or other applicable law prohibits Tenant from contractually assuming such additional obligations and restrictions.

24. SURRENDER.

24.1 Surrender of Premises. Upon the Termination Date, Tenant shall at once peaceably surrender the Premises to Landlord broom clean and in good order, condition and repair, ordinary wear and tear excepted.

24.2 Removal of Personal Property. The Tenant may, at the termination of this Lease, remove all of its furniture, furnishings, equipment, machinery, accessories and supplies, and all such other tangible personalty as may not be affixed or attached to the Premises. The Tenant shall, at its own expense, perform such repairs as are necessary to restore the Premises to the condition required pursuant to **Section 24.1**.

25. HOLDING OVER.

25.1 <u>**Holding Over.**</u> Unless the parties agree otherwise, any holding over of possession of the Premises by Tenant after the expiration of this Lease will operate and be construed, to be a tenancy from month to month only, at a monthly rental of one hundred fifty percent (150%) of the last monthly Base Rent plus all other Additional Rent payable hereunder, and upon the terms hereof applicable to a month-to-month tenancy. Such month to month tenancy will only be created if Tenant pays such holdover rent, and said tenancy may be terminated at any time by either Party by fourteen (14) days prior written notice to the other Party. Nothing contained in this **Section 25** is to be construed to give Tenant the right to hold over at any time and Landlord may exercise any and all remedies at law or in equity to recover possession of the Premises and damages resulting from any such holding over.

25.2 If, by reason of the length of the Term of this Lease, it could be deemed something more than a lease for years requiring a transfer by deed or conveyance in order to terminate the same, Tenant shall execute such deed or other documentation as may be required to perfect fee title to the Premises in Landlord free and clear of this Lease.

26. BROKER.

Landlord and Tenant each represent and warrant to the other that each has not dealt with any real estate agent or broker in connection with this transaction other than CB Richard Ellis N.E. Partners L.P. (the **"Broker"**). Landlord shall be responsible for any commission due the Broker under a separate agreement with Broker. Landlord shall indemnify and hold Tenant harmless from and against any claims made against Tenant by any broker acting or claiming to act on behalf of Landlord. Tenant shall indemnify and hold Landlord harmless from and against any claim made against Landlord by any broker acting or claiming to act on behalf of Tenant. The indemnifications and hold harmless provisions of this Section include, but are not limited to, court costs, reasonable attorney fees and other professional fees and expenses, including the cost of any appeals.

27. QUIET ENJOYMENT.

Subject to the terms and conditions of this Lease, Tenant, upon and during the continuance of its payment of all Rent and sums herein provided and its compliance with the performance of all those provisions, terms and conditions applicable to and performable by Tenant, shall peaceably and quietly hold, occupy, and enjoy the Premises for the Lease Term without hindrance, ejection, or interruption by any person claiming by, through or under Landlord.

28. LIMITATION OF LIABILITY.

Notwithstanding anything in this Lease to the contrary, Tenant agrees that there shall be absolutely no personal liability on the part of Landlord with respect to any of the terms, covenants and conditions of this Lease, and Tenant shall look solely to the fee interest of Landlord in the Premises for the satisfaction of each and every remedy of Tenant in the event of any breach by Landlord, or by such successor in interest, of any of the terms, covenants and

conditions of this Lease to be performed by Landlord, such exculpation of personal liability to be absolute and without any exception whatsoever, and no other assets of Landlord shall be subject to levy, execution or other procedures for the satisfaction of Tenant's remedies. Any assignment or other similar instrument made or to be made by Landlord with respect to this Lease shall be subject to the terms and provisions of this Lease and the rights herein granted to Tenant. However, Landlord shall have no liability whatsoever to Tenant for any breach of this covenant occasioned by the acts or omissions of any transferee, successor or assignee of Landlord.

29. NOTICES.

29.1 **Method of Notice.** All notices, demands or other instruments required or permitted hereunder or required by law shall be in writing and served in one of the following methods:

(a) Personally upon the Person or an officer of the Person to whom the notice is addressed;

(b) By United States mail, postage prepaid, certified mail, return receipt requested;

(c) By a recognized messenger or delivery service guaranteeing overnight delivery, postage prepaid, with customary tracking capabilities assuring confirmation of receipt;

29.2 **Addresses.** The notices specified in Subsection **29.1 B.**, **C.**, and **D.** shall be addressed to Landlord, Tenant and the other parties specified at their respective addresses set forth below. Landlord and Tenant each may from time to time specify, by giving notice to the other Party, (a) any other address as its address for purposes of this Lease and (b) any other Person that is to receive copies of notices, offers, consents and other instruments hereunder.

The names and mailing address of Landlord and Tenant are:

Landlord

Quonset Development Corporation
c/o Managing Director
95 Cripe Street
North Kingstown, RI 02852

email address:

With a copy to:

Adler Pollock & Sheehan P.C.
One Citizens Plaza, 8th Floor
Providence, RI 02903-1345

Tenant

Deepwater Wind Rhode Island, LLC
36-42 Newark Street, Suite 402
Hoboken, NJ 07030
Attn: ____________________

With a copy to:

Hinckley Allen & Snyder, LLP
50 Kennedy Plaza, Suite 1500
Providence, RI 02903

Attn: Robert I. Stolzman, Esquire Attn: Jeffrey M. Grybowski, Esq.

email address: rstolzman@apslaw.com

29.3 Effective Date. Notices shall be effective upon personal delivery pursuant to **Section 29.1.A.** or confirmed receipt by any of the methods specified in **Sections 29.1.B., C.,** or **D.**; provided, however that any e-mail delivery pursuant to **Section 29.1.D.** shall be promptly supplemented with a hard copy delivery made through one of the other methods specified in **Section 29.1.** Delivery shall also be deemed given if there is confirmed evidence that the addressee has refused to accept delivery, or upon return because of impossibility to deliver (provided in such instance the Person providing notice shall be required to make a good faith effort to locate the new address of the other Person).

30. RECORDING.

Tenant shall not record this Lease and any such recordation shall be a default hereunder. Concurrently with the execution of this Lease, Landlord and Tenant may, at the request of either Party, execute a short form "memorandum" of this Lease prepared by Landlord in form suitable for recording which Tenant may, at its cost, record, provided that Tenant shall, if it records such memorandum, furnish a copy bearing the recorder's stamp to Landlord. At the expiration or earlier termination of this Lease, Tenant shall, at the request of Landlord, execute and deliver to Landlord a lease cancellation instrument or other instrument in form suitable for recording, provided that such document does not have the effect of waiving any claims that either Landlord or Tenant may have against the other arising out of this Lease.

31. MISCELLANEOUS.

31.1 Definitions. Words of any gender used in this Lease will be held and construed to include any other gender and words in the singular number shall be held to include the plural unless the context requires otherwise. The term **"Person"** when used in this Lease shall mean any individual, corporation, partnership, firm, trust, joint venture, business association, syndicate, combination, organization or any other person or entity. The term "**Business Day**" when and if used in this Lease shall mean any day other than Saturday, Sunday or any legal holiday under the laws of the United States or the State of Rhode Island. The term **"Party"** when used in this Lease shall mean either, or both of, Landlord and Tenant.

31.2 Binding Effect. Subject to the terms of **Section 31.14** with respect to Landlord, The terms, provisions, covenants and conditions contained in this Lease will apply and, inure to the benefit of, and be binding upon, the Parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns and subtenants except as otherwise herein expressly provided. "Permitted assigns and subtenants" includes only such assigns and such subtenants to whom the assignment of this Lease or the subletting of the Premises by Tenant has either been consented to by Landlord or is otherwise permitted pursuant to the terms of this Lease.

31.3 **Interest Rate.** Except as expressly herein provided, any amount due to Landlord or Tenant not paid when due shall bear interest from the date due at the rate of twelve percent (12%) or the highest rate permitted by law, whichever is less. Payment of such interest shall not excuse or cure any default by Tenant under this Lease.

31.4 **Captions.** The table of contents preceding this Lease and the headings to the Sections of this Lease are for convenience only and do not define, limit or otherwise describe the scope or intent of this Lease or any provision hereof nor affect the interpretation of this Lease.

31.5 **Entire Agreement.** This Lease and the Exhibits hereto contain all agreements of the Parties with respect to any matter mentioned herein or therein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified in writing only, signed by the parties in interest at the time of the modification.

31.6 **Time of the Essence.** Time is of the essence with respect to the due performance of the terms, covenants and conditions herein contained.

31.7 **Separability.** If any term or provision of this Lease is to any extent held invalid or unenforceable, the remaining terms and provisions of this Lease will not be affected thereby, but each term and provision of this Lease will be valid and be enforceable to the fullest extent permitted by law.

31.8 **Non-Exclusive Remedies.** No specific right, remedy or election hereunder shall be deemed exclusive, but shall wherever possible be cumulative with all other remedies at law or in equity, and no such reference shall preclude Landlord from exercising any other right or from having any other remedy or from maintaining any action to which it may otherwise be entitled at law or in equity.

31.9 **No Waiver.** No waiver by Landlord or Tenant of any breach by the other Party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach of the same or any other provision or alter this Lease in any way whatsoever. No failure by either Landlord or Tenant to insist upon the strict performance of any agreement, term, covenant or condition hereof, or to exercise any right or remedy upon a breach hereof and no payment by Tenant, or acceptance by Landlord, of full or partial Rent during the continuance of any such breach, shall constitute a waiver of any such breach, agreement, term, covenant or condition. Landlord's or Tenant's consent to or approval of any act shall not be deemed to render unnecessary the obtaining of consent to or approval of any subsequent act.

31.10 **No Merger.** There shall be no merger of this Lease or of the Leasehold Estate with the fee estate in the Premises or any part hereof by reason of the fact that the same person may acquire or hold, directly or indirectly, this Lease or the Leasehold Estate or any interest in this Lease or in such Leasehold Estate as well as the fee estate in the Premises or any interest in such fee estate.

31.11 **Resolution.** If any Party is an entity, such Party shall furnish the other Party with a certified copy of a duly adopted resolution of the board of directors, general partners, managing

members, or such other proper parties associated with such Party with respect to the due authorization to execute and deliver this Lease.

31.12 **Corporate Authority.** If any Party is an entity, each individual executing this Lease on behalf of said entity represents and warrants that such individual is duly authorized to execute and deliver this Lease on behalf of said entity in accordance with a duly adopted resolution of such entity and in accordance with the bylaws, partnership agreement, operating agreement, or trust agreement of said entity, and that this Lease is binding upon said entity in accordance with its terms.

31.13 **Governing Law.** This Lease shall be construed and enforceable in accordance with the laws of the Rhode Island.

31.14 **Assignment by Landlord.** Nothing in this Lease shall be deemed to limit or affect the right of Landlord to sell, assign, encumber, transfer, lease or otherwise dispose of any or all of Landlord's interest in any portion or all of the Premises. The term **"Landlord"** as used herein shall mean only the owner or owners at the time in question of the fee title of the Premises or Landlord's interest in this Lease, or any part thereof. In the event of any transfer of such title or interest, from and after the date of such transfer, Landlord herein named (and in case of any subsequent transfers, the then grantor) shall be relieved of all liability as respects Landlord's obligations thereafter to be performed, provided that any funds in the hands of Landlord or the then grantor at the time of such transfer, in which Tenant has an interest, shall be delivered to the grantee, and further provided that Landlord's transferee assumes in writing all of the obligations of Landlord hereunder. The obligations contained in this Lease to be performed by Landlord shall, subject as aforesaid, be binding on Landlord's successors and assigns, only during their respective periods of ownership.

31.15 **Effective Date of Lease; No Option.** Submission of this instrument for examination does not constitute a reservation of or option for the Premises. The instrument becomes effective as a lease only upon execution and delivery by both Landlord and Tenant.

31.16 **Exhibits.** All Exhibits referred to in and attached to this Lease are hereby made a part of this Lease.

31.17 **Partial Payment.** No receipt or acceptance by Landlord from Tenant of less than the monthly Rent herein stipulated shall be deemed to be other than a partial payment on account for any due and unpaid stipulated Rent; no endorsement or statement on any check or any letter or other writing accompanying any check or payment of Rent to Landlord shall be deemed an accord and satisfaction, and Landlord may accept and negotiate such check or payment without prejudice to Landlord's rights to (a) recover the remaining balance of such unpaid Rent or (b) pursue any other remedy provided in this Lease.

31.18 **No Joint Venture.** Landlord shall not by the execution of this Lease in any way or for any purpose, become (a) a partner of Tenant in the conduct of Tenant's business or otherwise, or (b) a joint venturer or a member of a joint enterprise with Tenant.

31.19 **No Power to Charge Reversion.** Tenant shall not have the power to do any act or make any contract which may create or be the foundation for any lien upon the present fee estate, reversion or other estate of Landlord in the Premises.

31.20 **Injunctive Relief.** In addition to the other remedies provided in this Lease, the Parties hereto shall be entitled to injunctive relief in case of the violation, or attempted or threatened violation, of any of the covenants, agreements, conditions or provisions of this Lease by the other, or to a decree compelling performance of any of such covenants, agreements, conditions or provisions of this Lease or to any other remedy allowed to the Parties at law or in equity.

31.21 **Standard of Discretion.** Unless specifically provided otherwise, any approval, consent or decisions to be made by any Party, shall be made in the reasonable discretion of such Party, and shall not be unreasonably withheld, conditioned, or delayed.

31.22 **Waiver of Trial by Jury.** To the extent permitted by applicable law, the Parties hereby waive for each of them and all those claiming under each of them, any rights which either Party may have under any present or future Laws to a trial by jury in any action, proceeding or counterclaim brought by either of the Parties hereto against the other or any matters whatsoever arising out of or in any way connected to this Lease.

31.23 **Easements.** Tenant will grant to Landlord, and to any nominee of Landlord, such easements and rights of way as Landlord may reasonably request that are necessary, useful or convenient for the development and use of the adjoining property owned by Landlord at the Park, provided that the easement or right of way will not materially adversely interfere with the use of the Premises for the uses permitted under this Lease. The maintenance of any such easement or right of way will be borne by Landlord.

31.24 **Construction.** The provisions of this Lease shall not be construed more strictly against either Party.

31.25 **No Discrimination.** It is intended that the Premises will be operated without discrimination because of race, creed, color, sex, age, national origin or ancestry. To that end, Tenant shall not discriminate in the conduct and operation of the Premises against any person or group of persons because of the race, creed, color, sex, age, national origin or ancestry of such person or group of persons.

31.26 **Attorneys' Fees**: In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Lease on the part of Landlord or Tenant, the prevailing party in such litigation shall be entitled to reasonable attorneys' fees and expert fees and costs to be fixed by the Judge presiding in such action or proceeding.

32. INDEMNIFICATION; DEFENSE.

32.1 **Indemnification.** Except for those arising from Landlord's negligence or willful acts, Tenant agrees to pay, and to protect, indemnify and save harmless Landlord, and any member, officer, director, shareholder, agent or employee of Landlord, from and against, any and

all liabilities, losses, damages, costs, expenses (including any and all attorney's fees and expenses of Landlord), causes of action, suits, claims, demands or judgments of any nature whatsoever attributable to or arising from (a) any act or omission on or about the Premises or any part thereof by, or at the request or direction of, Tenant or its agents, contractors, licensees, subtenants or their respective Guests, (b) injury to, or the death of, persons or damage to or loss of property at the Premises, or on adjoining sidewalks, streets or ways, or connected with the use, condition or occupancy of any thereof, within the primary control and/or custody of Tenant, or in any manner connected with the use, non-use, condition, possession, operation, maintenance, management or occupation of the Premises or resulting from the condition thereof which is not caused by the negligence or willful misconduct of Landlord, (c) violation by Tenant, or its respective Guests of any agreement or condition of this Lease, and of any Laws, conditions, agreements, or restrictions, affecting the Premises or the ownership, occupancy or use thereof, and (d) any Permitted Contest referred to in **Section 33.**

32.2 **Defense.** In case any action, suit or proceeding is brought against Landlord or any member, officer, director, shareholder, agent or employee of Landlord by reason of any occurrence herein described, Tenant will at its own cost and expense defend such action, suit or proceeding with counsel reasonably satisfactory to Landlord.

32.3 **Landlord Negligence.** Nothing herein shall be construed as indemnifying Landlord or any member, officer, director, shareholder, agent or employee of Landlord against its own negligence or willful acts, unless such acts are deemed acts of such party by operation of law and provided that unintentional omissions shall not constitute such negligence or willful acts.

33. PERMITTED CONTESTS

33.1 **Permitted Contests.** Notwithstanding any other provision of this Lease, Tenant shall not be required to pay, discharge or remove any tax, assessment, levy, fee, rent or charge referred to in **Section 6 - Taxes** of this Lease, or comply with an Laws or perform any investigations as required in **Section 17 - Use; Compliance with Law,** or remove any lien referred to in **Section 19 – Liens,** or **Section 5 - Repairs,** so long as Tenant, or its nominee, shall contest in good faith at its own expense the amount or the validity thereof by appropriate proceedings which shall operate to prevent (a) the collection of, or realization upon, the tax, assessment, levy, fee, rent, charge or lien so contested, and (b) the sale, loss or forfeiture of Landlord's interest in the Premises, or any Rent or other sums payable under this Lease, or any part thereof to satisfy the same. No such contest shall be permitted that would (i) materially and adversely affect (A) the ownership, use or occupancy of the Premises, (B) the payment of any Rent or any other sums payable under this Lease, or (C) any other material rights of Landlord hereunder, or (B) subject Landlord to the risk of any criminal liability, civil liability, or forfeiture of Landlord's interest in the Premises. Pending any such proceedings, Landlord shall not have the right to pay, remove, or cause to be discharged the tax, assessment, levy, fee, rent, charge or lien thereby being contested.

33.2 **Indemnification of Landlord.** In the event of such contest, Tenant shall either pay the disputed amount under protest or furnish reasonable security as may be required by Landlord to insure the payment thereof or the requested compliance, and prevent any sale, foreclosure or forfeiture of the Premises, or any part thereof, or any loss of Landlord's interest in

the Premises, or part thereof, or any Rent or any other sums payable under this Lease by reason of such non-payment or non-compliance. Tenant further agrees that such contest shall be prosecuted to a final conclusion diligently, that it will pay, and save Landlord harmless against, any and all losses, judgments, decrees and costs (including all reasonable attorneys' fees and expenses) in connection therewith, and that it will, promptly after the final determination of such contest, fully pay and discharge the amounts which shall be levied, assessed, charged or imposed or be determined to be payable therein, together with all penalties, fines, interest, costs and expenses resulting from such contest. Tenant shall perform all acts that are finally ordered or decreed at the conclusion of the contest.

33.3 **Landlord Cooperation.** Landlord agrees, at Tenant's sole expense, to cooperate with Tenant in any contest permitted hereby, to execute any documents relating thereto that are reasonably requested by Tenant and that do not materially affect Landlord or any of its rights hereunder, and to allow Tenant to bring any such contest, if legally required, in Landlord 's name; provided that Tenant hereby agrees to indemnify Landlord against any loss, damages or expense incurred by reason thereof and provide to Landlord such security as may be requested by Landlord to insure ultimate payment of all amounts claimed to be due in connection with such contest.

34. OPTION TO EXTEND TERM.

(a) Provided that the Tenant is not in default of this Lease, the Tenant may extend the Term for two (2) successive additional terms of five (5) years each (the "First Extension Term" and the "Second Extension Term", respectively) on the same terms and conditions as the Term, except for Base Rent set forth in Section 1.3, upon giving the Landlord written notice of extension not less than ninety (90) days prior to the expiration of the Term or the First Extension Term.

(b) Annual Base Rent during the First Extension Term for the Premises shall be payable as follows:

Commerce Park

	Per Acre	Annual	Monthly
_______, 20___ - _____, 20___	$22,482.50	$1,191,572.50	$99,297.71

North Davisville

	Per Acre	Annual	Monthly
________, 20___ - ________, 20___	$19,837.50	$99,187.50	$82,656.25

Port of Davisville

	Per Acre	Annual	Monthly
_______, 20___ - _______, 20___	$26,450.00	$370,300	$30,858.33

TOTAL RENT

	ANNUAL	MONTHLY
________, 20___ - _______, 20___	$ 2,553,748.00	$212,812.29

(c)Annual Base Rent during the Second Extension Term shall be payable as follows:

Commerce Park

	Per Acre	Annual	Monthly
_______, 20___ - ______, 20___	$25,854.86	$1,370,307.50	$114,192.30

North Davisville

	Per Acre	Annual	Monthly
________, 20___ - ________, 20___	$22,813.13	$1,140,656.20	$95,054.84

Port of Davisville

	Per Acre	Annual	Monthly
_______, 20___ - ______, 20___	$30,417.50	$425,845.00	$35,487.10

TOTAL RENT

	ANNUAL	MONTHLY
_______, 20___ - ______, 20___	$ 2,936,808.70	$244,734.24

Notwithstanding the terms of this Section 34 above, the parties agree that any agreements to extend the Term for periods greater than two (2) successive additional terms of five (5) years each shall be subject to further negotiation of the parties prior to execution of the Lease.

35. USE OF PORT OF DAVISVILLE.

The Tenant shall be permitted to use the Port of Davisville facilities in accordance with the rules, regulations, conditions and commodity rates and charges set forth in both the Quonset Business Park Development Regulations and the Quonset Development Corporation Terminal Tariff No. 017.

36. EMPLOYMENT REQUIREMENT.

Notwithstanding the terms of this form of Lease which is Exhibit B to that Development Agreement between the parties hereto dated as of June 30, 2009 (the "Development Agreement"), and notwithstanding any terms to the contrary in the Development Agreement, the parties agree that the definition of "job" and the terms of this Section 36 may need to be adjusted by mutual agreement of the parties prior to the execution of this Lease and after a more thorough analysis of the nature, type, wages and periods of employment, including full time equivalent use of part time employees, contemplated by Tenant's employment structure, and the economic development impacts thereof.

(a) For purposes of this Lease, the term "job" shall mean a full time employee employed by the Developer, or any affiliate, in Rhode Island with at least 1500 hours of employment in a year, which hours of employment shall include vacation time, sick time, disability time, personal time or other time for which Developer, of its affiliate, must pay the employee plus, at a minimum, benefits typical of those services provided by the employee for the Developer or its affiliates for similar services provided in Rhode Island. The term "job" shall include, without limitation, (a) employees of service providers for outsourcing; (b) temporary employees retained through an employment agency in Rhode Island meeting the same criteria for the benefit of the Developer, or its affiliate, as if that employee were employed directly by the

Developer; and (c) an employee who is based in Rhode Island, but works off-shore for Tenant's projects, but is treated as a Rhode Island employee for state income tax purposes. For employees who are not paid on an hourly basis, each full-time salaried employee employed for a full year shall be deemed to work at least 1500 hours per year. The hours attributed to salaried employees shall be prorated for any employees who are employed for less than a full year.

(b) It is anticipated that by the third anniversary of the Commencement Date, the Facilities will create approximately eight hundred (800) jobs on the Premises for individuals in the State of Rhode Island. Notwithstanding the foregoing, Tenant shall be obligated to pay Additional Rent to Landlord (which, in addition to any Minimum Jobs Requirement Cure Period Additional Rent received by Landlord pursuant to Section 21.1 (b) above, Landlord shall forward to the Rhode Island Economic Development Corporation for its use in job development programming for the State of Rhode Island), as set forth in Section 36(c) below, in the event the tenant fails to create at least five hundred (500) jobs.

(c) In the event that, upon the third anniversary of the Commencement Date and any anniversary date thereafter, the Tenant shall fail to create at least five hundred (500) jobs for at least two hundred eighty (280) days for each year, then in such event, Tenant shall pay as Additional Rent to Landlord the amount of One Hundred Thousand ($100,000) Dollars each year following such deficiency, to be paid monthly in advance, for every fifty (50) jobs which is less than five hundred (500). . By way of example, and for illustration purposes only, in the event that during the fourth year of this Lease, Tenant shall have created a total of 425 jobs upon the Premises, then in such event, Tenant shall pay as Additional Rent in the fifth year of the Lease an amount equal to Two Hundred Thousand ($200,000) Dollars.

(d) Not less frequently than every six (6) months during the Term of this Lease, Tenant shall deliver to the Landlord and the Rhode Island Department of Labor and Training ("DLT") a written certification in a form acceptable to the Landlord and executed by a duly authorized officer of the Tenant stating the number of individuals employed by Tenant in the State of Rhode Island during the previous six (6) month period. Landlord and the DLT hereby are authorized by Tenant to share with each other employment data regarding Tenant and its operations in Rhode Island.

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

Witnesses:

Landlord:

RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION
ACTING BY AND THROUGH ITS AGENT AND ATTORNEY IN FACT QUONSET DEVELOPMENT CORPORATION

____

By: ______________________

Its: ______________________

Tenant:

DEEPWATER WIND RHODE ISLAND, LLC

____

By: ______________________

Its: ______________________

STATE OF __________)
) SS
COUNTY OF ________)

In said county on the ____ day of ____________, 20___, before me personally appeared ________________ of RHODE ISLAND ECONOMIC DEVELOPMENT CORPORATION ACTING BY AND THROUGH ITS AGENT AND ATTORNEY IN FACT QUONSET DEVELOPMENT CORPORATION, a ____________ corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of said corporation and he acknowledged said instrument by him executed to be his free act and deed and the free act and deed of said corporation.

____
Signature

____
Title

(SEAL)

My Commission Expires: _________

STATE OF __________)
) SS
COUNTY OF ________)

In said county on the ____ day of ____________, 20___, before me personally appeared ________________ of ________________, a ____________ corporation, to me known and known by me to be the party executing the foregoing instrument on behalf of said corporation and he acknowledged said instrument by him executed to be his free act and deed and the free act and deed of said corporation.

____
Signature

____
Title

(SEAL)

My Commission Expires: _________

EXHIBIT A

PREMISES

EXHIBIT B

PERMITTED ENCUMBRANCES

1. Access and Services Agreement between [Landlord] and the United States of America dated [197-]

2. Port Facility Property Instrument of Disposal Quitclaim Deed, Indenture between the United States of America acting by and through the Secretary of Transportation, as delegated to the Maritime Administrator, Maritime Administration, as Grantor, and the Rhode Island Economic Development Corporation, as Grantee, dated October 14, 1998 (the "MARAD Deed").

3. Lease in Furtherance of Conveyance between the United States of America and the Rhode Island Economic Development Corporation dated January 30, 1998.

4. Terms of Finding of Suitability to Transfer (FOST) for Parcels 4, 4A, 5 & 6, Zone 2, Warehouse Area (247.71 Acres) At the Former Naval Construction Battalion Center (NCBC) Davisville, Rhode Island dated November 15, 1999.

5. [All other matters of Record]

EXHIBIT C

FACILITIES

[To be described in detail upon the completion of Tenant's Master Plan and Development Plan pursuant that certain Development Agreement between Landlord and Tenant dated as of July 1, 2009.]

EXHIBIT D-1

PUBLIC AREA RIGHTS OF WAY

[To be described in detail upon the completion of Tenant's Master Plan and Development Plan pursuant that certain Development Agreement between Landlord and Tenant dated as of July 1, 2009.]

EXHIBIT D-2

TRANSPORTATION RIGHTS OF WAY

[To be described in detail upon the completion of Tenant's Master Plan and Development Plan pursuant that certain Development Agreement between Landlord and Tenant dated as of July 1, 2009.]

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