

INTERDEPARTMENTAL AGREEMENT IN THE FORM OF A
GROUND LEASE

Between

CITY OF WESTFIELD, MASSACHUSETTS

Landlord

And

WESTFIELD GAS & ELECTRIC LIGHT DEPARTMENT

Tenant

Dated: As of _____, 2008

Premises: Railroad Right of Way
Holyoke Secondary Track
Westfield, Massachusetts

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**INTERDEPARTMENTAL AGREEMENT IN THE FORM OF A
GROUND LEASE**

THIS LEASE made as of this _____ day of _____, 2008, between the **CITY OF WESTFIELD**, a municipal corporation having its principal offices at 59 Court Street, Westfield, Hampden County, Massachusetts 01085 (hereinafter referred to as "Landlord") **as authorized by vote of the City Council and executed by the Mayor**; and the **WESTFIELD GAS & ELECTRIC LIGHT DEPARTMENT**, a Massachusetts municipal lighting plant formed under the provisions of Massachusetts General Laws Chapter 164, having its principal offices at 100 Elm Street, P.O. Box 990, Westfield, Hampden County, Massachusetts 01085 **by and through its General Manager** (hereinafter referred to as "Tenant").

Preliminary Statement

Landlord is the owner of rights and interests in certain real property within the City of Westfield in a former railroad right of way as more particularly described in a deed from the Commonwealth of Massachusetts, Executive Office of Transportation and Construction, to the City of Westfield, dated December 9, 1998, recorded in the Hampden County Registry of Deeds in Book 10710, Page 199. The aforesaid railroad right of way was formerly known as the Holyoke Secondary Track and is shown on valuation survey plans recorded in the Hampden County Registry of Deeds in Book 4914, Pages 14 through 47, inclusive (hereinafter referred to as the "Plans"). Landlord has acquired its interest in the former railroad right of way in order to construct, in the future, a bicycle and pedestrian way commonly referred to as the "Columbia Greenway Bike Trail" ("Columbia Greenway"). Tenant desires use of the former railroad right of way as an expedient and efficient location in which to install an underground natural gas pipeline to improve the distribution of natural gas to its customers within the City of Westfield. In order for Landlord to effectuate the future plan to construct the Columbia Greenway, Landlord must maintain charge and control of the premises and that asset. In order for Tenant to finance its proposed underground natural gas pipeline, Tenant must hold a bona fide long term interest in the premises. The Landlord desires to receive compensation for the granting of

rights to this asset. The parties agree that both projects are in the public interest. The parties have, therefore, entered into this interdepartmental agreement in the form of a ground lease to facilitate the attainment of both goals.

The premises is located in Westfield at a point originating at the Southwick/Westfield line and running north approximately 1900' to a point just north of the Columbia Greenway's intersection with Shaker Road in Westfield. Tenant desires to lease certain rights in a portion of the premises for the purpose of constructing, installing, and operating a natural gas pipeline and conduits for telecommunications lines and other purposes ("Facility"). Landlord desires to lease certain rights to Tenant to accomplish said purposes, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the demise of the rights herein referred to, and in consideration of the lease payments, covenants and conditions herein set forth, Landlord and Tenant do hereby covenant, promise and agree as follows:

ARTICLE I. LEASE OF RIGHTS

Section 1.01. Landlord does hereby lease to Tenant, and Tenant does hereby lease from Landlord, for the term hereinafter provided and any extensions thereof, the right to construct, install, and operate a natural gas pipeline and conduits for telecommunication lines and other purposes in the former railroad right of way from a point at the municipal line between the City of Westfield and Town of Southwick to a point on Shaker Road. Said gas pipeline shall consist of one coated steel pipe twelve (12) inches in diameter designed to carry natural gas at pipeline pressure (that may initially operate at ninety (90) psi) along the entire length of the pipe (the "Pipeline"). The conduits shall consist of four (4) 5-inch diameter schedule 40 pvc pipe, with the necessary associated pull boxes (the "Conduit" or "Conduits"). The Pipeline and Conduit are referred to herein as the "Facility" or "Facilities". The exact location of the Facility as constructed shall be referred to herein as the "Demised Premises".

Section 1.02. Tenant, its agents, employees, and/or contractors shall have access to the former right of way hereinabove described to construct, install, operate, maintain and/or repair the Facility during the term of this lease, limited only as provided in this lease agreement and by Landlord's right to use the same for municipal sewer and bike path purposes, and as limited by the reservation of rights set forth in the deed from the Commonwealth of Massachusetts, Executive office of Transportation and Construction to the City of Westfield, dated December 9, 1998, recorded in the Hampden County Registry of Deeds in Book 10710, Page 199. Landlord will be responsible for all approvals and permits necessary for the grant of this lease free and clear of all encumbrances except those listed above, and as set forth in Exhibit C attached hereto and made a part hereof by reference. However, the reasonable cost and expense of obtaining such approvals or permits will be at the sole expense of the Tenant.

Section 1.03. Tenant shall apply for all licenses, permits and approvals, for the construction, installation, operation, and maintenance of the Facility at its sole cost and expense. Landlord agrees to support and cooperate with Tenant in obtaining such licenses, permits, and approvals.

Section 1.04. Tenant shall commence construction of the Facility within ninety (90) days of the Commencement Date. Tenant will construct, install, operate, maintain, and/or repair the Facility from the abandoned rail bed of the New York New Haven Railroad that is now the proposed Columbia Greenway in Westfield originating at the Southwick/Westfield line and running north approximately nineteen hundred (1900) feet to a point just north of the Columbia Greenway's intersection with Shaker Road in Westfield. Tenant will keep the Landlord apprised as to schedules, timelines, location and methods of construction.

Section 1.05. Tenant, its agents, employees, and/or contractors shall have access to the proposed lease area in the railroad right of way for the purpose of surveying the property and performing work preliminary to the licensing and permitting process, and preliminary to construction of the Facility. Ingress and egress to and from the railroad right

of way shall be limited to the railroad right of way and to existing public roads, if any, on or near the premises. All activities of the Tenant on the premises as contemplated hereunder shall be limited to the said railroad right of way.

Section 1.06. Tenant shall have the right to place only one natural gas pipeline under the surface of the former railroad right of way. The Tenant shall have no right to locate any portion of the pipeline above the surface of the ground, and shall have no right to fence the whole or any part of the railroad right of way.

Section 1.07. Any gas pipeline or conduit installed or maintained by the Tenant in the said railroad right of way pursuant to this lease agreement shall be subject to the following special terms and conditions: (1) The City of Westfield, as Landlord, reserves the full title and use of the entire railroad right of way not inconsistent with the exercise by the Tenant of the rights leased hereunder, including, but not limited to, the right to grant servitudes which may cross the Tenant's pipeline and conduit; the right to cross the gas pipeline and conduit with such vehicles, machines, and equipment as the City of Westfield may desire; the right to construct, install, operate, and maintain walkways, bicycle trails, roadways, streets, railways, bridges, parking areas, sewer lines and water lines anywhere in the right of way; the right to construct, clear, and maintain drainage ditches across, over, and under the gas pipeline and conduit; and the right to construct, install, and maintain fences; (2) Should any proposed use of the railroad right of way by the City of Westfield reasonably require it, the Tenant, upon demand, shall at its own expense either lower or relocate the gas pipeline and conduit which it constructs, installs, maintains, operates, or uses on the premises; (3) The City of Westfield, its agents, employees, successors, and assigns, shall not, under any circumstances whatsoever, be liable for any damage which they may do or cause to be done to the Tenant's gas pipeline and conduit or any appurtenance thereto to be constructed, save for willful and deliberate acts of destruction; (4) the Tenant shall, upon demand, cap and purge the gas pipeline and all appurtenances thereto, and abandon the same in place, upon termination of the lease.

Section 1.08. The location of the pipeline to be constructed (herein referred to as the "Demised Premises"), and the preliminary plans and specifications with regard thereto, have been reviewed and conceptually approved by the City Engineer. Notwithstanding anything to the contrary contained herein, it is understood and agreed by the parties hereto that in no event shall the location, installation, construction, and operation of the said pipeline and Facility interfere in any way or manner with the sanitary sewer interceptor line existing in the premises nor shall it interfere in any way or manner with the proposed location and construction of the bike rail trail to be installed on the premises. Any submission of plans and specifications to the Landlord in accordance with this Lease, or otherwise, shall be totally without responsibility on the part of the Landlord, or its officers, agents or employees so far as any breaches of conditions herein contained, and the Landlord, its officers, agents and employees shall have no responsibility for the design or condition of said improvements, the Facility, or as to the use or occupancy which may be made thereof, and the Landlord, its officers, agents and employees shall not be responsible for any latent defect or change of condition of said improvements, nor for any change in their condition, or for any damage occurring thereto, or because of the existence of any violations in any state, federal, municipal, or other rules, ordinances, or regulations.

Section 1.09. It is understood and agreed by the parties hereto that although the natural gas pipeline and conduits as installed and constructed may vary in depth along the length of the railroad right of way, it is the intention of the parties hereto to have the invert of the pipeline be at a minimum nominal depth of four (4) feet below the finish grade of the bike path (rails to trails) to be constructed on the premises. For purposes of this Lease, the term "nominal" as used herein shall be defined to mean an accepted tolerance limit of three (3) inches of the stated measurement. Landlord and Tenant agree to make every effort to insure that the gas pipeline and conduits as installed and constructed will be located at a minimum nominal depth of at least four (4) feet below pre-construction grades of the bike path in areas of proposed fill, and at least a minimum nominal depth of four (4) feet below finish grades of the bike path in areas of proposed excavation and removal of soils. It is further understood and agreed that the foregoing limitations will require the elevation of the natural gas pipeline and conduits as installed and constructed to be at

varying depths below the finished grades of the bike path, and at varying depths below the existing grades of the railroad right of way.

Section 1.10. It is further understood and agreed by the parties hereto that the depth of the existing sewer interceptor line and other conduits in the railroad right of way, as the same run the length of the rails to trails corridor (i.e., as the same run the length of the railroad right of way) vary from five (5) feet below finish grade to approximately twenty-five (25) feet below finish grade. Therefore, the parties hereto covenant and agree to fully cooperate in coordinating the natural gas pipeline and telecommunication conduit construction plans and specifications with the as-built plans and specifications of the sewer interceptor line to insure that such lines do not interfere with one another. It is also understood and agreed that the location of the natural gas pipeline and conduits to be constructed within the railroad right of way will, therefore, have to be engineered so as to prevent or minimize any adverse impact on the sewer interceptor line and/or any fiber optic cables and other communication lines lying within the premises. Therefore, in designing, constructing and installing the natural gas pipeline and conduit, the Tenant shall endeavor to maintain a horizontal separation of no less than six feet between the location of the natural gas pipeline within the premises and the existing sewer interceptor line provided that a separation of less than six feet is acceptable in the limited area that has been identified by the parties as being an area where it is not reasonable to maintain such a separation and, provided further, that upon completion of construction, Tenant shall provide the City Engineer with as built plans that clearly and accurately delineate the horizontal separation in detail.

ARTICLE II. OPTION TO TERMINATE AND LEASE TERM

Section 2.01. Option to Terminate Prior to the Commencement of Term. The Tenant shall pay to the Landlord the non-refundable sum of Thirty Nine Thousand Two Hundred Eighty and 64/100 (\$39,280.64) Dollars upon execution of the Ground Lease or, in the sole option of the Landlord exercised at the time of execution, within thirty (30) days after Tenant is presented by Landlord with an invoice for said sum. If within six (6) months

of the date hereof, Tenant is unable to obtain all of its required permits and approvals to construct and operate the Facilities, Tenant may exercise this option to terminate at any time, and for any reason, during the said six (6) month period, by giving written notice to the Landlord of Tenant's intention to so terminate. In the event the Tenant fails for any reason to give such written notice to the Landlord of its intention to terminate within said six (6) month period, then such option to terminate shall expire, and the Tenant shall be bound by all of the terms, conditions, provisions, and obligations of this Lease Agreement. In the event Tenant exercises its option to terminate prior to the expiration of six (6) months from the date of execution of this lease agreement, Tenant shall not be obligated to make the additional payments required hereunder .

Section 2.02. Term. The term of this Lease shall commence six (6) months from the date hereof (on the date of expiration of the Tenant's option to terminate set forth in Section 2.01 above), or upon the date the Tenant commences construction of the Facility, whichever is first in time to occur (the "Commencement Date"), and shall end on the last day of the 50th "Lease Year" as hereinafter defined (the "Lease Term").

Section 2.03. The term "Lease Year" shall mean each successive period of twelve (12) consecutive calendar months, commencing on the Commencement Date during the Lease Term. Any portion of the Lease Term which is less than a full Lease Year shall be deemed a "Partial Lease Year." Section 2.04. Tenant shall have the option to renew this lease for ten (10) successive five (5) year renewal periods of five (5) Lease Years each, each commencing at the expiration of the then current lease term, pursuant to all of the terms, covenants and conditions of this lease, except that the Tenant shall not have the right to renew the lease beyond the expiration of the tenth (10th) renewal term, as aforesaid. In the event the Tenant shall desire to exercise the option or options to renew referred to herein, the Tenant shall so advise the Landlord by notice in writing no later than six (6) months prior to the expiration of the then existing lease term. In addition, the Landlord shall notify the Tenant in writing of the approach of each renewal period deadline within the last year of the lease term and any renewal term, and Tenant's right to notify the Landlord of the exercise of its renewal option shall be extended for a period of six (6)

months from the receipt of such notice, provided, however, that any additional period of time accorded to the Tenant to exercise its right to renew this lease shall not extend the term of the lease beyond the number of Lease Years in said renewal period.

ARTICLE III. RENT

Section 3.01. Lease Payment Obligation. Tenant covenants and agrees to pay to Landlord, beginning with the Commencement Date and throughout the Lease Term, the sums set forth in this Article as rent, without prior demand therefor. The term "Rent" shall be deemed to include "Annual Rent" as hereinafter defined. All payments of Rent shall be paid to Landlord in person or by mail at the Landlord's office indicated on the first page hereof or to any other place designated by Landlord upon at least forty-five (45) days' prior notice to Tenant.

Section 3.02. Annual Rent. Tenant covenants and agrees to pay to Landlord fixed rent ("Annual Rent"), in lawful money of the United States in annual installments in advance, commencing with the Commencement Date in accordance with the Annual Rent Payment Schedule attached hereto as Exhibit A and made a part hereof by reference.

Section 3.03. In the event Annual Rent defined above is not paid for twenty (20) days after its due date (including any advances for obligations of the Tenant paid by the Landlord as provided for in this Lease, with interest thereon) and Tenant has failed to cure such default within such applicable time periods and after receipt of all notices required as set forth in Article XV, said non-payment shall be a major breach of this Lease for which the Landlord shall have an immediate right of entry for breach of condition hereof, free from interference by the Tenant, and upon such breach and entry or attempted entry, this Lease shall terminate forthwith. This Section 3.03 shall have the same force and effect in the event the City of Westfield is no longer the Landlord hereunder.

ARTICLE IV. USE

Section 4.01. The Tenant may use and occupy the Demised Premises for the operation of the gas pipeline Facility for the transmission of natural gas (and any energy source/component being transmitted through the Tennessee Gas Transmission line to which it is connected) only, and such use shall be subject to and be in accordance with all applicable laws, regulations, and ordinances including those of the City of Westfield, Massachusetts, and of every other public authority of competent jurisdiction. Notwithstanding the foregoing, the Conduits to be installed in the Demised Premises may be used for the purposes of running power and communication lines for Tenant's purposes and to control and operate the gas pipeline.

Section 4.02. It shall be the obligation of the Tenant to see that the use and occupation of the Demised Premises is in compliance with all rules and regulations of all Federal, State and local Governments and any subdivisions thereof, and that no illegal or other use or occupation contrary to law shall be permitted or tolerated.

Section 4.03. Tenant shall not be obligated to operate the Facility on the Demised Premises and may vacate the Demised Premises at any time, provided Tenant shall otherwise remain liable for all of its obligations pursuant to this Lease, including but not limited to those obligations set forth in Article VI hereof.

Section 4.04. All improvements to the Demised Premises shall be made in conformity with rules and regulations of all Federal, state and local governmental subdivisions, and shall at all times be kept free of water accumulations as well as refuse, junk and any other accumulations whether the same may have accumulated as an act of breach, negligence, or the result of the acts of others, all at the expense and cost of the Tenant.

Section 4.05. Upon the expiration of the term hereof or of any renewal or extension hereof, or upon sooner termination of this Lease for any reason, the Tenant

shall quietly and peaceably surrender the Demised Premises, including the Facility and all structural and non-structural improvements thereon, in good order and condition, clean and free of all accumulations, ordinary wear and tear only excepted, without any compensation to be paid by Landlord to Tenant therefor. Thereafter, Landlord will be solely responsible for the Facility except as otherwise provided for in this lease.

ARTICLE V. ALTERATIONS

Section 5.01. During the Lease Term, Tenant shall have the right, at its own cost and expense, to make such repairs, changes, alterations, or additions ("Alterations" or "improvements") to the Facility and the Demised Premises as may be necessary for its operation and maintenance, provided that no Alterations shall be made which, after completion, would materially reduce the value of the Demised Premises, and provided further that in each instance Tenant shall obtain the Landlord's prior written approval, which approval shall not be unreasonably withheld. Further, no approval shall be necessary for any repair, changes, alterations, or additions which may be required by a court or a regulatory agency having jurisdiction. Any Alterations that Tenant has a right to make, and any Alterations that Landlord has approved, shall be made at Tenant's sole cost and expense, and in making any such Alterations Tenant shall comply with the following conditions:

(a) No Alterations shall be undertaken until Tenant shall have procured and paid for, so far as same may be required, all necessary permits and authorizations of all governmental authorities having jurisdiction. Landlord shall join in the application for such permits or authorizations promptly upon request whenever reasonably necessary. Landlord shall be reimbursed its out-of-pocket costs and expenses by Tenant in connection therewith within thirty (30) days of submitting such invoices to Tenant.

(b) No Alterations affecting the Facility or the Demised Premises shall be made except in accordance with plans, specifications, and cost estimates prepared and approved in writing by engineers selected by Tenant. If no action is taken within thirty (30)

days of submittal by Tenant, such plans shall be deemed approved as of the thirty-first (31st) day following such submittal.

(c) Before commencing any Alterations, Tenant shall, at its expense, obtain any necessary and appropriate riders for fire and extended coverage, workmen's compensation insurance, and comprehensive general public liability and property damage insurance covering the risks during the course of such work, and certificates therefor, all in accordance with Article X hereof.

(d) Any Alterations shall be made promptly (unavoidable delays excepted), in a good and workmanlike manner and in compliance with all applicable laws, municipal ordinances, building codes, permits and all rules, regulations and requirements of all governmental authorities having jurisdiction, and of the local Board of Fire Underwriters, if any, and upon completion Tenant shall obtain and deliver to Landlord a copy of any amended Certificate of Completion, if required.

(e) The cost of any Alterations shall be promptly paid so that the Demised Premises at all times shall be free of liens for labor and materials supplied for the Alterations.

(f)(i) If any mechanic's lien, materialman's lien, construction lien, or similar lien shall be filed against the Demised Premises, the Facility, or the improvements because of any act or omission (or alleged act or omission) of Tenant, and whether or not arising from Tenant's work or subsequent demolition, repair, replacement, maintenance, alteration or otherwise, Tenant shall, at its own cost and expense, cause the same to be discharged of record or bonded to the reasonable satisfaction of the Landlord within thirty (30) days after notice to Tenant of the filing thereof from Landlord. Notwithstanding the foregoing, Tenant may contest any such lien or encumbrance so long as such contest does not create an imminent danger of foreclosure of such lien or encumbrance or otherwise impair Landlord's title to the Demised Premises.

(ii) If Tenant fails, for any reason (other than those reasons set forth in Article XVII), to comply with the foregoing provisions in or within thirty (30) days after notice to Tenant of the existence of the same, Landlord shall have the option, on seven (7) days' prior notice to Tenant of discharging or bonding any such lien, charge, order or encumbrance, and Tenant shall immediately reimburse Landlord for all reasonable costs, expenses and reasonable attorneys' fees incurred by Landlord in so doing as additional Rent therefor, or Landlord may declare such failure to be a default and seek termination of this Lease pursuant to Article XV.

(g) Any submission of plans and specifications to the Landlord in accordance with this Lease, or otherwise, shall be totally without responsibility on the part of the Landlord so far as any breaches of conditions herein contained, and the Landlord shall have no responsibility for the design or condition of said Alterations or improvements, the Facility, or as to the use or occupancy which may be made thereof, and the Landlord shall not be responsible for any latent defect or change of condition of said Alterations or improvements, nor for any change in their condition, or for any damage occurring thereto, or because of the existence of any violations in any state, federal, municipal, or other rules, ordinances, or regulations.

(h) Any and all Alterations or improvements to the Facility and to the Demised Premises made by the Tenant prior to or during the term of this Lease or any extension hereof, shall, upon the termination of this lease, become the property of the Landlord without payment therefor by the Landlord. Thereafter, Landlord will be solely responsible for the Facility except as otherwise provided for in this lease.

ARTICLE VI. REPAIRS AND MAINTENANCE

Section 6.01. Throughout the Lease Term and any renewal hereof, Tenant shall, at its expense, maintain the Demised Premises, the Facility, and the improvements in good order and condition and shall make any and all necessary repairs thereto, both as to structural and non-structural, mechanical and utility systems, whether extraordinary,

foreseen or unforeseen. When used in this **Article VI**, the term "Repairs" shall include all such replacements, renewals, alterations, additions and betterments necessary for Tenant to properly operate the Facility. All Repairs made by Tenant shall be generally equal in quality and class to the improvements in their original condition. The necessity for and adequacy of Repairs to the Facility, the Demised Premises, and the improvements pursuant to this **Article VI** shall be measured by the standard by which such facilities of similar construction and class are generally maintained, provided that Tenant shall at all times make any and all Repairs necessary to avoid any structural damage or injury to the Demised Premises.

ARTICLE VII. COMPLIANCE WITH LAW

Section 7.01. Tenant shall, from the date of execution of this Lease and throughout the Lease Term and any renewals thereof, promptly comply with any notices of violations of any present or future laws and regulations of federal, state, municipal and local governments, or any subdivisions, departments, commissions and boards thereof pursuant to law, or directives or orders issued pursuant thereto, at its sole cost and expense. Tenant agrees to either comply with such orders or demands forthwith, but in no event later than within a period of thirty (30) days of the date of receipt of the same, or to commence the appropriate proceeding to contest, as hereafter provided, such orders or demands within said thirty (30) days. If Tenant fails to so comply or contest within said thirty (30) days, Landlord may deem such failure a default hereunder and this Lease may be terminated by Landlord after all notices as provided in Article XV have been given and such default remains uncured. Tenant shall promptly pay all fines, penalties, and damages that may arise out of or be imposed because of Tenant's failure to comply with the provisions of this paragraph. Tenant shall have the right to contest or appeal such requirements or orders, as hereinabove provided, and shall be entitled to defer compliance with any such laws, regulations, orders, requirements, rules or regulations to the extent Tenant shall contest the same by appropriate proceedings. No such contest by Tenant shall subject Landlord to criminal liability or civil liability, and Tenant shall give such

reasonable security during the pendency of such contest as shall be requested by Landlord with respect to any costs, fines, expenses, penalties or damages which may be imposed upon Landlord by reason of Tenant's contest. Tenant shall promptly notify Landlord in writing of such contest or appeal and decisions reached with regard to the same. Upon final resolution of such contest, Tenant shall promptly comply with the judgment, finding or order of the governmental authority so resolving the contest in accordance with its terms.

Section 7.02. All compliance with all present and future laws, regulations, orders, rules and requirements made under this Article shall be at the sole cost and expense of the Tenant including any fines, penalties or damages whether in the name of the Tenant or of the Landlord, and shall be promptly paid by the Tenant immediately upon the expiration of the exercise of the Tenant's right of appeal whether in the name of the Tenant or of the Landlord.

ARTICLE VIII. UTILITIES

Section 8.01. Tenant shall be solely responsible for, and shall promptly pay to the proper authorities charged with collecting the same, the cost of all utilities consumed on the Demised Premises by Tenant throughout the Lease Term, and any renewals or extensions thereof, including but not limited to charges for electricity, telephone, and other utility services, if any. Tenant shall pay for all utility charges for the installation, replacement, and repair of any utilities appurtenant to the Demised Premises and charged to the same. Tenant shall make its own arrangements for such utilities and Landlord shall be under no obligation to furnish any utilities to the Demised Premises and shall not be liable for any interruption or failure in the supply of any such utilities to the Demised Premises. Landlord agrees to provide necessary rights-of-way for utilities to serve such premises over land owned by the Landlord.

Section 8.02. The Tenant shall be responsible for the installation of all utilities deemed necessary or convenient by the Tenant for the use and occupation of the

Demised Premises for either the structural or non-structural elements of the Facility, including but not limited to, utilities for water, sewer, electricity, telephone, fuel, gas, drainage, and any other utility services which the Tenant is required or wishes to install, at the sole cost and expense of the Tenant; and the installation of any of these utilities shall include the installation and maintenance of meters or other apparatus for measuring of the same.

Section 8.03. The Tenant agrees that upon termination of this Lease all said utilities owned by Tenant shall become the property of the Landlord without payment therefor.

ARTICLE IX. INDEMNITY

Section 9.01. Tenant covenants and agrees to indemnify, defend, and hold the Landlord, its officers, agents and employees harmless from and against any and all claims, suits, actions, damages, costs, losses, liabilities, expenses, including reasonable attorneys' fees, claims for injuries whether physical or personal, and property damage, that may in any manner result from or arise out of the construction, laying, maintenance, renewal, repair, use, operation, or existence of any pipeline and appurtenances constructed pursuant to this lease, or removal of the pipelines from the Demised Premises, including but not limited to, the breaking of the pipeline or the leaking of any substance from the pipeline, whether or not the liability, loss, or damage is caused in whole or in part by any negligent act of the Tenant, or of the Tenant's employees, contractors, and agents. It is understood and agreed that this provision includes, but shall not be limited to, indemnification of the City of Westfield for responding to any action, notice, claim, order, summons, citation, direction, litigation, investigation, or proceeding which is in any way related to an act or failure to act on the part of the Tenant, its employees, contractors, and agents. In the event the Landlord shall be named a party to any legal or equitable action or any other type of litigation commenced against the Tenant, or by Tenant against any third party, the Tenant shall protect and hold the Landlord harmless and shall pay all costs, expenses, and reasonable attorneys' fees incurred or

paid by the Landlord to its personal counsel in connection with defending the same unless such legal action or litigation shall be fully covered and reimbursed by any policy of insurance carried by Landlord.

Section 9.02. Landlord covenants and agrees to indemnify, defend, and hold Tenant harmless from and against any and all claims, suits, costs, losses, liabilities, and expenses sustained by the Tenant regarding damage to the Tenant's pipeline which is caused by willful and deliberate acts of destruction of Landlord, its employees, contractors, and agents. Notwithstanding the foregoing, the Tenant hereby agrees that the Landlord shall in no event be liable for injury or damage to the Tenant's business or for any loss of income therefrom; shall in no event be liable for injury or damage resulting from conditions arising on or upon the premises of the railroad right of way which are not caused by acts of the Landlord; and shall in no event be liable for injury or damage arising from any act or neglect of any other tenant, easement owner, licensee, abutting landowner, or member of the public at large using the railroad right of way.

Section 9.03. Tenant hereby covenants and agrees to indemnify, defend and hold harmless the Landlord and its successors, and assigns, from and against all loss, liability, damage and expense, including reasonable attorneys' fees, occasioned by or associated with any claims, suits and/or enforcement actions, including any administrative or judicial proceedings, and any remedial, removal or response actions ever asserted, threatened, instituted or requested by any person, including any governmental agency or authority, on account of: (a) any release by the Tenant of oil or hazardous materials or substances on, upon or into the Demised Premises; and (b) any and all damage to real or personal property or natural resources and/or harm or injury to persons alleged to have resulted from such release by the Tenant of oil or hazardous materials or substances. For purposes of this **Section 9.03**, "hazardous waste" and "hazardous substance" shall mean any material which may be dangerous to health or to the environment, including without limitation, all "hazardous materials," "hazardous substances," and "oil" as defined in any of the following statutes and their implementing regulations: (1) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et

seq, as amended; (2) Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, as amended; (3) Massachusetts Superfund Law, M.G.L. c. 21E, as amended; (4) Toxic Substances Control Act, 15 U.S.C. Sec. 2601 et seq, as amended; (5) Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. Sec. 136, as amended; (6) Massachusetts Pesticide Control Act, M.G.L. c. 132B, as amended; (7) Hazardous Materials Transportation Act, 49 U.S.C. Sub-Section 1801-1802, as amended; (8) Federal Water Pollution Control Act, 32 U.S.C. Sec. 1251 et seq, as amended; (9) Federal Solid Waste Disposal Act, as amended; and (10) Federal Clean Air Act, 42 U.S.C. Sec. 1857 et seq, as amended.

Section 9.04. Landlord hereby covenants and agrees to indemnify, defend and hold harmless the Tenant and its successors, and assigns, from and against all loss, liability, damage and expense, including reasonable attorneys' fees, occasioned by or associated with any claims, suits and/or enforcement actions, including any administrative or judicial proceedings, and any remedial, removal or response actions ever asserted, threatened, instituted or requested by any person, including any governmental agency or authority, on account of: (a) any release by the Landlord of oil or hazardous materials or substances on, upon or into the Demised Premises; and (b) any and all damage to real or personal property or natural resources and/or harm or injury to persons alleged to have resulted from such release by the Landlord of oil or hazardous materials or substances. For purposes of this Section 9.04, "hazardous waste" and "hazardous substance" shall mean any material which may be dangerous to health or to the environment, including without limitation, all "hazardous materials," "hazardous substances," and "oil" as defined in any of the following statutes and their implementing regulations: (1) Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq, as amended; (2) Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C, as amended; (3) Massachusetts Superfund Law, M.G.L. c. 21E, as amended; (4) Toxic Substances Control Act, 15 U.S.C. Sec. 2601 et seq, as amended; (5) Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. Sec. 136, as amended; (6) Massachusetts Pesticide Control Act, M.G.L. c. 132B, as amended; (7) Hazardous Materials Transportation Act, 49 U.S.C. Sub-Section 1801-1802, as amended; (8) Federal Water

Pollution Control Act, 32 U.S.C. Sec. 1251 et seq, as amended; (9) Federal Solid Waste Disposal Act, as amended; and (10) Federal Clean Air Act, 42 U.S.C. Sec. 1857 et seq, as amended.

Section 9.05. Landlord and Tenant each represents that it has dealt with no broker or brokers in connection with the negotiation, execution and delivery of this Lease, and shall each defend, indemnify and hold the other harmless from and against any claims or demands for brokerage commissions and finder's fees from any other party.

ARTICLE X. INSURANCE

Section 10.01. No later than the date on which Tenant enters the former railroad right of way for the purpose of commencing construction of the Facility, Tenant shall at its sole expense provide and cause to be maintained the following insurances:

(a) Tenant shall maintain commercial excess liability insurance, excess of a \$500,000.00 self-insured retention, with limits of not less than \$25,000,000.00 each occurrence and \$25,000,000.00 aggregate with Landlord to be named as an additional insured. Such insurance shall provide coverage against claims for bodily injury, death or property damage occurring on, in or about the Demised Premises, and shall cover liability arising from the premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract. Such insurance shall include a waiver of subrogation in favor of Landlord.

(b) Tenant shall maintain commercial property insurance covering damage to the Facilities and to Tenant's personal property, fixtures, equipment and Tenant improvements on the Demised Premises. Such insurance shall be provided on an All Risk Property Form. Such insurance shall include full replacement cost coverage and waiver of subrogation in favor of the Landlord.

(c) Tenant is self-insured for workers compensation, but shall continue to maintain

employers liability insurance. The employers liability limits shall not be less than \$500,000.00 each accident for bodily injury by accident and \$500,000.00 each employee for bodily injury by disease. Such insurance will include a waiver of subrogation in favor of Landlord.

(d) Tenant shall provide written evidence of the insurance required by subsections “a” and “b”, above, annually with payment of the annual rental payment or, more frequently, if Tenant has a change of insurance carrier.

Section 10.02. Tenant shall not violate nor permit any violation of any of the conditions and provisions contained in any insurance policy maintained by Tenant and shall conform to the customary provisions of any policy maintained by Tenant pursuant to this Article in all material respects and shall comply with the customary requirements of the companies writing such policies pertinent to the conduct of Tenant's Facilities on the Demised Premises. Tenant may contest any provisions thereof, and Landlord shall reasonably cooperate in Tenant's efforts in connection therewith, but not in any manner which would result in the cancellation of such policy without available substitution. Landlord shall not be liable for any premiums for or assessments on such policies, but nothing herein shall prevent or preclude Landlord from carrying additional insurance provided such additional insurance does not act to reduce the amount which Tenant would otherwise recover pursuant to policies of insurance maintained by Tenant.

Section 10.03. Prior to commencement of any work under this Lease, Tenant shall furnish Landlord with certificates) of insurance, executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements set forth above. Failure by Landlord to request, obtain, and/or respond to certificates of insurance shall not constitute a waiver of any insurance requirements required under this Lease. Landlord shall have the right to reject insurance written by an insurer it deems unacceptable; however, acceptance will not be unreasonably withheld. Copies of endorsements evidencing the waiver of subrogation and additional insured provisions

must be attached to the certificates. Certificates evidencing the renewal or required insurances must be received by the Landlord within five (5) days of expiration dates.

ARTICLE XI. DAMAGE OR DESTRUCTION

Section 11.01. If at any time after the date of execution of this Lease but during the Lease Term and any renewals thereof, the Demised Premises and/or any facilities or improvements owned or constructed by the Landlord, or any part thereof, shall be damaged or destroyed by fire or other casualty of any kind or nature caused by acts of the Tenant, Tenant shall at its own cost and expense (or any party acting on behalf of Tenant may), promptly proceed with due diligence to commence repair or restoration of the Demised Premises, and the said facilities and improvements owned or constructed by the Landlord, to completion, regardless of the existence of any insurance coverage (but subject to reasonable time allowance for the purpose of adjusting the insurance loss if any, or unavoidable delay, and the provisions as may be permitted under **Article V** ("Restoration Work").

Section 11.02 (a) All insurance proceeds payable to Tenant or any Leasehold Mortgagee at any time, as a result of casualty to the Demised Premises, and/or as a result of casualty to the said facilities and improvements owned or constructed by the Landlord, shall be used for the cost of Restoration Work, except as may be otherwise expressly set forth herein, and advanced from time to time to the Tenant for such purposes as the work progresses upon certified request of Tenant's engineers and receipt by Landlord and any Institutional Mortgagee and Leasehold Mortgagee of: (i) copies of the contracts and construction plans and specifications for the Restoration Work; (ii) a title insurance binder indicating that no mechanic's or materialman's liens have been filed and remain undischarged; and (iii) evidence of the state of completion of the Restoration Work and of performance of the Restoration Work in a good and workmanlike manner in accordance with the contracts and construction plans and specifications through certification by the Tenant's engineers.

(b) Notwithstanding anything heretofore provided, in the event of a casualty to the Demised Premises, and/or casualty to the said facilities and improvements owned or constructed by the Landlord, in which the proceeds of the insurance award do not exceed \$25,000.00, such proceeds shall be payable directly to Tenant, to be applied for the Restoration Work. Such funds shall be used only for such purposes until the Restoration Work is completed and any excess proceeds shall be retained by Tenant.

(c) Landlord shall cooperate with Tenant's reasonable requests in order to obtain the largest possible insurance award recovery and execute any and all consents and other instruments and take all other actions reasonably necessary or desirable in order to effectuate the same and to cause such proceeds to be paid as hereinbefore provided. Landlord shall be reimbursed its out-of-pocket costs and expenses by Tenant in connection therewith within thirty (30) days of submitting paid invoices to Tenant. Landlord shall not carry any insurance concurrent in coverage and contributing in the event of loss with any insurance required to be furnished by Tenant hereunder if the effect of such separate insurance would be to reduce the protection or the payment to be made under Tenant's insurance.

Section 11.03. This Lease shall not be affected in any manner by reason of the total or partial destruction of the Facility or the improvements, or any part thereof, or for any reason whatsoever, and Tenant notwithstanding any law or statute, present or future, waives all rights to quit or surrender the Demised Premises or any part thereof and Tenant's obligations under this Lease, including the payment of Rent, and all other charges provided for hereunder shall continue as though none of those events had occurred and without abatement, suspension, or reduction of any kind.

ARTICLE XII. EMINENT DOMAIN

Section 12.01. If substantially all of the Demised premises or access thereto or therefrom shall be taken for any public or quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof (a "Taking"), then this Lease shall

automatically terminate as of the date that possession has been so taken (the "Vesting Date"). In this event, Landlord may enter or re-enter the remainder of the Demised Premises free and clear of the conditions of this Lease, free and clear of any Leasehold Mortgage, lien, security agreement, and free and clear of any rights of any other party which may then exist upon the same, and with full ownership in fee simple of the remainder of the Demised Premises, and free and clear of any encumbrance of any kind whatsoever.

Section 12.02. (a) In the event of a Taking of less than substantially all of the Demised Premises, if such portion of the Demised Premises shall be taken as to render the Demised Premises unsuitable for the continuance of the operation of the natural gas pipeline by Tenant in substantially the same manner as the same was being operated immediately prior to such taking, then Tenant shall have the right to terminate this Lease by giving written notice to Landlord within thirty (30) days after receipt of Notice of Entry for purposes of effectuating the taking. If the parties are unable to agree upon a suitable relocation of the pipeline and Facilities, and/or if the costs of repairing or restoring the Facility, the Demised Premises, and the improvements after a partial taking is more than twenty (20%) per cent of their value immediately prior to such taking, Landlord may at its option terminate this Lease by written notice to Tenant within thirty (30) days after the date of the taking.

(b) If this Lease shall not be so terminated, Tenant shall restore the Facility with all reasonable dispatch to a complete unit as close as possible to the condition the Facility was in immediately prior to said taking.

(c) If the Demised Premises, or any part thereof, shall be rendered untenable and the Lease is not terminated, the Annual Rent herein reserved or a just and proportionate part thereof, shall be suspended or abated according to the nature and extent of the taking from the date of such taking until the Demised Premises shall be restored.

Section 12.03. In the event of any such taking of the Demised Premises, temporary or otherwise, the proceeds thereof shall be payable to Landlord or Landlord's Institutional First Mortgagee, if so required by the applicable terms of the mortgage and Tenant shall have absolutely no right or interest in any such award. Tenant hereby irrevocably appoints Landlord as its attorney in fact for purposes of collecting any such condemnation award and dealing with all governmental authorities with respect thereto. This power of attorney is coupled with an interest and hence is irrevocable. Notwithstanding the foregoing, nothing contained herein shall be construed to preclude the Tenant from prosecuting any claim directly against the condemning authority in such condemnation proceedings for loss of business, or depreciation to, damage to, or cost of removal of, or for the value of trade fixtures, equipment, and other personal property belonging to the Tenant; provided, further, however, that no such claim shall diminish or otherwise adversely affect the Landlord's award or the award of any fee mortgagee.

Section 12.04. If Tenant shall be obligated to repair or restore as aforesaid, and if the Demised Premises are not repaired or restored within four (4) months after the date of such taking, then Landlord may, in addition to all other rights and remedies it may have, terminate this Lease.

Section 12.05. Upon any such termination, the Annual Rent shall be adjusted to the date of termination and neither party shall have any further rights or liabilities hereunder. With respect to any items of additional Rent or other charges which are payable to Landlord or another party, as the case may be, but which are not then capable of ascertainment, in the event of such termination, Tenant shall pay to Landlord, or to such other party, an amount equal to such additional Rent and other charges as and when the same become determined. The covenants and agreements with respect to the adjustment and payment and refunding of these items of additional Rent and other charges shall survive the termination of this Lease.

Section 12.06. Notwithstanding anything to the contrary contained herein, in the event there is a narrowing or widening of the former railroad right of way by a Taking or by

a condemnation or eminent domain procedures by any subdivision of Federal, State or Municipal governments which does not affect the Facility then existing upon the Demised Premises, this Lease and any renewal or extension thereof shall remain in full force and effect, without apportionment or abatement of Annual Rent, additional Rent, or other charges hereunder.

ARTICLE XIII. LANDLORD'S COVENANTS AND WARRANTIES
AND TENANT'S COVENANTS AND WARRANTIES

Section 13.01. Landlord represents, warrants and covenants to the Tenant as follows:

(a) Landlord is the fee owner of an easement in the Demised Premises, and except as otherwise provided in this Lease, Landlord's interest is free and clear of any mortgages or liens which would adversely affect Tenant's use or occupancy of the Demised Premises as authorized under this Lease or the rights granted Tenant in this Lease. The Demised Premises are presently encumbered by the "Permitted Encumbrances" listed on **Exhibit C** only.

(b) Landlord represents that it will perform promptly all of the obligations, covenants, and agreements of Landlord set forth in this Lease.

(c) Landlord has the right and lawful authority to enter into this Lease and to perform Landlord's obligations hereunder.

(d) Landlord does not represent nor warrant that the use authorized under this Lease shall extend to any purpose; that land constitutes any manner of bearing weight; that there are sufficient utilities for any specific purpose; or that the whole or any particular portion of the Demised Premises is suitable or usable for any designated purpose.

Section 13.02. In the event there is a condition at material variance with the foregoing representations and warranties with respect to the Demised Premises which

prevents, or in any material way inhibits, the use of the Demised Premises or any part thereof for the use authorized under this Lease, or if Landlord shall default in the observance or performance of any term or covenant on Landlord's part to be performed under this Lease, then and in any such event, in addition to such other remedies as may be accorded Tenant at law, in equity or under the terms of this Lease, Tenant may after thirty (30) days' notice to Landlord, obtain an injunction to specifically enforce the performance of such term or covenant, the parties hereby acknowledging the inadequacy of Tenant's legal remedy and the irreparable harm which would be caused to Tenant by any such default; and/or Tenant may attempt to cure such condition or defect and Landlord shall be obligated to reimburse Tenant for all expenses reasonably incurred by Tenant in so doing and in failure thereof, upon thirty (30) days' prior notice, the reasonable cost thereof may be deducted from future accruing annual rental hereunder.

Section 13.03. The Tenant represents, warrants and covenants to the Landlord:

(a) That it will enter upon and use the Demised Premises in accordance with the terms and conditions of this Lease for and during the term hereof and any renewal or extension thereof.

(b) That it will perform promptly all of the obligations, covenants, and agreements of Tenant set forth in this Lease; and that it will pay when due the Annual Rent and all charges, expenses, and other sums which by the terms of this Lease are to be paid by Tenant.

(c) That the Tenant shall at all times and in all manner, use and occupy the Demised Premises under the terms hereof in a legal and lawful manner and in accordance with all statutes, rules, regulations, or restrictions applicable to or pertaining to said use and occupation, including, but not limiting the same to, the regulation and control of agents, employees or invitees of the Tenant while upon the Demised Premises.

(d) That the Tenant shall occupy and use the Demised Premises in a quiet and peaceful manner and not use said Demised Premises for any unlawful use nor permit or commit any nuisance, waste, or offensive use (as same are defined pursuant to applicable law) to exist thereon.

(e) That the Tenant will diligently protect both the structural and non-structural portions of the Demised Premises in a careful and safe manner.

(f) Tenant has the right and lawful authority to enter into this Lease and to perform Tenant's obligations hereunder.

ARTICLE XIV. INSOLVENCY

Section 14.01. (a) If at any time during the Lease Term or any renewal hereof, proceedings in bankruptcy shall be instituted by or against Tenant and result in an adjudication of bankruptcy, or if Tenant shall file, or any creditor or other person shall file, any petition in Bankruptcy under the Bankruptcy Code of the United States of America which shall be judicially approved, or if a Receiver of the business or assets of Tenant shall be appointed and if such filing or appointment be not vacated or withdrawn within sixty (60) days thereafter, or if a general assignment is made by Tenant for the benefit of creditors, or any sheriff, marshal, constable or other duly constituted public official takes possession of the Demised Premises by authority of any attachment or execution proceedings, lis pendens, or other lien, or offers the same for sale publicly, Landlord may, at its option in any of such events, on thirty (30) days' notice to Tenant, if such action is not vacated or withdrawn within said period of thirty (30) days, immediately recapture, re-enter and take possession of the Demised Premises and terminate this Lease. On any such termination, all installments of Annual Rent owing to the date of termination shall become at once due and payable. Tenant or any person holding under it shall immediately vacate the Demised Premises on said termination and re-entry by Landlord. Tenant or any person holding under it shall be liable for the Annual Rent and all other charges reserved hereunder together with and in addition to any costs, charges, damages or other expenses

of the Landlord including, but not limiting the same to, reasonable attorneys' fees for evicting the Tenant or any persons holding under it or purporting to hold under it. Such amounts shall become at once due and payable.

(b) Notwithstanding the foregoing, for so long as Tenant or its assignee shall continue to pay Annual Rent and all other charges provided for under this Lease, Tenant shall not be deemed in default hereunder as a result of this provision and this Lease shall not be then terminated, and all Tenant's rights and obligations hereunder shall remain undisturbed by this Article.

ARTICLE XV. DEFAULT

Section 15.01. (a) If Tenant shall fail to pay any part of the Annual Rent or any other charges due Landlord provided for herein, or if default should be made in any of the other covenants or conditions on Tenant's part herein contained and such non-payment or default is not cured within thirty (30) days after written notice thereof by Landlord to Tenant (or if said default cannot be cured within thirty (30) days and if Tenant does not commence within said thirty (30) day period to attempt to cure said default and thereafter proceed with due diligence with the curing of same), such circumstances, after the passage of any applicable curative period, shall constitute a "Default" under this Lease.

(b) In the event of such a Default under this Lease, Landlord may, at its option on thirty (30) calendar days' notice to Tenant (if said default is not cured during such period), terminate this Lease and Landlord, its agents or representatives, may re-enter the Demised Premises or any part thereof as of its original estate as more fully provided in subparagraph (c) below, or Landlord may re-let the Demised Premises in whole or in part, altering, changing or subdividing the same (with or without terminating this Lease), at such rental and upon such terms and for such length of time (whether less or greater than the unexpired portion of the Lease Term and any renewal thereof), as Landlord may in its reasonable discretion determine, and Tenant shall be liable unto Landlord for the deficiency between the rent provided for herein and the rental collected by Landlord for the

period of such re-letting, not exceeding, however, the balance of the Lease Term (after deducting therefrom the reasonable cost of such re-letting, including brokerage fees and attorneys' fees in a reasonable amount), and Landlord may monthly, or at such greater intervals as it may see fit, institute action to exact payment of said deficiencies. Tenant's obligations hereunder shall not, however, exceed the amount of any such obligation that would have existed if the Demised Premises had remained vacant and had not been re-let. Should this Lease not initially be terminated, Landlord may, notwithstanding such re-letting, at any time thereafter, provided the Default has not been cured, elect to terminate this Lease. In the event of a termination of this Lease, Landlord shall be entitled to recover from Tenant as its damages and worth, at the time of any such termination, the amount equivalent to the Annual Rent for the entire balance of the Lease Term. For the purpose of this Article, the "rent" reserved in this Lease shall be deemed to be the rent arrived at by adding the Annual Rent and insurance. It is expressly agreed by the parties hereto that the Landlord shall be under no obligation to re-let the Demised Premises or to otherwise mitigate damages hereunder.

(c) In the event any payment of any sums due hereunder is not paid within ten days after notice from Landlord that such payment has not been made, the Tenant shall pay to the Landlord interest on the unpaid portion at a rate equal to the legal rate of interest payable on judgments recovered in the courts of the Commonwealth of Massachusetts. Further, in the event Annual Rent defined above is not paid for thirty (30) days after its due date (including any advances for obligations of the Tenant paid by the Landlord with interest thereon) and Tenant has received written notice of its default therein as required pursuant to **Article XV** and has not cured such default within the applicable cure period set forth in **Article XV** including that period set forth in **Section 15.01(b)**, said non-payment shall be a major breach of this Lease for which the Landlord shall have an immediate right of entry for breach of condition hereof with or without process of law, free from interference by the Tenant or any person or persons occupying said Demised Premises and upon such breach and entry or attempted entry, this Lease shall terminate forthwith. Landlord may expel Tenant or any person or persons occupying the Demised Premises, using such force as may be necessary to do so, and so to repossess and enjoy the Demised

Premises as of Landlord's former estate, without being guilty of trespass, forcible entry, detainer, or other tort. Upon such entry or attempted entry, Tenant shall vacate the Demised Premises promptly and immediately.

(d) The Landlord may, from time to time, during the term hereof, reserve the right not to send notice as provided herein for any default hereunder for as long as the Landlord may deem wise and expedient but neither failure nor negligence to send such notice shall be deemed a waiver of any of the rights or obligations hereunder. To the contrary, the Landlord reserves the right after giving notice of any breach hereof, to re-notify for any and all breaches of the terms or conditions hereof whether or not the Landlord had, should have had, or did not have notice of the same at the time of the first notice.

(e) The Tenant shall be responsible for all sums due and for the performance of all of the terms and conditions of this Lease during the term of the Tenant's use and occupation, holding over, holding under dispute, or of any other type of holding in part or in full, together with such additional in interest, penalties, reasonable attorneys' fees, or costs which may be added thereto under the terms hereof.

(f) Tenant covenants and agrees that in the event Landlord incurs any expenses, including reasonable attorneys' fees ("Expenses"), in enforcing any covenant, agreement or obligation of Tenant under the terms of this Lease including, but not limited to, the payment of any Annual Rent and other charges provided for under this Lease, Tenant shall pay to Landlord the Expenses forthwith.

Section 15.02. In the event of a bona fide dispute between Tenant and Landlord, other than any dispute relating to the payment of the Annual Rent hereunder, Tenant shall have the right, within the applicable notice and curative period, to notify Landlord, in writing, of Tenant's desire to dispute the propriety of the Landlord's claim of default. In the event that such bona fide dispute relates to the payment of money, the notice of dispute, to be valid, shall be accompanied by payment of that portion of the sum due as to which Tenant or such party does not take issue, limiting the notice of dispute to only the net

amount actually disputed. The dispute notice shall be accompanied by a detailed statement as to the basis for Tenant's dispute. Such dispute may be litigated under the provisions of any simplified procedure for court determination of disputes applicable under the laws of the Commonwealth of Massachusetts if appropriate and available in such state, or, with the mutual agreement of the parties, may be submitted to arbitration, in either of which events, all parties will join in the request for expedition in the disposition of any proceeding brought to resolve the dispute. In such circumstances, the time within which to cure any claimed default as to which a bona fide dispute has been raised will be extended to the date which is ten days following the final determination of the arbitrators, court or other forum or, in the event that the dispute is resolved before any such final determination, within ten (10) days of the judgment, settlement or other resolution of the dispute.

ARTICLE XVI. WAIVER OF REDEMPTION

Section 16.01. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being dispossessed or removed from the Demised Premises upon the termination of this Lease because of default or breach of any condition hereof by Tenant hereunder, except as provided in Article XXVII.

ARTICLE XVII. UNAVOIDABLE DELAYS, FORCE MAJEURE

Section 17.01. If either party shall be prevented or delayed from punctually performing any obligation or satisfying any term or condition under this Lease, excluding the exercise by the Tenant of the option to terminate set forth in Section 2.01, by any strike, labor walkout, inability to obtain labor, materials or reasonable substitutes therefor, Act of God, present or future governmental restrictions, regulation or control, insurrection, sabotage, fire or other casualty, and final determination of insurance and condemnation claims, or any other condition beyond the control of the party, then the time to perform such obligation or satisfy such condition shall be extended by the delay caused by such

event, but in no event shall such time be extended beyond one hundred eighty (180) days. If either party shall, as a result of any such event, be unable to exercise any right or options within any time limit provided therefor in this Lease, such time limit shall be deemed extended for a period equal to the duration of the delay caused by such event, but in no event shall such time be extended beyond one hundred eighty (180) days. The party who is to perform or satisfy such condition or obligation shall promptly notify the other in writing of the cause and the probable term thereof. Notwithstanding the foregoing, under no circumstances shall application of this Article be construed as a waiver of the rights of the Landlord to the eventual replacement, repair or maintenance of the Facility and the structural or non-structural improvements to the Demised Premises, and under no circumstances shall this Article include financial inability to perform, or delay or excuse the Tenant from the prompt payments of sums due or to become due in Annual Rents or other charges as provided under this Lease.

ARTICLE XVIII. NO WAIVER

Section 18.01. The failure of Landlord or Tenant or any Mortgagee to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver or partial waiver of any rights or remedies that party or any other such party may have hereunder and shall not be deemed a waiver of or excuse for any subsequent breach or default in any of such terms, covenants or conditions.

ARTICLE XIX. NOTICES

Section 19.01. (a) Subject to the further provisions of Article XXVII, whenever it is provided herein that notice, demand, request, consent, approval or other communication ("Notice") shall or may be given to either of the parties by the other, it shall be in writing and, any law or statute to the contrary notwithstanding, shall not be effective for any purpose unless same shall be personally delivered in hand to an employee within the office of the following named officials or served by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: General Manager
Westfield Gas and Electric Light Department
100 Elm Street
P.O. Box 990
Westfield, Massachusetts 01085

If to Landlord: Mayor
City of Westfield
City Hall, 59 Court Street
Westfield, Massachusetts 01085

or at such other address as either party may from time to time designate by notice to the other as herein provided.

(b) Any Notice hereunder shall be deemed to have been given on the date hand delivered or on the date of service as noted on the return receipt if served by registered or certified mail.

ARTICLE XX. ACCESS

Section 20.01. Landlord and its designees shall have the right to enter upon the Demised Premises at reasonable hours accompanied by an employee of Tenant to inspect the Demised Premises, or, during the period commencing one hundred eighty (180) days prior to the end of the Lease Term, or any renewal thereof as the case may be unless a period of renewal has been exercised, for the purpose of exhibiting same to prospective tenants. Landlord or its designees may enter the Demised Premises at any time in the event of an emergency upon giving such notice as is practicable under the circumstances.

Section 20.02. Tenant hereby grants to Landlord and its agents, employees, contractors, subcontractors, and invitees permission to enter onto the Demised Premises for the purpose of performing the following actions: (a) the inspection, investigation, and remediation of the Demised Premises concerning any hazardous waste, hazardous substances, oil, and hazardous materials in accordance with the provisions of the

Massachusetts Contingency Plan, 310 CMR 40.0000, and any orders issued by the Massachusetts Department of Environmental Protection with regard thereto.

ARTICLE XXI. SIGNS

Section 21.01. Tenant may place or install signs on the Facility on the Demised Premises at its own cost and expense, subject to the terms and conditions hereof. Notwithstanding the foregoing, no sign shall be installed on the Demised Premises until all governmental approvals and permits required therefore, if any, are first obtained and all fees pertaining thereto have been paid. Tenant shall comply with all laws and ordinances of the applicable governmental authorities with respect to the installation and maintenance of all signs.

ARTICLE XXII. IMPROVEMENTS AND FIXTURES

Section 22.01. All improvements erected by Tenant upon the Demised Premises, including the Facility, the improvements, and any Alterations and any equipment and replacements thereof, exclusive of Tenant's trade fixtures and any signs shall, without further instrument and without any consideration therefore, become the property of the Landlord upon the expiration or sooner termination of this Lease.

Section 22.02. All trade fixtures furnished or installed by Tenant on the Demised Premises, regardless of the manner or mode of attachment, shall be and remain the property of Tenant, and may be removed by Tenant or by any Leasehold Mortgagee or other entity entitled to remove the same at any time during the Lease Term and shall be removed within the period often (10) days after the expiration or sooner termination of the Lease. Tenant shall promptly repair all damage to the Facility, the improvements, and the Demised Premises caused by removal of any such trade fixtures by Tenant or its assignees or licensees or any Leasehold Mortgagee. Any such trade fixtures, signs, or other property of the Tenant remaining on the Demised Premises after the expiration of such ten (10) day period shall be deemed abandoned and shall become the property of

Landlord without payment therefor. Prior to the termination of the Lease the Landlord may notify Tenant that it requires all such trade fixtures, signs, and other property of the Tenant to be removed, and, in that event Tenant shall remove the same and repair all damage to the Facility, the improvements, and the Demised Premises caused thereby. In the event Tenant or any Leasehold Mortgagee fails to remove such trade fixtures, signs, and other property of the Tenant within said ten (10) day period above provided for, the Landlord may remove the same. Removal by the Landlord and disposal of the same together with repairs to the Demised Premises caused by the removal of the same shall be at the cost of the Tenant with the right of the Landlord to apply against said cost any sums of the Tenant held by Landlord or due the Tenant. The Landlord shall not in any way or manner be obligated or responsible for the sale of any such property of the Tenant, but if any such sales take place, any prices received from the sale of such trade fixtures, signs, and other property of the Tenant by the Landlord shall be conclusively binding on the Tenant as shall the cost of repair of the Demised Premises for any damages created by removal of the same.

ARTICLE XXIII. END OF TERM

Section 23.01. Upon the expiration or other termination of the term of this Lease or any renewal thereof, Tenant shall peaceably and quietly quit and surrender the Demised Premises, together with the Facilities and all Alterations and improvements which are then part of the Demised Premises, in good order and condition, reasonable wear and tear and the provisions of Articles XI and XII excepted.

ARTICLE XXIV. HOLDING OVER

Section 24.01. Should Tenant or any party succeeding to the interest of Tenant hold over in possession after the expiration date, such holding over shall not be deemed to extend the term or renew this Lease; but the tenancy thereafter shall continue as a tenancy from month to month upon the same terms and conditions herein contained and at the then increased Annual Rent as hereinabove provided in this Lease.

ARTICLE XXV. ASSIGNMENT AND SUBLETTING

Section 25.01. Provided Tenant is not in default of any of the terms of the Lease beyond any applicable cure period, Tenant may assign this Lease with the consent of Landlord, which consent will not be unreasonably withheld, subject to the following conditions:

(a) Tenant shall not thereby be relieved of any liability, obligation or responsibility hereunder;

(b) A copy of the effective instrument is delivered to Landlord either prior to or immediately subsequent to the date of the subject action;

(c) Upon the assignment of this Lease, the Tenant shall notify the Landlord of the terms and conditions thereof as the same are required under Massachusetts General Laws, Chapter 183, Section 4, as and if amended, whether or not the term is under seven years and whether or not recording of such Notice is required, including the correct full name and address of the assignee, and if the assignee is a corporation, a certificate of its authority to do business in the Commonwealth of Massachusetts.

It is understood and agreed that the rights granted under this lease are personal to the Tenant and shall not be assigned by the Tenant, in whole or in part, without the prior written consent of the Landlord. No written consent of the Landlord to any assignment shall be deemed to be a waiver by the Landlord of any provision of this lease, except to the extent expressly set forth in such consent. In any event, should Landlord consent to any such assignment, such consent shall be subject to the conditions set forth in subparagraphs **(a)**, **(b)**, and **(c)** set forth above.

ARTICLE XXVI. FEE MORTGAGES

Section 26.01. (a) Landlord shall have the right at any time or times during the term of this Lease to subject the interest of Landlord in the Demised Premises, separately or in conjunction with other property owned by Landlord, or any part thereof, but not the Facility or the improvements or other property of Tenant, to any one or more mortgages on said estate and to renew, modify, consolidate, replace, extend and/or refinance said mortgages ("Mortgages").

(b) Landlord shall be entitled to all of the proceeds from any such Mortgages at any time effected pursuant hereto. The owner or holder of any such Mortgage as to which Tenant has received prior notice shall be referred to as the "Mortgagee", and if such holder is a lending institution (which for purposes hereof shall be deemed to mean a bank, savings and loan association, insurance company, pension fund of a public corporation listed on a national securities exchange, or a federal, state or municipal pension or retirement fund which may make loans on real estate), shall be referred to as an "Institutional Mortgagee".

Notwithstanding the foregoing, any and all Mortgages or refinancing thereof shall at all times be subordinate to this Lease of the Demised Premises and to any replacement hereof and to any and all assignments hereunder. Tenant shall not be required to subordinate Tenant's leasehold interest to the lien of any such Mortgage, nor shall Tenant's estate be subject to defeasance or the reduction or interference with any of Tenant's rights under this Lease as a result of the foreclosure of any such Mortgage. All such Mortgages affecting the Demised Premises hereunder shall recognize this Lease and any and all of the rights of Tenant hereunder.

ARTICLE XXVII. LEASEHOLD MORTGAGES

Section 27.01. (a) Tenant, and any assignee of the entire Demised Premises, may from time to time with Landlord's consent, assign, or otherwise encumber Tenant's

leasehold estate in the Demised Premises, its interest in the Facility and the improvements and its interest in this Lease, or any part thereof to secure a loan or other obligation of such party or a related entity, provided that such security interest shall be subject to the terms, covenants and conditions of this Lease, and provided further, that nothing in this Article shall give, or shall be construed to give, Tenant any right or license to rely upon the Landlord for the purpose of joining in or obtaining such institutional lending or for compliance with any of the terms and conditions hereof, including the payment of all Annual Rent and all other charges provided for hereunder. Tenant shall, within ten (10) days of execution of the same, notify the Landlord of any lien upon the leasehold interest hereby created and shall also notify the Landlord by the same or different notice of any collateral assignment of rents received from any assignee, and the amount of such assignment to each.

(b) Any such security instrument including, but not limited to, a collateral or security assignment, security agreement or financing statement or other instrument recognized by the Uniform Commercial Code, and any and all modifications, extensions, refinancings, or replacements thereof, whether or not representing repayment of principal sums secured, shall be collectively referred to as "Leasehold Mortgage(s)" and the holders thereof being herein collectively referred to as "Leasehold Mortgagee(s)". The term "Institutional Leasehold Mortgagee" shall be deemed to be a bank, savings and loan association, insurance company, trust company, college or university fund, pension fund of a public corporation listed on a national securities exchange, or a federal, state or municipal pension or retirement fund which may make loans on real estate. In addition to the foregoing, the rights of the Leasehold Mortgagee set forth herein shall also inure to the benefit of an assignee of Tenant's interest in this Lease who has sublet the entire Demised Premises back to the assigning Tenant or other entity, pursuant to a sublease whereby the subtenant assumes all of the obligations of the Tenant under this Lease in a manner commonly referred to as a "Sale Leaseback Transaction" and the term Leasehold Mortgagee(s) shall be deemed to include such assignee.

Section 27.02. If any Leasehold Mortgagee shall deliver to Landlord by certified or registered mail, return receipt requested, a true copy of its Leasehold Mortgage, together with notice specifying the name and address of such Leasehold Mortgagee or any assignee thereof, and the pertinent recording data with respect to such Leasehold Mortgage when available, Landlord agrees that, until written notice of satisfaction or termination of the Leasehold Mortgage is given by the Leasehold Mortgagee to Landlord, the following provisions shall apply:

(a) Landlord will give the Leasehold Mortgagee(s) a copy of any notice or demand from Landlord to Tenant hereunder simultaneously with the giving thereof to Tenant. No exercise by Landlord of any right, power or remedy with respect to any failure of or default by Tenant in the performance of an obligation, nor any termination of this Lease in connection therewith, shall have any effect until Landlord shall have so provided to the Leasehold Mortgagee(s) written notice of such failure, default or termination, as the case may be, provided that delivery of such notice shall not relieve Tenant of its obligations hereunder. Any and all costs incurred by Landlord in giving the aforesaid notices shall be at the cost and expense of Tenant and shall be reimbursed to Landlord forthwith.

(b) Any Leasehold Mortgagee(s) may make any payment or perform any act or obligation required hereunder to be made or performed by Tenant under this Lease with the same effect as if made or performed by Tenant within the time permitted for the curing of such failure or default for the Tenant following required notice or such additional period as may be provided the Leasehold Mortgagee under this Article but in no event more than thirty (30) days from any such notice. Any action by the Leasehold Mortgagee to cure a default by Tenant involving the payment of money shall be performed within such applicable curative period after the receipt of such notice of default.

(c) In case of a failure or default by Tenant in the performance or observance of any term, covenant, condition or agreement on Tenant's part to be performed under this Lease, other than a term, covenant, condition or agreement requiring the payment of a sum of money (including a failure or default of such nature that it cannot be practicably

cured by the Leasehold Mortgagee without taking possession of the Demised Premises, or a failure or default not susceptible of being cured by the Leasehold Mortgagee then Landlord shall not reenter the Demised Premises or serve a notice of election to terminate this Lease, or bring a proceeding to dispossess Tenant and/or other occupants of the Demised Premises or terminate this Lease, by reason of such a default pursuant to **Article XV**, or any statute now or hereafter enacted, or otherwise, terminate the leasehold estate of Tenant hereunder, if and so long as: **(i)** in the case of a default which can practicably be cured by the Leasehold Mortgagee without taking possession of the Demised Premises, the Leasehold Mortgagee shall deliver to Landlord, prior to the date on which Landlord shall be entitled to exercise such rights, a written instrument wherein the Leasehold Mortgagee confirms to Landlord that it will cure such default and in fact cures such default within thirty (30) days of delivery of such notice to Landlord; **(ii)** in the case of a default which cannot practicably be cured by the Leasehold Mortgagee without taking possession of the Demised Premises, the Leasehold Mortgagee shall proceed diligently, subject to any stay in any proceedings involving the insolvency of Tenant affecting the Demised Premises, to obtain possession of the Demised Premises as Mortgagee (including possession by a receiver), and, upon obtaining such possession, shall proceed to cure such default and shall cure said default within sixty (60) days of receipt of notice of such default from Landlord; and **(iii)** in the case of a default which is not susceptible of being cured by the Leasehold Mortgagee, the Leasehold Mortgagee shall institute foreclosure proceedings and diligently prosecute the same to completion, subject to any stay in any proceedings involving the insolvency of Tenant affecting the Demised Premises (unless in the meantime the Leasehold Mortgagee or a nominee shall acquire Tenant's estate hereunder by assignment in lieu of foreclosure or otherwise) and such foreclosure is completed within ninety (90) days of receipt of notice of such default from Landlord. The Leasehold Mortgagee shall not, however, be required to continue to proceed to obtain possession or to continue in possession as Mortgagee of the Demised Premises or to continue to prosecute foreclosure proceedings if such default shall be cured within said ninety (90) day period.

(d) Any rejection of this Lease by any trustee of Tenant in bankruptcy, reorganization, arrangement or similar proceeding which would, if it were not for this Article cause this Lease to terminate, shall, without any action or consent by Landlord, Tenant or any Leasehold Mortgagee(s), effect the transfer of Tenant's interest hereunder to such Leasehold Mortgagee(s) or its nominee. The Leasehold Mortgagee(s) may terminate this Lease upon any such transfer upon giving notice thereof to Landlord no later than fifteen (15) days after notice from Landlord of such transfer. The Leasehold Mortgagee(s) shall have no further obligations hereunder as a result of such transfer except in the event that said Leasehold Mortgagee(s) shall request a new lease, in which event all prior obligations accruing to the effective date of the new lease shall be payable at the date of its effectiveness notwithstanding the earlier rejection and termination.

(e) In the event of the termination of this Lease, or of any succeeding lease made pursuant to the provisions of this subparagraph (e), prior to its stated expiration date except as to a termination as a result of the Leasehold Mortgagee's failure to cure as provided in **Section 27.02 (c)** of this Lease, Landlord will upon request enter into a new lease with the Leasehold Mortgagee or, if there be more than one Leasehold Mortgagee, then with the Mortgagee whose Leasehold Mortgage is prior in lien (the "Senior Leasehold Mortgagee"), or, at the request of such Senior Leasehold Mortgagee, to a corporation formed by or on behalf of such Senior Leasehold Mortgagee, for the remainder of the Lease Term, effective as of the date of such termination, with the Rents, and upon all of the terms, covenants, and conditions of this Lease, provided:

(i) such Leasehold Mortgagee makes request upon Landlord for such new lease within fifteen (15) days from the date of such termination and such request is accompanied by an agreement to pay to Landlord all amounts then due to the Landlord accruing prior to the taking of possession by said Mortgagee or nominee thereof and such Lease is fully executed and payment of all said amounts is made within thirty (30) days of said request; and

(ii) such Leasehold Mortgagee pays to Landlord at the time of the execution and delivery of said new lease as hereinabove provided, any and all sums which would at such time be due under this Lease, but for such termination, and any expenses, including reasonable attorneys' fees, court costs and disbursements incurred by Landlord in connection with any such default and termination; and

(iii) if more than one such Leasehold Mortgagee makes request upon Landlord in accordance with the provisions of this subparagraph (e), the new lease shall be delivered pursuant to the request of the Senior Leasehold Mortgagee, and the written request of any Leasehold Mortgagee whose Leasehold Mortgage is subordinate in lien shall be void and of no force or effect; and

(iv) upon the execution and delivery of a new lease in accordance with the provisions of subparagraph (e) of this Article, all subleases, if any, which theretofore may have been assigned and transferred to Landlord shall thereupon be assigned and transferred, without recourse to Landlord, to the Leasehold Mortgagee as the new tenant.

(f) Landlord shall give the Leasehold Mortgagee(s) notice of any condemnation proceedings affecting the Demised Premises, and the Leasehold Mortgagee(s) shall have the right to intervene and be made a party to any such condemnation proceedings for and on behalf of Tenant at its own cost and expense.

(g) The Leasehold Mortgagee(s) shall be given notice of any arbitration or judicial proceeding by or between them with respect to a material provision or default of Tenant and shall have the right to intervene therein and be made a party to such proceedings for and on behalf of Tenant at its own cost and expense, and shall receive notice of and a copy of any award or decision made in such proceedings. In the event an arbitrable dispute arises with respect to a material provision or default of Tenant between Landlord and Tenant pursuant to this Lease and Tenant shall fail to proceed with arbitration and prosecute the same, after thirty (30) days' notice by the Leasehold Mortgagee to Tenant without further action by Tenant, Tenant shall be deemed to have constituted and

appointed the Senior Leasehold Mortgagee its agent and attorney-in-fact, in Tenant's name, place and stead and at Tenant's cost and expense, to arbitrate said dispute and any award or decision made in such arbitration shall be binding upon Tenant with the same force and effect as though Tenant had proceeded to arbitration.

(h) The name of the Leasehold Mortgagee(s) may be added to any "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant hereunder, on condition that the insurance proceeds are to be applied (either by Tenant or by any such Leasehold Mortgagee) in the manner specified in this Lease.

(i) No Leasehold Mortgagee (or assignee of this Lease in connection with a Sale Leaseback Transaction) or successor or assignee thereof shall become personally liable under any agreements, terms, covenants or conditions of this Lease, except as is otherwise provided in this **Article XXVII**, unless and until it takes possession or becomes the owner of the leasehold estate and then only to the extent of its estate in the Demised Premises. Upon any assignment of this Lease by any owner of the leasehold estate whose interest shall have been acquired by, through or under or purchase from any Leasehold Mortgagee, the assignee shall execute and deliver to Landlord a recordable instrument of assumption satisfactory to Landlord wherein such assignee shall assume and agree to perform and observe all of the covenants and conditions in this Lease contained on Tenant's part to be performed and observed. Nothing contained herein shall be deemed to release Westfield Gas & Electric Light Department, as the original Tenant, of its liabilities and obligations under this Lease.

(j) There shall be no voluntary cancellation, surrender, amendment, or modification of this Lease without the prior written consent of the Leasehold Mortgagee(s).

(k) Landlord shall, upon request, execute, acknowledge and deliver to a Leasehold Mortgagee(s) making such request, an agreement prepared at the sole cost and expense of Tenant, including reasonable attorneys' fees, in form satisfactory to such Leasehold

Mortgagee(s), between Landlord, Tenant and such Leasehold Mortgagee(s), confirming each of the provisions of this Section.

Section 27.03. In no event shall the right granted herein to Tenant to assign, or otherwise encumber Tenant's leasehold estate, created by and pursuant to this Lease, be deemed or interpreted as a subordination by Landlord of Landlord's interest in the estate in the Demised Premises or of this Lease to the lien of such assignment or encumbrance, it being expressly agreed that under no circumstance shall Tenant have any right to mortgage, assign or encumber Landlord's estate in the Demised Premises subject to this Lease or subordinate such interest to the lien of any mortgage, assignment or encumbrance which Tenant may place upon its leasehold estate created by and pursuant to this Lease. Tenant shall give Landlord notice of the mortgaging of this Lease within ten (10) days following the execution and delivery of such mortgage, together with the name and address of the mortgagee, and a complete copy of said mortgage.

Section 27.04. Tenant agrees to reimburse Landlord within 15 days of notice for all costs and expenses, including reasonable attorneys' fees, incurred by Landlord in giving the notices and documents required under this **Article XXVII**.

Section 27.05. In the event the Leasehold Mortgagee fails to exercise its rights under this **Article XXVII**, any entry of the Demised Premises by the Landlord for breach of any of the terms, covenants, or any of the conditions herein set forth or reserved shall be free and clear of all the terms and conditions of this Article as well as any subletting, subleasing, license, granting of any concessions, or of the obligations of any leasehold mortgage and the Landlord shall re-enter the Demised Premises free and clear of the same including, but not limiting the same to, any security instruments, collateral assignments, liens, and agreements. In addition, at the expiration of or sooner termination as provided for under this Lease, or upon entry of the Demised Premises by the Landlord for breach of any of the terms, covenants, or any of the conditions set forth or reserved in this Lease, each Leasehold Mortgagee shall immediately discharge of record its

encumbrance or lien on the Demised Premises, if any, and so notify Landlord of the same in writing forthwith.

ARTICLE XXVIII. CERTIFICATES

Section 28.01. Tenant shall, without charge, at any time and from time to time, within twenty (20) days after request by Landlord, deliver a written instrument to Landlord or any other person, firm or corporation specified by Landlord, duly executed and acknowledged, certifying

(a) that this Lease is unmodified and in full force and effect, or if there has been any modification, that the Lease is in full force and effect as modified and stating any such modification;

(b) whether or not there are then existing, to the knowledge of the executing officer, any setoffs or defenses against the enforcement of any of the agreements, terms, covenants, or conditions of this Lease upon the part of Tenant to be performed or complied with, and, if so, specifying same; and

(c) the dates to which the Annual Rent and other charges hereunder have been paid.

Section 28.02. Landlord shall, without charge, at any time and from time to time, within twenty (20) days after request by Tenant, or any Leasehold Mortgagee, deliver to Tenant or any entity indicated by Tenant a written instrument, certifying whether or not this Lease is in full force and effect; whether it has been modified (and, if so, setting forth such modification); whether Tenant has fully made all payments theretofore due under the Lease; and whether Landlord knows or does not know, as the case may be, of any default by Tenant in the performance by Tenant of all agreements, terms, and conditions on Tenant's part to be performed; and if it does know of any failures or defaults, specifying

same and setting forth such other information as may be reasonably requested by any Leasehold Mortgagee.

ARTICLE XXIX. RELATIONSHIP OF PARTIES

Section 29.01. Nothing contained in this Lease shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the parties hereto other than the relationship of Landlord and Tenant.

ARTICLE XXX. RECORDING

Section 30.01. Neither Landlord nor Tenant shall record this Lease; however, upon the request of either party hereto, the other party shall join in the execution of a memorandum or so-called "notice of lease" for the purposes of recordation. Said memorandum or notice of lease shall contain the information provided for under the General Laws of the Commonwealth of Massachusetts, Chapter 183, Section 4, and shall provide only the portion of this Lease required thereunder and to give appropriate notice to all third parties of Tenant's rights in the Demised Premises.

ARTICLE XXXI. CAPTIONS AND SECTION NUMBERS

Section 31.01. The captions, section numbers, and index appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe, or describe the scope or intent of such sections or articles nor in any way affect this Lease.

ARTICLE XXXII. APPLICABLE LAW

Section 32.01. This Lease shall be governed by, and construed in accordance with the laws of the Commonwealth of Massachusetts. If any provision of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or

unenforceable, the remainder of this Lease shall not be affected thereby and each provision of the Lease shall be valid and enforceable to the fullest extent permitted by law.

ARTICLE XXXIII. ADDENDA

Section 33.01. The following exhibits have been agreed to by the parties and annexed hereto or initialed by the parties prior to the execution hereof, it being the intention of the parties that they shall become a binding part of this Lease as if fully set forth herein.

Exhibit A —Annual Rent Payment Schedule

Exhibit B —Surveys

Exhibit C —Permitted Encumbrances

ARTICLE XXXIV. ENTIRE AGREEMENT

Section 34.01. This Lease and the Exhibits, and Riders, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Demised Premises, and there are no covenants, promises, agreements, conditions or understandings heretofore made, either oral or written, between them other than as herein set forth. No officer, official, agent or employee of the Landlord or the Tenant shall have the power to amend, modify, or alter this Lease agreement or waive any of its provisions or to bind the Landlord or the Tenant by making any promise or representation not contained herein except by an amendment, in writing, duly authorized and in the same manner as this Lease agreement is executed. Neither party may rely on any conduct, statements, actions, inaction, or course of conduct of the employees, agents or officers of the other party as having changed, modified, or amended this Lease agreement. No modification, amendment, change or addition to this Lease shall be binding upon Landlord or Tenant unless reduced to writing and signed by each party in the manner herein provided.

ARTICLE XXXV. OTHER AGREEMENTS

Section 35.01. It is the intention of the parties that this Lease shall be independent of any other lease or other agreement between the parties. Without limiting the generality of the foregoing, (a) nothing herein shall be deemed to amend, modify, or alter the provisions, terms or requirements, of any other lease or other agreement between the parties to include the so-called "In Lieu of Tax Payment" ("ILOT") made by Tenant to Landlord; (b) neither Landlord nor Tenant shall be in default under any provision of this Lease by virtue of either (i) any action taken by either Landlord or Tenant pursuant to any other lease or other agreement between Landlord and Tenant or (ii) any default or alleged default of either Landlord or Tenant under any other lease or other agreement between Landlord and Tenant; and (c) no rights or obligations of either Landlord or Tenant under this Lease shall be expanded, diminished or in any way modified by any rights or obligations of either Landlord or Tenant under any other lease or other agreement between Landlord and Tenant. Any references in this Section to the parties or to Landlord or Tenant shall be deemed to include any parent, subsidiary, affiliate, controlled or controlling entity thereof.

ARTICLE XXXVI. MISCELLANEOUS PROVISIONS

Section 36.01. Any and all rights and remedies which the parties may have hereunder shall be cumulative and the exercise of any one of such rights or remedies shall not bar the exercise of any other right or remedy which said party may have.

Section 36.02. All of the records, materials, fixtures, equipment, effects and property of every kind, nature and description of Tenant and of all persons claiming by, through and under Tenant which, during the continuance of this Lease or any occupancy of the premises by Tenant or anyone claiming under Tenant, may be on the premises, shall be at the sole risk and hazard of Tenant or anyone claiming under Tenant, and if the whole or any part thereof shall be destroyed or damaged no part of said loss or damage is to be charged to or to be borne by Landlord.

Section 36.03. In all instances regarding the obligation to pay any Rents, time shall be considered of the essence of this Lease and as such shall be strictly construed.

Section 36.04. Whenever under the terms of this Lease, Tenant requests the cooperation of Landlord in joining in any applications, etc. before any governmental bodies or other entities, Landlord shall be reimbursed their out-of-pocket costs and expenses by Tenant in connection therewith within thirty (30) days of submitting such invoices to Tenant.

Section 36.05. Notwithstanding anything to the contrary contained herein the sole and exclusive place, status, and forum of this Lease shall be Hampden County, Massachusetts. It is the express intention of the parties to this Lease that the exclusive venue of all legal actions and procedures of any nature whatsoever which relate in any way to this Lease shall be either the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts sitting in the Hampden County Hall of Justice, Springfield, Massachusetts, or the United States District Court of Massachusetts sitting in Springfield, Massachusetts.

Section 36.06. To the extent there are training requirements for emergency personnel, including without limitation Policy, Fire and Federal Emergency Management Agency staff and volunteers, to respond to emergencies relating to Tenant's Facilities, Tenant at no cost to the Landlord shall provide the training to its own emergency personnel. Should emergency equipment be required by a regulatory agency having jurisdiction with regard to the construction, operation, and maintenance of the Facilities to be constructed pursuant to this Lease, solely due to the location of the Tenant's Facilities within the City of Westfield, then Tenant shall provide or make available to the Landlord, the required emergency equipment at no cost to the Landlord.

Section 36.07. Each of the parties hereto represents that it has the authority to enter into and perform its obligations under this Lease agreement, that all actions have

been taken and all approvals have been obtained which are requisite to the authorization of this Lease, and that the persons executing this Lease agreement on behalf of each party are duly authorized to do so.

Section 36.08. It is understood and agreed that the deed from the Commonwealth of Massachusetts to the City of Westfield, dated December 9, 1998, recorded in the Hampden County Registry of Deeds in Book 10710, Page 199, contains exceptions, rights, and reservations referred to therein which may adversely effect the construction of the natural gas pipeline and conduits by the Tenant. It is also understood and agreed that the Commonwealth of Massachusetts reserved unto itself in said deed an easement over the entire railroad right of way for transportation purposes. The Tenant covenants that it has satisfied itself that the construction and operation of the natural gas pipeline and conduits contemplated hereunder is feasible notwithstanding the aforesaid exceptions, rights, and reservations. This Lease is granted without warranty of title, either express or implied, and cover's only Landlord's present interest in the leased premises.

IN WITNESS WHEREOF, Landlord and Tenant have each caused these presents to be signed in its name by its duly authorized signatories, and have each caused its corporate seal to be hereto affixed, executed in multiple counterparts as of the day and year first above written.

LANDLORD:
CITY OF WESTFIELD

By _____
Michael R. Boulanger, Mayor

TENANT:
WESTFIELD GAS & ELECTRIC
LIGHT DEPARTMENT

By _____
Daniel Golubek,
General Manager

Approved as to Form:

Law Department

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss: _____, 2008

Then personally appeared the above named **Michael R. Boulanger, Mayor of the City of Westfield**, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license or other satisfactory documentation, to be the person whose name is signed on the preceding or attached document, acknowledged to me that it was signed voluntarily for its stated purpose, that the seal affixed to the foregoing instrument is the corporate seal of the City of Westfield, and that said writing was signed and sealed by him on behalf of said City of Westfield by authority duly given, and further acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the **City of Westfield**, before me,

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss: _____, 2008

Then personally appeared the above named **Daniel Golubek, General Manager of Westfield Gas & Electric Light Department**, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license or other satisfactory documentation, to be the person whose name is signed on the preceding or attached document, acknowledged to me that it was signed voluntarily for its stated purpose, that the seal affixed to the foregoing instrument is the corporate seal of the Westfield Gas & Electric Light Department, and that said writing was signed and sealed by him on behalf of said Westfield Gas & Electric Light Department by authority duly given, and further acknowledged the foregoing instrument to be his free act and deed and the free act and deed of the **Westfield Gas & Electric Light Department**, before me,

Notary Public
My Commission Expires: _____

EXHIBIT A
ANNUAL RENT PAYMENT SCHEDULE

<u>Year</u>	<u>Annual Rent Payment</u>
On Date of Execution Of this Lease	\$ 39,280.64
1	\$ 1,978.20
2	\$ 2,077.11
3	\$ 2,180.97
4	\$ 2,290.01
5	\$ 2,404.51
6	\$ 2,524.74
7	\$ 2,650.98
8	\$ 2,783.58
9	\$ 2,922.70
10	\$ 3,068.84
11	\$ 3,222.28
12	\$ 3,383.39
13	\$ 3,552.56
14	\$ 3,730.19
15	\$ 3,916.70
16	\$ 4,112.54
17	\$ 4,318.16
18	\$ 4,534.07
19	\$ 4,760.77
20	\$ 4,998.81
21	\$ 5,248.75
22	\$ 5,511.19
23	\$ 5,786.75
24	\$ 6,076.09
25	\$ 6,379.89
26	\$ 6,698.89

For Lease Years 27 through 49, and for the additional option periods to renew the lease for ten (10) successive five (5) year renewal periods of five lease years each, the annual lease payments shall be subject to revision upward in recognition of the parties' expectation that long-term economic trends indicate that the real value of the rent provided for herein is likely to diminish. Accordingly, it is covenanted and agreed that after the expiration of the 26th lease year provided for above, the annual lease payment for each successive lease year beginning with the 27th lease year shall be further adjusted by the percentage change in the level of the annual Consumer Price Index (CPI), as hereinafter defined, from that of the previous year. [Said percentage change shall be computed by first determining the CPI index point change by subtracting from the annual index figure for the previous calendar year ("previous year") the index figure for the calendar year immediately prior to the previous calendar year ("prior year"). The resulting index point change shall then be divided by the prior year's index, and then multiplied by one hundred (100), to determine the percentage change in the CPI. Said percentage change in the CPI shall then be multiplied by the previous year's annual lease payment amount, and the resulting adjustment figure shall then be added to the previous year's annual lease payment amount to arrive at the annual lease payment for the then current lease year.] [Example: The following example, provided by the U.S. Department of Labor Bureau of Labor Statistics, illustrates the computation of percent change:

CPI for the previous calendar year ("previous year")	=	136.0
Less CPI for the calendar year immediately		
prior to the previous calendar year ("prior year")	=	129.9
Equals index point change	=	6.1
Divided by the CPI for the calendar year immediately		
prior to the previous calendar year ("prior year")		129.9
Equals (rounded)	=	0.047
Result multiplied by 100		0.047 x 100
Equals percent change	=	4.7]

Such adjustments shall apply for each and every lease year of the 27th through 49th years of the lease term and for each lease year of the extended term of the lease (including said

option renewal periods set forth above). The Consumer Price Index means the Consumer Price Index for All Urban Consumers (CPI-U)(Annual Figure Not Seasonably Adjusted)(Area: Northeast Urban)(All Items)(Base Period] 982-84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor; or, if such Consumer Price Index shall not then be in use, the price index most nearly comparable thereto, then published by such Department, or if none by said Department, by any Department of the Government of the United States of America. Notwithstanding the foregoing, however, there shall never be a decrease in the yearly annual lease payments resulting from changes in said Index; the minimum annual lease payment increase for each lease year shall be two and one-half percent (2.5%) above the annual lease payment for the previous lease year; and no increase in the annual lease payment shall be greater than six percent (6%) above the annual lease payment for the previous lease year.

EXHIBIT B
SURVEY

The Demised Premises are a portion of the former railroad right of way formerly known as the Holyoke Secondary Track as shown on valuation survey plans recorded in the Hampden County Registry of Deeds in Book 4914, Pages 40 through 45, inclusive; said plans being incorporated herein by reference.

EXHIBIT C
PERMITTED ENCUMBRANCES

1. Subject to the exceptions, rights, restrictions, and reservations referred to in a deed from the Commonwealth of Massachusetts to the City of Westfield, dated December 9, 1998, recorded in the Hampden County Registry of Deeds in Book 10710, Page 199.

2. Subject to the exceptions, rights, restrictions, and reservations referred to in a deed from The Penn Central Corporation to the Commonwealth of Massachusetts, dated March 5, 1980, recorded in the Hampden County Registry of Deeds in Book 4914, Pages 1 through 47, inclusive, including but not limited to: (a) the exceptions, rights, restrictions, and reservations referred to in said deed; and (b) the exceptions, rights, restrictions, and reservations referred to or shown on the valuation survey plans attached to said deed in Book 4914, Pages 14 through 47, inclusive.