

## ENERGY PURCHASE AGREEMENT AND FACILITY LEASE

This Energy Purchase Agreement (“**Agreement**”) is made as of this 18th day of December 2007 (“**Effective Date**”) by and between Northstar Power Ltd, a Nevada limited liability company (“**Northstar**”), and the County of San Mateo (“**Customer**”).

### RECITALS

A. Customer is involved in an enterprise which involves the use of electricity and hot water or other heated or cooled fluids and, as a result, Customer has substantial and defined energy needs.

B. Northstar is engaged in the sale, design, engineering, installation, operation, and maintenance of cogeneration equipment which has the capability to provide energy at a price less than the price of the local utility company and which may be used to generate electricity and heated water or other fluids or to create chilled water for space cooling.

C. Customer desires to purchase from Northstar, and Northstar desires to supply, a portion or all of Customer’s electrical and thermal energy needs for the purpose of heating or cooling water, air, or other fluids at Customer’s facility described on **Exhibit “A”** attached hereto (“**Premises**”) in accordance with the terms and conditions set forth herein.

D. Northstar will provide the thermal and electrical energy to be purchased hereunder from Northstar’s generation equipment to be installed on the Premises.

E. The Cogeneration equipment utilized by Northstar will interface with Customer’s existing conventional energy system. Customer will rely upon its existing energy system and the local utility company for its energy needs beyond what the Northstar Cogeneration equipment provides.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein, Customer and Northstar hereby agree as follows:

### ARTICLE 1 DEFINITIONS

As used in this Agreement, the terms set forth below shall have the following meanings:

“**Agreement**” shall have the meaning as set forth in the introductory paragraph of this Agreement.

**“Applicable Electric Rate”** means, with respect to Electrical Energy, the rate per kilowatt hour and kilowatt that is ten percent (10%) below the rate per kilowatt hour and kilowatt that the Customer’s Electric Utility would have charged the Customer during the applicable billing period in the absence of Electrical Energy being provided by Northstar, under the Customer’s Electric Utility tariff applicable to the customer class which the Customer would have then qualified including the tariff charges for transmission, delivery, energy/electric generation, stranded cost charge, system benefit charge, taxes, and other charges applicable to that customer class.

**“Applicable Thermal Rate”** means, with respect to Thermal Energy, the rate per thermal unit that is ten percent (10%) below the rate per thermal unit that the Customer would have incurred during the applicable billing period to produce the same quantity of Thermal Energy (hot and cold) supplied by Northstar during such period using natural gas supplied by the Customer’s Natural Gas Utility at the Customer Natural Gas Rate in the Customer equipment installed on the date of this Agreement with an assumed Customer boiler overall thermal efficiency (not flue gas measurement) of seventy-five percent (75%) . Northstar will measure by independent testing the boiler efficiency in January and July of 2008. If the weighted average of the boiler efficiency is determined to be more than 75%, the 75% number will be adjusted upward to equal the weighted average of the two tests.

**“Claims”** means all claims or actions, threatened or filed, and whether groundless, false, or fraudulent, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

**“Cogeneration”** refers to the technology of generating both electrical energy and thermal energy from a common equipment source which is normally powered by natural gas.

**“Commencement Date”** means the date that Northstar first commences the delivery of Electrical Energy and/or Thermal Energy to the Premises. Northstar shall provide in writing to the Customer the date upon which the Equipment is capable of furnishing electrical and thermal energy to the Premises.

**“Customer”** shall have the meaning as set forth in the introductory paragraph of this Agreement.

**“Customer Electric Utility”** means the principal utility currently providing electric service to the Premises.

**“Customer Natural Gas Rate”** means the delivered cost per BTU of natural gas that the Customer Natural Gas Utility would have otherwise charged the Customer during the billing period preceding the applicable period.

“**Customer Natural Gas Utility**” means the principal utility providing natural gas service to the Premises.

“**Customer Plant Facilities**” means the existing HVAC and Plant Process Equipment serving the Premises, the existing electrical system serving the Premises, and other existing utility systems serving the Premises.

“**Customer Utility**” means Customer Electric Utility, Customer Natural Gas Utility, or other companies providing tariffed or regulated utility services to the Premises as of the Effective Date and any successor(s) thereto.

“**Designated Area**” shall have the meaning as set forth in Section 3.1 hereof.

“**Designated Load**” means, with respect to Electrical Energy or Thermal Energy, as the case may be, the applicable quantity set forth on **Exhibit “B”** attached hereto.

“**Dispute**” shall have the meaning as set forth in Section 14.6 hereof.

“**Easement**” shall have the meaning set forth in Section 3.2 hereof.

“**Effective Date**” shall have meaning set forth in the introductory paragraph of this Agreement.

“**Electrical Energy**” means the net electricity generated by the Equipment, as measured in kilowatt hours and kilowatts.

“**Electrical Interconnection Point**” means the location where Equipment connects to the existing electrical systems serving the Premises.

“**Electric Meter**” shall have the meaning set forth in Section 2.2 hereof.

“**Equipment**” means the entire cogeneration system described in **Exhibit “C”** attached hereto for the production of Electrical Energy and Thermal Energy, which Northstar shall install, operate, maintain and own at the Premises in the Designated Area pursuant to the terms of this Agreement.

“**Equipment Energy**” means both the Electrical Energy and the Thermal Energy produced by the Equipment.

“**Facilities**” has the same meaning as Premises.

“**Force Majeure**” means an event which is not within the reasonable control of a party or which by the exercise of its due diligence, it is unable to overcome or to obtain or cause to be obtained a commercially reasonable substitute therefore. Force Majeure includes, but is not limited to, any changes in Law which prohibit or frustrate a party from performing under this Agreement.

**“Governmental Authorities”** means the United States, any of the fifty states therein, and any other political subdivision thereof and agency, department, commission, board, court, or instrumentality thereof having appropriate jurisdiction.

**“Hazardous Materials”** means oil or petroleum products, asbestos, polychlorinated biphenyls, or any biologically or chemically active or other hazardous or toxic materials, substances or wastes whether in solid, liquid, or gaseous state.

**“HVAC Equipment”** means the heating, ventilating and air conditioning system for the Premises, including any and all related equipment and all HVAC steam, make-up water supply, condensate return, waste, potable water, and thermal fluid supply or return lines.

**“HVAC Interconnection Point”** means the point(s) where the “Equipment” connects to the existing HVAC and domestic hot water system serving the Premises.

**“Installation Plan”** shall have the meaning as set forth in Section 4.3 hereof.

**“Interconnection Facilities”** means all facilities necessary to connect the Equipment to (i) the systems of Customer Utilities and (ii) the HVAC and Plant Process Equipment.

**“Law”** means any applicable law, statute, regulation, rule, decision, writ, order, degree, or judgment.

**“Lease”** shall have the meaning as set forth in Section 3.1 hereof.

**“Northstar”** shall have the meaning as set forth in the introductory paragraph of this Agreement.

**“Northstar Property”** shall have the meaning set forth in Section 3.3 hereof.

**“Plant Process Equipment”** means those systems in Customer’s facilities that require hot or cold water and hot or cold air and all the related piping including make up water supply, return water systems, and waste lines.

**“Plant Process Equipment Interconnection Point”** means the location where the Equipment connects to the existing Plant Process Equipment and the hot water and hot air systems serving same.

**“Premises”** shall have the meaning as set forth in Exhibit “A” hereof.

**“Stand-By-Charge”** is a fee charged by the Electric Utility to a customer with on-site generation not owned by the Utility to provide electrical capacity (kw) and electric energy (kwhr) during a period when the on-site generation is off-line.

“**Stipulated Termination Charge**” has the meaning set forth in **Exhibit “D”** attached hereto.

“**Stipulated Rate**” means a rate per annum equal to 7.5% compounded semiannually; provided that the Stipulated Rate charged and collected shall never exceed in the aggregate, taking into account all payments constituting interest under the Law, the maximum rate permitted by the Law.

“**Taxes**” means any and all governmental or quasi-governmental taxes, assessments, levies, duties, fees, charges or withholdings of any kind or nature whatsoever and howsoever described, including but not limited to income, gross receipts, franchise, sales, use, excise, property, capital, value added, stamp, transfer, intangible, generation, privilege, utility, BTU, gathering, energy, consumption, lease, permit, license, filing, custom and/or recording tax, together with any and all penalties, fines, additions or interest thereon.

“**Term**” has the meaning set forth in Section 2.3 hereof.

“**Thermal Energy**” means the hot or cold thermal energy produced by the Equipment as measured in British Thermal Units.

“**Thermal Meter**” has the meaning set forth in Section 2.2 hereof.

“**UCC**” shall have the meaning as set forth in Section 12.4 hereof.

## **ARTICLE 2 PURCHASE AND SALE OF ENERGY**

**2.1 Agreement to Purchase and Sell Equipment Energy.** Commencing on the Commencement Date and throughout the Term, Northstar hereby agrees to generate, sell, and deliver to Customer, and Customer hereby agrees to accept and purchase from Northstar, Electrical Energy at the Applicable Electric Rate and Thermal Energy at the Applicable Thermal Rate. Customer shall purchase all of the Electrical Energy and Thermal Energy supplied by Northstar from the Equipment to the extent such Energy is required by Customer. Customer shall accept and purchase Electrical Energy and Thermal Energy delivered by Northstar prior to accepting any electrical energy or thermal energy from any other source and shall accept such electrical energy and thermal energy from other sources only to the extent that Northstar does not supply electrical energy or thermal energy to meet Customer’s requirements. In the event Customer has contracted the management of the Premises or the business operated thereon to a third party, then Customer shall require such manager to accept and purchase the energy as provided above.

**2.2 Delivery and Metering of Equipment Energy.** Electrical Energy (Kwhr and Kw) shall be delivered by Northstar to Customer at the Electrical Interconnection

Point, at which point title to and risk of loss for Electrical Energy shall transfer from Northstar to Customer. Thermal Energy shall be delivered by Northstar to Customer at the HVAC and/or Plant Process Equipment Interconnection Point, at which point title to and risk of loss related to Thermal Energy shall transfer from Northstar to Customer. The actual amount of Electrical Energy, kilowatt hours and kilowatts, delivered to Customer shall be measured and recorded by meter(s) at the Electrical Interconnection Point (collectively “**Electric Meter**”). The actual amount of Thermal Energy delivered to Customer shall be measured and recorded by a BTU meter(s) at the HVAC and/or Plant Process Equipment Interconnection Point (collectively “**Thermal Meters**”). The Electric Meter and Thermal Meter shall be installed, operated, and maintained by Northstar, at its sole cost and expense, and each shall be of a quality and type that is customarily used by electric utilities or providers of thermal energy, as the case may be. Northstar shall cause each such Meter to be tested periodically, and Customer has the right to validate the calibration of the Meters. If either Meter is found to be inaccurate, Northstar shall promptly provide Customer with corrected invoices for the period since the prior test, based on other meters, past usage, or other appropriate correction factors and shall provide Customer with reasonable supporting documentation.

**2.3 Term of Agreement.** Unless sooner terminated in accordance with the applicable provisions of this Agreement, the term of this Agreement (“**Term**”) shall be the period of ten (10) years, commencing on the date the Equipment is fully installed and approved for operation by regulatory authorities, including but not limited to the California Office of Statewide Health Planning and Development, and Pacific Gas & Electric Company, and ending on the tenth (10<sup>th</sup>) anniversary thereof.

**2.4 Invoicing and Payment.** Northstar shall render to Customer an invoice for each monthly billing period (on a calendar month basis) during the Term, setting forth the charges and the amounts due Northstar for Electrical and Thermal Energy, which shall be based on the actual amounts of Electrical Energy and Thermal Energy delivered to Customer during the billing period, as determined under Section 2.2. hereof and calculated as shown on **Exhibit “E”** attached hereto. Customer will remit payment with each invoice to Northstar within thirty (30) calendar days following the date of receipt of the applicable invoice. Amounts invoiced that are not paid by the due date, including withheld disputed amounts resolved in Northstar’s favor shall accrue interest at the Stipulated Rate from (and including) the date due to (but excluding) the date on which payment is received by Northstar, and the failure of Customer to pay any amount invoiced within thirty (30) calendar days after the date due shall constitute a dispute. If customer in good faith disputes any portion of an invoice, Customer shall provide Northstar with a written explanation specifying in detail the basis for the dispute, and Customer shall pay the undisputed amount no later than the due date therefore. All disputes shall be resolved as provided in Section 14.6 hereof. If any amount paid to Northstar by Customer is determined not to be owed to Northstar, it shall be repaid to Customer within five (5) days of such determination, along with interest accrued at the Stipulated Rate from the date received by Northstar until repaid to customer.

**2.5 Customer Utility Information.** Customer agrees to provide the necessary written authorization to each utility supplying energy to Customer that allows Northstar access to all utility invoices, usage rates, and fee structure.

**2.6 Limitation on Northstar's Responsibility.** In no event shall Northstar incur any liability to Customer for its failure to provide Electrical Energy or Thermal Energy to Customer as contemplated hereby, other than in accordance with obligations specified in Article 6.2 (a) and assumed responsibilities for payment of Stand-by Charges assessed by the Customer's Electric Utility, it being understood that Customer's sole and exclusive remedy for any such failure shall be the use of electricity from the existing utility to which it is already connected. In the event the Equipment is off-line due to an Equipment or service problem, or scheduled maintenance and is not producing electricity, then Northstar shall reimburse Customer for any related Stand-by-Charge. In the event Northstar's fuel costs rise to a level that Northstar no longer is able to provide energy to Customer at any profit to Northstar, then Northstar: 1) shall provide immediate notice to the Customer of such event; 2) shall negotiate with the Customer in an effort to resolve the condition in a mutually beneficial manner; 3) after fourteen (14) calendar days following notice to Customer, may suspend operation of the Equipment and supplying energy to Customer until such time that Northstar is able to operate at any profit.

**2.7 Reductions in Designated Load.** Northstar shall retain sole control and absolute discretion over the times of operation of the Equipment and the amount of Electrical Energy and Thermal Energy supplied to Customer hereunder, provided however, that when the Equipment is in operation Northstar will adjust the output of Equipment from time-to-time as Customer's actual requirements for Electrical Energy and Thermal Energy vary with time of day, climatic conditions, season, or processing requirements. Customer agrees to not reduce its average or peak requirements for Equipment Energy without written concurrence from Northstar through self-generation, conservation, or other changes to the Customer Plant Facilities or the Premises or to Customer's use of or demand for Equipment Energy if such changes would reduce Customer's requirements to a level below the Designated Load

**2.8 Rebates and Other Benefits.** Customer acknowledges and agrees that any demand-side management, peak sharing, conservation, or other similar rebates, credits, allowances, or other benefits from any Customer Utility, governmental authority, equipment manufacturer, or other person or entity received by or available to either party as a consequence of the installation or operation of the Equipment or the supply of Equipment Energy to Customer shall be for the benefit of Northstar. Customer shall cooperate with and assist Northstar in applying for and obtaining such benefits and shall assign or pay to Northstar any such rights or amounts received in connection therewith.

### **ARTICLE 3 LEASE OF DESIGNATED AREA**

**3.1 Lease of Designated Area.** Customer hereby leases ("Lease") to Northstar that portion of the Premises as set forth in **Exhibit "F"** attached hereto

(“**Designated Area**”). Northstar shall place the Equipment in the Designated Area and shall use and occupy the Designated Area for the purpose of installing, operating, and maintaining the Equipment in order to supply Electrical Energy and Thermal Energy as provided herein, along with such other ancillary activities as may be reasonably related thereto. Customer shall maintain the Designated Area and shall pay all utilities, taxes, and bills attributable thereto. The term of the Lease shall be coterminous with the Term of this Agreement. Concurrently with the execution of this Agreement, Customer shall execute and deliver to Northstar, in recordable form, the Memorandum of Lease and Easement attached hereto as **Exhibit “G.”**

(a) **Consideration.** The consideration for the lease of Customer’s property shall be the installation of the cogeneration system by Northstar and the provision of electrical and thermal energy to the Premises provided in this agreement at rates 10 percent below what Customer would otherwise pay the utility for the amount of energy purchased from Northstar, the mutual promises herein contained, and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged.

**3.2 Easement.** Customer hereby grants Northstar an easement (“**Easement**”) for ingress and egress to the Designated Area and Interconnection Facilities and for entry upon and to access such portions of the Premises (including the common areas thereof and utility lines, gas lines, ductwork, electrical lines, metering equipment and the like) as is reasonably necessary for the construction, reconstruction, replacement, installation, maintenance, care, repair and operation of the Equipment and Interconnection Facilities and to carry out activities thereon. Northstar shall exercise its access rights granted herein in such a manner so as not to materially interfere with the operations of the Premises, including the operations of other tenants of Customer. Any ductwork, utility lines, and other facilities installed by Northstar shall be installed in such manner so as not to materially interfere with the tenant improvements installed by other tenants of the Premises. It is understood that all existing Customer Plant Facilities are, and shall remain, the property of Customer. If such access or installation activities cause material damage to the Customer Plant Facilities or the Premises, Northstar shall, at its own expense, promptly make repairs and restore the Customer Plant Facilities of the Premises to substantially their condition prior to such damage. The term of the Easement shall be coterminous with the Term of this Agreement.

**3.3 Northstar Property.** The Equipment and all alterations, additions, improvements, and installations made thereto by Northstar and all Northstar property used in connection with the installation, operation, and maintenance of the Equipment (“**Northstar Property**”) is, and shall remain, the personal property of Northstar. In no event shall any Northstar Property be deemed to be a fixture, nor shall Customer, nor anyone claiming by, through, or under Customer (including, but not limited to, any present or future mortgagee or tenant of the Premises or the Designated Area) have any rights in or to the Northstar Property at any time. Customer acknowledges and agrees that Northstar may be required to grant or cause to be granted to its lender a security interest in Northstar Property in connection with a lease or debt financing of the Northstar Property, and Customer expressly disclaims and waives any rights it may have



in the Northstar Property, at any time and from time to time, pursuant to this Agreement, at law or in equity. Customer agrees to provide to Northstar's lenders such consents to collateral assignment of this Agreement, estoppel certificates, releases, and other documents as Northstar may reasonably request.

**3.4 Customer's Access.** Customer shall have the right to enter the Designated Area at all reasonable times for the purposes of inspection, provided that Customer shall indemnify, hold harmless, and agree to defend with counsel reasonably acceptable to Northstar, Northstar from and against any and all loss, cost, Claim, damage, or expense, caused directly or indirectly, in whole or in part, by such entry including, but not limited to, damage to the Equipment, the Designated Area, or any other property or person. The provisions of this section shall survive the expiration or earlier termination of this Agreement.

**3.5 Non-Disturbance.** If requested by Northstar in writing Customer shall obtain from mortgagee (if any) of the Premises a written undertaking in favor of Northstar to the effect that such lender or mortgagee will not disturb Northstar's right of possession of the Designated Area if Northstar is not then or thereafter in breach of this Agreement, and in no case shall such lender interfere with Northstar's right to possession and/or ownership of the Equipment.

**3.6 Emergencies.** Either party may take such action as reasonably may be required to respond to emergencies respecting the Equipment, Customer Plant Facilities, and the Interconnection Facilities, and to prevent loss of life or property damage. Each party promptly shall notify the other of any such emergency or action.

**3.7** There is reserved to Customer the right to construct or reconstruct facilities and appurtenances in, upon, over, under, across and along the Premises and in connection therewith, the right to grant or convey to others easement rights and interests to the Premises; provided such rights and interests do not unreasonably interfere with Northstar's operations. Northstar recognizes that the Customer has existing facilities on the Premises and Northstar shall not damage or destroy such facilities or improvements.

**3.8** Notwithstanding any provision of this Agreement to the contrary, Customer reserves the right in its sole discretion to make improvements and/or alterations to the Premises and/or changes in the operations of the Premises and the use energy.

#### **ARTICLE 4 INSTALLATION AND OPERATION OF EQUIPMENT**

**4.1 Installation, Operation and Permits.** Northstar shall, at its sole cost and expense, design, build and own the Equipment in the Designated Area, substantially in compliance with the specifications set forth on **Exhibit "C"** attached hereto. Northstar, at its sole cost and expense, shall operate, maintain, and repair the Equipment in a commercially reliable manner and in accordance with prevailing industry standards.

Northstar shall obtain, at Northstar's sole cost, any permits or regulatory approvals required for the installation and operation of the Equipment and the installation and operation of the Equipment shall be in compliance with all Laws, provided however, that Customer shall cooperate with Northstar in obtaining any such permits or approvals.

**4.2 Financing Contingency.** Northstar shall use its best efforts to obtain financing for the purchase and installation of the Equipment. Customer acknowledges that Northstar is incurring substantial financial risks and burdens in acquiring and installing the Equipment and if, within one hundred eighty (180) days of the execution hereof by both parties, Northstar fails to secure such financing at reasonable rates within the parameters utilized in originally proposing the Equipment to Customer, this Agreement shall terminate without liability to either party.

**4.3 Installation Plan.** Within one hundred twenty (120) days of the execution hereof by both parties, Northstar shall submit written materials ("**Installation Plan**") to Customer sufficient to indicate where the Equipment is to be installed and where the various protection, metering, connection, and other devices necessary to permit the Equipment to function in conjunction with Customer's current or existing energy system are to be located. The Installation Plan shall include a project schedule showing all tasks required to complete the installation by the Commencement Date. Customer shall review the Installation Plan and shall either approve same in writing or reject those portions of the plan which are unacceptable. In the event that portions are rejected, Northstar shall revise the Installation Plan until it is approved in writing by Customer. Such approval will not be unreasonably withheld. If Customer fails to respond to an Installation Plan within ten (10) days after its receipt, then Customer shall be deemed to have accepted such Installation Plan.

**4.4 Permits and Consents.** Upon completion and approval of the Installation Plan, Northstar shall apply for all building permits and consents, including but not limited to the California Office of Statewide Health Planning and Development, and Pacific Gas & Electric Company, necessary for the installation and operation of the Equipment. If alterations of the Installation Plan are necessary in order to obtain such permits and consents, Customer's approval of such alterations shall be obtained prior to proceeding. Customer's approval shall not be unreasonably withheld. If Northstar is unable to obtain all necessary permits and consents, this Agreement shall terminate without liability to either party.

**4.5 Commencement of Performance.** After obtaining the necessary permits and consents for the installation of the Equipment, Northstar shall take all necessary steps to procure the Equipment. Northstar's obligations hereunder are conditioned upon the availability of the various components of the Equipment and at approximately the prices previously planned by Northstar. If Northstar is not able to so procure the Equipment when indicated by the project schedule included with the Installation Plan, this Agreement may terminate without liability to either party. If Northstar is able to procure the Equipment, the installation shall commence as soon as reasonably practical.

**4.6 Performance.** Customer agrees to fully cooperate in the installation of the Equipment. Customer acknowledges that minor disruptions in utility service to the Premises may be occasioned by both testing and final “hook-up” of the Equipment, and that construction and installation of the Equipment may entail use of cranes, ladders, helicopters, and other heavy equipment. The installation will be performed in a good and workmanlike manner, and every effort will be made to not unreasonably interfere with the operation of the Premises. Should any changes be required after the Installation Plan is approved by the Customer, Northstar shall reflect such changes in writing, and the changes shall be subject to the approval set forth above.

## **ARTICLE 5 OWNERSHIP OF NORTHSTAR EQUIPMENT**

**5.1 Equipment Owned by Northstar.** Northstar shall have complete ownership and control of the Northstar Equipment. The Northstar Equipment is and shall remain the property of Northstar, and no item thereof shall become a fixture of the Premises or other real property notwithstanding its installation on or attachment to real property or any improvement located thereon subject to Customer’s right to purchase.

**5.2 Protection of Northstar’s Ownership Interest.** Customer agrees to execute any document and perform any act necessary or desirable to document and/or protect Northstar’s ownership interest in the Equipment. If any buildings or structures located upon the Premises is not owned by Customer, Customer warrants that the true owner thereof will not claim any ownership interest in the Equipment and Customer agrees to cause such true owner to execute any document and perform any act necessary or desirable to document and/or protect Northstar’s ownership interest in the Equipment.

**5.3 Proprietary Property Rights.** Subject to and with the exception of the Option to Purchase specified in Article 14.9, Northstar shall be the sole owner of, and Customer shall acquire no interest in, any software, formulas, patterns, devices, inventions, processes, copyright, patent, other intellectual property or proprietary rights, or similar items of property which are or may become used in connection with the Equipment.

## **ARTICLE 6 MAINTENANCE AND REPAIR OF FACILITIES**

**6.1 Maintenance of Premises.** Customer agrees to keep in good order, condition, and repair the structural components and the roof of Premises, the common utility and systems, the common hallways, entrances, restrooms and elevators, the paved surface of the parking areas serving the Premises and the sprinkler system of the Premises (including within the Designated Area). If Customer fails to make such repairs, Northstar may make such repairs as required to permit Northstar to fulfill its obligations hereunder or to prevent damage to the” Equipment”. Customer shall not be liable for any failure to make such repairs unless Northstar has given notice to Customer of the need to

make such repairs and Customer has failed to make a good faith effort to complete such repairs within a reasonable time depending upon the nature of the damage or disrepair.

## **6.2 Maintenance of Utility Connections and Equipment.**

(a) **Northstar's Obligations.** Northstar shall use its diligent efforts to maintain the Equipment in good working order. Northstar shall provide service, repairs, and maintenance to the Equipment and shall replace defective or worn out components. All repairs, parts, accessories, and improvements of any kind or nature furnished or affixed to the Equipment shall belong to and become the property of Northstar. Northstar shall provide Customer with reasonable advance notice regarding any scheduled Equipment shutdowns. Northstar shall notify Customer upon arrival at Premises and prior to entering the Designated Area. Northstar and its authorized representatives shall have access to all components of the Equipment along with all other components of Customer's energy system for the purpose of performing its maintenance and repair duties hereunder. Northstar represents the Equipment will be operational 92% of the time annually (8059 hours) and will provide a minimum of 80% of the designated load at those hours that will optimize the economic benefit to Customer.

(b) **Customer's Obligations.** Customer shall not remove, render non-operational, alter, repair, or service Northstar's Equipment in any manner whatsoever without the prior express written consent of Northstar.

**6.3 Alterations.** Northstar may, but is not required to, replace or alter the Equipment at any time during the Term, and unless such replacements or alterations involve a change in the space requirements of the Equipment, they may be made without Customer's consent provided they meet the requirements and specifications set forth in the Agreement and are in compliance with the requirements of all regulatory agencies. Customer shall not change, alter, or modify the Equipment in any way.

(a) Customer shall at all times during the Term maintain the Customer Plant Process Equipment and Facilities in good condition and repair so as to be able to safely receive and utilize the Electrical Energy and Thermal Energy delivered to the Customer from the Equipment and to receive and utilize electrical energy and thermal energy from the Customer Utilities. Customer shall maintain in good working order and available at all times or an immediate demand basis, its hookup to and its service contract with, the Customer Utilities so that Customer can immediately obtain its full requirements for electrical energy and thermal energy from the Customer Utilities during periods when Northstar is unable to provide for such requirements whether due to the Equipment not being operational or otherwise.

(b) Northstar may make repairs, conduct inspections, or perform routine or extraordinary maintenance, or make upgrades or other modifications to the Equipment or the Interconnection Facilities, at any time during the Term.

**6.4 Connection and Services to Equipment.** Customer shall cooperate with Northstar in obtaining from any Customer Utility such separate and metered connections for water supply, sewer, natural gas, electric or other services as Northstar may determine necessary for the operation of the Equipment. The cost of such connections, including any hook-up fees assessed by a Customer Utility shall be paid for by Northstar. Customer shall provide to Northstar, without cost to Northstar, such water supply and sewer services as may be required for the installation and operation of the Equipment. Northstar shall pay for all natural gas used by it to operate the Equipment.

**6.5 Interference with Northstar's Operations.** Customer reserves the use of the land, walls, and roof of the Designated Area, together with the right to install, maintain, use, repair and replace pipes, ducts, conduits, wires and structural elements leading through the Designated Area in locations which will not materially interfere with Northstar's use of the Designated Area, or if such action would cause material interference with Northstar's use of the Designated Area, Customer shall conduct such installation, maintenance, repair or replacement only after at least forty-eight (48) hours advance notice to Northstar and at a time that minimizes such interference, or outside of normal business hours, if reasonably practical (except in the event of an emergency, in which case Customer shall be entitled to make such repairs immediately). Notwithstanding any preclusion of the full operation of the Equipment that may be caused by any such interference, Customer shall remain obligated to pay Northstar an amount equal to

the numbers of hours the Equipment is non-operational multiplied by 50% of the average cost per hour of power generation for the previous sixty days, and any standby charges levied by the local utility for the period of the Equipment's non operation except where such interference is due to Force Majeure. The continuation of any such interference for a period in excess of thirty (30) days shall constitute a dispute under the terms of this Agreement. This provision will not apply unless the Customer obligation to purchase 80% of the Designated Load under Article 2 is not fulfilled for the previous 12 months.

**6.6 Environmental Compliance.** Notwithstanding anything above to the contrary, Customer shall be responsible for the removal in accordance with all applicable Laws of all Hazardous Materials released or threatened to be released in, on, under, or about or emanating from Premises, excluding the Equipment, known or unknown, as of the date of this Agreement or hereafter coming to be released or threatened to be released on, under, or about or to emanate from the Premises from the act or omission of Customer, other tenants, and/or other persons. In the event of any current or future release or threat of release of Hazardous Materials upon adjacent lands (if caused or permitted by Customer or its agents or its representatives or persons claiming under Customer) or upon the Building (if caused by any party other than Northstar or its agents or representatives), Customer shall promptly remedy the problem in accordance with all applicable Laws and requirements. Furthermore, Customer shall indemnify, defend, and hold Northstar harmless from and against all loss, cost, liability, and damage including, without limitation, reasonable attorney's fees and litigation costs, arising from the past, current, or future release or threat of release of Hazardous Materials to the extent caused

or permitted by Customer or its agents or representatives or other tenants or other persons. Additionally, Northstar agrees to fully comply with all applicable ordinances regarding noise pollution at no expense to the Customer. The indemnity obligation set forth in this section shall survive the expiration or earlier termination of this Agreement.

**6.7 Costs of Maintenance; Charges.** Except as provided in this subparagraph, Northstar shall operate, service, maintain and repair the Equipment at its sole cost. Northstar shall not be responsible for any expense incurred by Customer for the service, maintenance, or repair of the Equipment unless Northstar fails to service, repair, or maintain the Equipment in conformity herewith for a period of five (5) days following written notice from Customer advising Northstar of such problem(s). In the event any of the following occur, Customer shall compensate Northstar for its services and costs incurred at actual incurred cost.

(a) Northstar responds to a request for service or maintenance by Customer and it is determined that nothing substantial is wrong with the Equipment.

(b) Northstar responds to a request for service or maintenance by Customer and the reported problem is determined by Northstar not to be the result of the Equipment, but of some other component of Customer's building or Plant Process Equipment.

(c) Any maintenance, repair, replacement, or service due to the act or omission of Customer or its agents, contactors, or tenants.

In the event that Customer is required to pay for Northstar's services pursuant hereto, the charge for Northstar's services shall be its then current hourly rate for repair, service, and maintenance of a similar size and type system.

## **ARTICLE 7 TERMINATION; LIQUIDATED DAMAGES; AND LIMITATION OF LIABILITY**

### **7.1 Termination.**

(a) If Customer fails (i) to make any payment to Northstar when due and payment in full is not received by Northstar within fifteen (15) days after written notice to Customer or (ii) to perform or comply with any provision of this Agreement and does not fully cure such failure within fifteen (15) days after notice to Customer or, if such failure cannot be cured within such fifteen (15) day period, and Customer fails within such fifteen (15) day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible but in all events within ninety (90) days of such notice then such failure shall constitute grounds for termination and this Agreement may be terminated by Northstar upon such notice to Customer. Customer shall pay to Northstar the Stipulated Termination Charge within thirty (30) days following such termination.

(b) If Northstar fails to perform or comply with any provision of this Agreement and does not fully cure such failure within fifteen (15) days after notice to Northstar or, if such failure cannot be cured within such fifteen (15) day period, and Northstar fails within such fifteen (15) day period to commence, and thereafter diligently proceed with, all actions necessary to cure such failure as soon as reasonably possible but in all events within ninety (90) days of such notice then such failure shall constitute grounds for termination and this Agreement may be terminated by Customer upon such notice to Northstar. Northstar shall remove the Equipment from the Designated Area within sixty (60) days following such termination. If Northstar fails to remove the Equipment within the time specified then the Equipment shall become the property of Customer and Customer shall pay Northstar an amount equal to the value of the Equipment to Customer.

(c) Customer may terminate this Agreement, for no cause, at any time prior to Commencement Date upon (i) written notice and (ii) payment to Northstar of expenses incurred up to a maximum of the Stipulated Termination Charge.

**7.2 LIQUIDATED DAMAGES. NORTHSTAR AND CUSTOMER EXPRESSLY ACKNOWLEDGE AND AGREE THAT IF THIS AGREEMENT IS TERMINATED PURSUANT TO SECTION 7.1(A) OR 7.1 (C) HEREOF (I) NORTHSTAR WILL BE MATERIALLY DAMAGED, (II) IT WOULD BE EXTREMELY DIFFICULT AND IMPRACTICABLE AT THIS TIME TO ESTIMATE THE AMOUNT OF SUCH DAMAGE, AND (III) AFTER NEGOTIATION, THE PARTIES HAVE AGREED THAT, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE DATE OF THIS AGREEMENT, THE AMOUNT OF THE STIPULATED TERMINATION CHARGE IS A REASONABLE ESTIMATE OF THE DAMAGES THAT NORTHSTAR WOULD INCUR IN SUCH EVENT. ACCORDINGLY, NORTHSTAR AND CUSTOMER AGREE THAT IN THE EVENT OF SUCH TERMINATION, THE STIPULATED TERMINATION CHARGE SHALL CONSTITUTE LIQUIDATED DAMAGES FOR SUCH DEFAULT. SUCH LIQUIDATED DAMAGES SHALL CONSTITUTE NORTHSTAR'S SOLE AND EXCLUSIVE REMEDY FOR SUCH TERMINATION AND SHALL BE IN LIEU OF ANY OTHER MONETARY RELIEF OR ANY OTHER RELIEF TO WHICH NORTHSTAR MAY OTHERWISE BE ENTITLED UNDER THIS AGREEMENT OR UNDER THE LAW, AND NORTHSTAR HEREBY WAIVES ANY RIGHT TO SPECIFIC PERFORMANCE OR DAMAGES HEREUNDER, EXCEPT CUSTOMERS FAILURE TO PAY THE STIPULATED TERMINATION CHARGES WILL BE RESOLVED IN ACCORDANCE WITH SECTION 14.6.**

**BY PLACING ITS INITIALS BELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY WAS REPRESENTED BY COUNSEL WHO EXPLAINED, AT THE TIME THIS AGREEMENT WAS MADE, THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION.**

INITIALS: Northstar \_\_\_\_\_

Customer \_\_\_\_\_

**7.3 Limitation of Liability.** Except for the payment of the Stipulated Termination Charge under Section 7.1 hereof in no event, whether as a result of breach of contract, breach of warranty, tort liability (including negligence or strict liability), strict liability, or otherwise, and whether arising under any of the terms of this Agreement or otherwise, shall Customer be liable to Northstar, or Northstar be liable to Customer for any special, indirect, incidental, economic, or consequential damages whatsoever including, without limitation, loss of profits or revenue, loss of use of equipment, cost of capital, cost of temporary equipment, overtime, business interruption, spoilage of goods, claims by customers or tenants of Customer or other economic harm. Without limiting the foregoing, Northstar shall not be responsible for any increased utility costs suffered by Customer or Customer's tenants on account of any breach or termination of the Agreement by Northstar.

## **ARTICLE 8 INSURANCE**

**8.1 Northstar Insurance Obligations.** Throughout the Term (unless otherwise indicated), Northstar shall maintain, at its sole cost and expense, the following:

(a) Commercial general liability insurance against the risks of bodily injury, personal injury, and property damage occurring on, in or about the Premises which arise from Northstar's ownership, installation, use, or maintenance of the Equipment, in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate. Such policy shall not be cancelled or materially changed without at least thirty (30) days written notice to additional insureds. If the policy insures more than one location, it shall be endorsed to show that the limits and aggregate apply per location.

(b) Prior to the Commencement Date, installation risk insurance in an amount equal to one hundred percent (100%) of the projected completed value of the work associated with the installation of the Equipment with "special perils" endorsement, excluding flood.

(c) After the Commencement Date, insurance covering loss or damage to the Equipment in an amount not less than the replacement cost of the equipment in the region in which the Premises is located (provided that such insurance is commercially available), providing protection against all perils included within the classification of fire and extended coverage, vandalism coverage and malicious mischief, sprinkler leakage, and water damage, excluding flood coverage.

**8.2 Customer's Insurance Obligations.** Throughout the Term (unless otherwise indicated), Customer shall maintain, at its sole cost and expense, the following:



(a) Property insurance in the so-called Special Form insuring Customer Plant Facilities for the full replacement value thereof.

(b) Commercial general liability insurance insuring Customer against liability for bodily injury, property damage, and personal injury in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit of liability.

(c) Where applicable, boiler and machinery insurance covering Customer Plant Facilities for the full replacement value thereof and including a minimum of twelve (12) months loss of income protection for Northstar.

**8.3 Customer Policy Form.** Each policy of insurance required to be carried by Customer pursuant to this Article may, at Customer's discretion include self-insurance, commercial insurance or a combination thereof.

**8.4 Customer Certificate.** As to each policy of insurance required to be carried by a party pursuant to this Article, prior to the time installation of the Equipment and the commencement of each succeeding policy period thereafter, the insuring party shall deliver to the other party a certificate of the insurer certifying, in a form satisfactory to the other party, that the policy is in full force and effect with premiums paid in full and is compliance with the requirements set forth in this Article. With respect to each renewal or replacement of any such insurance, the requirements of this paragraph must be complied with prior to the expiration or cancellation of the policy being renewed or replaced. The other party may at any time, and from time to time, inspect and/or copy any and all insurance policies required to be carried by the insuring party pursuant to this Article.

**8.5 Insurance Policies.** All insurance policies required under this Article shall be issued by insurers of recognized responsibility which are licensed to do business in the state in which the Premises is located. Each party's policy of commercial general liability insurance shall name the other party as an additional insured and shall contain an agreement by the insurer that such policy shall not be terminated or canceled without at least thirty (30) days prior written notice to such additional insured; provided such notice shall be ten (10) days in the case of failure to pay premiums. However, Customer's responsibility may be met by self-insurance, commercial insurance or a combination thereof.

## **ARTICLE 9 FAILURES, DAMAGE, OR DESTRUCTION OF EQUIPMENT**

**9.1 Insured Risk.** If the Equipment is damaged, destroyed, or fails as a result of an event which is covered by insurance and the funds are received from the insurance carrier and are made available to Northstar for such purpose, Northstar shall utilize the insurance proceeds to repair or replace the Equipment.

**9.2 Resulting From Acts of Customer.** If the Equipment is damaged,

destroyed, or fails as a result of the act or omission of Customer, a tenant of Customer, or either of their officers, employees, agents, independent contractors, guests, or any person or entity under the control or direction of either Customer or such tenant, Customer shall be liable to Northstar for the cost of replacement or repair. The failure to pay such cost shall constitute a breach hereof. It is mutually agreed that the Customer is under no obligation to monitor the Equipment.

## **ARTICLE 10 DEFAULT**

**10.1 Northstar Default.** The following events by Northstar shall be resolved in accordance with either Article 14.6 or 7.1.b at Customer's option.

(a) Failure to complete the installation of the Equipment as obligated hereunder.

(b) Failure to commence attempts to maintain or repair the Equipment for a period of thirty (30) days after written notice from Customer of a problem.

(c) Failure to perform any covenant or act required herein which failure continues for a period of thirty (30) days after written notice from Customer of such failure.

(d) Northstar becoming insolvent or making an assignment for the benefit of creditors.

(e) Northstar making an application for or consenting to the appointment of a receiver.

(f) Any representation or warranty furnished by Northstar to Customer was knowingly false or misleading in any material respect when made.

(g) Failure to produce at least eighty percent (80%) of the electrical or thermal energy Designated Load for the prior two years.

**10.2 Customer Default.** The following events by Customer shall be resolved in accordance with either Article 14.6 or 7.1.a at Northstar's option.

(a) Failure by Customer to make payment when due of all sums due hereunder.

(b) Failure by Customer to perform any covenant or act required herein which failure shall continue thirty (30) days after written notice to Customer.

(c) Customer becoming insolvent or making an assignment for the benefit of creditors.

(d) Customer making an application for or consenting to the appointment of a receiver.

(f) Customer's requirements for electrical or thermal energy produced by the Equipment becomes less than eighty percent (80%) of the average monthly Kwhr or therm usage for the prior two years as per the Designated Load.

(g) Any representation or warranty furnished by Customer to Northstar was knowingly false or misleading in any material respect when made.

**10.3 Force Majeure.** If either party shall be unable to carry out any of its obligations under this Agreement due to events beyond its control, such as an act of God, government or judicial authority, war, blockades, insurrection, riot, labor dispute, labor or material shortage, a fire, explosion, floods, nuclear emergency, epidemic, landslide, lightning, earthquake, terrorist attack, or similar cataclysmic occurrence, this Agreement shall remain in effect, but the effected party's obligations shall be suspended for a period equal to the disabling circumstances.

## **ARTICLE 11 REPRESENTATIONS AND WARRANTIES**

**11.1 General Representations and Warranties of Northstar and Customer.** Customer and Northstar each hereby represent and warrant to the other that the following statements are true and correct as of the date hereof:

(a) It is duly organized, validly existing and in good standing under the laws and jurisdiction of its formation and is qualified to conduct its business in those jurisdictions necessary to its performance under this Agreement.

(b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions of its governing documents or any contract to which it is a party or any Law applicable to it.

(c) This Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, subject to Laws affecting creditor's rights generally, and with regard to equitable remedies, subject to the discretion of the court before which proceedings to obtain the same may be pending.

(d) There are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending or being contemplated by it, or to its knowledge threatened against it.

(e) To the best of its knowledge, there are no suits, proceedings, judgments, rulings or orders by or before any court or any governmental authority that could materially adversely affect its ability to perform under this Agreement.

(f) It has sufficient knowledge and experience in business matters that enable it to evaluate the merits and risks of entering into this Agreement.

**11.2 Representations and Warranties of Customer.** Customer further represents and warrants that:

(a) Customer shall not re-sell any Equipment Energy to any third party, provided, however Equipment Energy may be provided to tenants and other occupants of the Premises by Customer and payment for such Equipment Energy may be included in the lease payments from such tenants to Customer.

**11.3 Representations and Warranties of Northstar.** Northstar represents and warrants that it is not a public utility or public service corporation under the laws of the State of California or subject to the jurisdiction of the California Energy Commission or the California Public Utilities Commission or regulated by the Federal Energy Regulatory Commission by reason of this Agreement or any other agreement or by reason of its receipt of payment for Equipment Energy. Northstar further represents and warrants that its sale of Equipment Energy to Customer hereunder does not make Northstar an “electrical service provider” as such term is defined in Section 2.18.3 of the Public Utility Code of California. Northstar further represents and warrants that:

(a) All services to be performed by Northstar pursuant to this agreement shall be performed in accordance with all applicable federal and state laws, all applicable county ordinances, and all applicable licensure requirements. Northstar will timely and accurately complete, sign, and submit all necessary documentation of compliance.

**11.4 Disclaimer; Limitation on Representations.** Except as otherwise provided in this Agreement, the provisions of the Uniform Commercial Code (“UCC”) of the State of California shall be deemed to apply to this Agreement, and Electric Energy and Thermal Energy sold and purchased hereunder shall be deemed to be “goods” for purposes of the UCC. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NORTHSTAR MAKES NO OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE EQUIPMENT, ITS PERFORMANCE OR AS TO THE AVAILABIILTY, RELIABILITY OR QUALITY OF THE EQUIPMENT ENERGY.

## ARTICLE 12

### ASSIGNMENT: SALE OR TRANSFER OF PREMISES BY CUSTOMER

**12.1 Assignment by Northstar.** Northstar may transfer or assign any part of

its rights herein or delegate any part of its duties hereunder to any party upon 30 days written notice to Customer and without the consent of Customer, whether in connection with the sale or hypothecation of the Equipment or otherwise, provided that any assignee or delegatee agrees to abide by the terms of this Agreement or any part hereof and shall execute any document necessary or desirable to accomplish same.

**12.2 Assignment by Customer.** Customer may transfer or assign any part of its rights herein or delegate any part of its duties hereunder, whether by way of sale, sublease, mortgage, hypothecation or otherwise, provided that (a) Customer provides 30 days written notice to Northstar, (b) Customer pays all sums owed to Northstar through the date of such assignment, and (c) Customer's successor in interest executes a document assuming all of the obligations of Customer hereunder and agreeing to abide by all of the provisions hereof.

**12.3 Sale by Customer.** Without limiting the provisions of Section 12.2 hereof, if Customer sells, exchanges, or otherwise transfers the Premises, Customer shall, at least thirty (30) days prior to any such transfer, notify Northstar in writing of such transfer including in the notice the name and address of the proposed transferee. Customer shall require the proposed transferee to assume all of the obligations of Customer hereunder of as such transfer, and failure to do so shall constitute a breach of this Agreement by Customer.

**12.4 Eminent Domain.** If the Premises, or a portion thereof, is taken by condemnation or the right of eminent domain, or by agreement between Customer and those authorized to exercise such right, then any award made in respect thereof shall belong to and be paid to Customer, and Northstar hereby assigns to Customer all of its right, title and interest in any such award, provided however, that Northstar shall be entitled to receive any portion of the award that is made to Customer (i) for the taking of personal property, inventory or trade fixtures belonging to Northstar, including the Equipment, (ii) for the interruption of Northstar's business, goodwill, or its moving costs, and (iii) for the value of any leasehold improvements installed thereon and paid for by Northstar including the Equipment.

## **ARTICLE 13 INDEMNIFICATION**

**13.1** Customer shall indemnify, defend, and hold harmless Northstar from any and all claims, actions, costs, expenses, damages, and liabilities arising out of or in connection with activities of Customer, a tenant of Customer, or either of their officers, employees, agents, independent contractors, guests, or any person or entity under the control or direction of either Customer or such tenant. In addition, Customer shall indemnify, defend, and hold harmless Northstar from any claims of Customer's creditors to any right, title, or interest in the Equipment or resulting from any encumbrances, liens, or claims placed on the Equipment.

**13.2** Northstar shall indemnify, defend, and hold harmless Customer from any

and all claims, actions, costs, expenses, damages and liabilities arising out of or in connection with activities of it or its employees or other agents in connection with and within the scope of this Agreement in so far as any such loss or claim is not covered by available insurance proceeds. In addition, Northstar shall indemnify, defend, and hold harmless Customer from any claims of Northstar's creditors to any right, title or interest in the Equipment or resulting from any encumbrances, liens or claims placed on the Equipment.

**13.3** The indemnity obligations set forth in this Article shall survive the expiration or earlier termination of this Agreement.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

**14.1 Notices.** Any notice, statement, certificate, request, or demand required or permitted to be given or delivered under this Agreement shall be in writing, and sent by either (i) registered or certified mail, postage prepaid, return receipt requested, or (ii) nationally recognized overnight courier service (such as Federal Express), in either case addressed to the intended recipient at the address set forth beneath its signature to this Agreement, (or to such other address as Customer or Northstar shall designate in the manner provided herein). Should Customer designate a managing agent and provide notice thereof to Northstar, such managing agent shall be authorized and designated to sign, give, and deliver to Northstar and receive from Northstar, any notice under this Agreement. Any such notice, statement, certificate, request or demand shall, in the case of registered or certified mailing, be deemed to have been given on the date mailed as aforesaid in any post office or branch post office regularly maintained by the United States Government, and in the case of delivery by nationally recognized overnight courier service, shall be deemed to have been given upon the date of delivery to an authorized agent of such courier service, except in each case for notice of change of address or revocation of a prior notice, which shall only be effective upon receipt.

**14.2 Survival of Obligations.** Any sums due from either party that by the terms herein would be payable, or are incapable of calculation until, after the expiration or earlier termination of this Agreement shall survive and remain a continuing obligation until paid. Any obligations of either party that by the terms hereof are to be performed after the expiration or earlier termination of this Agreement shall survive and remain a continuing obligation until performed.

**14.3 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same agreement.

**14.4 Governing Law; Successors and Assigns.** This Agreement shall be governed by and construed in accordance with the laws of the State of California as applied to agreements among California residents which are entered into and performed entirely within California. Any dispute arising under this Agreement shall be resolved

exclusively through arbitration as set forth in Section 14.6 hereof. The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, except as expressly provided otherwise.

**14.5 Complete Agreement; Waiver.** This Agreement contains and embraces the entire agreement between the parties with respect to the matters contained herein. Neither this Agreement nor any part hereof may be changed, altered, modified, limited, terminated, or extended orally unless memorialized by a written agreement signed by the parties hereto.

**14.6 Settlement of Disputes.** If a dispute arises under this Agreement, the parties shall first promptly attempt in good faith to resolve the dispute by negotiation or mediation by a mutually agreeable mediator.

**14.7 Severability.** If any term or provision of this Agreement or the application therefore to any person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**14.8 No Joint Venture, etc.** Nothing contained herein shall be deemed or construed by the parties nor by any third party as creating a relationship of principle and agent or of partnership or of joint venture between the parties.

**14.9** Both parties agree the combined demand load charged by Northstar and Customer Electric Utility will not exceed what Customer Electric Utility would have charged Customer during the applicable billing period in the absence of Electrical Energy being provided by Northstar. Northstar's Demand Charge rate will be ten percent (10%) below the rate charged by Customer Electric Utility.

**14.10 Option to Purchase.** Northstar hereby grants to Customer an exclusive and irrevocable option to purchase the Northstar Property ("**Option**"). The purchase price for the Northstar Property shall be the Stipulated Termination Charge except that the year of exercise of the Option shall be deemed the year of termination for purposes of determining the Stipulated Termination Charge ("**Purchase Price**"). The Option may be exercised by Customer any time during the Option Period by providing written notice thereof to Northstar. If Customer fails to exercise the Option as provided in the preceding sentence, then the Option and all rights under this paragraph shall terminate without further notice. For purposes of this paragraph, (a) the "**Option Period**" shall mean the period commencing with the first (1<sup>st</sup>) anniversary of the Commencement Date and ending on the tenth (10<sup>th</sup>) anniversary of the Commencement Date, and (b) the "**Term Factor**" shall mean one hundred percent (100%) if the Option is exercised during the first year of the Option Period, ninety percent (90%) if the Option is exercised during the second year of the Option Period, and a ten (10) basis point reduction for each year

thereafter, as described on “Exhibit D” attached hereto. The payment of the Purchase Price and the transfer of the Northstar Property shall take place at a location designated by Northstar, on or before twenty (20) days following Customer’s exercise of the Option (“Closing”). At the Closing, Customer shall pay to Northstar the Purchase Price, and Northstar shall execute and deliver to Customer such documents of transfer that Customer shall reasonably require in order to transfer the Northstar Property (including operating software) to Customer, free and clear of all liens and encumbrances.

(a) Expiration of Term. Should Customer elect not to exercise the option to purchase by expiration of ten-year term of this agreement, Northstar shall execute and deliver to Customer such documents of transfer that Customer shall reasonably require in order to transfer the Northstar Property to Customer, free and clear of all liens and encumbrances.

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

Northstar Power Ltd

Customer

By: \_\_\_\_\_  
Rod Bower, President

By: \_\_\_\_\_  
Rose Jacobs Gibson  
President  
Board of Supervisors  
County of San Mateo

Address for notices:

P.O. Box 68  
660 Sundance Place  
Applegate, CA 95703  
Attention: Rod Brower

Address for notices:

County of San Mateo  
555 County Center, 5<sup>th</sup> Floor  
Redwood City, CA 94066  
Attention: James C. Porter



ATTEST:

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John L. Maltbie, County Manager/  
Clerk of the Board of Supervisors

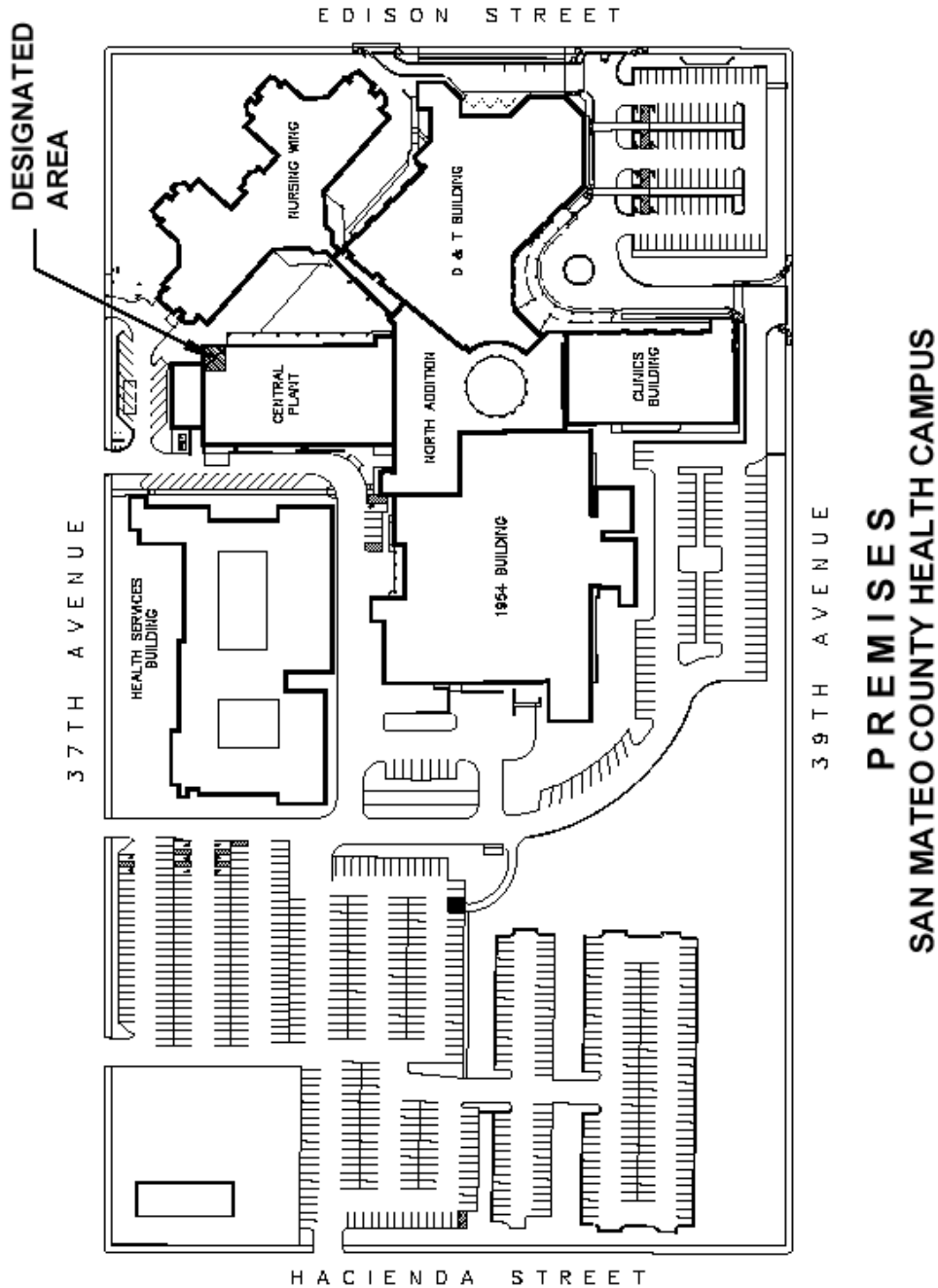
## **SCHEDULE OF EXHIBITS**

- “A” Description of Premises
- “B” Designated Load
- “C” Equipment and Specifications
- “D” Stipulated Termination Charge
- “E” Calculation of Charges
- “F” Designated Area
- “G” Memorandum of Lease and Easement

**EXHIBIT "A"**

**DESCRIPTION OF PREMISES**

That portion of the real property shown on the attached drawing identified as Exhibit "A" commonly known as the San Mateo County Health Campus situated in the City of San Mateo, County of San Mateo, State of California.



**EXHIBIT "B"**

**DESIGNATED LOAD**

| <b>San Mateo Medical Center<br/>Annual Designated Load</b> | <b>Therms</b>  | <b>Kwhrs.</b>    |
|--|----------------|------------------|
| <b>Annual Total</b>  | <b>379,000</b> | <b>6,226,000</b> |

**NOTE: Assumes the replacement of existing 200 hp steam boiler with 8 million BTU hot Water boiler at Customer's expense**

## **EXHIBIT “C”**

### **EQUIPMENT AND SPECIFICATIONS**

The conceptual understanding is that Northstar shall install, operate and maintain a cogeneration system of approximately 900 kW consisting of up to three separate Cummins engines, a dump radiator, heat exchangers, circulating pumps, connection points, metering devices, and sound attenuation equipment necessary for compliance with the current City of San Mateo noise ordinance. Equipment specifications shall be determined by a comprehensive study to be completed by Northstar at Northstar’s expense following approval of this agreement. Commencement Date shall be within approximately twelve (12) months of the Effective Date providing; however for an extension because unusual or unforeseen circumstance.

Northstar shall prepare project plans and specifications for the cogeneration system that shall be installed, operated and maintained at the Designated Area described in this agreement.

- A. Development of the project plans and specifications shall be performed under the responsible charge of a registered professional engineer. Project plans and specifications are to be stamped and signed by the registered professional engineer of record.
  
- B. Project plans and specifications shall be developed in compliance with OSHPD Regulations and the City of SanMateo noise ordinances.
  
- C. Detailed final plans and specifications shall include the following:
  - 1. Detailed electrical design, including:
    - a. Scale electrical drawings (24 x 36 minimum)
    - b. Installation plans and details
    - c. Single-line diagrams
    - d. Equipment schedules
    - e. Panel schedules
    - f. Equipment sizing calculations for all equipment
  
  - 2. Detailed mechanical design, including:
    - a. Scale mechanical drawings (24 x 36 minimum)
    - b. Installation plans and details
    - c. System schematics
    - d. Equipment schedules
    - e. Equipment sizing calculations for all equipment

3. Detailed structural design, including:
  - a. Scale structural drawings
  - b. Installation plans and details
  - c. Materials schedules
  - d. Design connections of equipment to existing structure
  - e. Structural calculations to verify adequacy of Equipment connections and anchorage.
  
4. Detailed control design, including:
  - a. Detailed control drawings (24 x 36 minimum)
  - b. Installation plans and details
  - c. Points list
  - d. Sequence of control
  - e. Equipment schedules
  - f. Panel layouts, diagrams, installation details, etc.
  - g. System block diagrams and schematics

D. Drawings shall be prepared in CADD. Copies of files in AutoCAD formats are to be submitted with final or as-built plans. Six (6) copies of project plans and specifications shall be submitted for the Customer's review and approval.

E. Project development shall, in general, adhere to the following schedule:

| Event  | Day |
|--|-----|
| Effective Date – Signing of Energy Purchase Agreement                          | 1   |
| Comprehensive study completed  | 60  |
| Installation plan for Customer's review and approval                           | 120 |
| Respond to Customer's comments and commence permitting                         | 130 |
| Customer's review and approval of construction plans and commence construction | 250 |
| Notice of Start up and test  | 350 |
| Commencement Date – delivery of electrical/thermal energy to the Premises      | 365 |

**EXHIBIT “D”**

**STIPULATED TERMINATION CHARGE**

The Stipulated Termination Charge is an amount equal to the lesser of One Million Six Hundred Thousand Dollars (\$1,600,000.00) multiplied by the percentage shown below corresponding to the year in which the early termination occurs or the costs and expenses (excluding interest) paid or incurred by Northstar to acquire, construct, and install the Northstar Property on the Premises multiplied by the percentage shown below corresponding to the year in which the early termination occurs. Such costs and expenses shall include an amount equal the time spent by Northstar’s employees to design and supervise the installation and construction of the Northstar Property multiplied by Northstar’s published billing rates for the applicable employees or agents.

|         |      |
|---------|------|
| Year 1  | 100% |
| Year 2  | 90%  |
| Year 3  | 80%  |
| Year 4  | 70%  |
| Year 5  | 60%  |
| Year 6  | 50%  |
| Year 7  | 40%  |
| Year 8  | 30%  |
| Year 9  | 20%  |
| Year 10 | 10%  |

## EXHIBIT “E”

### CALCULATION OF CHARGES

The monthly payment to be made by Customer to Northstar for Electrical Energy and Thermal Energy shall be calculated as follows (unless adjusted by independent qualified engineer boiler efficiency analysis, in which case the boiler efficiency number in this formula will reflect the determined efficiency formula):

$$EEP = [EE1 \times ARE1] + [EE2 \times ARE2] + [TE \times ART] / 0.75$$

Where:

EEP = Monthly Equipment Energy Payment, in \$

EE1 = Electrical Energy for such month, in kWh, as measured by the Electric Meter at the Electrical Interconnection Point.

ARE1 = Applicable Electric Rate, in \$/kWh

EE2 = Electrical Energy for such month, in kW, as measured by the Electric Meter at the Electrical Interconnection Point.

ARE2 = Applicable Electric Rate, in \$/kW

TE = Thermal Energy for such month, in BTUs, as measured by the Thermal Meter at the HVAC Interconnection Point.

ART = Applicable Rate for Thermal Energy, in \$/BTU





**EXHIBIT "G"**

**MEMORANDUM OF LEASE AND EASEMENT**

Recording requested by and  
when recorded mail to:

Northstar Power LTD  
P.O. Box 68  
Applegate, CA 94526

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### MEMORANDUM OF LEASE AND EASEMENT

This Memorandum is made as of this \_\_\_\_ day of \_\_\_\_\_, by and between Northstar Power Ltd, a Nevada limited liability company (“**Northstar**”), and \_\_\_\_\_ (“**Customer**”) to witness and give notice that:

1. Northstar and Customer have entered into an Energy Purchase Agreement dated \_\_\_\_\_ (“**Agreement**”) which is hereby incorporated by reference, pursuant to which, among other things, Northstar is providing energy to the real property and premises owned by Customer and located in the County of \_\_\_\_\_, State of \_\_\_\_\_, and legally described on **Exhibit “A”** attached hereto (“**Premises**”).

2. Under the Agreement, Customer leases a portion of the Premises to Northstar for the purpose of construction, installation, operation, maintenance, and repair of and access to certain cogeneration equipment owned by Northstar which supplies energy to the Premises under the Agreement.

3. The Agreement also grants to Northstar an easement over the Premises for the purpose of construction, installation, operation, maintenance and repair of and access to certain cogeneration equipment which supplies energy under the Agreement.

5. The Agreement requires the Customer to cause any successor in interest to the Premises to assume, in writing, all of the obligations of the Customer under the Agreement and that a failure to do so may constitute a breach thereof and/or consent of the successor in interest to all of the terms and conditions thereof.

6. The Agreement authorizes Northstar to assign the Agreement and all benefits and burdens thereof, and upon such assignment, the assignee shall be entitled to fully enforce the Agreement.

IN WITNESS WHEREOF, the parties have executed this instrument this day and year first above written.

Northstar Power Ltd

Customer:

By: \_\_\_\_\_  
Rod Brower, President

By: \_\_\_\_\_  
Rose Jacobs Gibson  
President  
Board of Supervisors  
County of San Mateo

**ACKNOWLEDGEMENT**

State of California

County of Sacramento

On \_\_\_\_\_, 2007, before me, \_\_\_\_\_, Notary Public, personally appeared, \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public (Seal)

**ACKNOWLEDGEMENT**

State of California

County of San Mateo

On \_\_\_\_\_, 2007, before me, \_\_\_\_\_, Notary Public, personally appeared, \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public (Seal)