

**LEASE OF TOWN LAND  
FOR WIND TURBINE ELECTRIC GENERATION**

- 1. Parties.** This lease is entered into the 31 day of July, 2007 by and between the Town of Fairhaven, 40 Centre Street, Fairhaven, MA 02719, acting by and through its Board of Selectmen (the "Town"), and CCI Energy, LLC, 8 Bay View Avenue, Plymouth, MA 02360 ("CCI") (hereinafter, the "Lease").
- 2. Leased Premises.** Subject to the terms and conditions set forth herein, the Town hereby leases to CCI the following: (i) two areas of 10,000 +/-square feet each (each a "Site" and collectively, the "Sites") and (ii) the right to use on a non-exclusive basis certain parcels (the "Accessory Parcels") for access to the Sites and to construct, operate, and maintain electric transmission lines, transformers, telecommunications equipment and other related facilities and equipment in the Accessory Parcels. (The Sites together with the Accessory Parcels are hereinafter referred to collectively as the "Leased Premises".) The Sites are located within three larger parcels of land shown on Fairhaven Assessors Map 28 as Lots 8, 8A and 9 (collectively the "Large Parcel"). The Sites shall be used for the purpose of constructing, operating, repairing and maintaining thereon two wind turbine electric generating facilities (the improvements to be constructed on the Leased Premises are sometimes referred hereinafter as the "Project"). The preliminary location of the Leased Premises, is more accurately shown on a plan entitled "Town of Fairhaven, Preliminary site Plan for Wind Turbine Project". The definitive location of the Leased Premises will be shown on a plan to be produced by CCI pursuant to Section 9(a) of this Agreement. Except as otherwise set forth herein, all of CCI's rights to access and use of the Leased Premises shall end upon termination of the Lease term, or of any extension thereof.
- 3. Term of Lease.** The Lease term shall commence upon execution, at which time the Town shall deliver full possession of the Leased Premises to CCI, and shall terminate twenty (20) years from Commencement of Operations, unless the term is extended as provided in Section 12(b) hereof. "Commencement of Operations" is the first day of the month following the month in which the Project commences operation in parallel with the NStar electric power distribution system ("EPS") (the "Actual Start Date"). The operation of the turbines solely for the purpose of testing shall not be considered the Commencement of Operations. Upon the Commencement of Operations, CCI shall execute and deliver to the Town a "Memorandum of Commencement of Operations" which identifies the date on which the Commencement of Operations occurs. Such memorandum shall include a written notice from NStar that interconnection with the EPS is authorized.
- 4. Rent.** In consideration for the Town providing CCI with the rights set forth in this Lease, CCI shall make the following payments:

(a) **Interim Rent.** Prior to the Commencement of Operations, CCI shall pay to the Town the sum of One Hundred Dollars (\$100) per calendar year quarter in advance no later than the last business day of the month immediately prior to the calendar year quarter. Such payments shall stop after the Commencement of Operations.

(b) **Partial Rent.** Together with the first full payment of Base Rent due hereunder as hereinafter provided, CCI shall pay to the Town as Partial Rent an amount equal to the product

of (i) the number of days from the Actual Start Date to the last day of the month in which the Actual Start Date occurs and (ii) the Base Rent which is payable for the first full calendar quarter calculated on a per diem basis.

(c) **Base Rent.** Upon the Commencement of Operations, CCI shall make quarterly rent payments to the Town equal to the greater of (i) the MWh Rent Amount as calculated in subsection 4(c) or (ii) \$25,000 (such quarterly rent, the "Base Rent"). The first Base Rent payment shall be due in the fourth month after the Commencement of Operations, and shall be made every three months thereafter, no later than the last business day of the month next following the end of each successive quarter. (For example, if the Actual Start Date is in May, and the Commencement of Operations is June 1, then the first Base Rent payment would be due by the last business day in September.) Notwithstanding the foregoing, in the twelve-month period commencing on the Commencement of Operations (hereinafter, "Contract Year") and all subsequent Contract Years during the initial term, the total Base Rent payment due for such Contract Year shall not exceed the greater of (i) the sum of the quarterly Mwh Rent Amounts for such Contract Year or (ii) \$100,000.

(d) **MWh Rent Amount:** The MWh Rent Amount is the product of \$12.80/MWh times the sum of the gross MWhs generated and sold in the previous three calendar months, provided, however, the MWh Rent Amount shall be increased (but not decreased) commencing on the tenth anniversary of the Commencement of Operations by any amount equal to twenty percent (20%) of the product of (x) the number of MWh generated and sold to all third parties or entities times (y) the excess amount paid by all such third parties or entities which is in excess of a weighted average of \$100.00/MWh escalating each year commencing on the eleventh anniversary of the Commencement of Operations at 3% per year with respect to sales of electrical energy and/or capacity from the Project during each such three month period. For example, if in the eleventh year, CCI sells 5,000 MWhrs to third parties for \$750,000 resulting in a weighted average of \$150.00/MWh for the sale of electrical energy and capacity, or \$47.00 in excess of the then inflated rate of \$103/MWh, CCI would owe the Town an additional amount hereunder equal to \$47,000 (20% x \$47/MWh x 5,000 MWh). In the event of a combined sale (sometimes referred to as "bundling") of electrical energy and capacity with other goods, services, or marketable commodities, the sale price of electrical energy and capacity used for the purpose of the MWh rent calculation pursuant to this subsection shall be the price as if sold separately and not in combination; with the intent that the price used in the MWh rent calculation not be impacted by pricing factors which might otherwise arise as a result of the combined sale.

(e) **Tax Payment Credit:** CCI shall credit against the rental payment due each quarter the amount of property taxes owed by it to the Town of Fairhaven during the quarter covered by that payment. In the event that a property tax payment credit exceeds the rental payment due for that quarter, CCI may carry over the excess credit, and credit it against successive rent payments due during the same Contract Year until the credit is exhausted but not beyond the same Contract Year, and provided that under no circumstances will the Town be obligated to repay or reimburse CCI for tax payments. In the event that at the time CCI is obligated to make a quarterly payment the amount of the property taxes are not yet known, such quarterly payment will be reduced by an estimated tax credit based on the taxes due for the previous fiscal year provided that such credit will be adjusted when the amount of the property taxes for the current fiscal year becomes known.

(f) Extension Base Rent. In the event that CCI exercises one or both of its options to extend the term of this Lease, CCI shall pay to the Town as rent for each Contract Year during the extended term the greater of (i) the Base Rent due hereunder payable as provided in Section 12(b), as determined in accordance with Section 4(c), for the Contract Year or (ii) the "Extension Base Rent" for the Contract Year which is the product of (x) 50% and (y) CCI's Net Cash Flow for the Contract Year. For the purposes hereof, "CCI's Net Cash Flow" shall mean the amount by which CCI's Revenue for any Contract Year exceeds CCI's Expenses for such Contract Year where CCI's Revenue and CCI's Expenses mean, respectively;

- (i) CCI's Revenue. With respect to any Contract Year, the amounts actually received by CCI from the Leased Premises from the sale of electricity during such period and other miscellaneous income actually received by CCI from the operation of the Leased Premises during such period, calculated on a cash basis, including all interest income earned on bank accounts that CCI maintains with respect to the Project (but excluding interest on funds held in reserve and from which withdrawals are restricted in accordance with requirements of a financing agreement), and including funds released from reserve to the extent those funds were paid into reserve during the lease extension period, and any proceeds of any loan received by CCI. CCI's Revenue shall not include: (i) any amount attributable to any period prior to the twentieth (20<sup>th</sup>) Contract Year, no matter when received; (ii) condemnation awards and the proceeds of casualty insurance and proceeds of business interruption insurance or similar insurance, except to the extent that such award or proceeds represents compensation for lost income; (iii) except to the extent such amounts reimburse CCI for the loss of an amount that would be included in Revenue, any amount paid by a third-party to CCI arising out of the breach of any representation or warranty made to CCI or the breach of any covenant made with CCI, or any indemnity payments received by CCI; (iv) any amounts received by CCI in connection with the sale or disposition of all or any part of the Project; and (v) refunds and abatements of property taxes, except to the extent that such tax had been previously counted as an expense for the purpose of the calculation of the Extension Base Rent under this Lease.
- (ii) CCI's Expenses. With respect to any Contract Year, all costs and expenses actually paid or accrued and the amount of bills received for expenses incurred during such period incident to the construction, operation, repair, improvement, alteration and maintenance of the Project. Expenses shall include, without limitation: (i) management fees not to exceed \$50,000 per year as of the commencement of Lease term and escalating at 2.5 percent per year at the start of each subsequent Contract Year; (ii) any costs and expenses in connection with marketing and advertising; (iii) all amounts payable to any reserves required hereunder or by any lender, whether for capital improvements, alterations, replacement of furniture, fixtures and equipment, decommissioning, removal, or site restoration and for property taxes assessed or reasonably anticipated to be assessed against the Project; (iv) costs for insurance premiums; (v)

payments for sales commissions; (vi) all reasonably necessary costs and expenses (regardless of their treatment as capital or ordinary in nature for accounting and tax purposes) incident to the repair, replacement, maintenance and operation of the Project or to comply with any applicable legal requirements; (vii) all taxes (other than income taxes) of CCI related to the Project; (viii) duties, water and sewer charges; (ix) accounting and auditing fees; (x) with respect to a loan made to the Project after the 20<sup>th</sup> anniversary of the Commencement of Operations, payments of principal and interest; and with respect to a loan made to the Project prior to the 20<sup>th</sup> anniversary of the Commencement of Operations, that portion of the payments of principal and interest, made in repayment of that portion of the loan proceeds which was used for a legitimate business purpose and was not borrowed solely for the purpose of increasing CCI's Net Cash Flow; and (xi) all other expenses in connection with the operation of the Project or otherwise incurred in connection with CCI's obligations under this Lease. Notwithstanding anything to the contrary herein contained, CCI's Expenses shall not include payments due on any loans (x) to any affiliate of CCI without the consent of the Town, such consent not to be unreasonably withheld or (y) which resulted in a special distribution to CCI during the initial term hereof. After the initial term, except for management fees subject to the dollar limitation set forth above, CCI shall not make any payment to any affiliate of CCI including, without limitation, any payment of the proceeds resulting from a refinancing, nor will CCI incur any obligation to any affiliate of CCI as an expense of CCI, in each case without the approval of the Town, such approval not to be unreasonably withheld.

(g) Payment of Extension Base Rent. Not later than sixty (60) days after the end of each Contract Year, CCI shall calculate the Extension Base Rent for the immediately preceding Contract Year and shall provide such calculation to the Town with appropriate supporting documentation. Such documentation shall include (a) a balance sheet, income statement and cash flow statement for the Contract Year; (b) MWh of electricity and other products sold in the Contract Year; and (c) a certificate signed by an authorized officer of CCI that he has reviewed the submittal and calculations; and that the submittal is a correct representation of the matters set forth and was prepared in accordance with the terms of this agreement. If the Extension Base Rent exceeds the Base Rent payable for such Contract Year, then CCI shall promptly pay the difference to the Town.

## **5. Energy Rent**

(a) Delivery to the Town. In addition to the obligation to pay Base Rent and Extension Base Rent as set forth in Section 4 above, CCI agrees to install a direct electrical interconnection with the Waste Water Treatment Plant ("WWTP") owned by the Town and located adjacent to the Leased Premises and, as of the Commencement of Operations, to deliver to the WWTP energy generated by the Project (the "Energy Rent"). Notwithstanding the then market price for electricity, the Town shall pay CCI the rate of \$0.07 per kWh, such rate to escalate three (3) percent per Contract Year, with the first escalation to commence on the first anniversary of the Commencement of Operations (such rate as increased each Contract Year, the

“Town Cost”). The amount of energy to be delivered to the Town by CCI as Energy Rent for use at the WWTP shall equal (i) the amount required to serve the WWTP’s actual demand, or (ii) the amount actually generated and delivered by the Project coincident with that demand, whichever is lower. The Town acknowledges that it will require supplemental energy service from NStar or a competitive supplier for those hours during which the actual demand of the WWTP exceeds the coincident output of the Project. The Town will provide CCI with reasonable access to the WWTP and across the Large Parcel for the purpose of installing, monitoring, maintaining, repairing and replacing any equipment reasonably necessary for the delivery of Energy Rent to the WWTP. CCI shall comply with applicable industry standards in providing electrical service to the WWTP and any Additional Load as defined below. Within 90 days from the date of this Lease, CCI shall propose detailed operating standards and protocols for providing electrical deliveries to the WWTP, which shall be subject to approval by the Town, such approval not to be unreasonably withheld.

(b) Additional Electrical Loads. In the event that the Town or the Project qualifies under Massachusetts law to receive additional energy from the Project to the WWTP and/or other Town-electrical loads on a net-metering basis and CCI or the Project qualifies to deliver such additional electrical loads and, with regard to Town electrical loads other than the WWTP, without the requirement of installing a direct interconnection to each additional electrical load (collectively, the “Additional Load”), the Town has the right, but not the obligation, to require that CCI serve such Additional Load from the Project in accordance with applicable law, up to the amount of energy generated by the Project, at the Town Cost as such cost is calculated in accordance with Section 5(a) (the “Additional Energy Rent”) except that: (i) all incremental costs, if any, associated with such additional delivery shall be borne by the Town; (ii) CCI will not be considered a public utility or an electric company under applicable federal and state law or CCI can obtain waivers of such regulation, provided that the Town shall pay all applicable costs of obtaining the waivers, if any; (iii) such delivery will not conflict with any contractual obligation of CCI; (iv) the Town shall have the right to exercise this right one time only during the initial term of the Lease and only for such additional load or additional buildings as shall be specified by the Town, except that, subject to the provisos in this Section 5(b), the Town may subsequently exercise this right with regard to any Additional Load which is authorized by a subsequent change in law, or with regard to newly created Additional Load, including but not limited to subsequent new construction; and (v) once the Town exercises this right, CCI shall continue to pay the Additional Energy Rent for the Additional Load, and the Town shall continue to pay the Town Cost, as applicable, for the remainder of the term of this Lease. CCI shall commence the delivery of Additional Load to the Town under this Section (i) no later than one hundred (120) days following notice to it by the Town of the Town’s exercise of its rights hereunder or (ii) such later date as the Town and CCI may mutually agree.

(c) CCI’s Rights to Contract with Other Customers. With respect to contractual obligations referenced in Section 5(b)(iii) of this Lease, except with the prior written consent of the Town, any power sale agreement entered into by CCI shall allow CCI to reduce or suspend delivery to the buyer by the amount of the Additional Load to the Town by providing the buyer no more than ninety (90) days notice prior to the commencement of the delivery of the Additional Load to the Town in order to allow the buyer to arrange for an alternative supply. Notwithstanding anything in this agreement to the contrary, CCI may discontinue deliveries to the WWTP and any Additional Load and sell such energy and capacity to any other party if

the Town is in default of its payment obligations under Section 5(d) hereof and the Town has not cured such payment default within the allowed time period.

(d) **Payment by Town.** CCI shall issue invoices monthly to the Town delivered by email, facsimile or hand. All invoices to the Town will be based on actual metered energy deliveries for the prior calendar month. Payment shall be due within twenty (20) days of the date of the invoice. Except to the extent of any amount of an invoice which is in dispute, if payment has not been received within thirty (30) days of the date of the invoice, CCI will notify the Town in writing of its default under this Lease, attaching a copy of the past due invoice. All payment defaults must be cured within thirty (30) days of receipt of such notice. If payment is not received within thirty (30) days of the notice of default, CCI may at its sole option cease power sales to the Town and enter into alternative power sales arrangements. In the event of dispute of an invoiced amount, the Town shall pay the undisputed amount within twenty (20) days of the date of the invoice. The Town may request and attend a test of the meter utilized for measuring energy sales to the Town. If the meter is accurate to within 1.0 percent, the Town shall pay the cost of the meter test. If the deviation is greater than that amount, CCI shall pay for the meter test. If the deviation is found to be in excess of 1.0 percent, adjustments to previously issued invoices, consistent with the outcome of the meter test, shall be limited to the last three invoices.

**6. Security.** As security for CCI's obligations under this Agreement, CCI shall provide to the Town upon execution of this Agreement either cash, a certified check or a letter of credit (which letter of credit must be reasonably satisfactory to the Town), in the amount of \$5,000; or in lieu of the foregoing, at the written request of CCI and with the written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed, the meteorological data obtained at the Leased Premises shall be provided as security, provided the Town shall not use such data unless either party terminates this Agreement prior to Commencement of Operations. Either the monetary security deposit or the meteorological data shall be held in escrow by the Town. The Town shall return the monetary security deposit, or the meteorological data, to CCI upon the Commencement of Operations.

## **7. Termination Rights and Other Remedies.**

(a) Prior to Commencement of Operations, CCI shall have the right to terminate the Lease upon thirty (30) days' prior written notice to the Town, subject to forfeiture of the security deposit under Section 6.

(b) The Town shall have the right to terminate the Lease after thirty (30) days' prior written notice to CCI, as hereinbelow provided, upon the occurrence of one or more of the following conditions:

- (i) Failure of CCI to pay Base Rent for two consecutive quarters.
- (ii) Failure of CCI to submit to the Town a plan of the definitive location of the Leased Premises, and to order two wind turbines for the Leased Premises and to make the requisite down payment no later than December 31, 2007.
- (iii) Failure of CCI to have the wind turbines delivered to the Leased Premises on or by June 30, 2008 (or by December 31, 2008 in the event CCI is not

able to obtain the two Vestas turbines currently owned by the Massachusetts Technology Collaborative (the "MTC Turbines") ).

- (iv) Failure of CCI to reach Commencement of Operations by January 1, 2009 (or by July 1, 2009 in the event CCI is not able to obtain the MTC Turbines).
- (v) Failure of CCI to comply with any Material Term or condition of this Lease.

If CCI fails to comply with any other provision of this Lease other than as provided in (i) - (v) above on account of a default which failure does not entitle the Town to terminate this Lease, and the Town successfully establishes in an appropriate court of law beyond any applicable appeal period that CCI did cause a default under this Lease, then CCI shall reimburse the Town for its reasonable legal fees and costs in addition to any other damages which might be awarded to the Town in any such proceeding. For the purpose of this provision, a "Material Term" of the Lease shall mean the obligation to pay rent, deliver energy, comply with material provisions of applicable laws and regulations, maintain insurance and pay an indemnity hereunder.

CCI shall not be in default hereunder and the Town shall not terminate this Lease if any default by CCI under subsections (i) -(v) is cured within thirty (30) days of written notice to CCI from the Town of such default, or if such default is of such a kind that it cannot be cured within such thirty (30) day period, then within such longer period of time as may be reasonably necessary to cure such default, provided that CCI begins to cure the default as soon as is reasonably practical and diligently pursues such cure to completion and, provided further that such cure is completed within twelve (12) months of the initial default.

(c) If either CCI or the Town terminates the Lease, CCI shall provide the Town with the meteorological data it has collected or obtained on the Leased Premises free of charge and without restriction by CCI as to use. CCI makes no warranties or representations concerning the accuracy of such meteorological data.

**8. Payment for the Town's Expenses.** In connection with RFP No.2006-1, CCI has paid the Town \$50,000 as a deposit for past and ongoing professional services and expenses incurred in connection with the RFP and the Project. Promptly after the execution of this Agreement and again at the Commencement of Operations, the Town shall provide CCI with a detailed report which describes the expenditure of funds which the Town has deducted from the money provided by CCI together with such reasonable documentation and invoices as CCI may request. If any of such funds have not been expended for such services as of the earlier to occur of the termination of this Agreement or the Commencement of Operations, any unexpended funds shall be returned to CCI within thirty (30) days after the Commencement of Operations.

**9. CCI Obligations.** CCI shall, at its sole expense:

(a) Obtain all necessary legal approvals, consents, franchises, permits, licenses, certificates, inspections and authorizations required by any governmental authority, including all environmental permits, licenses, easements and other approvals necessary for the location (including, but not necessarily limited to, approval of a plan of the definitive location of the Leased Premises), construction and operation of the Project ("Required Approvals").

(b) Obtain an interconnection agreement with any company or organization for which it is necessary to obtain an interconnection agreement, including NStar and ISO-New England. CCI shall comply with any applicable requirements of NStar and ISO-New England.

(c) Consult with the Town for informational purposes regarding the licensing, construction and operation of the Project, when requested by the Town.

(d) Prevent and remove any mechanics liens filed against the Leased Premises, or if CCI chooses to contest the lien, to provide security to the Town in a form and amount that is reasonably acceptable to the Town.

(e) Comply with all material governmental requirements, rules, regulations, and conditions applicable to the Project.

(f) Comply with all provisions addressed in the Lease Document **SITE DESCRIPTION AND CONDITIONS OF USE** contained in the Fairhaven RFP No.2006-1 regarding Conditions of Site Use.

(g) Comply with the Design Standards currently set forth in the Town's Wind Energy by-law related to location and site design, which include the following, among others:

- Setback of the overall height of the wind turbine from the nearest residential or commercial structure, and not less than 100 feet from any property line.
- Maximum height of 350 feet from the natural grade to the top of the hub where the rotor attaches.
- Compliance with noise requirements through either (a) a setback of 600 feet from the nearest property line; or (b) demonstration that noise from the proposed turbine would not exceed 60 dBA at the nearest property line.
- Requirement that all utility connections be underground except to the extent that underground utilities are not feasible.

(h) Use commercially reasonable efforts to minimize impact on water resource areas, including salt marshes, wetlands, vernal pools, and other regulated areas.

(i) Use commercially reasonable efforts to avoid interference with future expansion of the WWTP on areas to the south of the existing developed area. (The Town shall not expand the WWTP onto the Sites.)

(j) Use commercially reasonable efforts to avoid interference with the operation of the existing radio tower, including both electromagnetic interference with tower signal transmissions and physical interference with and setback from the tower and its guy wires. Such commercially reasonable efforts may include CCI and the owner of the existing radio tower mutually agreeing to relocate all or a part of the radio tower.

(k) Minimize impacts on the existing recreational facilities, including the bicycle path and picnic areas, as well as the access to and views of the abandoned structures.

#### **10. Town Obligations.**

(a) The Town shall cooperate in CCI's efforts to obtain financing for the Project, and all necessary approvals, licenses, and permits for the construction, operation, repair and maintenance of the Project, provided that the Town shall not be required to take any action



involving the expenditure of funds or to expend funds in support of the Project or to subordinate payments owed to it under the Lease to any lender or holder of any security interest; and provided, further, that nothing herein shall prevent any Town department or agency from enforcing any existing applicable law, statute, bylaw, rule or regulation which it has the right to enforce; provided, however, that, except as may be required by general law, the Town shall not amend any such law, statute, bylaw, rule or regulation, or put into effect any new law, statute, bylaw, rule or regulation, which will result in a charge or fee, or impose an obligation, which is applicable to CCI but which is not applicable to all of the inhabitants of the Town on the same basis that it is applicable to CCI, or which will unreasonably interfere with CCI's ability to perform its obligations hereunder or to conduct its business.

(b) Except when exercising its regulatory authority, the Town shall not interfere with CCI's use of the Leased Premises; provided, however, that CCI is in compliance with its obligations under this Agreement prior to the expiration of all applicable cure periods.

**11. Removal of Project Facilities and Security.** CCI shall comply with the provisions of the Town's wind energy by-law regarding removal of the Project at the end of the term. To secure the payment of the cost of removing the Project at the end of the term, CCI shall make certain payments to the Town as hereinafter provided (the "Removal Security Deposit"). CCI shall make an initial \$500.00 payment to the Town prior to the commencement of construction on the Leased Premises for the Removal Security Deposit which the Town agrees to hold in escrow in a bank account established by the Town for this purpose only; thereafter, CCI shall make additional payments for the Removal Security Deposit to the Town to be held in escrow on or before the rental due dates in the amount of \$0.0003 per KWH generated in the previous quarter. The Town shall deliver the Removal Security Deposit to CCI upon the removal of the Project from the Leased Premises by CCI; provided, however, if CCI does not remove the Project from the Leased Premises by not later than six (6) months after the termination of the Lease, then the Town may retain the Removal Security Deposit, pay the reasonable cost of removing the Project from the Leased Premises from the Removal Security Deposit and return the remaining balance, if any, to CCI. CCI agrees that the Project will not be considered to have been removed pursuant to subsection (i) above unless CCI has restored the surface of the Sites as near as is reasonably practicable to its original condition at the beginning of the term of this Lease; provided, however, that CCI shall not be required to remove any underground installations located in the Accessory Parcels nor any installations in the WWTP. In addition to the Removal Security Deposit, the Town shall have a first lien on the Project which shall be superior to the interests of the Massachusetts Technology Collaborative (the "MTC") and to the interest of any other lender with a security interest in the Project solely for the purpose securing the cost of removing the Project from the Sites and restoring the surface of the Sites as hereinabove provided.

**12. Parties' Rights at the End of the Term.**

(a) Not earlier than two (2) years prior to the expiration of the Term, or prior to the expiration of any extension thereof, the Town shall have the right to fully inspect, examine and perform non-destructive testing on the Project buildings, structures, improvements and fixtures, and to inspect the books and other records of CCI relating to its energy production, maintenance, repairs, replacement, and costs of operation. The Town and the Town's representatives, agents and designees will have the right, at reasonable times and upon reasonable notice to CCI, (which

notice must describe the scope of the planned testing and investigations) to enter upon the Leased Premises. However, the Town agrees that:

- (i) all tests and investigations will be at the Town's sole cost and expense;
- (ii) the persons or entities performing such tests and investigations will be properly licensed and qualified and will have obtained all appropriate permits therefor;
- (iii) CCI will have the right of approval (which will not be unreasonably withheld or delayed) of any proposed physical testing or drilling;
- (iv) the Town will advise CCI in advance of the dates of all tests and investigations and will schedule all tests and investigations during normal business hours whenever feasible unless otherwise requested by CCI;
- (v) CCI will have the right to have a representative of CCI accompany the Town's representatives, agents or designees while they are on the Leased Premises; and
- (vi) the Town will indemnify, defend and hold CCI harmless for, from and against any and all claims, damages, costs, liabilities and losses (including mechanics' liens) arising out of any entry by the Town or its agents, designees or representatives; provided, however, that the Town shall not be liable for any existing condition which is revealed by the Town's inspection. This indemnity shall survive the end of the term.

The Town shall also have an option to purchase the Project at its then fair market value upon the condition that, on the date on which the Town exercises such option, and on the Closing Date, as hereinafter defined, no default by the Town has occurred and is continuing. If the Town intends to exercise such option, it shall, not later than eighteen (18) months prior to the expiration of the original term, or the extended term, if any, first give written notice to CCI which notice shall state the Town's proposed fair market value of the Project. If the Town and CCI do not agree upon the fair market value of the Project within thirty (30) days from the date of such notice (the "Negotiation Period") then, prior to the end of the Negotiation Period, either party may call for an appraisal which appraisal shall establish the Fair Market Value of the Project as follows.

The Fair Market Value of the Project shall be determined by appraisers (who shall hold the MAI designation and who shall have particular expertise in appraising energy related projects located in the New England area), one to be chosen by the Town, one to be chosen by CCI, and a third to be selected, if necessary, as below provided. The appraisal shall be based upon accepted methods of valuation of fair market value appropriate to the circumstances as determined by the appraisers, and without limitation of any other facts which may be considered, may include consideration of the economics of the Project as a going concern, giving due consideration to the energy market at the time of the appraisal, the Project's operating history and costs (including payments due to the Town hereunder), and the remaining life of this Lease assuming CCI exercises all of its options to extend the term of the Lease. The Town and CCI shall each notify the other of its chosen appraiser within fifteen (15) days following the call for appraisal. Such two appraisers shall attempt to reach a unanimous decision within thirty (30) days after their designation. If such two appraisers do not reach a unanimous decision within such time, they

shall be afforded seven (7) days to choose a third appraiser. If they shall be unable to select a third appraiser, then they shall so notify the then President of the Greater Boston Real Estate Board and request him to select an impartial third appraiser, who shall hold the MAI designation and who shall have experience appraising energy related projects in the New England area. Such impartial third appraiser and the first two chosen shall hear the parties and their evidence and render their decision not later than fifteen (15) days after such hearing. The written decision of a majority of the three appraisers shall be conclusive. The Town and CCI shall bear the expense of the third appraiser (if any) equally.

Not later than six (6) months following the date of determination of Fair Market Value, the Town may exercise its option to purchase the Project as set forth in this Section by giving written notice to CCI of the Town's exercise of the option in which event CCI shall sell, and the Town shall buy, the Project at the Fair Market Value as mutually agreed upon between the Town and CCI during the Negotiation Period, or in the event that there is no such agreement, then at the Fair Market Value as determined by the appraisal process. If the Town does exercise its option, then the sale shall be upon the terms set forth in this Section, including the following.

- (i) Included in the sale as part of the Project are the buildings, structures and improvements now or hereafter constituting the Project and the fixtures belonging to CCI and used in connection with the Project.
- (ii) The Project shall be conveyed by a good and sufficient Bill of Sale free of all warranties, except a warranty of good title, running to the Town, or to the nominee designated by the Town, and such Bill of Sale shall convey a good title thereto, free from all encumbrances.
- (iii) The purchase price for the Premises shall be paid at the time of delivery of the Bill of Sale by wire transfer of federal funds to such bank account as CCI shall designate.
- (iv) Such Bill of Sale shall be delivered at 10:00 a.m. on the last day of the term, or on the last day of the extended term, if any, or if such day is not a business day, then the first business day thereafter (the "Closing Date"), at the offices of Foley Hoag LLP, 155 Seaport Boulevard, Boston, Massachusetts 02210, unless otherwise agreed in writing. It is agreed that time is of the essence.
- (v) Full possession of the Project shall be delivered at the time of delivery of the Bill of Sale.
- (vi) CCI is not making, and has not at any time made, directly or indirectly, any warranties or representations of any kind or character, express or implied, with respect to the Project including, but not limited to, any warranties or representations as to merchantability, fitness for a particular purpose, title, zoning, tax consequences, physical or environmental condition, operating history or projections, valuation, governmental approvals, governmental regulations, or any other matter or thing regarding the Project. The Town has not relied upon and will not rely upon, either directly or indirectly, any representation or warranty made by or on behalf of CCI, nor any representative of CCI with respect to the

Project. Upon closing CCI shall sell and convey to the Town and the Town shall accept the Project "As Is, Where Is, With All Faults," Provided, however, CCI shall transfer to the Town any and all transferable warranties or guarantees, if any, issued by a third-party with respect to the buildings, structures, improvements and fixtures of the Project being transferred to the Town at Closing. Except to the extent of any such warranties or guarantees, which warranties or guarantees will impose no liability on CCI, the Town shall assume the risk that adverse matters including, but not limited to, construction defects and adverse physical and environmental conditions may exist. The Town, upon closing, hereby waives, relinquishes and releases CCI, its partners, and CCI's direct and indirect officers, directors, shareholders, members, employees, agents, attorneys, accountants, consultants, representatives and affiliates (collectively, the "CCI Parties") from and against any and all claims, demands, causes of action (including causes of action in tort), losses, damages, liabilities, costs and expenses (including attorneys' fees and court costs) of any and every kind of character, known or unknown, which the Town might have asserted or alleged against the CCI Parties (or any of them) at any time by reason of or arising out of any construction defects, physical or environmental conditions, the violation of any applicable laws and any and all other matters relating to the Project. Should any clean up, removal of hazardous materials or other environmental conditions on the Leased Premises or the Large Parcel be required, it is hereby understood and agreed that such clean up and removal shall be the responsibility of the Town and the occurrence of any such clean up or removal shall be at no cost or expense to CCI or any of the CCI Parties.

(b) In the event that the Town does not exercise its option to purchase the Project and CCI is not in default of its obligations under this Agreement beyond all applicable periods of cure, then CCI shall have the right, upon written notice given to the Town not later than ninety (90) days after the last day that the Town was entitled to exercise its option, or ninety (90) days prior to the expiration of the then existing term, whichever last occurs, to extend the term of this Agreement for an additional term of five (5) years, and, if exercised, thereafter for a second consecutive term of five (5) years upon the same terms and conditions. The rental payments due under the initial term of the Lease, shall continue to be adjusted pursuant to the terms of the Lease through any extensions thereof. The rights and obligations of the parties hereunder shall continue through any extensions.

(c) The Town shall have the option to discontinue its receipt of electrical energy from the Project pursuant to Section 5(a) or 5(b), or both, during any extension of the term of this lease by CCI, provided that the Town has given written notice to CCI not less than seven (7) months prior to the expiration of the then existing term of the Town's intention to discontinue its receipt of electrical energy from the Project, and in the absence of such notice CCI shall continue to deliver electrical energy to the Town during the extension term pursuant to the provisions of Section 5 of the Lease.

**13. No Interference.** During the term of this Lease, as it may be extended, the Town agrees not to take any action on the Large Parcel which would adversely affect the compliance of the

Project with any applicable laws, bylaws, rules and regulations including, without limitation, the compliance with the provisions of the Town's zoning bylaws, nor will the Town sell, lease or otherwise convey any interest in the Large Parcel, or any part thereof, to any other party, or permit any use of the Large Parcel, or any part thereof, by any other party, for the purpose of utilizing wind resources to generate electricity. The Town shall not interfere with, and shall not allow any other party under its control to interfere with the free, unobstructed and natural wind flow over and across the Large Parcel in a manner that would adversely affect the operation of the Project or any of CCI's rights under the Lease. Notwithstanding the foregoing, the Town shall not be obligated to remove or modify any existing structures on the Leased Premises or any trees or other natural features.

**14. Right to Enter.** Subject to Section 13, and without limiting the rights granted to the Town pursuant to Section 12(a), the Town, and its agents, employees, and servants shall have access to the Leased Premises during the term of the Lease and, with respect to the fenced areas of the Sites, by reasonable notice to CCI given not less than one (1) business day in advance of the Town's entry. The Town shall only enter the fenced areas of the Sites in the company of an employee of CCI and CCI agrees that it will use commercially reasonable efforts to make such employee available as requested by the Town. Notwithstanding the foregoing, the Town may enter the Leased Premises and the Sites without notice and without accompaniment in case of emergency. To the fullest extent permitted by law, the Town shall indemnify, hold harmless and defend the CCI, and any of its officers, directors, employees, agents, affiliates, subsidiaries and partners from and against all liability, including all expenses and reasonable attorney's fees by reason of liability imposed upon CCI, and/or any of its officers, directors, employees, agents, affiliates, subsidiaries and partners, related to, arising out of or resulting from the entry onto the Leased Premises by the Town or any of its officers, directors, employees, agents, affiliates, subsidiaries, or partners except insofar as is caused by the intentionally wrongful conduct or gross negligence of CCI or any of its officers, directors, employees, agents, affiliates, subsidiaries and partners.

**15. Care and Maintenance of Leased Premises.** CCI shall be responsible for and shall use all commercially reasonable efforts to maintain the Leased Premises in a safe and orderly condition.

**16. Taxes and Utilities.** CCI shall be responsible for all property taxes properly assessed to it. The Town shall not be responsible for the payment of taxes assessed to CCI. CCI shall also be responsible for payment of all utility services delivered to the Project.

**17. Right to Remove.** If, during the term of the Lease, a turbine installed on the Leased Premises fails to deliver energy to the power grid for a period exceeding eighteen (18) calendar months and, provided that CCI is not continuing to use reasonable efforts to replace such turbine or restore such turbine to operating condition, the Town may require CCI to remove such non-functioning turbine or turbines and related structure and terminate the right of CCI to the use of that portion of the Leased Premises upon which the non-functioning turbine is located, but all other provisions of the Lease will remain in effect.

**18. Assignment/Sublease.** CCI shall not assign or sublet any of its rights to use and occupy all or any part of the Leased Premises to any third party without the prior written consent of the Town, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, CCI may assign this Lease or sublease any portion of the Leased

Premises, to any entity which is a parent or subsidiary corporation of CCI, or to any entity with which CCI may merge or consolidate, or to which CCI may sell all or substantially all of its assets as a going concern in exchange for assumption of all or substantially all of its liabilities, or to an entity which is established by CCI as a special purpose entity so-called which is formed to facilitate investment in, and financing of, the Project (any of the foregoing entities being hereinafter referred to as a "Successor"), provided that simultaneously with any such assignment or sublease, CCI shall deliver to the Town an agreement in form and substance reasonably satisfactory to the Town which contains an appropriate covenant of assumption by such Successor, and provided further that in the case of any such assignment or sublease to a Successor, CCI shall have submitted to the Town prior thereto information reasonably satisfactory to the Town evidencing that such Successor is capable of performing the obligations of CCI under the Lease. In the event of an assignment of this Lease to a Successor, the Town agrees to release CCI from all liability hereunder.

**19. Notices.** All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given by the Lease shall be in writing, signed by the notifying party, or an officer, agent attorney of the notifying party, and shall be deemed to have been effective (i) upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service, or by overnight express mail, or (ii) upon the date of receipt (or the date of refusal to accept delivery) if sent by registered or certified mail, postage pre-paid, return receipt requested, and addressed as follows:

To Town: Board of Selectmen  
Town of Fairhaven  
40 Center Street  
Fairhaven, MA 02719

With a copy to: Thomas P. Crotty, Esq.  
Perry, Hicks, Crotty & Deshaies LLP  
388 County Street  
New Bedford, MA 02740

To CCI: James Sweeney  
c/o CCI Energy, LLC  
8 Bay View Avenue  
Plymouth, MA 02360

With a copy to: Mary Beth Gentleman, Esq.  
Foley Hoag LLP  
155 Seaport Boulevard  
Boston, MA 02210

The address to which any notice, demand, or other writing may be delivered to any party as above provided may be changed by written notice given by such party as above provided.

**20. Insurance.** At all times during the Term and any extension thereof, CCI shall maintain the following insurance coverage with an insurance company reasonably acceptable to Town:

- (i) Primary comprehensive general liability and property damage and contractual liability insurance in a combined single limit of not less than Two Million Dollars (\$2,000,000) for death or injury to any person(s) or for property damage. The policy or policies shall name Town as an additional insured and shall include a waiver of subrogation rights against Town. If the liability insurance is on a "claims made" basis, CCI shall be required to obtain an extended reporting period or tail end coverage for a period extending twenty-four months beyond the termination of the Lease.
- (ii) Worker's compensation insurance, covering liability under applicable worker's compensation law, at the statutory coverage levels, and employers liability insurance with limits of at least \$1 million for each accident, each employee and the policy limit;
- (iii) Fire and casualty insurance covering the Project against loss with limits of no less than Five Million Dollars (\$5,000,000), or the replacement value of the property whichever is greater; and
- (iv) Each of the foregoing policies shall provide for thirty (30) days written notice to the Town in advance of any termination or material change in coverage.

**21. Hazardous Materials.** CCI will not, and will not permit any of its agents, contractors, subcontractors, sublessees, employees, invitees, licensees or permittees to, store, use, release, discharge, or deposit on any portion of the Site any Hazardous Materials except in accordance with Applicable Laws. CCI shall defend (with counsel reasonably acceptable to the Town), indemnify and hold harmless the Town, its officials, officers, members, employees, agents, and contractors from and against any claims, losses, liability, damages, penalties (civil and criminal), fines, costs, fees (including reasonable attorney's fees), and expenses imposed on or incurred by the Town as a result of CCI's breach of the foregoing sentence and CCI shall undertake all measures necessary and appropriate to remedy any such breach in accordance with all Applicable Laws. For the purpose of this provision, "Hazardous Materials" means material or substance which is (i) designated as a "hazardous substance" pursuant to Section 311 of the federal Water Pollution Control Act (33 U.S.C. Section 1151 et seq.), (ii) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6903 et seq. (42 U.S.C. Section 6903), (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601), (iv) regulated under the Toxic Substances Control Act of 1976, or (v) regulated by the laws of the Commonwealth of Massachusetts, and (vi) all of the foregoing, as amended from time to time (collectively, the "Applicable Laws").

**22. Indemnification.** To the fullest extent permitted by law, CCI shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Town) the Town of Fairhaven, and any of its officers, directors, employees, agents, affiliates, subsidiaries and partners from and against all liability, including all expenses and reasonable attorney's fees by reason of liability imposed upon the Town of Fairhaven, and/or any of its officers, directors, employees, agents, affiliates, subsidiaries and partners, related to, arising out of or resulting from: (i) any wrongful act or negligence by CCI or any of its officers, directors, employees, agents, affiliates,

subsidiaries or partners under this Lease; (ii) any accident, injury or damage whatsoever caused to any person on the Sites during the term of this Lease; and (iii) any violation of applicable law or by a breach by CCI of this Lease, except insofar as caused by the intentionally wrongful acts or the gross negligence of the Town of Fairhaven and/or any of its officers, directors, employees, agents, affiliates, subsidiaries and partners.

**23. Governing Law.** This lease and the performance thereof shall be governed, interpreted, construed, and regulated by the Laws of the Commonwealth of Massachusetts. Any disputes arising out of the lease or performance thereof shall be brought in the Massachusetts Trial Court for Bristol County, except that disputes limited to the calculation of payments owed by either party to the other pursuant to Section 4 or 5 shall be subject to arbitration pursuant to the commercial arbitration rules of the American Arbitration Association, and shall be heard in Fairhaven, Massachusetts, unless otherwise agreed by the parties.

**24. Mortgage Leasehold Provisions.**

(a) Leasehold Financing. CCI shall have the unrestricted right, from time to time, to encumber, hypothecate or mortgage CCI's leasehold estate to a Leasehold Mortgagee without the prior consent of the Town (a "Qualified Leasehold Mortgage"). No Qualified Leasehold Mortgage shall be valid or effective unless (1) the holder thereof is an independent third party unrelated to CCI; (2) the lien of such Qualified Leasehold Mortgage is prior to all other encumbrances upon CCI's Leasehold Estate except as otherwise provided in this Lease; and (3) the entire sum or outstanding principal secured by such Qualified Leasehold Mortgage is or will be used in connection with the construction, reconstruction, rehabilitation, equipping, reequipping or other tangible improvements to the Leased Premises, the Project or to satisfy a previous Qualified Leasehold Mortgage.

(b) Estoppel Certificates. The Town and CCI, as the case may be, will execute, acknowledge and deliver to each other or to any Leasehold Mortgagee within 15 days after a written request therefor, a certificate stating:

- (i) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect as modified, and stating the modifications);
- (ii) the dates, if any, on which Base Rent and any other payments due hereunder have been paid;
- (iii) whether or not, to the knowledge of the certifying party, there are then existing any defaults under this Lease (and if so, specifying the same); and
- (iv) such other matters relating to this Lease as may be reasonably required.

(c) Cooperation with Leasehold Mortgagee. The Town shall cooperate reasonably with any Leasehold Mortgagee and with CCI in CCI's negotiations with prospective Leasehold Mortgagees, and will accommodate the reasonable requirements of such lenders, including, without limitation, making reasonable modifications and amendments to the formal terms of this Lease within the limits of applicable procurement law, but shall not be required to change the definition of the Leased Premises or the material financial or performance provisions of the Lease.

(d) Leasehold Mortgagee Rights.



a. **Cure of Defaults.** Each Leasehold Mortgagee shall have the benefit of the following provisions in addition to those elsewhere provided in this Lease, provided that such Leasehold Mortgagee shall have given written notice to the Town of the address in the United States to which notices are to be sent to it:

- (i) all notices or copies of notices which are by the terms of this Lease to be sent to the Leasehold Mortgagee shall be in writing and shall be sent by registered or certified United States mail, postage prepaid, return receipt requested, to such Leasehold Mortgagee at its address designated by notice to the Town;
- (ii) no notice of default or termination given by the Town to CCI shall be effective until a copy thereof shall also be sent to the Leasehold Mortgagee;
- (iii) after a notice from the Town of the occurrence of a default which has not been cured, Leasehold Mortgagee shall have the same time period subsequent to the receipt of such notice to cure any default hereunder or cause the same to be cured as shall be permitted hereunder to CCI after notice to CCI of such default;
- (iv) after the occurrence of any default by CCI which is not capable of being cured by the payment of money, but which is capable of being cured following obtaining possession and control of the Leased Premises (a "Curable Nonmonetary Default"), the Town will not terminate or cancel this Lease by reason of such default without first giving to the Leasehold Mortgagee such time as may reasonably be required to obtain possession of the Leased Premises (including possession by a receiver) and to cure such default, provided that the Leasehold Mortgagee shall prosecute with diligence and continuity its efforts to obtain such possession and to cure such default by CCI;
- (v) after the occurrence of any default which it is not reasonably within the power of the Leasehold Mortgagee to cure, the Town will not terminate or cancel this Lease by reason of such default without first giving to Leasehold Mortgagee such time as may reasonably be required to institute foreclosure proceedings or otherwise to acquire the interests of CCI under this Lease, provided that such forbearance by the Town shall extend for only so long as Leasehold Mortgagee shall be pursuing such remedies with diligence and continuity and shall be sending notices to the Town at least monthly informing the Town of its actions in pursuing such remedies; provided, however, that such forbearance by the Town shall not exceed eighteen (18) months in any event.

Nothing contained in this Section shall require Leasehold Mortgagee to begin or continue such possession or foreclosure proceedings or preclude the Town from exercising any rights or remedies under this Lease with respect to any other default by CCI during any period of such forbearance or preclude the Town from exercising any rights or remedies

under this Lease other than termination or cancellation of the Lease during any period of such forbearance. The forgoing provisions of clauses (iv) and (v) to the contrary notwithstanding, the Town shall have no obligation to refrain from terminating this Lease unless CCI or the Leasehold Mortgagee shall have paid, or cause to be paid, all Base Rent and all other amounts due and payable by CCI hereunder including the delivery of energy to the Town, or payment to the Town of any loss or additional costs incurred by the Town as the result of the failure by CCI or the Leasehold Mortgagee to deliver energy to the Town, and shall be diligently and continually prosecuting the cure of any default by CCI which is capable of being cured by the payment of money or without being in possession or control of the Leased Premises.

(e) Post-Foreclosure. If Leasehold Mortgagee acquires CCI's interest in the Leased Premises, Leasehold Mortgagee shall have the right, at its option, to:

- (i) complete construction of the Project; or
- (ii) assign or transfer CCI's interest in the Leased Premises and this Lease to any other assignee or transferee, which other assignee or transferee shall expressly assume all of the covenants, agreements and obligations of CCI under this Lease by written instrument to be recorded forthwith in the Bristol County Southern District Registry of Deeds;

No such action by Leasehold Mortgagee shall relieve CCI of any of its obligations hereunder. If Leasehold Mortgagee elects to complete construction or shall so assign or transfer its interest, the Town shall extend such time limits set forth in this Lease as shall be reasonably necessary to allow for the completion of construction of the Project.

(f) Possession. If Leasehold Mortgagee enters upon and takes possession of the Leased Premises, but not otherwise, it shall be bound thereafter to keep and perform all duties, covenants and agreements of CCI under this Lease; provided, however, that if any default or breach of covenant or other condition justifying termination or cancellation of this Lease by the Town shall have been cured within the period provided in this Lease and CCI shall resume possession and shall not then be in default under this Lease, Leasehold Mortgagee, upon restoring CCI to full possession of the Leased Premises and its rights under this Lease, shall thereafter not be so bound; and provided further, however, that if after such entry upon and taking possession of the Leased Premises, and Leasehold Mortgagee shall assign its mortgage, the mortgage note secured thereby and its possession of the Leased Premises to another party qualifying as a Leasehold Mortgagee in place of Leasehold Mortgagee, the Leasehold Mortgagee shall not be so bound.

(g) No Modification or Termination by CCI. This Lease shall not be (i) amended or modified or (ii) terminated or cancelled by reason of the exercises of any option or election by CCI hereunder, or by the giving of any notice by CCI hereunder, unless such amendment, modification, termination or cancellation is assented to in writing by Leasehold Mortgagee. Any such attempted amendment or modification, termination or cancellation without such assent shall be void.

(h) Successor Lease. If the Leasehold Mortgagee acquires CCI's interest in the Leased Premises pursuant to subsection (e) above, or upon any termination of this Lease, at the request of the Leasehold Mortgagee, the Town will, upon compliance with the requirements of

this subsection (h), enter into a successor lease with the Leasehold Mortgagee upon the same terms and conditions contained in this Lease with appropriate revisions to reflect the rights of such Leasehold Mortgagee, for the remainder of the term of this Lease subsequent to the date of the termination of this Lease. Said successor lease shall have the same priority as this Lease with CCI and shall provide that title to the Project shall automatically vest in the Leasehold Mortgagee. The Town shall not be required to enter into such a successor lease unless prior to the execution and delivery of such new lease Leasehold Mortgagee shall have paid, or caused to be paid, all Base Rent and other sums due and payable by CCI to the date of commencement of the new lease, together with the Town's reasonable expenses, including reasonable attorney's fees, in terminating this Lease and preparing and delivering the successor lease.

**25. CCI's Due Diligence.**

(a) CCI shall have the opportunity to inspect the Leased Premises and make the following investigations within the Due Diligence Period which shall expire on the ninetieth (90<sup>th</sup>) day after the date hereof:

- (i) the physical condition of the Leased Premises, including without limitation: the availability of adequate utilities and access;
- (ii) local, state and federal statutes, laws, bylaws, ordinances, rules and regulations and evidence of CCI's intended use being in compliance therewith, including without limitation zoning and building regulations;
- (iii) the title to the Leased Premises and the Large Parcel including, without limitation, all private restrictions applicable to the Leased Premises, declarations of covenants, conditions and restrictions, reciprocal easements and operating agreements; and
- (iv) any and all other matters concerning the current and future use, feasibility or value, or governmental permissions or entitlements pertaining to the Leased Premises, or any other matter or circumstance relevant to the CCI in its discretion concerning CCI's acquisition of the Leased Premises.

The Town will allow CCI and its agents access to the Leased Premises to perform any and all investigations and inspections desired by CCI (provided that any entry will be subject to the provisions of subsection (e) below);

(b) If CCI fails to notify the Town in writing of any objections to the matters set forth in subsection (a) above within the Due Diligence Period, CCI will be deemed to have approved matters referred to therein or otherwise deemed relevant to CCI in respect to the Leased Premises.

(c) If CCI objects to any of the matters set forth in subsection (a) above, CCI may terminate this Lease by written notice to the Town such notice to be delivered prior to the expiration of the Due Diligence Period, whereupon all rents paid by CCI pursuant to Section 4 shall be refunded forthwith, all obligations of the parties hereto shall cease and this Lease shall be void and without recourse to the parties thereto except as set forth in Section 26 (k). Time is of the essence hereof.

(d) If CCI does not terminate this Agreement under the preceding subsection (c), CCI will be deemed to have waived its objections, and this Lease will continue in full force and effect as provided for herein.

(e) CCI and CCI's representatives, agents and designees will have the right, at reasonable times and upon reasonable notice to the Town, (which notice must describe the scope of the planned testing and investigations) to enter upon the Leased Premises, in connection with CCI's lease of the Leased Premises. However, CCI agrees that:

- (i) all tests and investigations will be at the CCI's sole cost and expense;
- (ii) the persons or entities performing such tests and investigations will be properly licensed and qualified and will have obtained all appropriate permits therefor;
- (iii) the Town will have the right of approval (which will not be unreasonably withheld or delayed) of any proposed physical testing or drilling;
- (iv) CCI will advise the Town in advance of the dates of all tests and investigations and will schedule all tests and investigations during normal business hours whenever feasible unless otherwise reasonably requested by the Town;
- (v) the Town will have the right to have a representative of the Town accompany CCI and CCI's representatives, agents or designees while they are on the Leased Premises;
- (vi) CCI will indemnify, defend and hold the Town harmless for, from and against any and all claims, damages, costs, liabilities and losses (including mechanics' liens) arising out of any entry by CCI or its agents, designees or representatives; provided, however, that CCI shall not be liable for any existing condition which is revealed by CCI's inspection; and
- (vii) if CCI elects to terminate the Lease, CCI will restore the Leased Premises at CCI's sole cost and expense as near as is reasonably practicable to its original condition.

## **26. Miscellaneous.**

(a) Failure on the part of the Town or CCI to complain of any action or non-action on the part of the other, no matter how long the same may continue, shall never be a waiver by CCI or the Town, respectively, of any of the other's rights hereunder. Further, no waiver at any time of any of the provisions hereof by the Town or CCI shall be construed as a waiver of any of the other provisions hereof, and a waiver at any time of any of the provisions hereof shall not be construed as a waiver at any subsequent time of the same provisions. The consent or approval of the Town or CCI to or of any action by the other requiring such consent or approval shall not be construed to waive or render unnecessary the Town's or CCI's consent or approval to or of any subsequent similar act by the other.

(b) In any case where either party hereto is required to do any act, delays caused by or resulting from acts of God, war, civil commotion, fire, flood or other casualty, labor difficulties, shortage of labor, materials or equipment, government regulations, unusually severe weather, or other similar causes, and as to which the cause of delay, or the avoidance of delay, is

beyond such party's reasonable control, shall not be counted in determining the time during which work shall be completed, whether such time be designated by a fixed date, a fixed time or a "reasonable time", and such time shall be deemed to be extended by the period of such delay; provided, that such extension may not exceed eighteen (18) months.

(c) CCI, subject to the terms and provisions of this Lease, on payment of the Basic Rent and observing, keeping and performing all of the other terms and provisions of this Lease on CCI's part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Leased Premises during the term hereof, without hindrance or ejection by any persons lawfully claiming under the Town to have title to the Leased Premises superior to CCI.

(d) If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by Law.

(e) Except as herein otherwise provided, the terms hereof shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the Town and CCI.

(f) CCI agrees not to record this Lease, but each party hereto agrees, on the request of the other, to execute a so-called notice of lease in form recordable and complying with applicable law.

(g) The paragraph headings throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction, or meaning of the provisions of this Lease.

(h) Insofar as, and to the extent that, the following provision shall not make it impossible to secure insurance coverage obtainable from responsible insurance companies doing business in the locality in which the Leased Premises are located (even though extra premium may result therefrom) the Town and CCI mutually agree that any property damage insurance carried by either shall provide for the waiver by the insurance carrier of any right of subrogation against the other, and they further mutually agree that, with respect to any damage to property, the loss from which is covered by insurance then being carried by them, respectively, the one carrying such insurance and suffering such loss releases the other of and from any and all claims with respect to such loss to the extent of the insurance proceeds paid with respect thereto.

(i) Neither party has dealt with any broker in connection with the consummation of this Lease. In the event any broker makes any claims against a party hereto as a result of purported arrangement with the other party hereto, the other party agrees to defend the same and indemnify the first party against any such claim.

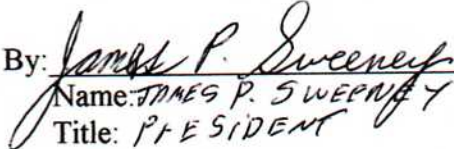
(j) This Lease may be modified or amended only by a written agreement signed by the Board of Selectmen acting on behalf of the Town and by CCI.

(k) The obligations of CCI under Sections 21 and 22 of this Lease shall remain in full force and effect, and shall survive the termination of this Lease or the sale of the Project to the Town, provided that an action to enforce any of the obligations of CCI under Sections 21 and 22 must be commenced no later than two years following such termination or sale, or such later date as may otherwise be agreed to by the parties.


(l) Neither party shall be liable to the other for any special, indirect, punitive, exemplary, incidental, equitable or consequential damages, including loss of profits, in any way arising out of or relating to this Lease.

Executed under seal this 31 day of July, 2007.

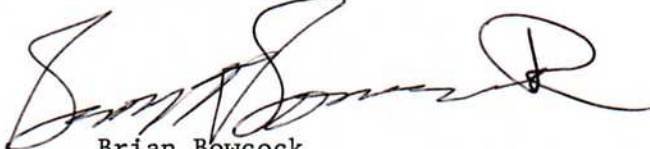
CCI ENERGY LLC

By:   
Name: JAMES P. SWEENEY  
Title: PRESIDENT

TOWN OF FAIRHAVEN

By:   
Name: Ronald Manzone  
Title: Chairman

  
Michael Silvia  
Selectmen

  
Brian Bowcock  
Selectmen

# Preliminary Site Plan for Wind Turbine Project



28-009

Turbine #1 (400' from WWTP)  
Approx. 41°38'20.00"N, -70°52'22.73"W

28-008

28-008A

28-014

Turbine #2 (750' from nearest home  
& 100' off South property line)  
Approx. 41°38'12.38"N, -70°52'22.32"W

Tree clearing and temp layouts  
20' clearing for straight paths  
50' clearing around turns

Electrical with 10' ROW

50' fence area around turbines  
and location of transformers  
Transformers located within fenced area

Alternate turbine placement  
(only if needed for performance)

Map prepared for:  
CCI Energy, LLC; Plymouth, MA  
Prepared by:  
Des Lauriers & Assoc., Inc., Franklin, MA  
August 8, 2007  
Orthophoto courtesy of MassGIS  
Office of Geographic and Environmental Information