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July 9, 2015

**VIA ELECTRONIC FILING
(WEB PORTAL)**

Ms. Carlotta S. Stauffer
Division of the Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 150075-EI

Dear Ms. Stauffer:

Florida Power & Light Company ("FPL") attaches for filing in above docket the following documents:

1. Rebuttal testimony of FPL witness Robert E. Barrett
2. Rebuttal testimony and exhibits of FPL witness Kim Ousdahl
3. Rebuttal testimony of FPL witness Ray Butts
4. Rebuttal testimony of FPL witness Tracy Patterson, along with full copies of Exhibits TLP-1 and TLP-2 and a public (redacted) version of Exhibit TLP-3.*
5. Public (redacted) version of the rebuttal testimony and exhibits of FPL witness Thomas L. Hartman;* and
6. Public (redacted) version of the rebuttal testimony and exhibit of FPL witness David Herr*

Please contact me if you or your Staff has any questions regarding this filing.

Sincerely,

s/ Maria J. Moncada
Maria J. Moncada

Enclosure

cc: Counsel for Parties of Record

2586888

* On July 8, 2015, FPL requested confidential classification for specified portions of Mr. Patterson's Exhibit TLP-3, as well as the rebuttal testimony of Thomas Hartman and David Herr [see FPSC Document Nos. 04274-15 and 04275-15].

**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

**DOCKET NO. 150075-EI
FLORIDA POWER & LIGHT COMPANY**

JUNE 17, 2015

**IN RE: PETITION FOR APPROVAL OF
ARRANGEMENT TO MITIGATE IMPACT OF
UNFAVORABLE CEDAR BAY POWER PURCHASE
OBLIGATION, BY FLORIDA POWER & LIGHT
COMPANY**

REBUTTAL TESTIMONY OF:

R. E. BARRETT, JR.

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **DIRECT TESTIMONY OF ROBERT E. BARRETT, JR.**

4 **DOCKET NO. 150075-EI**

5 **JUNE 17, 2015**

6
7 **Q. Please state your name and business address.**

8 A. My name is Robert E. Barrett, Jr. My business address is Florida Power & Light
9 Company (“FPL” or “the Company”), 700 Universe Boulevard, Juno Beach,
10 Florida 33408.

11 **Q. Did you submit direct testimony in this proceeding?**

12 A. Yes. My direct testimony was submitted on March 6, 2015.

13 **Q. What is the purpose of your rebuttal testimony?**

14 A. The purpose of my rebuttal testimony is: (1) to show that FIPUG witness Pollock
15 has mischaracterized the substance of the Cedar Bay Transaction (“the
16 Transaction”) and therefore makes incorrect assertions and conclusions about the
17 Transaction; and (2) to explain why OPC witness Myers is wrong in asserting that
18 FPL should only receive a debt return on the unamortized balance of the
19 regulatory asset created by the Transaction.

20 **Q. How has FIPUG witness Pollock characterized the proposed transaction?**

21 A. Witness Pollock describes the transaction as follows: “FPL is proposing to
22 recover the \$520 million that it paid for the Cedar Bay plant...” (Pollock

1 testimony, at p. 5, emphasis added). Further discussion in his testimony confirms
2 that he mistakenly believes the \$520.5 million paid by FPL is consideration for
3 buying the Cedar Bay power generation facility (“the Cedar Bay Facility” or “the
4 Facility”).

5 **Q. How is this a mischaracterization of the Cedar Bay Transaction?**

6 A. As described in my direct testimony, FPL has entered into a definitive agreement
7 to purchase 100% of the equity interest in CBAS Power, Inc. (“CBAS”) for a total
8 purchase price of \$520.5 million, subject to FPSC approval (referred to as the
9 “Cedar Bay Transaction”). This transaction, upon financial closing, will have the
10 effect of transferring ownership to FPL of (1) the Cedar Bay Facility ; and (2) the
11 Power Purchase Agreement (“PPA”) between Cedar Bay Generating Company
12 (“Cedar Bay Genco”). As described in greater detail by FPL witnesses Ousdahl
13 and Herr, the \$520.5 million transaction price includes \$0 for the Cedar Bay
14 Facility. Virtually all of the transaction price is related to the loss on the
15 cancellation of the PPA. Witness Pollock’s assertion that FPL paid \$520.5 million
16 for the Facility is wrong and misleading.

17 **Q. What incorrect conclusion does witness Pollock draw from his**
18 **mischaracterization of the Cedar Bay Transaction ?**

19 A. Mr. Pollock asserts that “FPL is attempting to recover costs through the CCR
20 clause that are historically and typically ripe for possible recovery in base rates.”
21 (Pollock, 11). By assuming that the \$520.5 million is being paid for the Cedar
22 Bay Facility, Mr. Pollock asserts that FPL is seeking Capacity Cost Recovery

1 (“CCR”) Clause recovery for a power plant, which would normally be recovered
2 in base rates. FPL’s petition makes clear that all costs associated with owning and
3 operating the Cedar Bay Facility are being requested for recovery in base rates *not*
4 the CCR Clause. What FPL seeks to recover through the CCR Clause are the
5 costs associated with the loss on the PPA. On several occasions, the Florida
6 Public Service Commission (“Commission” or “the Commission”) has permitted
7 CCR Clause recovery of regulatory assets established for buyouts of unfavorable
8 power purchase agreements. See Commission Orders Nos. PSC- 96- 0889-FOF-
9 EU, PSC-97-0652-S-EQ, and PSC-00-1913-PAA-EI. Witness Pollock’s
10 conclusion depends on a fundamental misunderstanding or mischaracterization of
11 the Cedar Bay Transaction.

12 **Q. What rate of return does OPC witness Myers recommend as appropriate for**
13 **calculating the carrying cost of the unamortized balance of the regulatory**
14 **asset created through this transaction?**

15 A. On page 21 of his testimony, witness Myers offers two alternatives, each of which
16 is a debt-only return. He suggests either the debt component of FPL’s weighted
17 average cost of capital (“WACC”) or the actual interest cost of any debt issued to
18 consummate this transaction. Witness Myers purports to rely upon two prior
19 orders of this Commission: Order No. PSC-97-0652-S-EQ, Docket No. 970096-
20 EQ, and Order No. PSC-00-1913-PAA-EI, Docket No. 000982-EI.

21 **Q. Do you agree with OPC witness Myers’ recommendation?**

22 A. No. Neither order is relevant precedent for determining the carrying cost of the

1 regulatory asset established for the Cedar Bay Transaction.

2 **Q. What was the subject of Commission Order No. PSC-97-0652-S-EQ?**

3 A. In Order No. PSC-97-0652-S-EQ, the Commission approved a stipulation among
4 the parties related to Florida Power Corporation's ("FPC's") purchase of the Tiger
5 Bay Cogeneration facility and subsequent termination of the associated PPAs.

6 **Q. How is the Cedar Bay Transaction different than the Tiger Bay transaction?**

7 A. There are several key differences between the Tiger Bay transaction and the
8 Cedar Bay Transaction: (1) the Tiger Bay transaction was the result of a stipulated
9 settlement among all parties to the docket including OPC and FIPUG and,
10 consequently, it should be viewed in its entirety and considered to be the result of
11 the give-and-take of negotiations between all parties; (2) FPC proposed to finance
12 the transaction only with debt, whereas FPL proposes to finance the Cedar Bay
13 Transaction with its normal mix of debt and equity capital to maintain a consistent
14 corporate capital structure; and (3) \$75 million of the Tiger Bay regulatory asset
15 was placed in rate base and therefore was subject to FPC's overall capital
16 structure and rate of return for surveillance purpose and for purposes of setting
17 base rates.

18 **Q. Although the Cedar Bay Transaction is not comparable to the Tiger Bay**
19 **stipulation, are there any similarities between the financing costs in the two**
20 **cases?**

21 A. Yes. The financing costs for Tiger Bay that were authorized by the Commission
22 under the stipulation were those proposed by FPC and were reflective of FPC's

1 stated intention to finance the transaction only with debt. The financing costs
2 proposed by FPL in the Cedar Bay Transaction likewise are reflective of the costs
3 FPL expects to incur in financing the transaction using a mix of long term debt
4 and common equity. In other words, while the mix of financing sources was
5 different, in both instances the return on unamortized balance of the regulatory
6 asset is intended to track the actual costs of capital incurred by the utility.

7 **Q. What was the subject of Commission Order No. PSC-00-1913-PAA-EI?**

8 A. In Order No. PSC-00-1913-PAA-EI, the Commission approved a settlement
9 agreement between FPL and two Qualifying Facilities (“QFs”), Okeelanta
10 Corporation and Osceola Farms. The settlement terminated the standard offer
11 contracts with the respective QFs; settled all claims by and/or against FPL; and,
12 settled all pending judicial proceedings related to the QF contracts.

13 **Q. How is the Cedar Bay Transaction different than the Okeelanta settlement?**

14 A. There are several significant, substantive differences: (1) as with Tiger Bay, the
15 Okeelanta transaction was the result of a settlement agreement that, among other
16 items negotiated between the parties, cancelled the QF contracts, settled all
17 claims, and ended all litigation between the parties; (2) FPL did not take
18 ownership of the Okeelanta or Osceola power generation facilities; (3) the
19 regulatory asset created by the settlement was amortized over a five-year period
20 versus more than nine years for the Cedar Bay Transaction; and (4) the regulatory
21 asset created by the Okeelanta settlement was placed in rate base for the first year
22 of the five-year recovery period and was therefore subject to FPL’s overall capital

1 structure for surveillance purposes during that first year.

2 **Q. Why did FPL agree to accept a commercial paper return on the unamortized**
3 **balance of the regulatory asset while it was in the Capacity and Fuel**
4 **Clauses?**

5 A. As discussed above, this was a complex settlement agreement that achieved
6 multiple objectives for all parties. Accepting a commercial paper rate of return on
7 the unamortized balance of the regulatory asset when in the CCR Clause and Fuel
8 Clause should be viewed as a concession made by FPL to achieve the litigation
9 settlement agreement, viewed within the overall context of operating, financial
10 and regulatory environments at that time.

11 **Q. Why is a similar concession not appropriate in the Cedar Bay Transaction?**

12 A. Unlike the Okeelanta settlement, where the parties were seeking to resolve
13 complex litigation between them, the Cedar Bay Transaction represents a
14 discretionary commercial transaction that neither FPL nor its counterparty, CBAS
15 Power Holdings, was under any compulsion to enter into. For the reasons
16 discussed in my direct testimony, and reiterated herein, FPL's fundamental
17 position is that a regulatory asset, recovered over a long period, and financed with
18 a mix of debt and equity, should be allowed recovery at the Company's WACC,
19 irrespective of the mechanism (base or clause) that effects that recovery. The full
20 cost of financing the transaction that creates customer savings should be properly
21 recoverable, to avoid creating a disincentive for utilities to pursue such
22 transactions.

1 **Q. Has the Commission previously approved a stipulation agreement between**
2 **the Florida Investor-Owned Utilities (“IOUs”), OPC and FIPUG (among**
3 **other parties) as to the appropriate return to be used for clause-approved**
4 **investments?**

5 A. Yes, as referenced in my direct testimony, in Order No. 12-0425-PAA-EU, issued
6 after both the Tiger Bay and Okeelanta settlements, the Commission approved a
7 Stipulation and Settlement Agreement (“Agreement”) between the IOUs, FIPUG
8 and OPC, intervenors in this docket. In the Commission’s decision approving the
9 Agreement, the Commission stated, “Therefore, unless and until modified by us, we
10 hereby approve use of the weighted average cost of capital calculation methodology
11 as established in the Agreement in all subsequent clause dockets.”

12 **Q. You previously testified that prior settlement agreements should not be**
13 **considered precedential for determining the proper return for the Cedar Bay**
14 **Transaction. Why is this different?**

15 A. The stipulated Agreement approved by the Commission in Order No. 12-0425-PAA-
16 EU is an agreement reflecting prospective Commission policy as to the appropriate
17 cost of capital authorized for investments approved for cost recovery in clause
18 proceedings. This is entirely different than a company-specific negotiated settlement
19 of pending litigation, as was the case in the settlements previously discussed in my
20 testimony.

21 **Q. Is a debt return sufficient to fully compensate FPL for the cost of financing**
22 **the Cedar Bay Transaction?**

1 A. No. FPL will fund this transaction with a combination of debt and equity in a
2 fairly consistent mix of approximately 40% debt and 60% equity. These sources
3 of capital are appropriate for an investment of this duration. Compensating the
4 equity portion of this investment with a debt rate of return is not sufficient.

5 **Q. Does FPL use its overall capital structure, reflected in its WACC, in all of its**
6 **investment decisions?**

7 A. Yes. All of FPL's investment decisions presented before this Commission use the
8 Company's WACC for determining revenue requirements and the corresponding
9 impact on customers. For example, in Docket No. 130199-EI, Demand Side
10 Management Goals, FPL used its WACC for calculating the cost effectiveness of
11 each potential measure. In Docket No. 140009-EI, Nuclear Cost Recovery, FPL
12 used its WACC for all analyses of revenue requirements related to an investment
13 in Turkey Point 6 & 7 new nuclear units. Finally, in Docket No. 110309-EI, the
14 Need Determination Filing for the Port Everglades Next Generation Clean Energy
15 Center, (and all prior Need Determination filings), FPL used its WACC for all
16 analyses of revenue requirements.

17 **Q. Has the Commission consistently approved the use of the overall capital**
18 **structure in determining the authorized rate of return to be recovered on**
19 **capital investments under different recovery mechanisms?**

20 A. Yes. FPL's recovery of capital investments through both clause and base rate
21 recovery mechanisms reflect an overall capital structure including both debt and
22 equity.

1 **Q. What would be the impact if the Commission granted a return based only on**
2 **the cost of debt?**

3 A. Granting a debt-only return would harm customers by disincentivizing utilities
4 from pursuing creative investment opportunities that provide customer savings.
5 As previously mentioned, FPL finances the consolidated company to achieve its
6 target capital structure. By so doing, the incremental financing of the Cedar Bay
7 Transaction would by definition be approximately 40% long term debt and 60%
8 common equity. FPL's after-tax cost of capital is 7.5%. If FPL were only allowed
9 to recover the after-tax cost of debt (3.1%), this would represent an after-tax loss
10 to FPL of more than \$20 million in the first year alone.

11 **Q. Please explain the adverse consequences for customers that would result if**
12 **the Commission only granted a return based on the cost of debt.**

13 A. First, Section 8.05(b) of the purchase and sale agreement for the Cedar Bay
14 Transaction (Confidential Exhibit TLH-2 to the direct testimony of FPL witness
15 Hartman) expressly gives FPL the right to terminate the transaction if the
16 Commission does not authorize FPL to earn its WACC on the investment. If the
17 transaction did not close, the PPA would remain in effect and customers would
18 lose the opportunity to save more than \$70 million on a cumulative present value
19 revenue requirement basis. Second, refusing to allow FPL to recover its actual
20 cost of capital on a transaction that is designed to save customers money would
21 chill plans by FPL and other utilities to identify and pursue such opportunities in
22 the future.

1 **Q. Please summarize your rebuttal testimony.**

2 A. FIPUG witness Pollock mischaracterizes the Cedar Bay Transaction as an asset
3 purchase and consequently arrives at wrong conclusions regarding the proper
4 accounting treatment and cost recovery for the transaction. OPC witness Myers
5 incorrectly relies upon two prior Commission orders to arrive at the
6 recommendation that the Commission should only authorize a debt return on the
7 regulatory asset created by the Cedar Bay Transaction. The transactions addressed
8 in those prior orders, however, are multi-part settlements reflecting the give and
9 take of negotiations between parties and it is therefore inappropriate to isolate one
10 component of either settlement, the rate of return, and suggest that it is applicable
11 for the Cedar Bay Transaction. The Cedar Bay Transaction was negotiated on its
12 own merits and is creatively structured to provide an estimated \$70 million of
13 savings for customers. The Cedar Bay Transaction also maintains reliability
14 benefits for customers in the near term, provides substantial environmental
15 benefits immediately, and likely will result in the retirement of the facility well
16 before it would otherwise retire without this transaction. A return on investment
17 equal to the Company's WACC is appropriate and removes a potential
18 disincentive for pursuing creative opportunities such as the Cedar Bay
19 Transaction.

20 **Q. Does this conclude your rebuttal testimony?**

21 A. Yes.

**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

**DOCKET NO. 150075-EI
FLORIDA POWER & LIGHT COMPANY**

JUNE 17, 2015

**IN RE: PETITION FOR APPROVAL OF
ARRANGEMENT TO MITIGATE IMPACT OF
UNFAVORABLE CEDAR BAY POWER PURCHASE
OBLIGATION, BY FLORIDA POWER & LIGHT
COMPANY**

REBUTTAL TESTIMONY & EXHIBITS OF:

K. OUSDAHL

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF KIM OUSDAHL**

4 **DOCKET NO. 150075-EI**

5 **JUNE 17, 2015**

6
7 **Q. Please state your name and business address.**

8 A. My name is Kim Ousdahl and my business address is Florida Power & Light
9 Company (“FPL” or the “Company”), 700 Universe Boulevard, Juno Beach,
10 Florida 33408.

11 **Q. Did you previously submit direct testimony in this proceeding?**

12 A. Yes. My direct testimony was submitted on March 6, 2015.

13 **Q. Have your position, duties, or responsibilities changed since you last filed**
14 **testimony in this docket?**

15 A. No.

16 **Q. Are you sponsoring any exhibits to your rebuttal testimony?**

17 A. Yes. I am sponsoring the following exhibits:

- 18 • KO-2 – FERC Accounting Decisions on Qualifying Facility (“QF”)
19 Acquisitions; and
20 • KO-3 – Cedar Bay Journal Entries Under Original Cost Accounting.

21 **Q. What is the purpose of your rebuttal testimony?**

1 A. The purpose of my rebuttal testimony is to address misstatements and incorrect
2 positions on accounting issues presented in the testimony of Office of Public
3 Counsel (“OPC”) witness Myers. Specifically, I will demonstrate that:

4 1. FPL’s proposal to record the Cedar Bay Facility at its fair value rather than
5 original cost is appropriate and consistent with Federal Energy Regulatory
6 Commission (“FERC”) precedent. Ultimately, however, the choice
7 between fair value and original cost has no impact to FPL’s retail customers
8 if the original cost accounting is handled properly; and

9 2. FPL has correctly determined that its payment to acquire CBAS Power, Inc.
10 (“CBAS”) is not deductible for income tax purposes.

11 **Q. Please summarize your rebuttal testimony.**

12 A. My rebuttal testimony demonstrates that the Company’s proposed accounting
13 treatment to record the transaction on a fair value basis, versus original cost, is
14 appropriate and consistent with FERC precedent. Regardless of whether fair
15 value or original cost is used, however, proper accounting will yield the same net
16 result for rate base and thus the choice makes no difference to the rates customers
17 will pay. In addition, I show that, contrary to OPC witness Myers’ assertion,
18 FPL’s payment to acquire CBAS is not tax deductible. The Internal Revenue
19 Code (“IRC”) explicitly states that for federal income tax purposes, an amount
20 paid to acquire an asset, including stock in a corporation, must be capitalized into
21 the basis of the acquired asset and is therefore not currently deductible.

22 **Q. On page 14 of OPC witness Myers’ direct testimony, he states that FPL must**
23 **record the purchase of the Cedar Bay Facility at original cost. Is he correct?**

1 A. No. OPC witness Myers is mistaken on certain important facts and he provides
2 only selective FERC orders in support of his position, none of which addresses or
3 acknowledges cases where FERC has permitted use of fair value accounting for
4 facts and circumstances similar to the Cedar Bay Transaction. With
5 comprehensive and accurate analysis of FERC precedent, it is clear recording the
6 Cedar Bay Transaction at fair value is appropriate.

7
8 The use of original cost accounting is codified in the Uniform System of Accounts
9 and is a longstanding requirement at the FERC and state commissions. Use of
10 original cost accounting generally ensures that assets devoted to public utility
11 service cannot result in an increase in book basis when bought and sold thereby
12 resulting in captive utility customers paying more than the original cost of the
13 asset. There are, however, exceptions to this practice which provide for fair value
14 accounting while continuing to ensure customers' interests are protected.
15 Regardless of the outcome of this accounting issue, the proper application of
16 FERC accounting precedent will result in the same rate base and thus not impact
17 FPL's retail rates.

18
19 On Page 12 of his testimony, OPC witness Myers refers to the PacifiCorp
20 acquisition of Chehalis Power Generating, LLC (Docket No. EC08-82-000).
21 However, this case does not support his position, because it is based on a FERC
22 staff legal determination that the Exempt Wholesale Generator ("EWG") in that
23 case, Chehalis, was devoted to public service prior to the proposed acquisition and

1 therefore, the original cost should be the basis for the purchase accounting entries.
2 As an EWG that had previously sold wholesale energy under a market-base rate
3 tariff approved by FERC, the Chehalis facility was deemed to have previously
4 been devoted to public service and thus it had to be recorded on the acquirer's
5 books at original cost. That is not the case with the Cedar Bay Facility, which has
6 operated as a QF, under a QF contract, for its entire operating life to date. To the
7 best of my knowledge, FERC has consistently applied fair value accounting
8 treatment to acquisitions of QFs.

9
10 On page 14 of OPC witness Myers' testimony, he opines that although the Cedar
11 Bay Facility is a QF, not an EWG, it would still be deemed to be devoted to public
12 service. He fails to note, however, that the Cedar Bay Facility is interconnected
13 to Jacksonville Electric Authority, an entity that is not subject to FERC's
14 jurisdiction. Likewise, the excessively high avoided cost rate charged by the QF
15 under the Cedar Bay Power Purchase Agreement ("PPA") was established on the
16 state level, not by FERC. Given these circumstances, FPL believes FERC is
17 likely to find that the Cedar Bay Facility was *not* devoted to public service and
18 that fair value accounting is therefore appropriate. OPC witness Myers'
19 testimony to the contrary is incorrect and fails to properly apply the test FERC
20 uses to make this determination. Moreover, OPC witness Myers' testimony fails
21 to cite or address FERC rulings in favor of fair value accounting for acquisitions
22 of QFs. I have identified FERC rulings on acquisitions of QFs and summarized
23 them on Exhibit KO-2. In these instances, the logical conclusion is that the

1 acquired QF was not previously devoted to public service and the acquirer
2 properly recorded the acquired assets and liabilities at fair value.

3 **Q. Has FPL presented its proposed accounting entries for the Cedar Bay**
4 **Transaction to FERC for approval?**

5 A. Yes. FPL submitted an application for FERC approval of the Cedar Bay
6 Transaction under Section 203 of the Federal Power Act on March 24, 2015,
7 which included FPL's proposed accounting entries. At the request of FERC staff,
8 FPL had a teleconference with FERC legal and accounting staff on May 11, 2015
9 to review and discuss the accounting entries, including the basis for such entries.
10 During this meeting, I provided an overview of and answered questions about
11 FPL's research of FERC precedent and cases that were consistent with the facts of
12 the Cedar Bay Transaction and that gave rise to fair value accounting. At the end
13 of this discussion, FERC staff did not ask FPL to change its proposed accounting
14 entries or supplement its application. FPL has requested that FERC issue an order
15 authorizing the Cedar Bay Transaction by June 30, 2015. Typically, such
16 authorization orders address the applicant's proposed accounting entries and
17 direct the applicant to submit final accounting entries to the FERC Accounting
18 office within six months of the consummation of the proposed transaction.

19 **Q. Even if FERC were to direct FPL to record the Cedar Bay Transaction**
20 **utilizing original cost accounting, would the entries proposed by OPC witness**
21 **Myers on Exhibit TMM-1 be correct?**

22 A. No. Based on my research and discussions with FERC staff, it is my
23 understanding that if FERC were to ultimately decide the Cedar Bay Facility was

1 devoted to public service, FERC will direct FPL to record the plant at original
2 cost, with the difference between fair value and net book value recorded as an
3 acquisition adjustment. As noted in Exhibit KO-3, FPL would record a negative
4 acquisition adjustment as a credit to FERC Account 114, Electric Plant
5 Acquisition Adjustments, for the difference between fair value and the
6 depreciated original cost of the purchased Cedar Bay Facility. Secondly, based on
7 FERC precedent, FPL would clear the negative acquisition adjustment to
8 accumulated depreciation. In fact, this is the exact treatment that FERC ordered
9 in PacifiCorp's acquisition of the Chehalis facility,¹ which OPC witness Myers
10 cited but then ignored in preparing his journal entries.

11
12 FERC acknowledges that if a plant on the date of acquisition has a fair value less
13 than its net book value based on original cost, only the fair value should remain in
14 rate base to be recovered from customers.² Therefore, even if FERC were to
15 require FPL to use original cost accounting for the Cedar Bay Transaction, no
16 undepreciated value of the facility would remain to be recovered from customers.
17 OPC witness Myers' proposed treatment on page 9 and 10 of his testimony is not
18 consistent with the relevant FERC precedent and should be rejected.

19 **Q. If FPL recorded the entries reflected on Exhibit KO-3, what would be the**
20 **impact to FPL's request in this proceeding?**

¹ *PacifiCorp*, Docket No. AC09-41-000 (May 22, 2009) (unpublished letter order) in response to letter from PacifiCorp for approval of final journal entries dated March 25, 2009 (Entry Nos. 3 and 4)
² *Locust Ridge Gas Co.*, 29 FERC ¶ 61,052, at 61,114 (1984); and *Entergy Corporation*, Docket No. AC06-19-000 (April 26, 2007) (unpublished letter order)

1 A. None. The net effect of the entries would be that the acquired Cedar Bay Facility
2 would be recorded on a fully depreciated basis with no net book value left to be
3 recovered from customers. This is the exact same outcome as with FPL's fair
4 value accounting entries. Under both accounting approaches, the entire purchase
5 price for the Cedar Bay Transaction would be allocated and recovered as a loss on
6 the termination of the PPA.

7 **Q. Do you have any other concerns with the entries that OPC witness Myers**
8 **reflects on Exhibit TMM-1?**

9 A. Yes. OPC witness Myers' entries on Exhibit TMM-1 contain a number of errors.

10 1. The Investment in Subsidiaries account must represent the parent
11 company's investment in the equity of the acquired business. In the
12 purchase of CBAS, this amount is zero; not \$520.5 million as he reflects
13 in Entry 1. In fact, OPC witness Myers' Entry 2 proves this, as he
14 presents no equity accounts and all of the asset accounts are equally offset
15 by liabilities;

16 2. OPC witness Myers then must find a way to balance the erroneous \$520.5
17 million debit to Investment in Subsidiaries so he records a credit to FERC
18 Account 253, Other Deferred Credits. However, the credit has no means
19 to be amortized so it remains on the balance sheet, improperly reducing
20 rate base in perpetuity;

21 3. Entry 6 should include a debit to the regulatory liability established for the
22 deferred income taxes associated with the book/tax difference on the
23 acquired Cedar Bay Facility (FERC Account 254) which would reduce the

1 debit to FERC Account 557, Other Expenses by an equal amount. He
2 credits FERC Account 190, Deferred Income Tax Asset and does not
3 address the turnaround of the regulatory liability; and

4 4. Entry 7 should be a credit to deferred income tax expense (FERC Account
5 411), not a credit to FERC Account 557, Other Expenses.

6 **Q. On page 17 of OPC witness Myers' testimony, he opines that the termination**
7 **of the Cedar Bay PPA is deductible for federal income tax purposes. Is he**
8 **correct?**

9 A. No. As discussed by FPL witness Barrett in his rebuttal testimony, the Cedar
10 Bay Transaction is the purchase of 100% of the equity interests in CBAS. As a
11 result of this transaction, FPL not only will terminate the PPA, but also will take
12 ownership of and operate the Cedar Bay Facility. Under Generally Accepted
13 Accounting Principles ("GAAP"), the valuation of the Cedar Bay Transaction
14 assigns all of the acquisition price to the termination of the PPA, which is not
15 relevant to the IRS determination of deductibility. GAAP are set by accounting
16 standard setters under principles deemed appropriate for financial reporting, while
17 the IRC is legislated by Congress. Differences between the two are accounted for
18 in accordance with Accounting Standards Codification 740 - Accounting for
19 Income Taxes.

20

21 For federal income tax purposes, the Cedar Bay Transaction is a purchase of a
22 business. This purchase and the subsequent termination of the PPA will not result
23 in a net deduction to FPL and its regulated subsidiaries for income tax purposes.

1 Furthermore, if FPL were able to deduct the purchase price for the Cedar Bay
2 Transaction, then in order to maintain tax symmetry, CBAS would have had to
3 recognize income and increase its tax obligation. Both sides concluded that FPL
4 would not be able to deduct the cost of its acquisition and that, as a corollary, the
5 sale was not a taxable event for CBAS. Had the parties concluded otherwise, FPL
6 would have had to pay a much higher price for the Cedar Bay Transaction,
7 reflecting a different tax outcome.

8 **Q. On page 19 of OPC witness Myers' testimony, he proposes that FPL request**
9 **a Private Letter Ruling ("PLR") from the Internal Revenue Service ("IRS")**
10 **"...regarding the deductibility of the termination of the PPA..." similar to**
11 **the request made by Florida Power Corporation in 1997 related to the buy-**
12 **out of the Tiger Bay PPAs. Do you agree that the Tiger Bay PLR is relevant**
13 **to the tax treatment for the Cedar Bay Transaction?**

14 A. No. The facts and circumstances of the referenced Florida Power Corporation
15 request are substantively different than FPL's Cedar Bay Transaction. The tax
16 deductible portion of the Tiger Bay Transaction related solely to the amount paid
17 to terminate the unfavorable contract and did not include amounts paid to
18 purchase the asset. Unlike Florida Power Corporation in the Tiger Bay
19 Transaction, from a federal income tax perspective, FPL is not making a payment
20 to terminate a PPA but rather is purchasing 100% of the outstanding common
21 stock of CBAS, which indirectly owns the Cedar Bay Facility and the right under
22 the PPA to receive capacity and energy payments from FPL. The PLR on the
23 Florida Power Corporation Tiger Bay Transaction (PLR-199913032, 4/5/1999,

1 IRC Sec. 162), stated clearly that “...amounts paid to terminate burdensome
2 contracts and reduce or eliminate future costs, *without more*, are generally
3 considered ordinary business expenses” (emphasis added) and are therefore
4 deductible for income tax purposes pursuant to IRC Section 162. Likewise, it is
5 also clear that an amount paid to acquire an asset, including stock in a
6 corporation, must be capitalized into the basis of the acquired asset pursuant to
7 IRC Section 263 because it “...brings about the acquisition of a business
8 advantage extending into the indefinite future”³ and is therefore not currently
9 deductible. As such, FPL’s stock purchase of CBAS is not deductible for income
10 tax purposes.

11 **Q. Does this conclude your rebuttal testimony?**

12 A. Yes.

³ PLR-199913032, 4/5/1999, IRC Sec. 162

FERC Accounting Decisions on QF Acquisitions

Acquirer	FPC (Florida Power Corp)	VEPCO (Virginia Electric and Power Company)	VEPCO (Virginia Electric and Power Company)	VEPCO (Virginia Electric and Power Company)
Date of Transaction	7/15/97	11/24/03	8/18/04	11/29/04
Seller	Tiger Bay Limited Partnership	Gordonsville Energy Limited Partnership (GELP)	United American Energy Corp	Multitrade of Pittsylvania County, L.P.
Type of Transaction	Asset acquisition and termination of PPA	Asset acquisition and termination of PPA	Business Combination and termination of PPA	Asset acquisition and termination of PPA
Facility Type	Qualifying Facility	Qualifying Facility	Qualifying Facility	Qualifying Facility
Summary of Transaction	FPC purchased a 220 MW cogeneration facility located in Polk County, Florida from Tiger Bay, LP. In addition, the purchase resulted in the termination of five separate purchased power agreements served by the Tiger Bay facility.	VEPCO purchased a 240 MW cogeneration facility and its associated transmission facilities located in Gordonsville, Virginia from GELP. In addition the purchase resulted in the termination of two separate power purchase agreements serviced by the Gordonsville facility.	VEPCO purchased 100% ownership interests in Mecklenburg Congenco, Inc. and Cogeneration Capital Corporation which owned the 138 MW topping cycle pulverized coal facility from United American Energy Corporation. In addition, VEPCO terminated its related Power Purchase Agreements.	VEPCO purchased a 79.6 megawatt (net) biomass facility and its appurtenant transmission facilities located in Pittsylvania County, Virginia. In addition, VEPCO terminated its related Power Purchase Agreement.
FERC Docket No. for Approval of Entries	AC97-184-000	AC04-22-000	AC05-49-000	AC-05-78-0000
Devoted to Public Service	No	No	No	No
FERC Accounting for Purchase of Facility	Fair Value	Fair Value	Fair Value	Fair Value
Accounting entry	The company recorded the plant at fair value with the remainder of the purchase price to a regulatory asset and O&M	The company recorded the acquired assets and assumed liabilities on its books at fair value and charged the costs to terminate the long-term purchase power agreement to Account 557, Other Expenses	The company recorded the acquired assets and assumed liabilities on its books at fair value and charged the costs to terminate the long-term purchase power agreement to Account 557, Other Expenses	The company recorded the acquired assets and assumed liabilities on its books at fair value and charged the costs to terminate the long-term purchase power agreement to Account 557, Other Expenses

**Florida Power and Light Company
 Cedar Bay Transaction
 Journal Entries Using Original Cost Accounting**

Line No	Description	FERC Account	Amount (\$ Millions)
1	Electric Plant Purchased	102	\$ 520.5
2	Cash	131	\$ 520.5
3			
4	<i>To record Cedar Bay stock purchase.</i>		
5			
6	Asset Retirement Cost	101	\$ 4.2
7	Regulatory Asset - Loss on PPA	182	520.5
8	Regulatory Asset - Tax Gross-Up	182	326.9
9	Deferred Tax Asset - Book/Tax Diff on Acquired Plant	190	4.9
10	Asset Retirement Obligation	230	\$ 4.2
11	Electric Plant Purchased	102	520.5
12	Regulatory Liability - Def Tax on Plant Book/Tax Diff	254	4.9
13	Deferred Tax Liability - Loss on PPA	283	326.9
14			
15	<i>To clear account 102, Electric Plant Purchased, and record (1) the termination of the PPA; (2) asset retirement obligation associated with the Cedar Bay Facility; and (3) deferred taxes associated with the book/tax difference on the acquired Cedar Bay Facility.</i>		
16			
17			
18			
19	Electric Plant in Service ⁽¹⁾	101	\$ 517.9
20	Accumulated Provision for Depreciation of Electric Utility Plant ⁽¹⁾	108	\$ 248.3
21	Electric Plant Acquisition Adjustments ⁽¹⁾	114	269.6
22			
23	<i>To record the cost of the Cedar Bay Facility (based on Cedar Bay Genco's books and records as of 12/31/14).</i>		
24			
25			
26	Electric Plant Acquisition Adjustments	114	\$ 269.6
27	Accumulated Provision for Depreciation of Electric Utility Plant	108	\$ 269.6
28			
29	<i>To clear account 114, Electric Plant Acquisition Adjustments, and record the negative acquisition adjustment consistent with FERC policy⁽²⁾.</i>		
30			
31			
32			
33	Notes:		
34	(1) The Cedar Bay Facility has a fair value of zero. However, if it is determined that the acquired plant was devoted to public service, FPL will record the plant at net book value. Note, amounts reported were obtained from the financial statements of Cedar Bay Generating Company, LP as of December 31, 2014. Includes Cedar Bay generating plant, equipment, and various fixtures and improvement.		
35	(2) See <i>Locust Ridge Gas Co.</i> , 29 FERC ¶ 61,052, at 61,114 (1984); <i>Entergy Corporation</i> , Docket No. AC06-19 (February 2, 2007) (unpublished letter order); <i>Amer. Elec. Power</i> , Docket No. AC06-161 at p. 2 (Apr. 26, 2007) (unpublished letter order); <i>Goldendale Energy Center, LLC and Puget Sound Energy, Inc.</i> , 118 FERC ¶ 62,101 at 64,279-80 (2007); <i>PacifiCorp</i> , Docket No. AC09-41-000 (May 22, 2009) (unpublished letter order); <i>Consumers Energy Company and AlphaGen Power LLC</i> , 148 FERC ¶ 61,251 at P 51 (2014); and <i>Public Service Company of New Mexico</i> , Docket No. AC15-47 (May 8, 2015) (unpublished letter order).		

**Florida Power and Light Company
Cedar Bay Transaction
Journal Entries Using Original Cost Accounting**

Line No	Description	FERC Account	Amount (\$ Millions)
1	<u>Annual Amortization</u>		
2			
3	Other Expenses	557	\$ 90.3
4	Regulatory Liability - Def Tax on Plant Book/Tax Diff	254	0.5
5	Regulatory Asset - Loss on PPA	182	\$ 55.8
6	Regulatory Asset - Deferred Taxes on Loss	182	35.0
7			
8	<i>To record annual amortization of the net regulatory asset on FPL's books and records.</i>		
9			
10			
11	Deferred Tax Liability - Loss on PPA	283	\$ 21.5
12	Deferred Tax Liability - Deferred Taxes on Loss	283	13.5
13	Current Income Tax Expense	409.1	35.0
14	Taxes Accrued	236	\$ 35.0
15	Provision for Deferred Income Taxes—Credit	411.1	35.0
16			
17	<i>To record current and deferred income taxes associated with the amortization of the Regulatory Asset -</i>		
18	<i>Loss on PPA and the Regulatory Asset - Deferred Taxes on Loss.</i>		
19			
20			
21	Provisions for Deferred Income Taxes	410.1	\$ 0.7
22	Taxes Accrued	236	0.7
23	Current Income Tax Expense	409.1	\$ 0.7
24	Deferred Tax Asset - Book/Tax Diff on Acquired Plant	190	0.2
25	Deferred Tax Liability - Other Property ⁽³⁾	282	0.5
26			
27	<i>To record current and deferred income taxes associated with the amortization of the Regulatory Liability -</i>		
28	<i>Def Tax on Plant Book/Tax Diff and tax depreciation on acquired plant.</i>		
29			
30			
31	<u>Notes</u>		
32	(3) For illustrative purposes only. The actual annual activity will vary based on the tax depreciation rate utilized for each period.		

**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

**DOCKET NO. 150075-EI
FLORIDA POWER & LIGHT COMPANY**

JUNE 17, 2015

**IN RE: PETITION FOR APPROVAL OF
ARRANGEMENT TO MITIGATE IMPACT OF
UNFAVORABLE CEDAR BAY POWER PURCHASE
OBLIGATION, BY FLORIDA POWER & LIGHT
COMPANY**

REBUTTAL TESTIMONY OF:

R. BUTTS

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF RAY BUTTS**

4 **DOCKET NO. 150075-EI**

5 **JUNE 17, 2015**

6

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

8 A. My name is Ray Butts. My business address is 700 Universe Blvd., Juno Beach, FL
9 33408.

10 **Q. By whom are you employed and what is your position?**

11 A. I am employed by Florida Power & Light Company (“FPL” or the “Company”) as a
12 Director of Environmental Services.

13 **Q. What are your present job responsibilities?**

14 A. I am currently responsible for the analysis, advocacy and communication of
15 emerging environmental issues and regulations that have the potential to impact
16 FPL. I also manage the air and hazardous substances sections of the Environmental
17 Services Department. These sections assist FPL operational facilities with the
18 implementation of air and waste regulations. The Hazardous Substances Section
19 also coordinates the remediation of hazardous substances discharges that may occur
20 from time to time at FPL facilities.

21 **Q. Would you please give a brief description of your educational background and**
22 **professional experience?**

1 A. I received Bachelors (1980) and Masters Degrees (1986) in Geology from Auburn
2 University in Auburn Alabama. I have worked for FPL in the Environmental
3 Services Department since 1988. I previously worked for the Southern Electric
4 System at Southern Company Services in Birmingham, Alabama, where I served
5 for eight years as an Engineering Geologist. While at Southern Company I held
6 registrations as a Professional Geologist in South Carolina and Georgia.

7
8 I have approximately 35 years of experience in the electric utility industry where I
9 have been responsible for the development of regulations and legislation, power
10 plant siting, permitting, licensing, construction and environmental management
11 projects. In 2010, I was appointed to the Florida State Emergency Response
12 Commission for Hazardous Materials where I continue to serve.

13 **Q. What is the purpose of your rebuttal testimony?**

14 A. The purpose of my rebuttal testimony is to respond to the positions and
15 recommendations contained in the testimony of witness Dan J. Wittliff on behalf of
16 the Office of Public Counsel (“OPC”) and positions stated by witness Jeffry Pollock
17 on behalf of the Florida Industrial Power Users Group (“FIPUG”). Specifically, I
18 will:

- 19 • Explain certain factors regarding intervener witness Wittliff’s testimony
20 claiming that there are missing pages in Appendix 20.1 of the ground lease
21 between RockTenn and the Cedar Bay generating unit (“the Cedar Bay Facility”
22 or “the Facility”).
- 23 • Respond to intervener witness Wittliff’s comments regarding his stated

1 concerns with the ground lease.

- 2 • Respond to witness Wittliff’s assertion that owners of the Cedar Bay Facility
3 may be subject to the Comprehensive Environmental Response, Compensation
4 and Liability Act (“CERCLA”) due to historical contamination on the site.
- 5 • Respond to testimony from witness Wittliff recommending that the Florida
6 Public Service Commission (“FPSC”) require FPL to double the amount of
7 environmental liability insurance the Company plans to hold for past, current or
8 future environmental contamination that may be encountered on the property.
- 9 • Respond to witness Wittliff’s implication that the terms of the ground lease
10 require a negotiation of cleanup requirements with respect to dismantling or
11 demolishing the facility; and
- 12 • Reply to statements made by witness Pollock regarding the significance of CO₂
13 emissions from the operation of the Cedar Bay Facility.

14 **Q. OPC witness Wittliff testifies that the ground lease between the Cedar Bay**
15 **Facility and RockTenn is missing pages that include Appendix 20.1 section (ii).**
16 **Did FPL request information regarding the blank pages during its due**
17 **diligence?**

18 A. Yes, as part of its environmental due diligence, FPL inquired about the blank pages
19 included in Appendix 20.1 section (ii) and was advised that Cogentrix’s copy also
20 included the blank pages. FPL ultimately determined, however, that the terms of
21 the ground lease rendered the content, if any, of the blank pages immaterial for
22 purposes of evaluating environmental liability. Section 10.2 of the ground lease

1 (CB-15-00410), which addresses indemnification, states that RockTenn would be
2 contractually obligated to indemnify FPL for *any* preexisting non-compliance
3 caused by RockTenn, regardless of whether the condition was disclosed in
4 Appendix 20.1. Additionally, any disclosures contained in Appendix 20.1 would
5 have been based on data collected more than twenty years ago, before the baseline
6 environmental assessment conducted by ENSR prior to the construction of the
7 Cedar Bay Facility. It would have been inappropriate to rely on outdated
8 environmental disclosures that were developed prior to more recent environmental
9 assessments of the property that were prepared in accordance with American
10 Society for Testing and Materials (“ASTM”) Standards that did not exist when the
11 ground lease was developed. In this instance, FPL instead analyzed data from far
12 more reliable sources, which I describe later in my testimony. This is preferable to
13 relying on two-decades-old data.

14 **Q. Has FPL since determined the content of the blank pages in Appendix 20.1?**

15 A. Yes, as more fully described in the testimony of witness Tracy Patterson, there are
16 no “missing” pages. Appendix 20.1 is intended to identify specific environmental
17 matters described in Section 20.1 *Environmental Matters* included in the body of
18 the ground lease. The ground lease incorporates a numbering convention that pairs
19 the section and sub-section numbers in the lease to the same section and subsection
20 numbers referred to in the corresponding Appendix.

21 **Q. OPC witness Wittliff refers to groundwater contamination described in the**
22 **March 10, 2010 letter from the Florida Department of Environmental**
23 **Protection (“DEP”) approving modifications to the Site Certification document**

1 **for the facility. The witness also refers to a November 2012 Phase I**
2 **Environmental Assessment prepared for the sites and a 1988 Environmental**
3 **Site Assessment prepared by the firm ERM. Did FPL review these documents**
4 **as part of the due diligence review of the Cedar Bay Facility?**

5 A. Yes. FPL reviewed each of these documents in addition to the other documents
6 related to the Site Certification of the Cedar Bay Facility on file with the Florida
7 DEP. FPL also reviewed numerous other documents provided by Cedar Bay
8 Generating Company (“Cedar Bay Genco”) or from the files of various government
9 agencies. In addition FPL’s due diligence included an on-site assessment,
10 employee interviews and records review at the Facility. The site visit was
11 conducted by a Florida Registered Professional Geologist, a Registered Professional
12 Engineer and a Certified Environmental Auditor/Hazardous Materials Manager.

13 **Q. Do the documents reviewed in the data room and through other sources**
14 **confirm the conclusion that contamination at the Cedar Bay Facility was due**
15 **to historical activities and not a result of actions by Cedar Bay Genco?**

16 A. Yes. Groundwater contamination observed at the site since before the construction
17 of the Cedar Bay Facility has been monitored utilizing an extensive groundwater
18 monitoring plan. The groundwater monitoring plan was established by the Florida
19 DEP as a part of the Cedar Bay Facility’s Site Certification approval under the
20 Florida Power Plant Siting Act. Results of the monitoring data are reported to the
21 Florida DEP in order to track trends in the existing historical contamination and to
22 characterize any new contamination that may be contributed to the groundwater
23 from the operation of the Cedar Bay Facility. The data from the monitoring plan

1 reviewed by FPL, reviews by the Florida DEP, and reviews conducted for
2 subsequent environmental assessments, confirm that no additional contamination
3 has occurred as a result of the operation of the Facility.

4 **Q. On page 11, lines 4-7 of his testimony, witness Wittliff asserts that the**
5 **indemnification provisions included in the ground lease are insufficient to**
6 **protect FPL as a future owner of the Cedar Bay Facility. Is this correct?**

7 A. No. The primary concern expressed by witness Wittliff was that the alleged
8 missing pages in the Appendix 20.1 Environmental Matters section of the ground
9 lease may have contained a list of environmental concerns that were not reviewed
10 or accounted for by FPL. Because witness Wittliff's concern about the blank pages
11 and other possible environmental concerns that may not have been reviewed is
12 unsubstantiated, it is clear that FPL's due diligence review has been sufficient to
13 identify all of the environmental concerns at the Facility. Further, FPL is confident
14 that the indemnifications included in the ground lease protect the Company from
15 any future liability associated with the historical contamination. And, in order to
16 expand this protection against environmental liability FPL will maintain a \$20
17 million insurance policy that protects against past, present and future environmental
18 liabilities, known or unknown.

19 **Q. Witness Wittliff indicates that the existing contamination at the Cedar Bay**
20 **Facility represents a risk of liability for FPL due to potential CERCLA**
21 **liability. Is such risk a reasonable assessment based on the due diligence**
22 **review performed by FPL?**

23 A. No. Witness Wittliff's concerns about CERCLA liability at the Cedar Bay Facility

1 are unrealistic. The property has long been on the Florida DEP's list of sites with
2 existing contamination and through the groundwater monitoring plan is under
3 constant scrutiny by the Florida DEP. RockTenn and its predecessors have
4 recognized the presence of the contamination at the Facility and through the ground
5 lease have clearly accepted their responsibility for the historical contamination at
6 the site. The site is not listed as a CERCLA facility and there is no indication that
7 the Florida DEP or Environmental Protection Agency ("EPA") will add the site to
8 the Superfund list.

9

10 Further, the Rose Chemical Company example of a CERCLA facility used by
11 witness Wittliff is not representative of the conditions observed at the Cedar Bay
12 Facility. Unlike the Rose facility, the over-sight regulatory agency for the Cedar
13 Bay Facility, the Florida DEP, is aware of the historical contamination and has
14 required monitoring of the Facility for years. Also, unlike the Rose Chemical
15 facility, lessees at the Cedar Bay Facility have the benefit of years of continuous
16 monitoring demonstrating that they are not a contributor to the contamination at the
17 site. In Superfund cases, Potentially Responsible Parties ("PRPs") are identified
18 based on their ownership of the affected property or their contribution of
19 contamination to the property. The Cedar Bay Facility has strong supporting
20 documentation confirming that the Facility has not contributed to the contamination
21 at the site.

22

1 It is important to note that the Florida DEP was well aware of the contamination at
2 this Facility and the lease agreement made between then Smurfit-Stone and Cedar
3 Bay Genco. The agency has since modified the Facility's Site Certification several
4 times, for various reasons, including a revision that modified the groundwater
5 monitoring plan in 2010. During these modifications the Florida DEP has never
6 raised a concern that this Facility would one day have to be designated as a
7 Superfund Site. In fact, as part of this Certification, the State of Florida explicitly
8 recognized that the lessee was not liable for pre-existing, historic groundwater
9 impacts.

10

11 The State of Florida Site Certification states:

12

13 Prior to Smurfit, Rayonier/St. Regis conducted industrial paper operations on the
14 site. The leased site where the Cedar Bay Facility is constructed and operates was a
15 dedicated waste disposal area for Smurfit between 1972 and 1991. As a pre-
16 requisite to site development for the Cedar Bay Facility, ENSR conducted a
17 detailed site assessment that included groundwater analyses, soil borings and a
18 compilation of the industrial history of the leased area. As a result of the particular
19 land use, it was found that there was already an established level of contamination
20 that existed in the groundwater. There are exceedances of the Department's
21 drinking water standards for metals (antimony, arsenic, beryllium, chromium,
22 copper, lead, mercury, nickel and zinc) and sulfate at many of the wells.

23

1 As a result of these findings, prior to operation, Cedar Bay Genco conducted
2 groundwater monitoring on a monthly basis in order to establish defined baselines
3 of the parameters in the monitoring wells. As there was authenticated pre-
4 established levels of contamination, Cedar Bay Genco uses pre-operational
5 groundwater data for comparison purposes and as a baseline to substantiate that
6 Facility operations have not impacted the zones of discharge. Both the Florida
7 DEP's ground water rule 62-520, F.A.C. and Site Certification Condition IV.G.15.
8 state: "If the concentration for any constituent listed in Condition IV.G.11. in the
9 natural background quality of the ground water is greater than the stated maximum,
10 or in the case of pH is also less than the minimum, the representative background
11 quality shall be the prevailing standard." The Cedar Bay Facility does have
12 elevated levels of certain contaminates in the background wells, and it is protected
13 from this background well rule requirement.

14
15 Finally, in 2006 Cogentrix purchased the Facility. Then in 2012 Cogentrix
16 refinanced the Facility. In each case the financing efforts included an
17 environmental review that was found acceptable to the lending institutions backing
18 the project. It would seem unlikely that a reputable financial institution would have
19 accepted the risk of financing the Facility if they felt there was a risk the site would
20 be added to the state's list of Superfund sites.

21 **Q. Witness Wittliff states that FPL's purchase of the Cedar Bay Facility should**
22 **include additional environmental liability insurance to address unknown**
23 **environmental liabilities. Is this a prudent approach?**

1 A. No. FPL is perplexed by witness Wittliff's arbitrary suggestion that FPL should
2 double the environmental liability insurance for the site. He offers no justification
3 for this proposed increase. In contrast, FPL in fact has evaluated potential remedial
4 action costs based on its collective historical experience as a power plant operator
5 and its assessment of the potential areas that may be impacted by discharges in the
6 future. FPL is confident that its thorough due diligence has clarified that:

- 7 1. Existing historical contamination at the site is well documented and is the
8 responsibility of RockTenn;
- 9 2. The ground lease for the property indemnifies the Cedar Bay Facility from
10 historical contamination associated with RockTenn and its predecessor's
11 activities;
- 12 3. FPL recognizes that future liabilities for the contamination at the site would
13 be limited to contributions of contaminants resulting from future activities
14 of the Cedar Bay Facility or FPL. Recent environmental site assessments
15 indicate there are no known discharges that have resulted from the Cedar
16 Bay Facility's activities that have not been previously closed to the
17 satisfaction of the Florida DEP;
- 18 4. FPL has considered possible unknown or future contamination that may
19 have occurred as a result of activities by the Cedar Bay Facility operations
20 and, based on its experience, has estimated potential cleanup costs that
21 could be associated with these activities.
- 22 5. Based on potential remediation costs that could occur FPL is confident the
23 environmental liability insurance policy to be purchased for the site is

1 sufficient to address potential known or unknown liabilities at the plant site
2 eliminating any material impacts associated with environmental
3 remediation.

4 **Q. Witness Wittliff’s testimony suggests that the ground lease requires that**
5 **dismantling or demolition of the Facility be negotiated with RockTenn. He**
6 **states that the ground lease contains no express provisions dictating how the**
7 **cleanup, transfer, and remediation of the site would be handled. Is this an**
8 **accurate representation of how the ground lease should be interpreted?**

9 A. No. Article XV, *Possession of the Facility Site Upon Termination*, includes sections
10 15.1 *Surrender of Possession* and Section 15.2 *Removal of Facility* that clearly
11 dictate the manner and schedule for turning the site over to RockTenn. Section 15.1
12 establishes the requirement for the lessee to provide a proposal to the lessor of
13 structures or improvements at the site that would be turned over to the lessor. If the
14 lessor accepts the terms of the proposal there is a prescriptive schedule under which
15 the lessee is required to remove remaining structures other than foundations. If the
16 lessor objects to the proposal of improvements or structures to be left on the
17 property the lessee will follow the prescribed schedule and remove all structures.

18
19 Regarding remediation of contamination, witness Wittliff in his testimony properly
20 characterized the requirements of the obligations of the lessee and lessor under the
21 ground lease—“what’s mine is mine, what’s yours is yours.” The ground lease is
22 consistent throughout that the lessee is not responsible for any historical
23 contamination associated with RockTenn and its predecessor’s activities on the site.

1 During demolition and abandonment of the site, the lessee would only be
2 responsible for the remediation of contamination attributable to its activities. FPL
3 believes these responsibilities for cleanup, transfer and remediation of the site are
4 clearly laid out in the ground lease.

5 **Q. Witness Pollock states that the Cedar Bay Facility is not a significant source of**
6 **carbon dioxide (“CO₂”) emissions in Florida. Do you agree?**

7 A. No. Witness Pollock is referring to emissions in terms of mass emissions related to
8 total tons in Florida. It is true that the total tons of emissions from the Cedar Bay
9 Facility are approximately 1.0 % of the state’s overall emissions. However, the
10 EPA’s proposed Clean Power Plan (“CPP”), due to be final later this summer, is a
11 rate-based rule that establishes an interim and final target rate in pounds per
12 megawatt-hour (“lbs/MWh”) for each state. Under the current draft CPP, the State
13 of Florida’s 2012 baseline year emissions rate is 1,200 lbs/MWh. The Florida
14 interim target rate average in the EPA’s proposed CPP between 2020 and 2029 is
15 794 lbs/MWh. The State’s final target rate for 2030 is 740 lbs/MWh under the
16 current draft CPP. In comparison, the EPA’s technical CPP support documents
17 indicate that the Cedar Bay Facility’s 2012 baseline emissions rate is 2,073
18 lbs/MWh. The Cedar Bay Facility’s baseline year CO₂ emissions are 2.8 times
19 higher than the CO₂ rate that the State of Florida is expected to achieve in 2030.
20 Accordingly, in comparison to the proposed CPP target emissions rates expected for
21 the State of Florida, it is not accurate to state that the CO₂ emissions from the Cedar
22 Bay Facility are insignificant.

23

1 Once the CPP is final each state will develop a State Implementation Plan (“SIP”)
2 designed to achieve compliance with the EPA target emissions rate. The state’s SIP
3 must be approved by the EPA.

4
5 The lower CO₂ emissions target will have the effect of decreasing the dispatch of
6 coal-fired generators on the grid. For utility owned or merchant generators this has
7 the impact of decreasing the revenues associated with those units, potentially
8 leading to retirement just on pure economic grounds.

9
10 The Cedar Bay Facility, however, is different. As dispatch is reduced the
11 profitability of the unit for its owners *increases*. Under the PPA, the less the Cedar
12 Bay Facility operates the more money it makes due to the PPA's very high capacity
13 payments but negative energy margin. Unlike most other coal plants that would be
14 affected by the CPP, under the PPA, the Cedar Bay owners would financially
15 benefit if the Facility continues to be available for dispatch even if the Facility is
16 not called on to run.

17
18 Because the CPP is not yet final it would be pure conjecture to assume that the
19 Cedar Bay Facility would retire as a result of the rule. The available evidence is
20 that the Facility will be economically viable through the end of the PPA. The
21 impact of the CPP would likely result in increased profits for the owner due to
22 continued capacity payments for the Facility and increased effective cost per unit
23 energy produced for FPL’s customers.

1

2 It is the EPA's stated intent to evaluate the progress of each state every two years to
3 determine the progress toward their reduction of CO₂ emissions in accordance with
4 their plan. FPL's 2012 CPP baseline emissions rate is 908 lbs/MWh. Based on
5 FPL's current generation plan the Company will be below EPA's 740 lbs/MWh
6 target rate for Florida by 2030. However, once included in the Company's CO₂
7 emissions database, the incremental emissions from the Cedar Bay Facility would
8 negatively impact FPL's ability to achieve the state target emissions rate.
9 Therefore, in addition to the obvious financial benefits to customers associated with
10 shutting down the Cedar Bay Facility early, the shutdown also contributes to FPL
11 and the State of Florida's goal to reduce CO₂ emissions rates under the EPA CPP
12 rule.

13 **Q. Does this conclude your rebuttal testimony?**

14 A. Yes, it does.

**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

**DOCKET NO. 150075-EI
FLORIDA POWER & LIGHT COMPANY**

JUNE 17, 2015

**IN RE: PETITION FOR APPROVAL OF
ARRANGEMENT TO MITIGATE IMPACT OF
UNFAVORABLE CEDAR BAY POWER PURCHASE
OBLIGATION, BY FLORIDA POWER & LIGHT
COMPANY**

REBUTTAL TESTIMONY & EXHIBITS OF:

T. L. PATTERSON

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF TRACY LEE PATTERSON**

4 **DOCKET NO. 150075 -EI**

5 **JUNE 17, 2015**

6

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

8 A. My name is Tracy Lee Patterson II, and my business address is 9640 Eastport
9 Road, Jacksonville, Florida 32218.

10 **Q. By whom are you employed and what is your position?**

11 A. I am employed by Cogentrix Energy Power Management, LLC (“Cogentrix”)
12 as Vice President of Operations. I have held this position since January 2015.
13 Cogentrix is a privately-owned company that develops, manages and operates
14 independent power plants in the United States. The company’s current project
15 portfolio has a generating capacity of approximately 4.6 GW from eighteen
16 coal, gas-fired and solar facilities. The plant, owned by Cedar Bay Generating
17 Company, Limited Partnership (“Cedar Bay”) in Jacksonville, Florida (the
18 “Cedar Bay Facility”), is one of the coal-fired facilities that Cogentrix manages
19 and operates as part of its portfolio.

20 **Q. What are your present job responsibilities?**

21 A. My primary responsibility is to provide oversight and direction to the General
22 Managers at the Cedar Bay Facility and the Effingham County Power Facility
23 located near Savannah, Georgia for all matters related to operations and

1 maintenance (“O&M”) of their plants and associated matters such as human
2 resources, employee health and safety, environmental compliance, and
3 performance and budgetary matters.

4 **Q. What, if any, positions did you hold with Cogentrix before your current**
5 **position as Vice President of Operations?**

6 A. I have worked for Cogentrix for 25 years. Most recently, from 2006 until
7 April 27, 2015, I held the position of General Manager of the Cedar Bay
8 Facility. From January 2015 to April 2015, I was both General Manager of the
9 Cedar Bay Facility and Vice President of Operations for Cogentrix.

10 **Q. Please summarize your duties and responsibilities in your position as**
11 **General Manager of the Cedar Bay Facility?**

12 A. I had primary responsibility for the day-to-day O&M of the Cedar Bay
13 Facility. My O&M duties and responsibilities encompassed all areas of the
14 Cedar Bay Facility’s operations and personnel matters, including health and
15 safety, environmental compliance, contractual compliance relating to
16 production and reporting requirements of various contracts to which Cedar Bay
17 is a party, budgeting and variance tracking, as well as long-term planning for
18 maintenance and operation of the Cedar Bay Facility. Among other things, I
19 was the principal author of each annual Business Plan prepared for the Cedar
20 Bay Facility during my time as General Manager.

21 **Q. Please summarize your educational background and professional**
22 **experience.**

1 A. I attended Middle Tennessee State University in Murfreesboro, Tennessee
2 from 1970 to 1972. In 1972 I enlisted in the United States Air Force and served
3 approximately eight years in the intelligence gathering group working under
4 direction of the National Security Agency. After discharge from the Air Force,
5 I was in the Nuclear Generation Training Program with the Tennessee Valley
6 Authority (“TVA”) for the Nuclear Generation Plant Instrumentation and
7 Controls group. TVA reduced the program and its plans for expanding nuclear
8 generation in the TVA system after the incident at Three Mile Island. From
9 TVA, I went to work for an electric cooperative in northwest Colorado at a
10 generating facility in Craig, Colorado and developed the training program for
11 Instrument, Controls and Electrical Maintenance group personnel. In 1990, I
12 began employment with Cogentrix in the instrument and controls team at
13 several facilities that were then being constructed. I moved into the
14 Environmental Compliance team in 1995, specializing in air quality
15 compliance, and I continued with the Environmental Health and Safety team
16 until 2006 when I took the position of General Manager at the Cedar Bay
17 Facility in Jacksonville, Florida.

18 **Q. What is the purpose of your testimony in this proceeding?**

19 A. I am testifying on behalf of Florida Power & Light Company (“FPL”), the
20 petitioner in this case. My testimony addresses and rebuts a number of
21 statements and assertions made by Mr. Gary D. Brunault and Mr. Christopher
22 C. Dawson, witnesses on behalf of the Office of Public Counsel, and also one

1 issue raised by Mr. Gary Wittliff, who is also a witness on behalf of the Office
2 of Public Counsel.

3 **Q. Are you sponsoring any exhibits in this proceeding?**

4 A. Yes. I am sponsoring the following exhibits:

5 Exhibit TLP-1 Cedar Bay: Chronology of Plant Engineering
6 Improvements (CONFIDENTIAL)

7 Exhibit TLP-2 Performance Statistics for Cedar Bay Generating
8 Facility (CONFIDENTIAL)

9 Exhibit TLP-3 The Ground Lease Between Cedar Bay Generating
10 Company and RockTenn (CONFIDENTIAL)

11 **Q. Please summarize the main points of your rebuttal testimony.**

12 A. In their testimonies, Mr. Gary Brunault and Mr. Christopher Dawson made a
13 number of statements and assertions that attempt to cast doubt on the ability of
14 the Cedar Bay Facility to meet the operating requirements necessary to earn
15 the level of the Bonus Capacity Payments under the Power Purchase
16 Agreement between Cedar Bay and FPL (“PPA”) that were assumed by FPL’s
17 witnesses David Herr and Tom Hartman. Mr. Brunault bases his assumption
18 of Bonus Capacity Payments of 2.59% on the average Bonus Capacity
19 Payments over the past eight years and on misinterpretations or
20 misunderstandings of the 2014 Business Plan for the Cedar Bay Facility,
21 asserting that “Nothing stands out to demonstrate that extraordinary efforts are
22 being undertaken to overcome the effects of aging on the plant’s ability to earn
23 bonus payments.” (Brunault Testimony p. 7). His assertion plainly ignores the
24 numerous operating and commercial improvements that Cogentrix has made
25 over time, including many significant improvements that were made within the

1 past five years, to ensure that the Cedar Bay Facility will operate with very
2 high reliability throughout the remainder of the PPA term. My testimony
3 explains that, if anything, Mr. Herr's and Mr. Hartman's assumption of Bonus
4 Capacity Payments of 5.0% is probably low, based on the current operating
5 conditions compared to the average of the past eight years and improvements
6 that Cogentrix continues to implement, as evidenced by the fact that the Cedar
7 Bay Facility has earned Bonus Capacity Payments greater than 5.0% in each of
8 the past three years.

9
10 Mr. Dan J. Wittliff and Mr. Christopher C. Dawson, on behalf of the Office of
11 Public Counsel, rely on one or more supposedly "missing" pages related to
12 environmental issues in the Cedar Bay Facility ground lease to contend that
13 FPL "did not thoroughly inspect the ground lease document" and has
14 accordingly failed to properly evaluate potential environmental liabilities that
15 would be assumed by FPL. The ground lease document in question is between
16 Cedar Bay and RockTenn CP, LLC ("RockTenn"), and includes a set of
17 appendices attached thereto (collectively, the "Ground Lease"). RockTenn, as
18 the successor to Seminole Kraft Corporation, owns the site on which the Cedar
19 Bay Facility is located and leases it to Cedar Bay. As I explain in more detail
20 below, the Office of Public Counsel's witnesses incorrectly assumed that an
21 appendix should appear even though the terms of the Ground Lease do not call
22 for it, and erroneously conclude that there are unknown and potentially costly
23 environmental liabilities that would be assumed by FPL. In fact, there are no

1 missing pages or a missing appendix, but rather two divider pages on which no
2 content was ever intended to appear. Accordingly, Mr. Wittliff's and Mr.
3 Dawson's testimony on this subject is incorrect, and would mislead the Florida
4 Public Service Commission to believe there is unquantifiable risk to the value
5 proposition of the transaction.

6 **Q. What testimony and other documents have you reviewed in preparing**
7 **your rebuttal testimony?**

8 A. Among others, I have reviewed the testimony and relevant exhibits of the
9 testimonies of Mr. Brunault, Mr. Wittliff, and Mr. Dawson, as well as the PPA
10 and relevant portions of the Ground Lease. I have also reviewed the testimony
11 of Mr. David Herr and Mr. Tom Hartman, on behalf of FPL.

12 **Q. At pages 5 through 9 of his testimony, Mr. Brunault discusses his assertion**
13 **that "the Bonus Capacity Revenue of 5% is too high." Is this assertion**
14 **accurate?**

15 A. No. Mr. Brunault's assertion is incorrect and it fails to recognize the numerous
16 actions that Cogentrix has taken and continues to take to ensure that the Cedar
17 Bay Facility will continue to operate with very high reliability, such that it is
18 confidently expected to continue to earn Bonus Capacity Payments (Revenues)
19 of 5.0%, if not greater, for the remainder of the PPA term, which expires in
20 January 2025. Mr. Brunault's reliance on the average bonus payments over the
21 eight year period from 2007 through 2014 is inappropriate, and his assertion
22 that nothing has changed at the Cedar Bay Facility to produce higher
23 operational reliability is incorrect. His assertion that a 2.59% Bonus Capacity

1 Revenue assumption is more realistic than Mr. Herr's 5.0% assumption is
2 therefore inappropriate, based on a failure to recognize the sustainable
3 operational improvements and ongoing maintenance practices incorporated and
4 put into effect over the period from 2006 to 2013 that will ensure that the
5 Cedar Bay Facility operates with high reliability, in line with its successful
6 operations and correspondingly high Bonus Capacity Payment rates realized
7 from 2012 through 2014.

8 **Q. Please summarize the measures that Cogentrix has implemented to ensure**
9 **that the Cedar Bay Facility operates with high reliability.**

10 A. Please refer to the graphic in my Exhibit TLP-1. This exhibit demonstrates
11 how the maintenance projects implemented from 2006-2014 had a significant
12 and sustainable impact on the Cedar Bay Facility's availability, reliability and
13 performance. Those projects are listed below and described in further detail
14 later on in this testimony:

- 15 1. Superheater tube leading-edge protection
- 16 2. Change to the waterwall tube coating program
- 17 3. Replacement of the grid floor nozzles

18 **Q. Please describe how these activities and measures will impact the Cedar**
19 **Bay Facility's ability to operate with high reliability into the future,**
20 **specifically through the end of the PPA term, January 31, 2025.**

21 A. The three major projects listed above have had the greatest impact on
22 improving the Cedar Bay Facility's availability, reliability and performance
23 and reducing its EFOR. (Equivalent Forced Outage Rate, or "EFOR", is a

1 widely-used and reliable industry measure of the amount of time that a
2 generating unit is not available for service due to unplanned, or “forced,”
3 outages.). The leading cause of the Cedar Bay Facility’s higher EFOR in 2006
4 - 2008 were tube leaks in the waterwalls of the combustor (or boiler) and tube
5 leaks from the superheater tubes located in the combustor. The tube leaks have
6 been virtually eliminated due to these three major projects.

7
8 The cause of the superheater tube leaks was erosion on the leading edge of the
9 tubes, exposing them to the particle laden high pressure gas stream. Cogentrix
10 began to replace the metal tube shields with a more durable refractory material
11 starting in the fall of 2006; this program was fully implemented in the spring of
12 2008. The superheater tube shields were installed using a high resistance, low-
13 loss refractory and have had zero failures since the project was completed.
14 They are inspected during each outage along with the other combustor
15 internals. If any of the refractory shields show indications of erosion they can
16 be easily replaced with a new section of refractory installed. This project is
17 effective, sustainable and will provide the same performance through the end
18 of the PPA in 2025.

19
20 The second significant project was a change to the waterwall tube coatings.
21 Prior to this change, the Cedar Bay Facility program consisted of applying a
22 metal coating with a high-chromium content to the tubes. The high-chromium
23 material was very hard, which one would expect to perform better against

1 erosion. The drawback to that material was that it could not be applied in a
2 thickness more than 17 mils, which left most of the underlying surface
3 deformity exposed for eddy effects from the circulating material in the
4 combustor. Cedar Bay Facility staff experimented with an application of a
5 high-nickel content metal application that was softer and as such could be
6 applied to a greater thickness of 75 mils or more. This allowed the tube face to
7 be left much smoother and prevented the eddy effects of the circulating
8 material. This project was started with a test area in the fall of 2007 and was
9 substantially implemented in all three combustors by 2009. The improved
10 boiler waterwall tube coating program is now managed by performing a
11 complete thickness mapping of all coated areas in each boiler allowing the
12 Cedar Bay Facility staff to determine any areas that need additional coating to
13 maintain the coating thickness. It is no longer necessary to completely strip and
14 recoat entire sections. The coating program has proven effective, sustainable
15 and will provide the same performance through the end of the PPA in 2025.

16
17 The third significant project was to replace the grid floor fluidizing nozzles,
18 which began in 2009. The fluidizing nozzles are the key components in the
19 lower combustor needed to properly fluidize the circulation material in the
20 combustor. Improper fluidization of the material can, and usually does, lead to
21 several problems. Build-up of material caused by improper fluidization will
22 result in air flow channeling to thinner areas, thereby increasing temperature in
23 those areas as well as the potential for erosion. High temperature areas in the

1 combustor bed result in higher emissions of nitrogen oxides and sulfur dioxide.
2 The grid nozzles that were installed beginning in 2009 were a significantly
3 improved design, allowing simpler and faster replacement when needed and
4 were spaced farther apart to prevent build-up of circulating material on
5 adjacent nozzles. This project was completed in 2011. The grid floor is
6 inspected during each maintenance outage and any grid nozzles that show
7 signs of erosion are easily replaced. The new nozzle design is effective,
8 sustainable and will provide the same performance through the end of the PPA
9 in 2025.

10 **Q. Please explain any other factors that will impact the Cedar Bay Facility's**
11 **ability to operate with high reliability into the future, specifically through**
12 **the end of the PPA term, January 31, 2025.**

13 A. There have been several other operational projects that have contributed to the
14 improved performance of the Cedar Bay Facility. One such other project was
15 the installation of a new limestone processing system that (1) provided better
16 particle size control of the material produced and used in the combustor for
17 sulfur control, and (2) was capable of producing all of the limestone needs for
18 the 3 combustors requiring only half of the diesel fuel for the drying. This
19 project was started in 2007 and fully completed in 2008. This limestone
20 processing system is effective, sustainable and will provide the same
21 performance through the end of the PPA in 2025.

22

1 Another project remediated several tube failures in the convection pass or the
2 backpass of each boiler that the Cedar Bay Facility experienced in 2012. The
3 failures were determined to be the result of several factors, most notably from
4 the many boiler cycles in the late 1990s and mid-2000s due to boiler EFOR
5 events with other tube failures. The failures were of a mechanical nature where
6 the tube itself was cooled by steam flow and the membrane material between
7 the tubes, which is not cooled, would expand and contract at different rates due
8 to the cooling effect of the steam flow in the tubes. Cedar Bay Facility staff
9 implemented changes to the startup and shutdown rates to allow a slower
10 temperature ramp rate and thereby to reduce the effects of the expansion and
11 contraction. This has reduced refractory cracking thereby minimizing the cost
12 of refractory repairs and minimizing EFOR due to tube failures caused by
13 refractory failure. The slower ramp rates coupled with fewer boiler EFOR
14 events as a result of other improvements will provide effective and sustainable
15 management of any tube failures through the end of the PPA in 2025.

16

17 The Cedar Bay Facility staff has also implemented a process to thermally scan
18 the boilers. Abnormal temperature readings that are identified by this thermal
19 scanning helps to identify refractory failures. This allows them to be repaired
20 during scheduled outages rather than causing an EFOR event. Again, this
21 program will provide effective and sustainable management of any refractory
22 failures through the end of the PPA in 2025.

23

1 An additional major factor impacting the Cedar Bay Facility’s ability to
2 operate with high reliability now and into the future, and thereby allowing for
3 higher Bonus Capacity Payments, is the 2013 amendment to the steam sales
4 agreement with RockTenn (the “Steam Agreement”). In addition to being the
5 Lessor under the Ground Lease, RockTenn is the steam host (or “off-taker”)
6 pursuant to the Steam Agreement. In the spring of 2013, the Steam Agreement
7 was extended to January 2025 (coterminous with the PPA) and the payment
8 structure for steam was amended as part of the renegotiation. RockTenn’s
9 fixed payments under the Steam Agreement were eliminated, while the
10 variable payments for steam were increased to incentivize RockTenn to
11 produce steam with its own gas-fired boilers when it is economic for them to
12 do so, while still taking enough steam from the Cedar Bay Facility to ensure
13 the Cedar Bay Facility will maintain its Qualifying Facility status. The
14 amendment in payment structure changed RockTenn’s steam take behavior
15 significantly, resulting in a 49% reduction in steam take from the Cedar Bay
16 Facility from 2012 to 2014. The reduced steam take has played a large role in
17 the recent increase in Bonus Capacity Payments by (a) reducing the operational
18 burden on the Cedar Bay Facility associated with steam off-take, thereby
19 increasing reliability, and (b) allowing the Cedar Bay Facility to increase
20 electrical output during on-peak hours, which is a component of the calculation
21 for Billing Capacity Factor (“BCF”) that drives Bonus Capacity Payments.

22 **Q. When did the Cedar Bay Facility fully realize the combined effects of**
23 **these factors improving its performance?**

1 A. The Cedar Bay Facility only realized the full effect of the combination of these
2 operational and commercial improvements in 2013.

3 **Q. Please explain the relationship between the Equivalent Forced Outage**
4 **Rate (EFOR) statistic mentioned by Mr. Brunault and the Billing**
5 **Capacity Factor upon which the Cedar Bay Facility's Bonus Capacity**
6 **Payments are based.**

7 A. Please refer to my Exhibit TLP-2. This exhibit shows that as EFOR decreases,
8 availability and performance under the PPA improves. However, the Cedar
9 Bay Facility's ability to earn Bonus Capacity Payments depends on its
10 Capacity Factor (a defined term in the PPA), which we commonly refer to as
11 the Billing Capacity Factor (or BCF). The relationship between the EFOR and
12 the BCF is not linear. Billing Capacity Factor takes into account other factors
13 such as plant dispatch and electrical output.

14 **Q. How, if at all, does Mr. Brunault's citation in his testimony to "an**
15 **objective" of a 3.5% Equivalent Forced Outage Rate in the 2014 Business**
16 **Plan relate to whether the Cedar Bay Facility will be able to earn Bonus**
17 **Capacity Revenues?**

18 A. In the 2014 Business Plan, the 3.5% EFOR is a target for budgetary purposes
19 and represents what the impact would be on a monthly basis if the Cedar Bay
20 Facility were to experience a boiler forced outage event once per month. It is
21 intentionally conservative for budget preparation purposes, to allow Cedar Bay
22 to prepare for startup costs, fuel needs and related impacts from a boiler
23 outage. Cedar Bay's expectation was to outperform the 3.5% EFOR, and

1 Cedar Bay did in fact outperform the 3.5% EFOR in 2014, limiting EFOR to
2 2.0%.

3

4 The Cedar Bay Facility's ability to earn Bonus Capacity Payments depends on
5 achieving a high BCF. While a lower EFOR is generally associated with a
6 higher BCF, as explained above, the relationship is not linear. For example, in
7 2013, the Cedar Bay Facility had an EFOR of 1.0% but the BCF was 101.8%,
8 not 99.0%, which is what it would be if the BCF was calculated by simply
9 subtracting the EFOR from 100.0%. Similarly, in 2014, the Cedar Bay Facility
10 had an EFOR of 2.0% but a BCF of 101.1%, not 98.0%. Cogentrix manages,
11 operates, and maintains the Cedar Bay Facility in accordance with its
12 obligations to FPL under the PPA and also in response to the economic
13 incentives to maximize the BCF under the PPA. The measures that Cogentrix
14 has implemented are sustainable and will ensure that the Cedar Bay Facility
15 will continue to achieve very high reliability and correspondingly high BCFs.

16 **Q. Do you believe that Mr. Brunault's use of an 8-year period to calculate an**
17 **average expected Bonus Capacity Payment or Revenue rate is reasonable**
18 **or appropriate?**

19 A. No. This 8-year period fails to recognize the fact that Cogentrix has
20 implemented significant operational and commercial improvements since the
21 start of this 8-year period which began to show improved performance under
22 the PPA beginning in 2009 and more fully demonstrated in 2013-2014.

1 **Q. What, in your view, would be a more representative time period to**
2 **examine in order to get the best estimate of what the Cedar Bay Facility's**
3 **Bonus Capacity Payments would be on a going-forward basis?**

4 A. The years 2013 and 2014 would be more representative of my expectations
5 going forward, because this more recent period accurately reflects the
6 cumulative impact of the improvements that Cogentrix has put in place since
7 2006 to maximize Bonus Capacity Payments. I would include only the past
8 two years because of the significant impact that the pricing structure of the
9 amended Steam Agreement (executed in the spring of 2013) had on the Cedar
10 Bay Facility's availability and output. It is readily apparent from Mr.
11 Brunault's own Exhibit GB-1 that the Cedar Bay Facility has operated with
12 Bonus Capacity Payment rates greater than 5.0% in each of the past two years.
13 These results demonstrate the cumulative effects of the improvements that
14 Cogentrix has implemented over time.

15 **Q. In your opinion, what is the best estimate of the Cedar Bay Facility's**
16 **Bonus Capacity Payment rate from now through January 2025?**

17 A. The best estimate would be 6-7%, which is in line with Bonus Capacity
18 Payments achieved in 2013 (7.7%) and 2014 (6.0%). Please refer to Exhibit
19 TLP-1. 2013 and 2014 are the most representative years for benchmarking
20 purposes, because those years reflect the full impact of the technical and
21 operational improvements that Cogentrix has achieved at the Cedar Bay
22 Facility over the period from 2006 to the present.

23 **Q. Why do you believe that this is the best estimate?**

1 A. I expect the Cedar Bay Facility's Bonus Capacity Payment rate to be between
2 6% and 7% because of the sustainable nature of the technical and operational
3 improvements discussed earlier in this testimony. Cedar Bay staff is highly
4 capable of continuing these programs to enable proactive management of
5 potential issues in the combustor rather than reacting to continued failures. If
6 FPL were not to purchase the Cedar Bay Facility, Cogentrix would continue
7 with its preventive maintenance and operating philosophy, as successfully
8 implemented over the past several years with proven results. The Cedar Bay
9 Facility's history of preventive maintenance and low EFORs over the past four
10 years strongly reinforces its ability to achieve sustained strong performance
11 throughout the remaining term of the PPA.

12 **Q. Mr. Wittliff and Mr. Dawson, testifying for the Office of Public Counsel,**
13 **have asserted that there are potentially significant unidentified**
14 **environmental liability risks that FPL failed to account for in its**
15 **evaluation of the transaction. Is this assertion justified?**

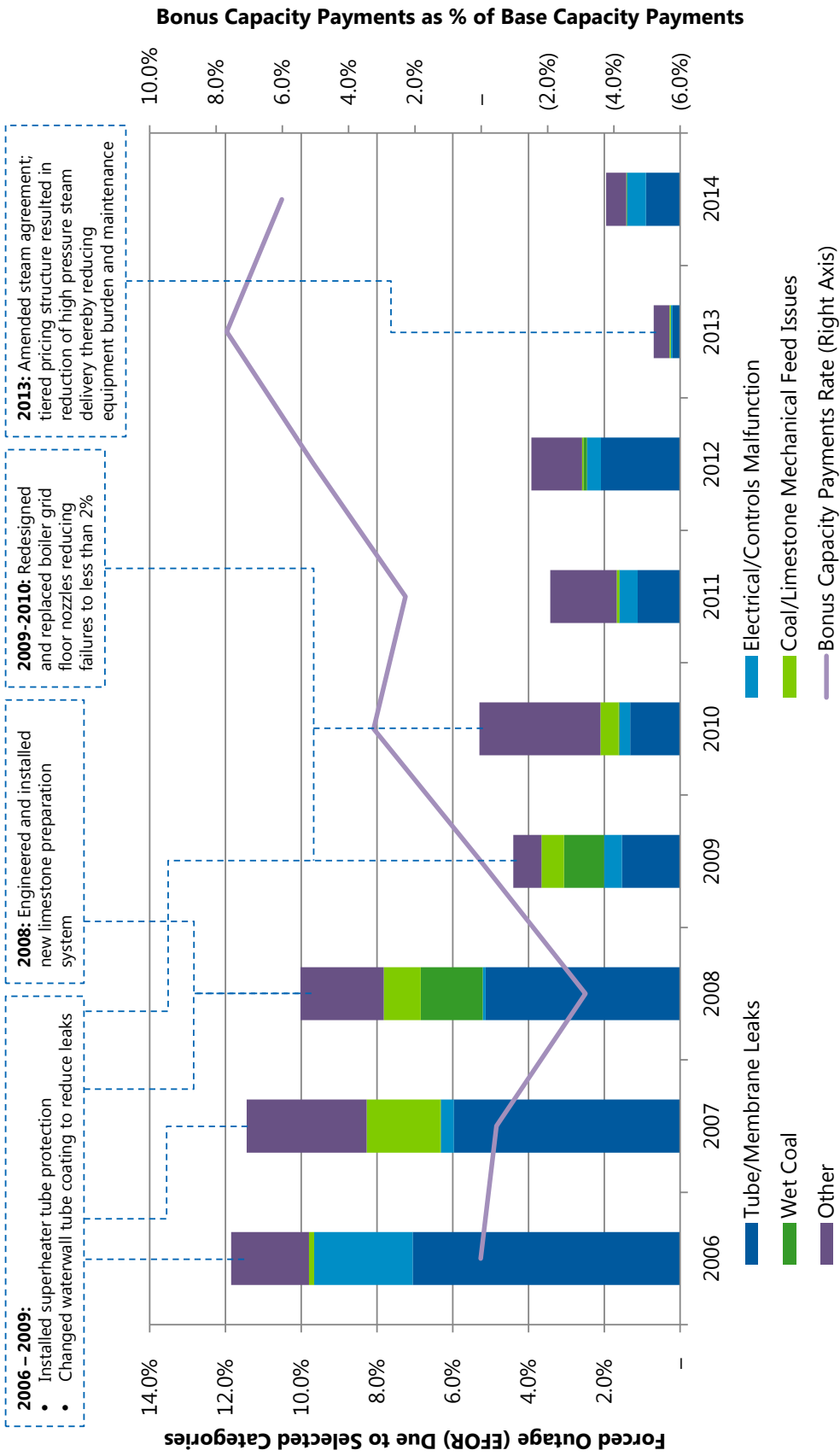
16 A. No. Mr. Wittliff and Mr. Dawson reviewed the appendices to the Ground
17 Lease, and specifically those pertaining to environmental matters, and
18 concluded that the absence of an Appendix 20.1(ii) means that such Appendix
19 was missing and therefore the full scope of environmental liability under the
20 Ground Lease could not be properly evaluated for purposes of the transaction
21 that is the subject of this Docket.

22

1 Article XX, Section 20.1, of the Ground Lease calls for two Appendices, both
2 of which are present: Appendix 20.1(i) and Appendix 20.1(iii). Both
3 correspond to representations and warranties as to certain environmental
4 matters set forth in Section 20.1 except as carved out by the excepted items
5 listed on the appendices. The Ground Lease (including all appendices and an
6 amendment thereto dated November 2009) is attached in full as Exhibit TLP-
7 3. Section 20.1(ii) does not call for a representation/warranty to be qualified
8 by items excluded on an appendix, and thus there is no corresponding
9 Appendix 20.1(ii). The two blank pages that appear between Appendix 20.1(i)
10 and Appendix 20.1(iii) reflect both sides of a divider sheet that was inserted
11 between the two appendices, and which were captured when the document was
12 scanned electronically from its hard copy form. A similar divider sheet
13 appears after each appendix to the Ground Lease. I have received and
14 reviewed an electronic copy of RockTenn's copy of the Ground Lease
15 (including the appendices) and that copy likewise contains no Appendix
16 20.1(ii) and otherwise mirrors Cedar Bay's copy. In summary, there is no
17 Appendix 20.1(ii), and accordingly, the assertions of the Office of Public
18 Counsel witnesses are misplaced

19 **Q. Does that conclude your rebuttal testimony?**

20 A. Yes, it does.





G.2.1
30R:B/3162t 13

GROUND LEASE
between
SEMINOLE KRAFT CORPORATION
and
AES CB LIMITED PARTNERSHIP

Dated as of April 29th, 1991

Cogeneration Facility
Jacksonville, Florida

To the extent, if any, that the Ground Lessee's interest in this Ground Lease constitutes Chattel Paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in the Ground Lessee's interest in this Ground Lease may be created by the transfer or possession of any counterpart hereof other than the counterpart containing the printed receipt therefor executed by the Financing Parties immediately following the signatures of the Parties to this Ground Lease.

THIS INSTRUMENT WAS PREPARED BY:

Richard Sonkin, Esq.
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New York, New York 10112

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Appendix 3.1(a)(i)	- Description of Easements Granted Under Section 3.1(a)(i) hereof
Appendix 3.1(b)	- Description of Improvements to be Demolished
Appendix 3.2	- Description of quality standards for Mill Effluent
Appendix 5.3(b)	- Portion of Mill Site Subject to Re-Zoning Efforts
Appendix 6.1(a)	- Schedule of Tonnage
Appendix 20.1	- Schedule of Environmental Concerns

GROUND LEASE

GROUND LEASE dated as of April 29, 1991 between SEMINOLE KRAFT CORPORATION, a Delaware corporation ("Ground Lessor"), and AES CB LIMITED PARTNERSHIP, a Delaware limited partnership ("Ground Lessee").

M I T H E R E E T H :

WHEREAS, Ground Lessee desires to construct and operate a cogeneration facility on a site owned by Ground Lessor adjacent to Ground Lessor's unbleached linerboard and kraft paper mill in the City of Jacksonville, Florida; and

WHEREAS, Ground Lessor desires to lease to Ground Lessee the site upon which such facility shall be developed and operated, to grant to Ground Lessee certain easements and to provide certain services to Ground Lessee needed for such development and operation upon the terms and conditions contained herein; and

WHEREAS, Ground Lessee desires to lease such site and to receive such easements and services upon the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, and intending to be legally bound hereby, the Parties hereby covenant and agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 **Definitions.** Except as otherwise defined herein, capitalized terms have the meanings assigned to them as follows:



[REDACTED]

"Affiliate" means, with respect to any Person, a Person that, directly or indirectly, controls or is controlled by or under common control with such Person. For the purposes of this definition, the concept of "control," when used with respect to any specified Person, shall signify the possession of the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise; provided that, in any event, any Person (including the family members of such Person) which owns directly or indirectly 5% or more of the securities having ordinary voting power for the election of directors or other governing body of a corporation or 5% or more of the partnership or other ownership interests of any other Person is deemed to control such corporation or other Person.

[REDACTED]

"Applicable Laws" means any statute, law, regulation, ordinance, rule, judgment, rule of common law, order, decree, Permit, approval, concession, grant, franchise, license, agreement, requirement, or other governmental restriction or any similar form of decision of, or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Authority, whether now or hereinafter in effect and in each case as amended (including, without limitation, any thereof pertaining to land use or zoning restrictions and any Environmental Law).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Easements" has the meaning specified in Section 3.1(a) hereof.

[REDACTED]

[REDACTED]

"Environmental Claims" means any and all obligations, liabilities, losses, administrative, regulatory or judicial actions, suits, demands, decrees, demand letters, claims, liens, judgments, warning notices, notices of noncompliance or violation, investigations, proceedings, removal or remedial actions or orders, or damages, penalties, fees, out-of-pocket costs, expenses, disbursements, attorneys' or consultants' fees, relating in any way to any Environmental Law or any Permit issued under any such Environmental Law (the "Claims"), including without limitation (a) any and all Claims by governmental or regulatory authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Law" means any and all Applicable Laws relating to the protection of the environment, human health, safety, or natural resources (including without limitation, wetlands, wildlife, aquatic and terrestrial species and vegetation), or to emissions, discharges, Releases or threatened Releases of Hazardous Materials into the environment including, without limitation, ambient air, surface water, groundwater, or land, or otherwise relating to the handling or use, treatment, storage, disposal, transport, or handling of Hazardous Materials; including, without limitation, the Site Certification Approval, dated February 11, 1991, relating to the Facility, and all terms and conditions thereof.

"Facility" means the boilers, steam turbine generator and all appurtenant structures, fixtures, improvements, equipment and other personal and real property interests (but not including the Facility Site and the Easements) now or hereafter constructed, owned or leased by Ground Lessee on the Facility Site and the Easements (excluding the Mill and any other improvements now or hereafter constructed, owned or leased by Ground Lessor on the Easements) for the purpose of generating and delivering steam or electricity.

"Facility Site" means all those parcels of land (excluding the Easements) situated in the City of Jacksonville, Florida that Ground Lessee leases from Ground Lessor from time to time under this Ground Lease, as further

described in Appendix I.1-A attached hereto and made a part hereof.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Financing Parties" means (i) the Collateral Agent and any and all parties on behalf of whom the Collateral Agent shall, from time to time, act pursuant to the Collateral Agency Agreement (as defined in the Leasehold Mortgage), and (ii) any and all lenders, their successors and assigns providing any refinancing (or refinancings) of the indebtedness secured by the Leasehold Mortgage.

[REDACTED]

"Governmental Authority" means any governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, domestic or foreign, federal, state or local having jurisdiction over the matter or matters in question.

[REDACTED]

"Ground Lessee" means AES CB and its successors and permitted assigns as lessee under this Ground Lease.

"Ground Lessor" means Seminole Kraft and its successors and permitted assigns as lessor under this Ground Lease.

"Hazardous Material" means (a) any petroleum or petroleum products, flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls and (b) any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law.

[REDACTED]

[REDACTED]

"Improvements" means any and all structures, fixtures, equipment and other personal property interests appurtenant thereto (but not including the Facility) hereafter installed and owned or leased by Ground Lessee on the Facility Site or the Easements (excluding the Mill and any other improvements now or hereafter constructed, owned or leased by Ground Lessor on the Easements) for or related to the purpose of developing and operating a lawful steam-using facility or any other lawful use in accordance with Section 5.1 hereof.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

"Material Adverse Effect" means (i) with respect to representations, warranties or covenants by Ground Lessor, a material adverse effect on (a) the business, operations or financial conditions of the Ground Lessee, (b) the construction, operation, maintenance or use of the Facility, the Facility Site, Easements, or Improvements, or (c) the ability of the Ground Lessor to perform its obligations under the Ground Lease, the Services Agreement, or the Stone Undertaking, and (ii) with respect to any covenants by Ground Lessee, a material adverse effect on (a) the business, operations or financial conditions of Ground Lessor, (b) the modification, operation, maintenance, ownership, or use of the Mill or the Mill Site, or (c) the ability of the Ground Lessee to perform its obligations under the Ground Lease or the Services Agreement.

"Mill" means the unbleached linerboard and kraft paper plant located in the City of Jacksonville, Florida with a street address of 9469 Eastport Road, and all appurtenant structures, fixtures, improvements, equipment and other appurtenant personal property interests now or hereafter owned or leased by Ground Lessor or any Affiliate of Ground Lessor on the Mill Site, including the water supply and steam delivery systems between the Mill and the applicable Interconnection Point, Condensate Delivery Point or Demineralized Water Delivery Point (as defined in the Services Agreement), as the case may be, the waste treatment facilities located on the Mill Site servicing the Mill and the Facility pursuant to Section 3.5 hereof, the Mill Effluent System and any and all other improvements (other than the Improvements) installed on the Mill Site from time to time.

[REDACTED]

[REDACTED]

[REDACTED]

"Mill Site" means all of the land now or hereafter owned or leased by Ground Lessor or any Affiliate of Ground Lessor and located in the City of Jacksonville, Duval County, Florida under, at or near the Mill, excluding the Facility Site leased to Ground Lessee under this Ground Lease, as more particularly described in Appendix 1.1-B hereto and made a part hereof.

[REDACTED]

[REDACTED]

"Party" or "Parties" means the Ground Lessor and the Ground Lessee.

[REDACTED]

"Person" means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or governmental body.

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, placing and the like,

into or upon any land or water or air, or otherwise entering
into the environment.

[REDACTED]

"SK Site" means the Mill, the Mill Site and the
Facility Site.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



ARTICLE III

EASEMENTS, ADDITIONAL LAND AND SERVICES

Section 3.1 EASEMENTS. (a) In addition to the demise of the Facility Site set forth in Article II hereof, subject to the terms and provisions of this Ground Lease, the Ground Lessor hereby grants to the Ground Lessee the following easements: (i) the easements described in Appendix 3.1(a)(i) attached hereto and made a part hereof (the "Presently Described Easements"), and (ii) the following additional easements (the "Additional Easements"; the Presently Described Easements and the Additional Easements being collectively referred to as the "Easements") with the understanding and intent that this grant is a present grant, vesting in Ground Lessee the present right of use and enjoyment of all of the Easements, subject only (in the case of the Additional Easements) to the conditions hereinafter set forth:

(A) Additional Easements as Required by Permits:
Such additional easements upon, over and across the Mill Site as are necessary from time to time to comply with any Permits obtained by or required of Ground Lessee with respect to environmental, construction or operating aspects of the Facility and the Improvements; provided that any such Additional Easement shall be located over, under and/or across such portions of the Mill Site and shall be used and employed by Ground Lessee in such manner as shall not, in Ground Lessor's reasonable judgment, interfere with Ground Lessor's then current or planned future use, enjoyment and operation of the Mill or the Mill Site for normal business purposes and such easement areas shall be maintained by Ground Lessee in a condition comparable to similar areas maintained by Ground Lessor on the Mill Site;

(B) Additional Easements for Ingress and Egress:

Such additional easements upon, over and across the Mill Site as are reasonably requested by Ground Lessee from time to time to facilitate pedestrian traffic and the movement of vehicles to and from the Facility Site; provided that such easements described in this subparagraph (B) shall only be granted to Ground Lessee in the event that Ground Lessee shall be unable, after the use of all reasonable efforts, to have the portion of the Mill Site described in Section 5.3(b) hereof rezoned, if necessary, from open rural to a zoning classification appropriate for Ground Lessee's permanent access road; provided, further that in Ground Lessor's reasonable judgment any such Additional Easement sought by Ground Lessee shall be located over, under and/or across such portions of the Mill Site and shall be used and employed by Ground Lessee in such manner as shall not unreasonably interfere with Ground Lessor's then current or planned future use, enjoyment and operation of the Mill or the Mill Site for normal business purposes; and provided further that Ground Lessee shall maintain such easement area in a condition comparable to similar areas maintained by Ground Lessor on the Mill Site;

(C) Additional Easements for Access to Intake

System. Such additional easements upon, over and across the Mill Site as are reasonably requested by Ground Lessee from time to time to facilitate access to Ground Lessor's Broward River intake system located on the Mill Site for the purposes contemplated in Section 3.2(s)(ii)(AA) hereof (including, without limitation, installation, maintenance, repair, replacement and use of pipes servicing the Facility and interconnecting with said Broward River intake system); provided that in Ground Lessor's reasonable judgment any such Additional Easement sought by Ground Lessee shall be located over, under and/or across such portions of the Mill Site and shall be used and employed by Ground Lessee in such manner as shall not unreasonably interfere with Ground Lessor's then current or planned future use, enjoyment and operation of the Mill or the Mill Site for normal business purposes; and provided, further, that Ground Lessee shall maintain such easement area in a condition comparable to similar areas maintained by Ground Lessor on the Mill Site;

(D) Additional Easements For Access to Mill Effluent System. Such additional easements upon, over

and across the Mill Site as are reasonably requested by Ground Lessee from time to time to facilitate access to the Mill Effluent System located on the Mill Site for the purposes contemplated in Section 3.2(s)(ii)(BB) hereof (including, without limitation, installation, maintenance, repair, replacement and use of pipes servicing the Facility and interconnecting with said Mill Effluent System); provided that in Ground Lessor's reasonable judgment any such Additional Easement sought by Ground Lessee shall be located over, under and/or across such portions of the Mill Site and shall be used and employed by Ground Lessee in such manner as shall not unreasonably interfere with Ground Lessor's then current or planned future use, enjoyment and operation of the Mill or the Mill Site for normal business purposes; and provided, further, that Ground Lessee shall maintain such easement area in a condition comparable to similar areas maintained by Ground Lessor on the Mill Site;

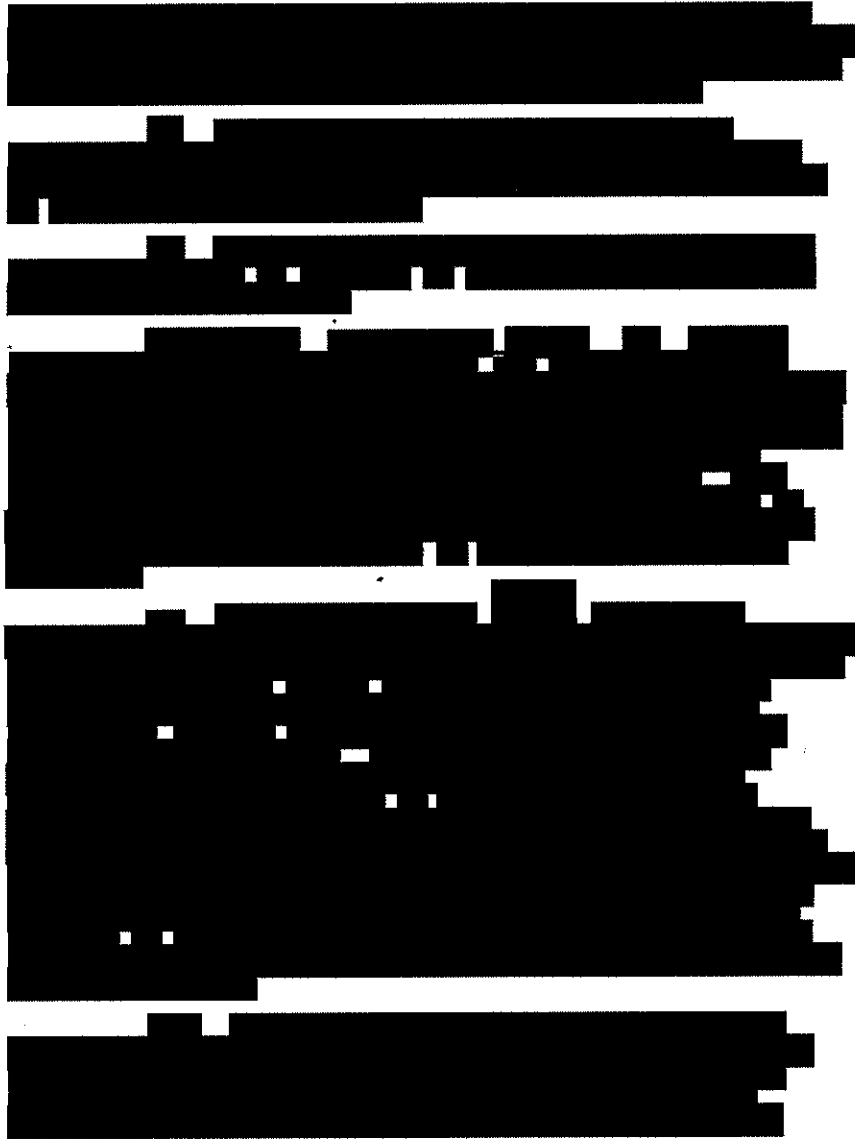
(E) Additional Easement For Access to City Effluent System. Such additional easements upon, over and across the Mill Site as are reasonably requested by Ground Lessee from time to time to facilitate access to the City Effluent System, to enable Ground Lessee to obtain effluent from the City Effluent System to meet some or all of the water requirements for the Facility's cooling towers (including, without limitation, installation, maintenance, repair, replacement and use of pipes servicing the Facility which will interconnect with the City Effluent System at a point on the boundary of the Mill Site); provided that in Ground Lessor's reasonable judgment any such Additional Easement sought by Ground Lessee shall be located over, under and/or across such portions of the Mill Site and shall be used and employed by Ground Lessee in such manner as shall not unreasonably interfere with Ground Lessor's then current or planned future use, enjoyment and operation of the Mill or the Mill Site for normal business purposes; and provided, further, that Ground Lessee shall maintain such easement area in a condition comparable to similar areas maintained by Ground Lessor on the Mill Site;

(F) Additional Easements for Access to JEA Interconnection Point. Such additional easements upon, over and across the Mill Site as are reasonably requested by Ground Lessee from time to time for purposes of construction, installation, maintenance,

repair, replacement and use of the transmission line to be constructed and maintained by the Jacksonville Electric Authority along Eastport Road; provided, that in Ground Lessor's reasonable judgment any such Additional Easements sought by Ground Lessee shall be located over, under and/or across such portions of the Mill Site and shall be used and employed by Ground Lessee or the Jacksonville Electric Authority in such manner as shall not unreasonably interfere with Ground Lessor's then current or planned future use, enjoyment and operation of the Mill or the Mill Site for normal business purposes; and provided, further, that Ground Lessee or the Jacksonville Electric Authority shall maintain such easement area in a condition comparable to similar areas maintained by Ground Lessor on the Mill Site.





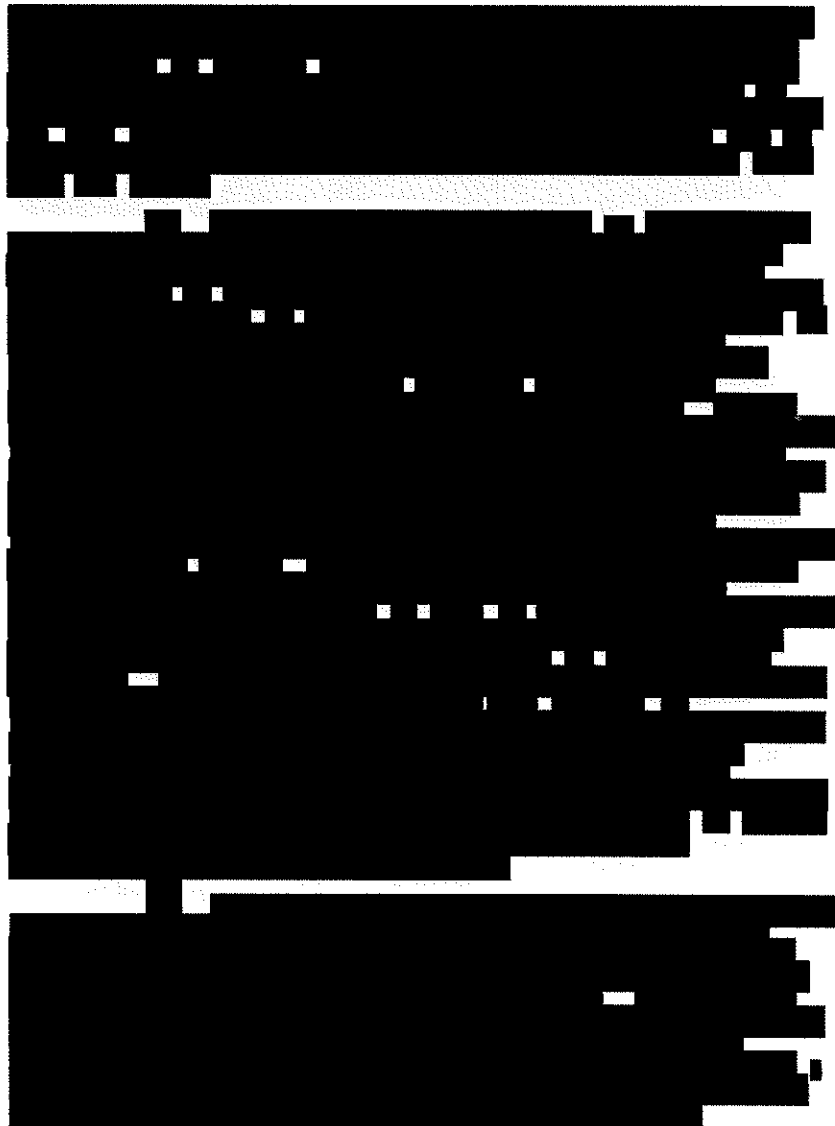




[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

See 15

(b) Ground Lessor will provide to Ground Lessee a disposal area on the Mill Site of approximately fourteen and seventy-five hundredths (14.75) acres as described in Appendix 3.1(a)(i) attached hereto and made a part hereof (the "Lime Mud Storage Parcel"), suitable (including, without limitation, licensed, or with all necessary approvals, if any, of governmental authorities having jurisdiction) under Applicable Laws for disposal of the lime mud specified in Section 3.4(a)(ii) hereof; provided that lime mud shall not be mounded on the Lime Mud Storage Parcel to a height in excess of forty (40) feet above the surrounding grade level and shall not be stored in an area within the Lime Mud Storage Parcel that shall exceed eleven (11) acres. In the event that relocation of the lime mud to the Lime Mud Storage Parcel provided pursuant to this Section 3.4(b) results in

any additional regulatory or remediation requirements being imposed on Ground Lessor, other than any requirements set forth in that certain License to Remove Fill dated October 31, 1986 between Seminole Kraft Corporation and Jacksonville Kraft Paper Co., Inc. contained in Warranty Deed recorded on November 4, 1986 in the Official Records of Duval County, Florida in Volume 6222, Page 504 (the "Fill License"), solely as a result of such relocation (including, without limitation, grading of the new disposal area), then the full cost of compliance with such requirements shall be borne by Ground Lessee. If, however, the Lime Mud Storage Parcel shall become unavailable for disposal of lime mud by Ground Lessee as herein contemplated as a result of the exercise of any rights or remedies available to Jacksonville Kraft Paper Co., Inc. (or its successors or assigns) under the Fill License, Ground Lessor shall use its reasonable efforts to make available to Ground Lessee, an additional parcel of land on the Mill Site, consisting of not less than eleven (11) acres, suitable (including, without limitation, licensed, or with all necessary approvals, if any, of governmental authorities having jurisdiction) under Applicable Laws for disposal of the lime mud specified in Section 3.4(a)(ii) hereof.

[REDACTED]

[REDACTED]

[REDACTED]

Section 3.5 Disposal of Sanitary Waste, Facility Effluent and Cooling Tower Blowdown. (a) Ground Lessor shall accept and dispose of, to the extent allowed by and in accordance with Applicable Laws, all of Ground Lessee's sanitary waste in an amount not to exceed an average of fifty (50) gallons per minute calculated over an Annual Period.

(b) Ground Lessor shall accept and dispose of through Ground Lessor's existing waste treatment system (consisting of Ground Lessor's clarifier and aeration ponds).

to the extent allowed by and in accordance with Applicable Laws, all treated, neutralized Facility effluent (consisting of demineralizer wastes, floor drains, treated coal pile runoff and similar materials) and, during the cleaning of the boilers at the Facility, all chemical and non-chemical metal cleaning wastes therefrom in an amount not to exceed (i) an average of five hundred thousand (500,000) gallons per day calculated over an Annual Period, and (ii) a maximum of nine hundred thousand (900,000) gallons in any one day.

(c) Ground Lessor shall accept and dispose of through Ground Lessor's existing discharge structure to the St. Johns River, to the extent allowed by and in accordance with Applicable Laws, (i) all treated cooling tower blowdown from the Facility and (ii) the stormwater runoff from the storage runoff pond during the construction of the Facility and the yard area runoff during operation of the Facility, in an aggregate amount (with respect to the items described in clauses (i) and (ii) above) not to exceed sixteen million (16,000,000) gallons per day. Ground Lessor shall accept and re-use in Ground Lessor's operation of the Mill the dewatering effluent produced during construction of the Facility in the maximum amount not to exceed an average of one hundred (100) gallons per minute (but not to exceed an instantaneous rate of two hundred (200) gallons per minute), provided the quality of such dewatering effluent either (i) meets the standards established for Class Three Surface Water, or (ii) although not meeting all the standards established for Class Three Surface Water, is of a quality sufficient to permit its re-use in connection with Ground Lessor's operation of the Mill.

(d) Delivery to Ground Lessor of the sanitary waste, Facility effluent, cooling tower blowdown, stormwater runoff, yard area runoff and dewatering effluent to be disposed of by Ground Lessor pursuant to Sections 3.5(a), (b) and (c) hereof shall be made by Ground Lessee at the boundary of the Facility Site, at specific points to be mutually and reasonably agreed upon by Ground Lessor and Ground Lessee. Ground Lessee shall be responsible, at its expense, for construction and installation of all piping, pumps, meters and related equipment, including all modifications or connections to the present facilities on the Mill Site, necessary on the Mill Site or the Facility Site for transporting (and Ground Lessee shall also be responsible, at its expense, for obtaining and maintaining all Permits necessary to facilitate transporting) the sanitary waste, Facility effluent, cooling tower blowdown, stormwater runoff and yard area runoff to be disposed of by Ground Lessor (and

dewatering effluent to be utilized by Ground Lessor) pursuant to Sections 3.5(a), (b) and (c) hereof from the Facility Site to the Mill Site. Ground Lessor shall be responsible throughout the term of this Ground Lease for all repairs associated with connections to the present facilities on the Mill Site necessary for transporting the sanitary waste, Facility effluent, cooling tower blowdown, stormwater runoff and yard area runoff to be disposed of by Ground Lessor (and dewatering effluent to be utilized by Ground Lessor) pursuant to Sections 3.5(a), (b) and (c) hereof from the Facility Site to the Mill Site; provided that Ground Lessee shall reimburse Ground Lessor for direct costs reasonably incurred by Ground Lessor (demonstrated to Ground Lessee's reasonable satisfaction) in making such repairs. Notwithstanding anything to the contrary contained in this Section 3.5(d), Ground Lessee shall not be responsible for costs of repairs to equipment existing on the Mill Site prior to the construction and installation of such connections (contemplated by the preceding sentence) unless specifically caused by the use of such equipment by Ground Lessee.

(e) Ground Lessor shall comply with the provisions of this Section 3.5 in accordance with all Applicable Laws. Ground Lessee shall supply Ground Lessor with information reasonably necessary to allow Ground Lessor to comply with Applicable Laws and to determine the applicability of such Applicable Laws. Such information shall be supplied promptly upon the earlier of (1) Ground Lessor's reasonable request or (2) Ground Lessee's actual knowledge of (i) an anticipated change in operations that can reasonably be expected to result in a change in the quality or quantity of the effluent from the Facility, or (ii) any actual change in the quality or quantity of such effluent.

(f) The services specified in Sections 3.5(a), (b) and (c) hereof shall be provided by Ground Lessor to Ground Lessee for the term hereof, subject to the terms of Article XVIII hereof and Applicable Laws, and without additional charge or cost to Ground Lessee except as specifically provided herein. Ground Lessor shall have no obligation to provide the services described in this Section 3.5 during any period in which (i) Ground Lessee is in violation of the Permits applicable thereto for more than five (5) days, or (ii) the provision of such services by Ground Lessor is causing damage to Ground Lessor's waste treatment system.

(g) Ground Lessee's rights under this Section 3.5 shall be subject to the indemnification obligations of Ground Lessee set forth in Section 1D.3 hereof.

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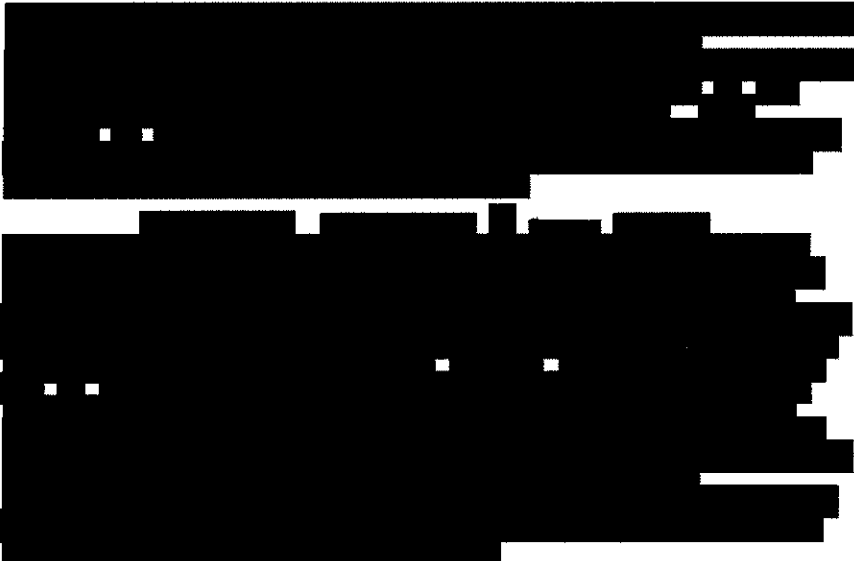
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ARTICLE V

USE

Section 5.1 Limited Use. (a) The Facility Site and the Easements shall be used by Ground Lessee (i) only for the erection, construction, start-up, testing, repair, replacement, restoration, operation (including without limitation the receipt, handling, storage and shipment of coal, limestone and any substitute or supplemental fuel other than nuclear materials), and maintenance of the Facility and any additions or modifications thereto, and, for the erection, construction, start-up, testing, repair, replacement, restoration, operation and maintenance of a CO₂ Plant on the portion of the Facility Site described as Parcel B on Appendix 1.1-A attached hereto, and uses reasonably ancillary to the foregoing, and (ii) with the consent of Ground Lessor, which consent shall not be unreasonably withheld, for any other lawful use.

(b) Ground Lessee shall not (i) Release any Hazardous Materials in an amount and manner prohibited by Applicable Law or that would require reporting to a

governmental entity under any Applicable Law other than routine reporting required under Applicable Law, or (ii) store any Hazardous Materials on (or under the surface of) the Facility Site or the Mill Site, or in the Facility (except, with respect to the Facility, the Facility Site or the Essements, in the case of inventories of Hazardous Materials to be used or generated in the ordinary course of business of the Facility, which inventories are stored in accordance with Applicable Laws pending such use or disposal).

(c) Ground Lessee agrees to use its reasonable efforts to obtain, if it generates Hazardous Materials, its own generator identification number and to use such number for all off-site disposal of Hazardous Materials generated in connection with its use of the Facility Site.

(d) Ground Lessee agrees that if (i) the Services Agreement has been terminated for any reason other than an Event of Default thereunder caused by Seminole Kraft, (ii) the CO₂ Plant shall have been constructed and the Facility shall be then producing Steam, and (iii) Ground Lessor shall request delivery of Steam to the Mill, then Ground Lessee shall not supply steam to any other person or facility (including, without limitation, the CO₂ Plant) unless Ground Lessee shall be furnishing to the Mill, on a first priority basis, all Steam (other than Steam necessary to operate the Facility) produced at the Facility up to the maximum amount of two hundred fifty thousand (250,000) pounds of Steam per hour, at a price equal to the price for such quantity of Steam which would have been payable under the Services Agreement (were the Services Agreement then in full force and effect); provided, however, that Ground Lessee's obligations under this Section 5.1(d) shall be suspended for so long as the Steam Interconnection Facilities servicing only the Mill shall be unable to deliver such Steam to the Mill as a result of a Force Majeure event.

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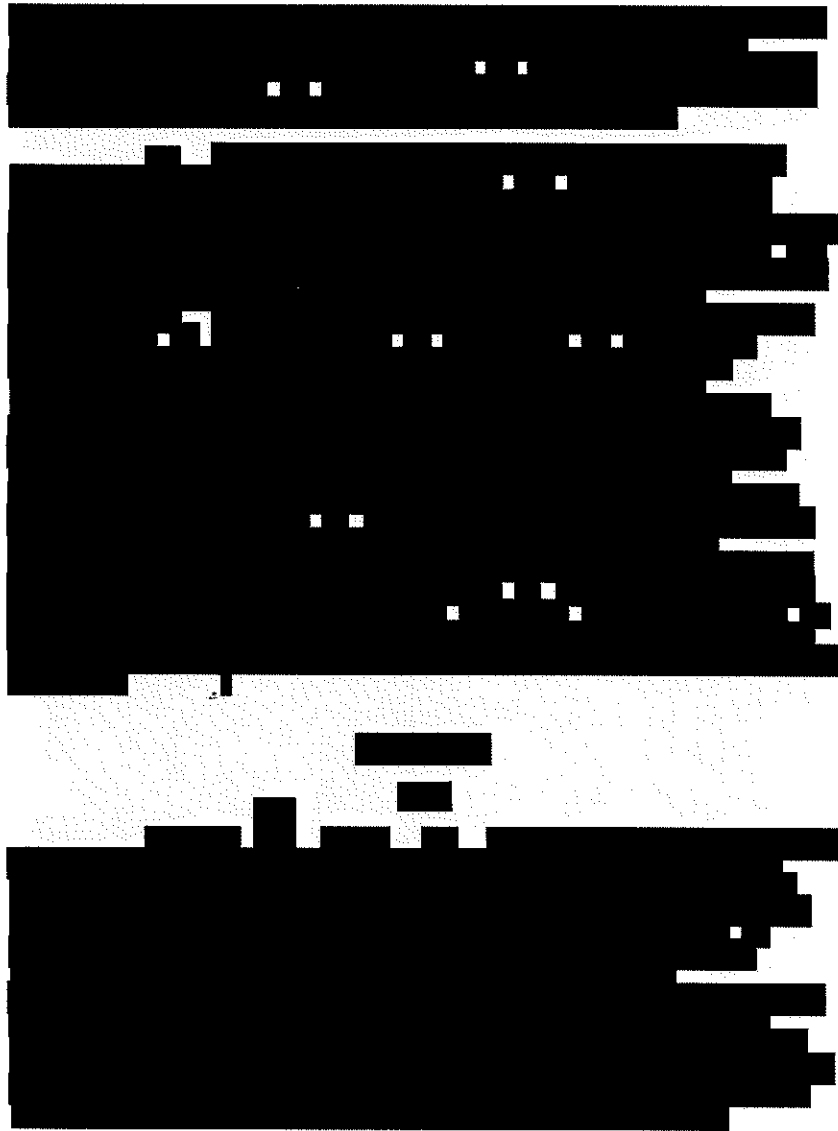
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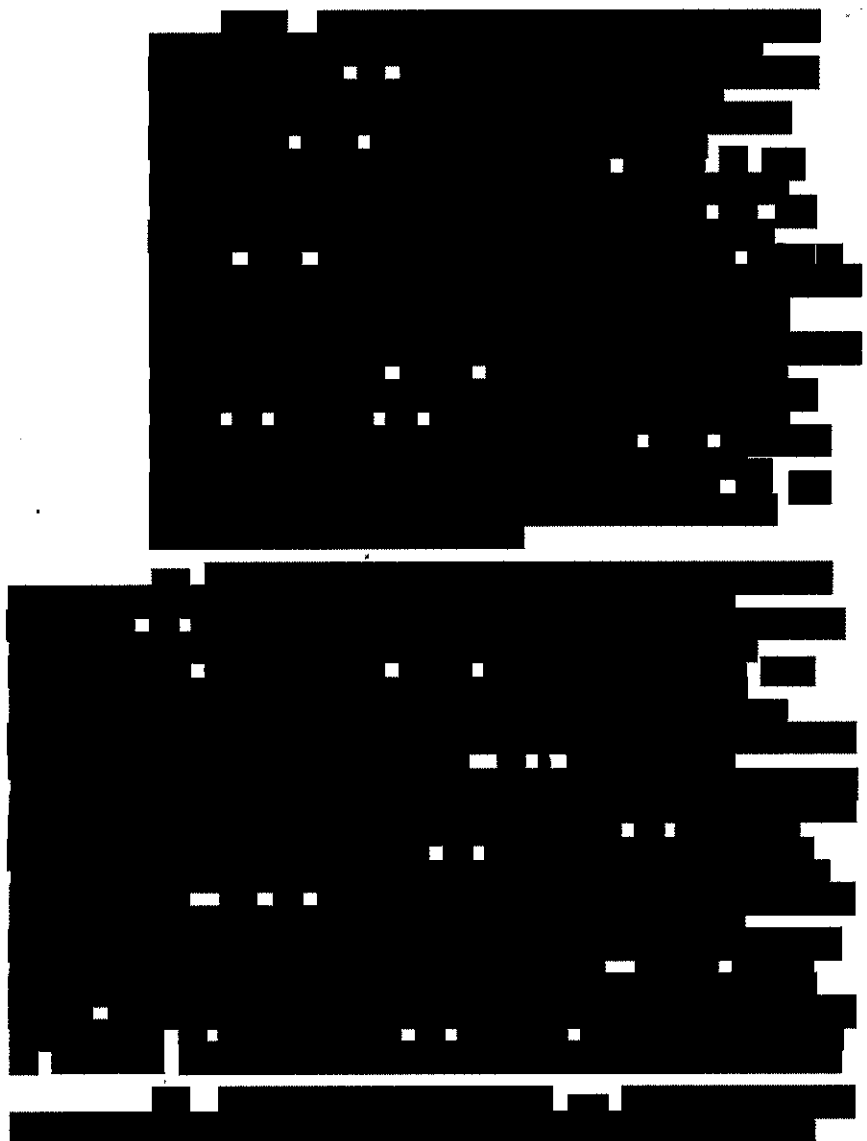


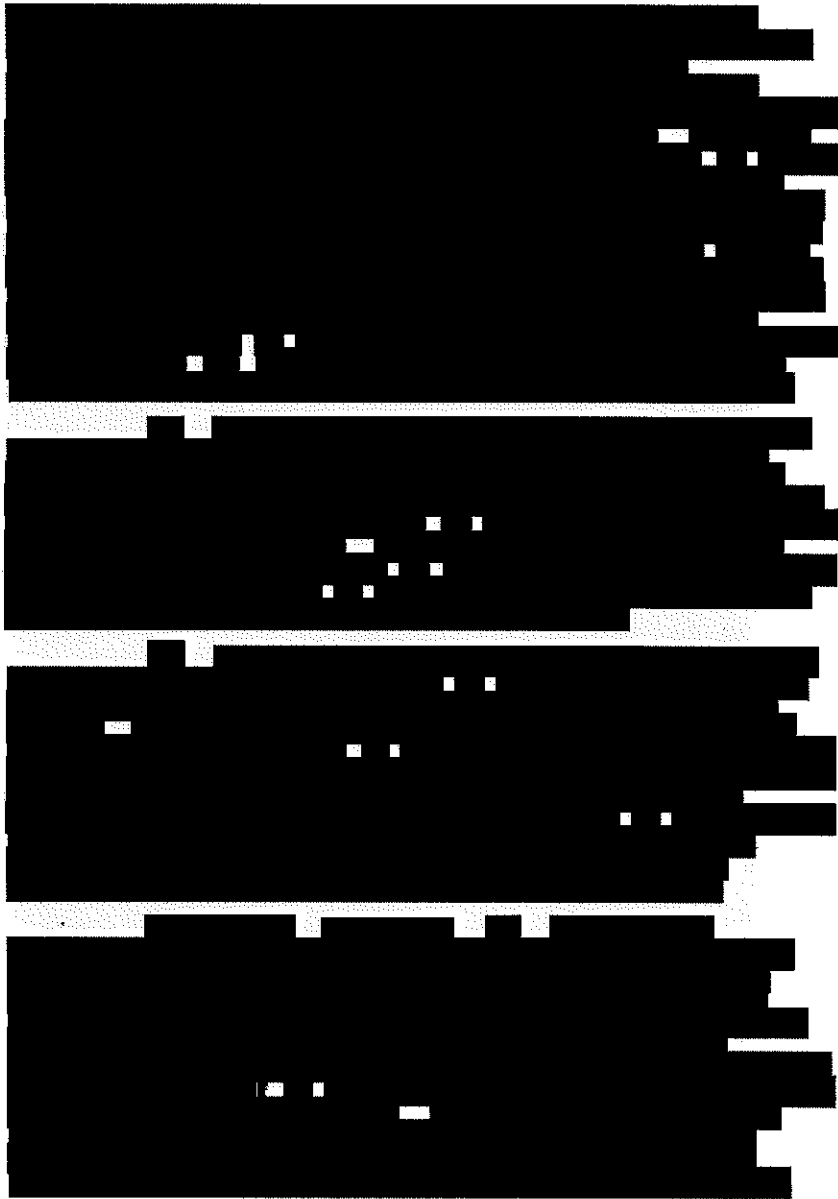


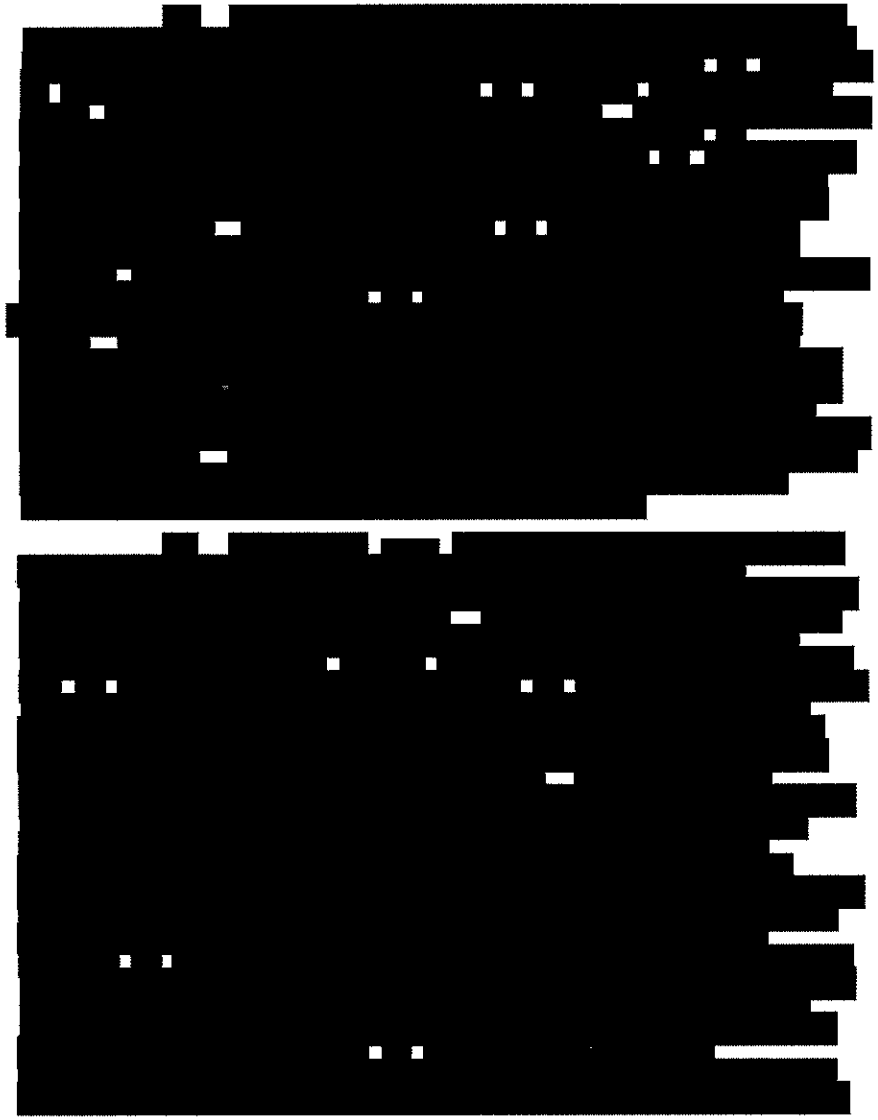
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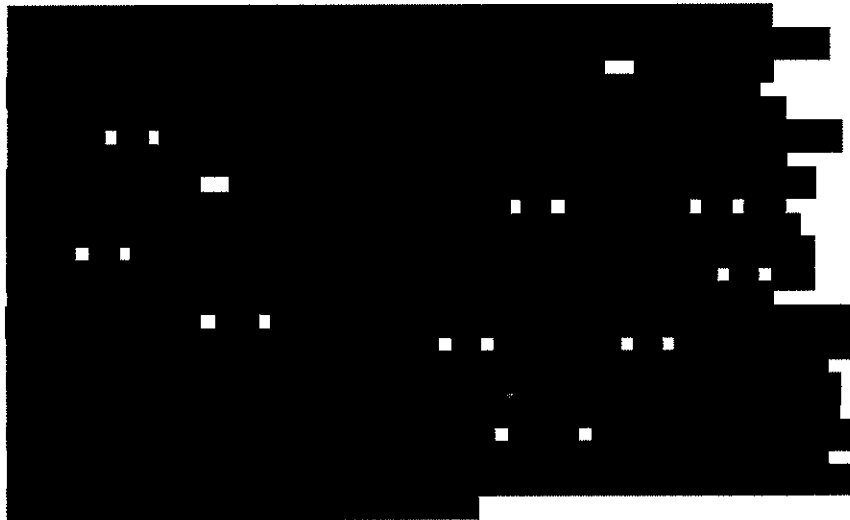
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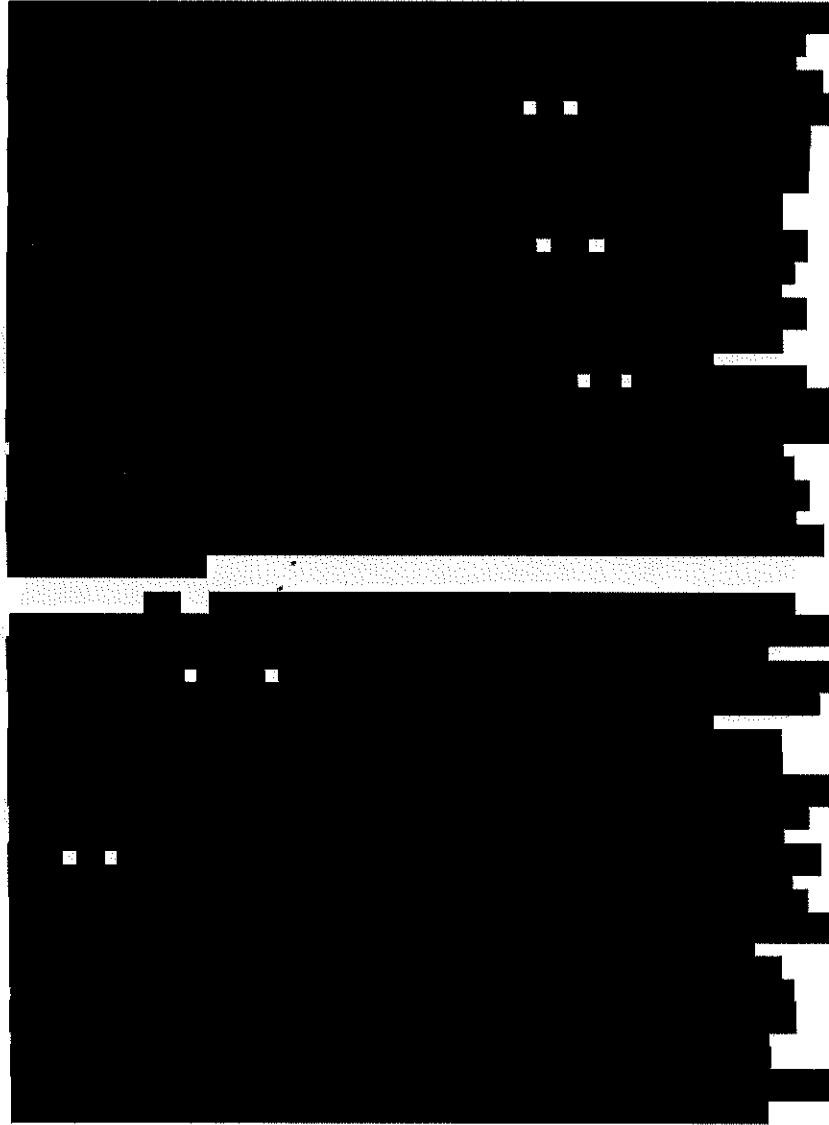
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ARTICLE X

INDEMNIFICATION

Section 10.1 Indemnification: General. Subject to the provisions of Section 10.2 hereof, each Party hereto shall indemnify and hold the other Party, its agents, Affiliates, employees, successors and assigns, harmless from and against all damages, losses or expenses suffered or paid as a result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities (including reasonable counsel fees incurred in litigation or otherwise) assessed, incurred or sustained by or against the indemnified parties and its agents, employees, successors and assigns as a result of or arising out of a willful or negligent act or willful or negligent failure to act of, or a breach of this Ground Lease by, the indemnifying Party, its employees, subcontractors, agents, representatives or invitees with respect to the Facility, the Improvements, the Mill, the Mill Site, the Facility Site or the Easements, except to the

extent that any such damages, losses or expenses are the result of the willful act or negligence of, or the willful or negligent failure to act of or the failure to comply with the terms of this Ground Lease by, the indemnified Parties or its agents, employees, successors and assigns; provided that, except as expressly set forth herein, neither Party shall be liable to an indemnified party for any indirect, consequential, incidental, punitive or exemplary damages.

Section 10.2 Indemnification: Environmental (i)
Except as otherwise specifically provided in this Ground Lease, Ground Lessee agrees to defend, protect, indemnify and save and hold harmless Ground Lessor (including its officers, directors, employees, Affiliates, and agents) from and against any and all Environmental Claims that may at any time be incurred by, imposed on or asserted or awarded against Ground Lessor directly or indirectly based on or in connection with (1) Ground Lessee's breach of any covenant contained herein relating to any Environmental Law, including covenants relating to Hazardous Materials, (2) compliance or noncompliance with any Environmental Law by Ground Lessee or its agents (irrespective of whether such noncompliance is known or unknown) or (3) the presence, generation, manufacture, refining, recycling, transportation, treatment, storage, handling, or Release of any Hazardous Materials on, in, under, at, from or affecting the Facility, the SK Site or the Improvements by Ground Lessee (or its officers, directors, agents, employees, invitees and licensees), or on, in, at, from or under the Facility or Facility Site by any person other than Ground Lessor and its Affiliates and agents after the date hereof.

(ii) Except as specifically provided in this Ground Lease, Ground Lessor agrees to defend, protect, indemnify and save and hold harmless Ground Lessee (including its officers, directors, employees, agents, and partners, and the respective partners, officers, directors, employees and agents of said partners) from and against any and all Environmental Claims that may at any time be incurred by, imposed on or asserted or awarded against Ground Lessee directly or indirectly based on or in connection with (1) Ground Lessor's breach of any representation, warranty or covenant contained herein relating to any Environmental Law, including any relating to Hazardous Materials, (2) Ground Lessor's compliance or noncompliance with any Environmental Law (irrespective of whether such noncompliance is known, unknown or disclosed on Appendix 20.1 of this Ground Lease), or (3) the existence and relocation of the lime mud from the Facility Site pursuant to Section 3.4 (b) hereof, except as

set forth therein, or (4) the presence, generation, manufacture, refining, recycling, transportation, treatment, storage, handling, or Release of any Hazardous Materials on, in, under, at, from or affecting the Facility, the SK Site, or the Improvements by Ground Lessor (or its officers, directors, agents, employees, invitees and licensees) or on, in, under, at or from the Mill or Mill Site, whether occurring prior to or after the date hereof or by any person other than Ground Lessee and its Affiliates and agents prior to the date hereof, except that Ground Lessor's liability with respect to the presence or Release of Hazardous Materials on, in, under, at, from or affecting the Facility Site prior to the date hereof shall not include materials which are not Hazardous Materials as of the date hereof.

(iii) Where acts or omissions of the nature referred to in clauses (i) and (ii) above by both Ground Lessor and Ground Lessee (including their respective officers, directors, employees, contractors or agents) have caused any liabilities, claims, injuries (including death resulting therefrom), property damage, fines, penalties or assessments by any public agency and costs or expenses, whether or not a third party's acts or omissions also were causal, Ground Lessor and Ground Lessee shall contribute to their common liability a pro rata share based upon the relative degree of fault of each. In such a case, the Parties shall share all costs equally (including attorney's and consultants' fees and other costs of defense, if the parties choose common counsel; but if either Party selects its own counsel, that Party shall bear its own attorneys' and consultants' fees and cost of defense, subject to reimbursement, until (1) there is a final court judgment allocating fault between the parties, or (2) the parties agree to such an allocation).

Section 10.3 Indemnification: Disposal of Waste.
Ground Lessee shall indemnify and hold Ground Lessor harmless against any and all costs and expenses (including reasonable counsel fees) arising from any personal injury or property damage, claims, liabilities, actions, suits, judgments and losses in any way relating to or arising out of any violation of Applicable Laws, or any failure or breakdown of Ground Lessor's waste treatment system, to the extent such violation, failure or breakdown is caused by any Hazardous Material contained in Ground Lessee's sanitary waste, Facility effluent, treated cooling tower blowdown, stormwater runoff, yard area runoff or dewatering effluent delivered to Ground Lessor pursuant to Section 3.5 hereof. Any and all costs (demonstrated to Ground Lessee's reasonable

(1)

satisfaction) associated with Ground Lessor's compliance with Applicable Laws that it would not have incurred but for its acceptance of Ground Lessee's sanitary waste, Facility effluent, treated cooling tower blowdown, stormwater runoff, yard area runoff or dewatering effluent delivered to Ground Lessor pursuant to Section 3.5 hereof, including costs of permitting procedures (including attorneys' and experts' fees) and user charges, if any, shall be promptly reimbursed by Ground Lessee.

Section 10.4 Notice and Legal Defense. Promptly after receipt by a Party, of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Sections 10.1, 10.2 or 10.3 hereof may apply, the indemnified Party shall notify the indemnifying Party in writing of such fact. Should a Party be entitled to indemnification as a result of a claim by a third party, the indemnifying Party shall assume the defense thereof with counsel designated by such Party, and reasonably satisfactory to the indemnified Party; provided that if the defendants in any such action include both the indemnified Party and the indemnifying Party and the indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the indemnifying Party the indemnified Party shall have the right to select separate counsel to participate in the defense of such action on behalf of such indemnified Party, at the indemnifying Party's expense.

Section 10.5 Failure to Defend Action. Should a Party be entitled to indemnification under Sections 10.1, 10.2 or 10.3 hereof as a result of a claim by a third party, and the indemnifying Party fails to assume the defense of such claim, the indemnified Party may at the expense of the indemnifying Party contest (or, with the prior written consent of such indemnifying Party, settle) such claim, provided that no such contest need be made and settlement or full payment of any such claim may be made without consent of the indemnifying Party (with such indemnifying Party remaining obligated to indemnify the indemnified Party under Sections 10.1, 10.2 or 10.3 hereof) if, in the written opinion of the indemnified Party's counsel, such claim is meritorious.

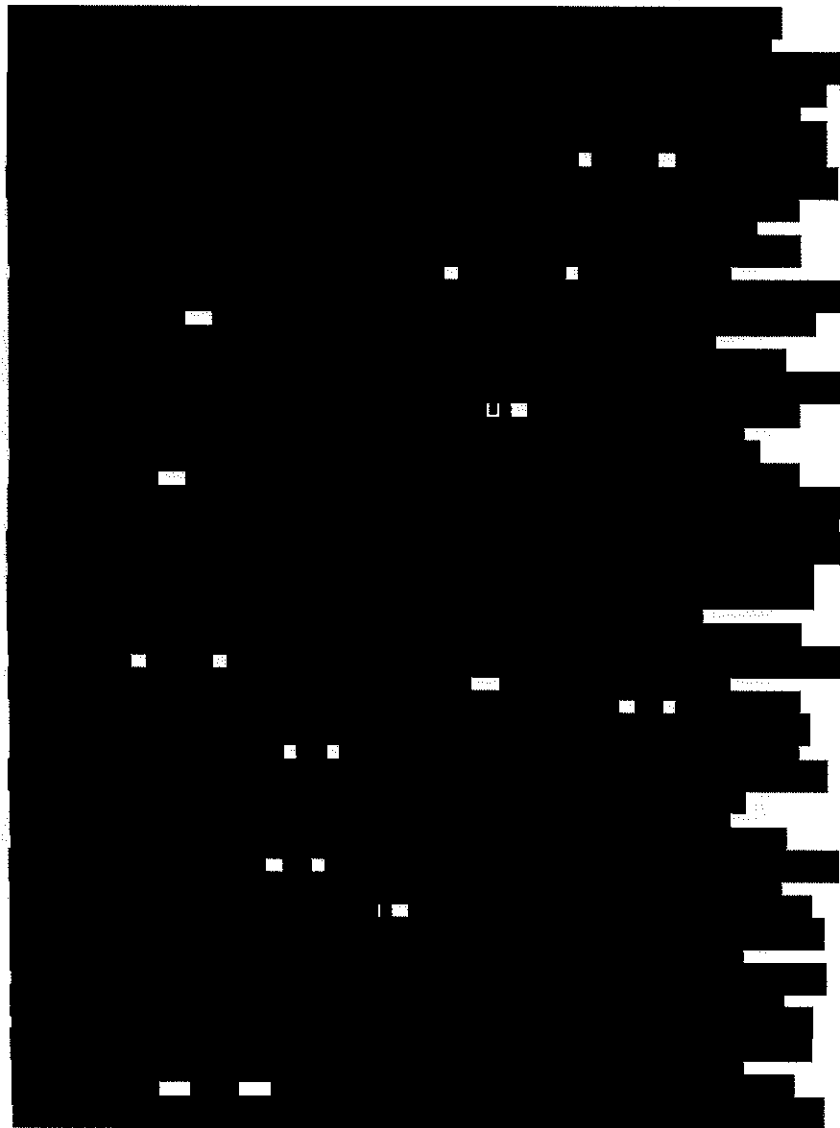
Section 10.6 Indemnification Amount. In the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under

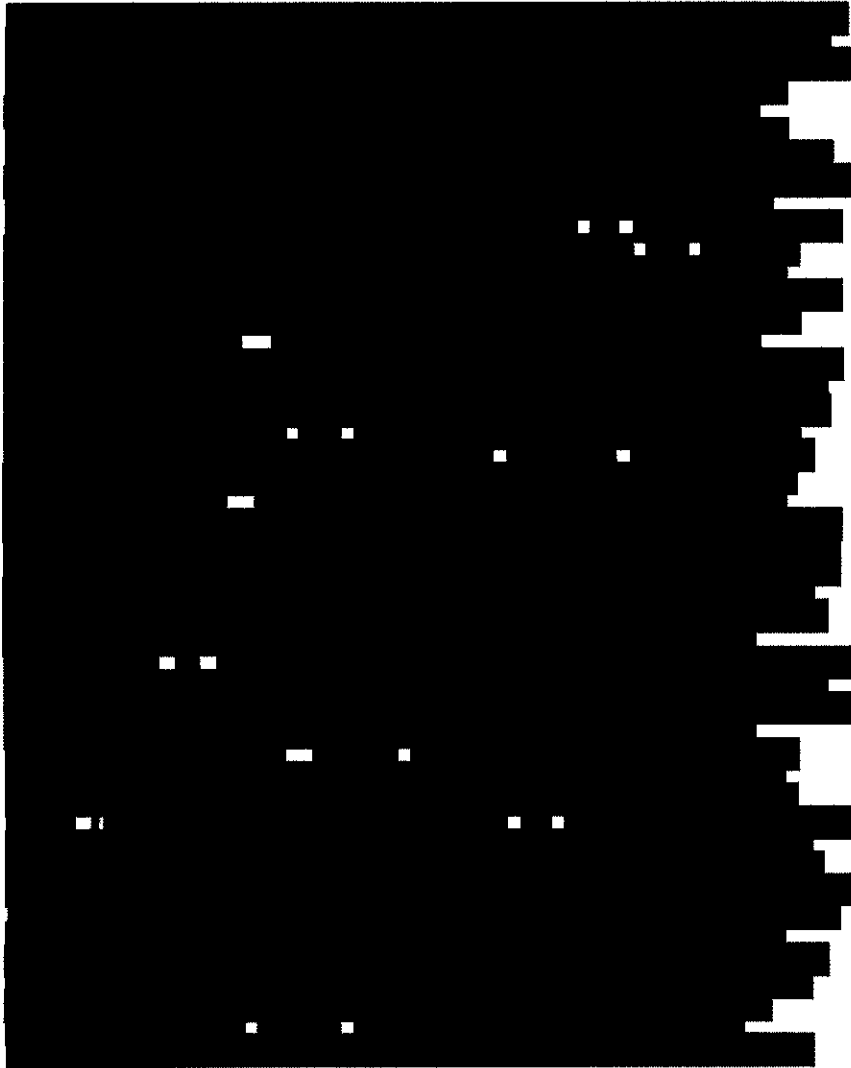
Sections 10.1, 10.2 or 10.3 hereof, the amount owing to the indemnified Party will be the amount of such Party's damages, losses and expenses net of any insurance or other recovery actually received by the indemnified Party, it being expressly understood, however, that, except as expressly set forth herein neither Party shall be liable hereunder for any indirect, consequential, incidental, punitive or exemplary damages.

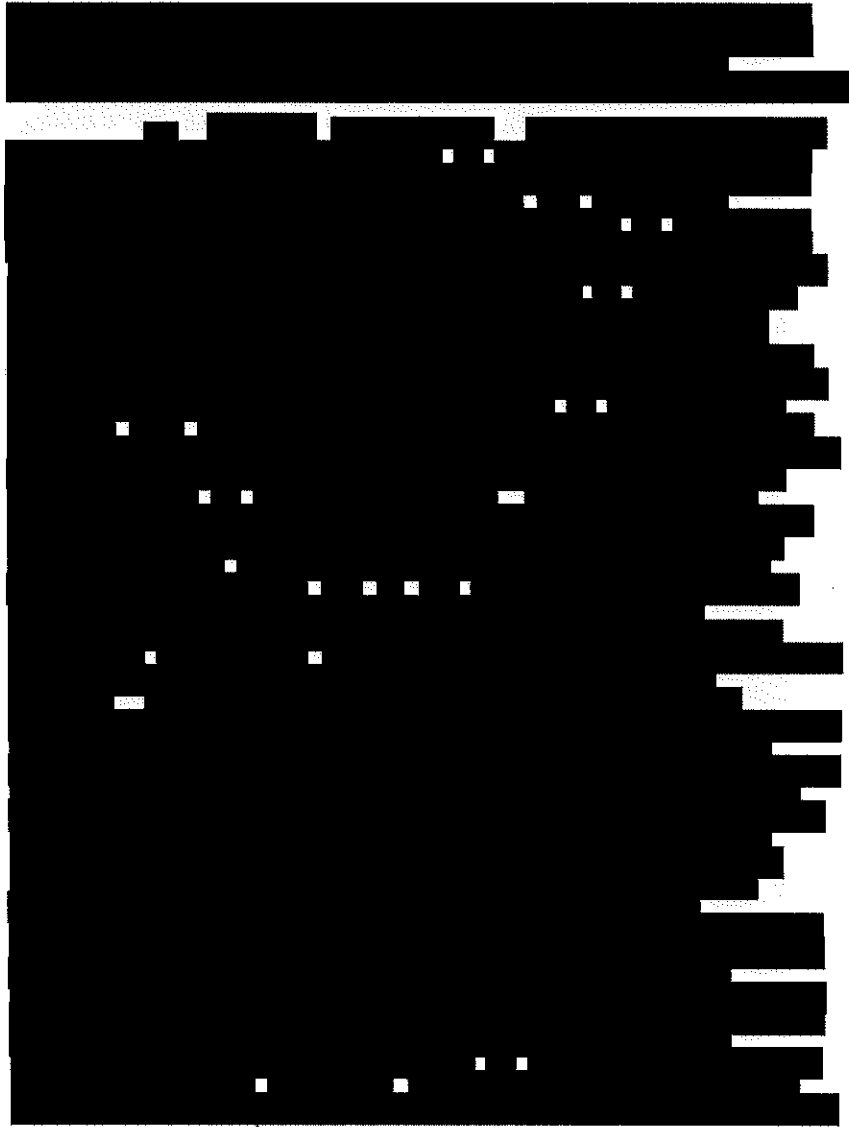
Section 10.7 Survival. The provisions of this Article X shall survive expiration of the term of this Ground Lease.

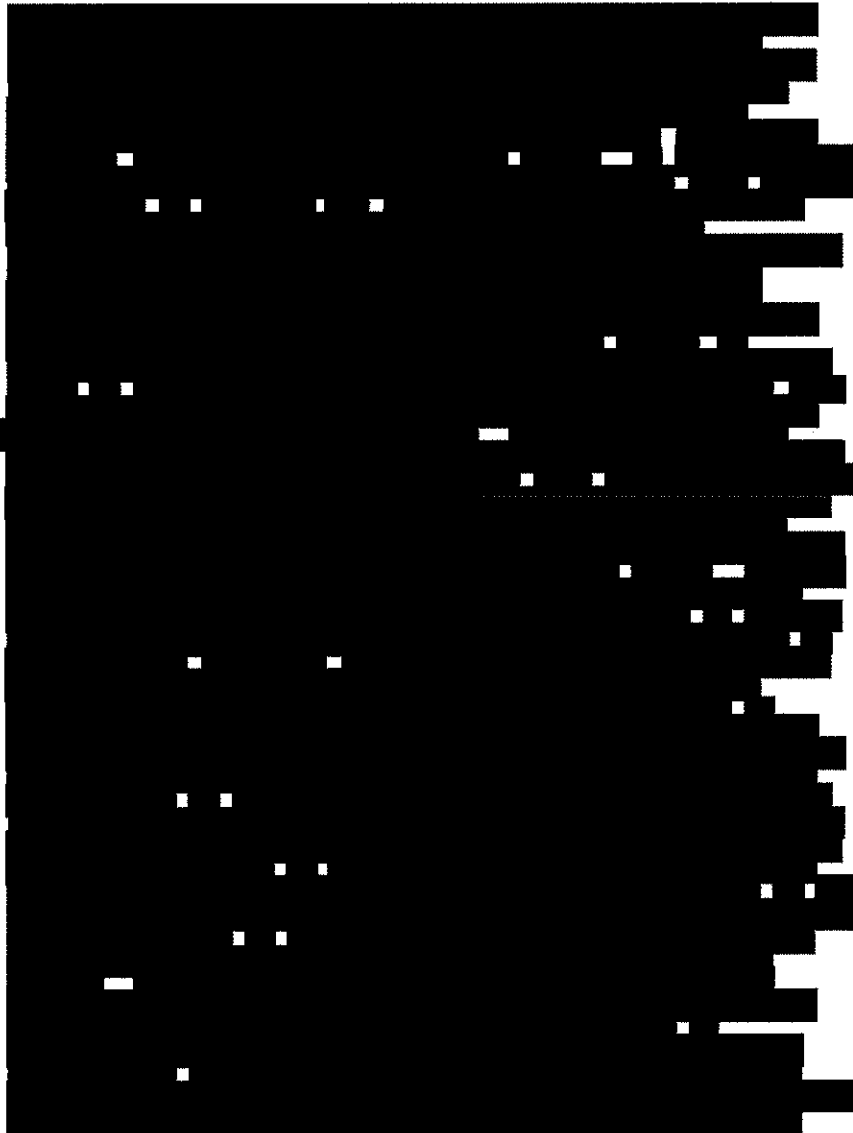
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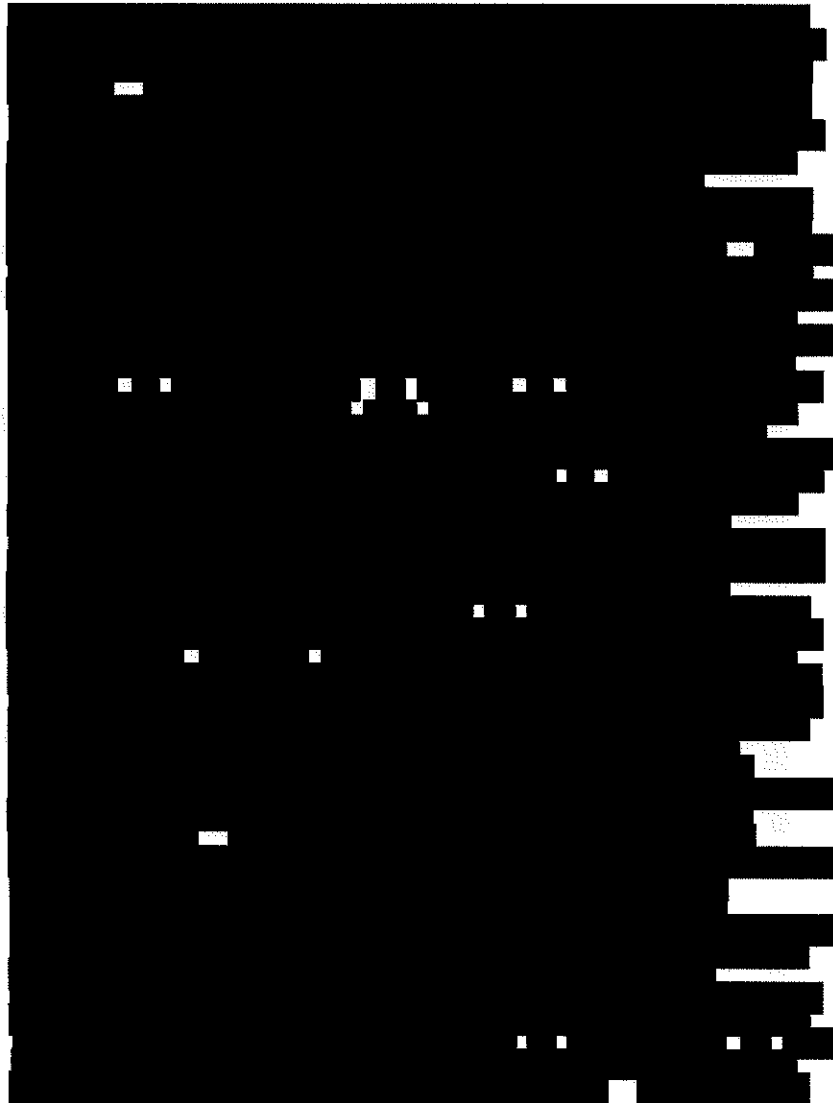


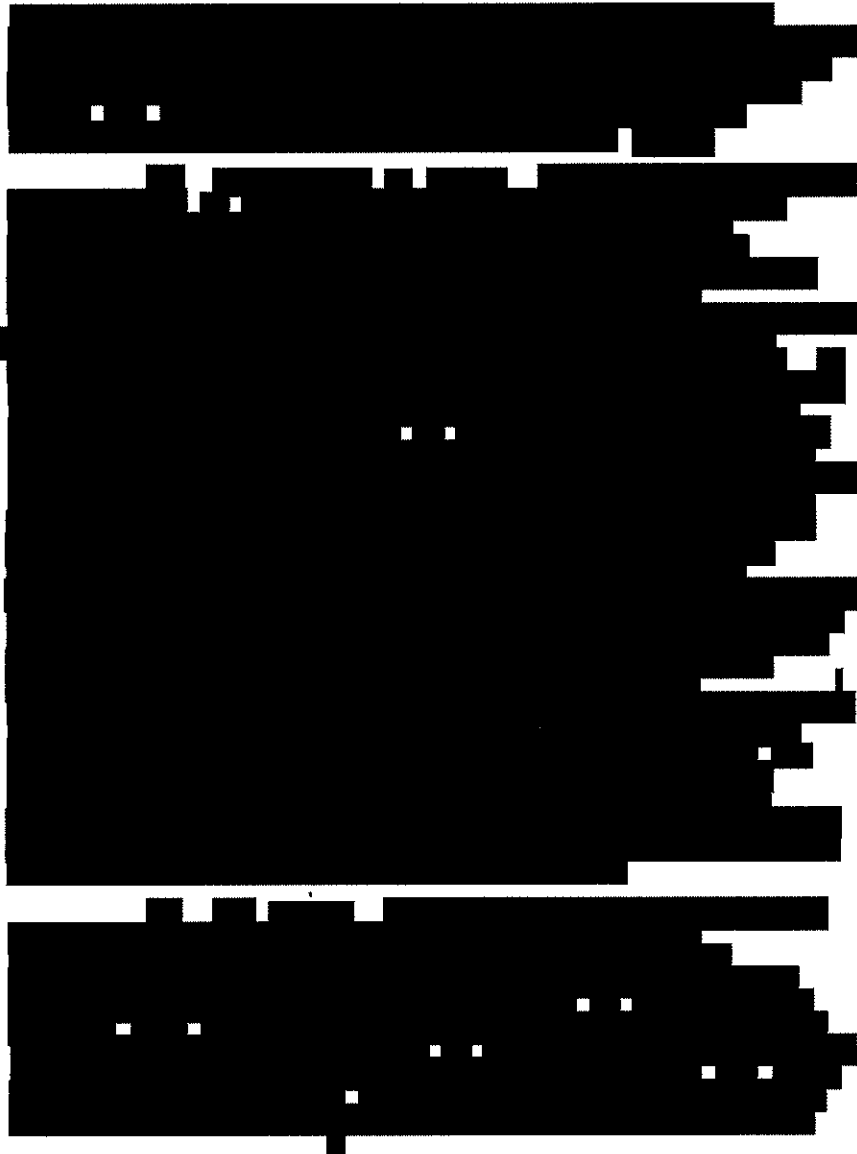












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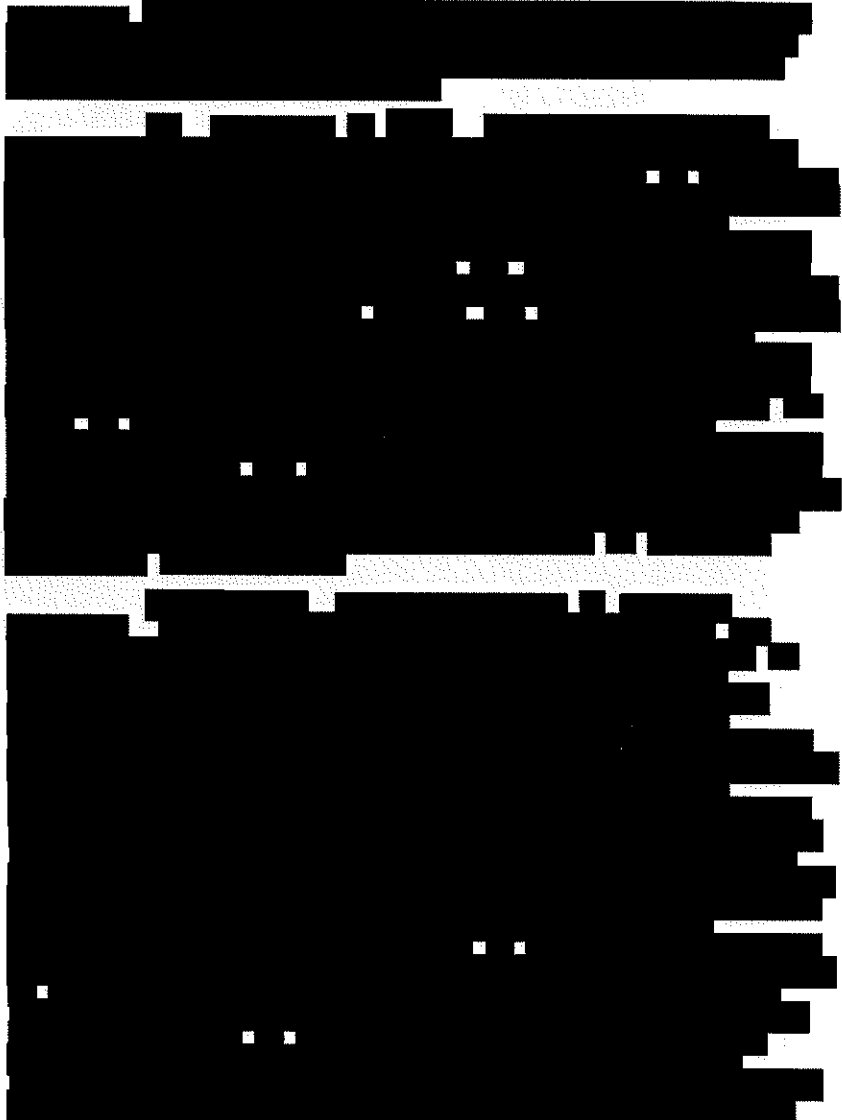
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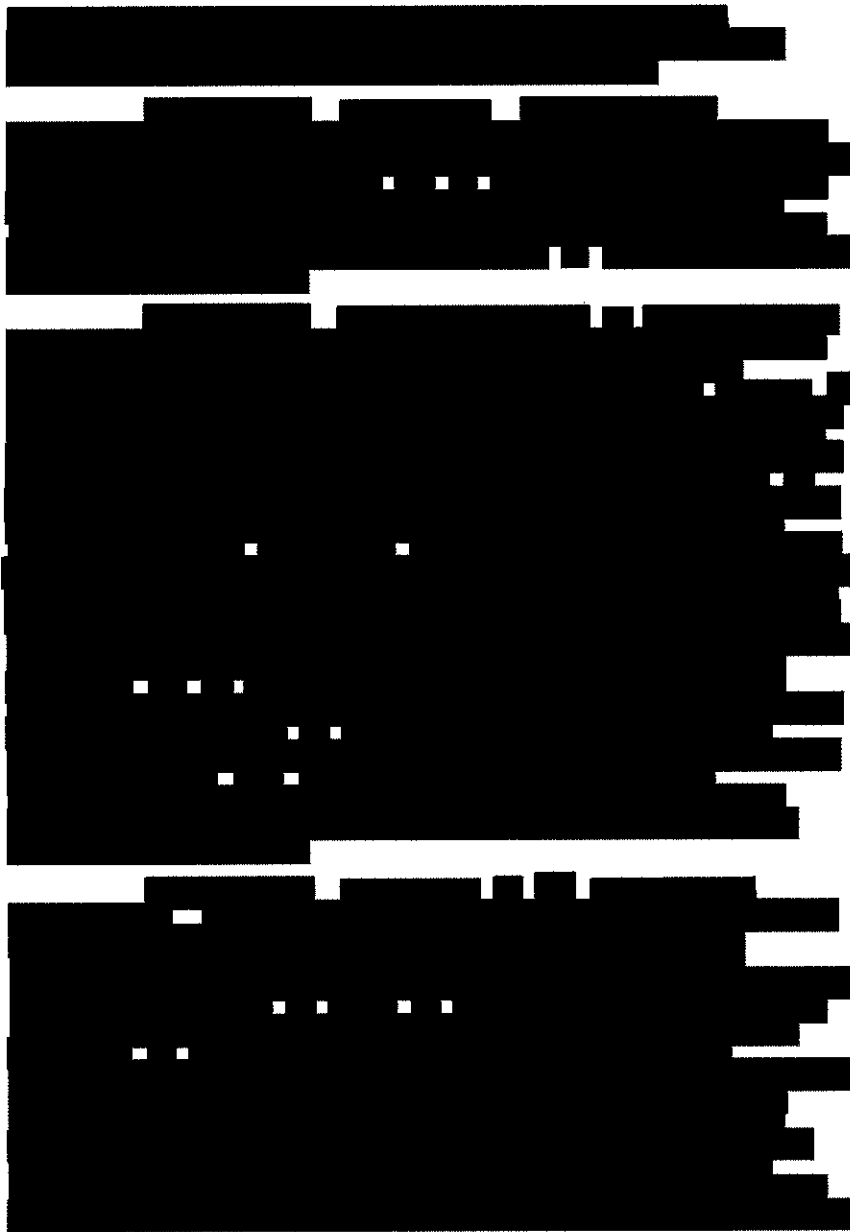
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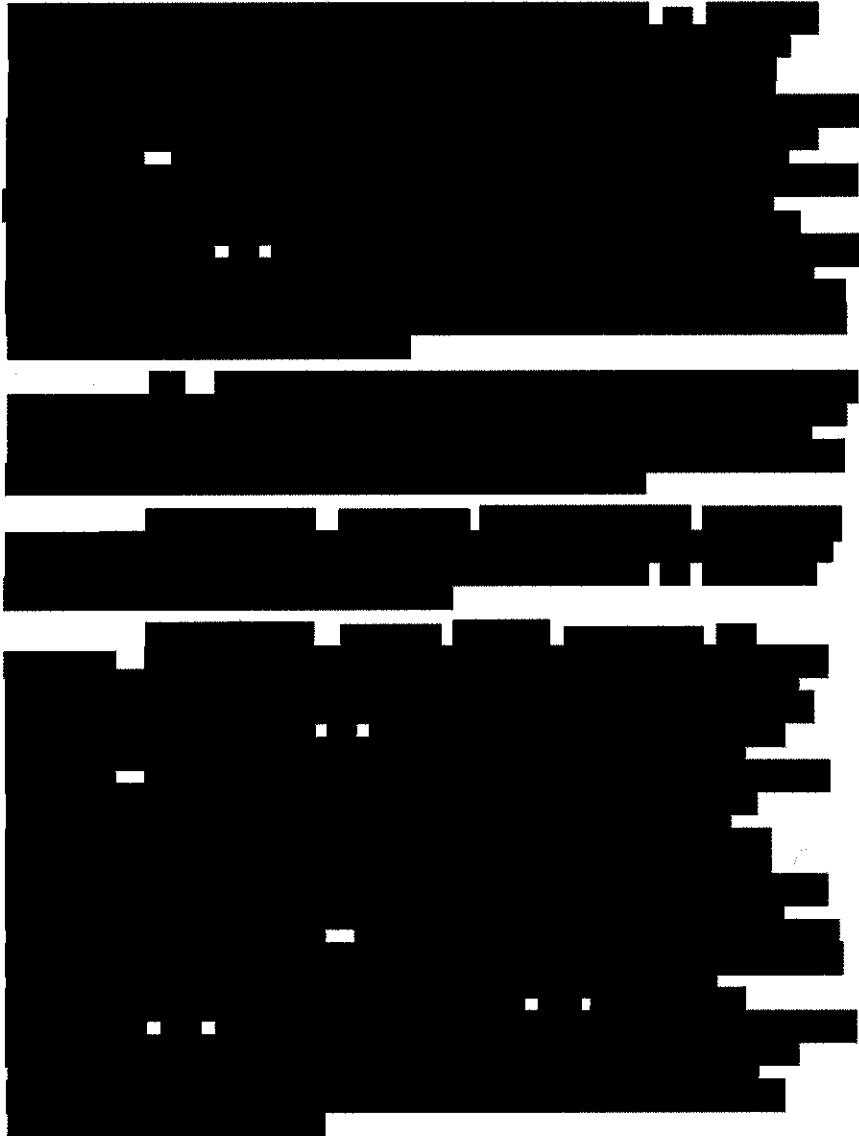
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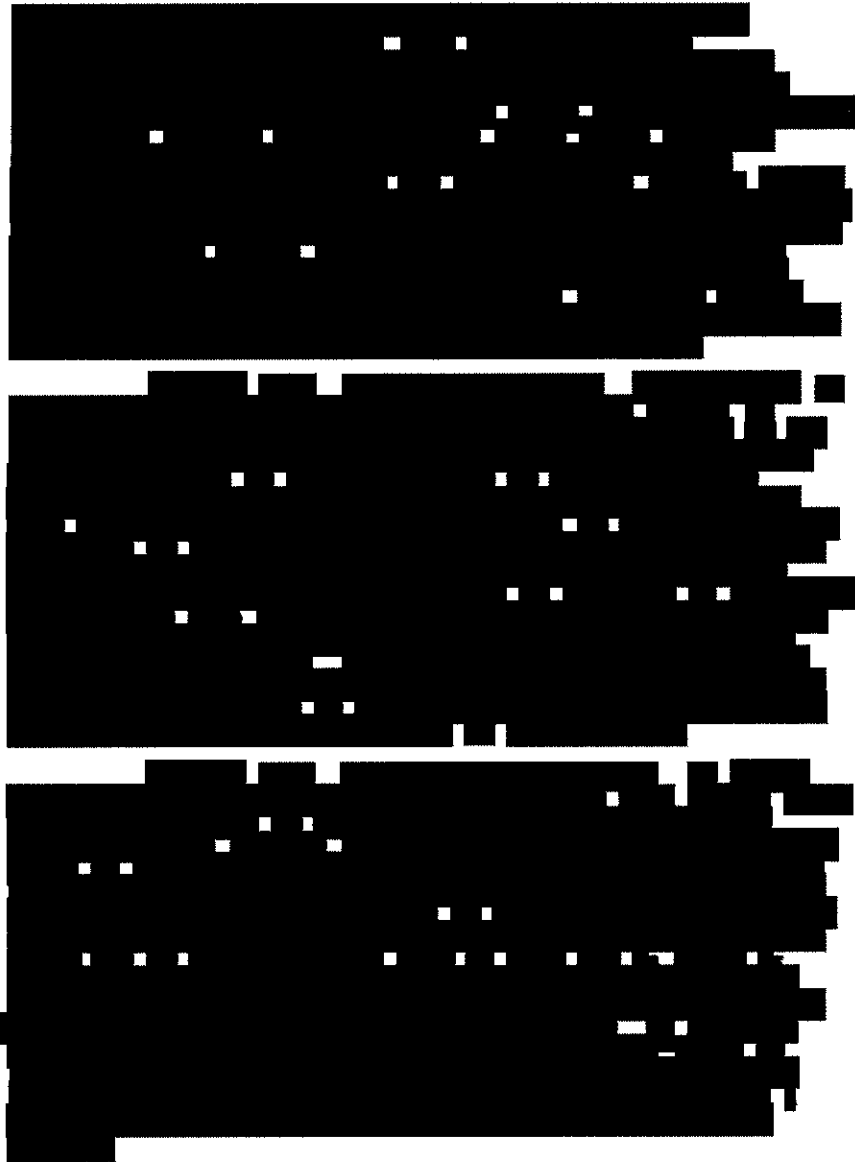
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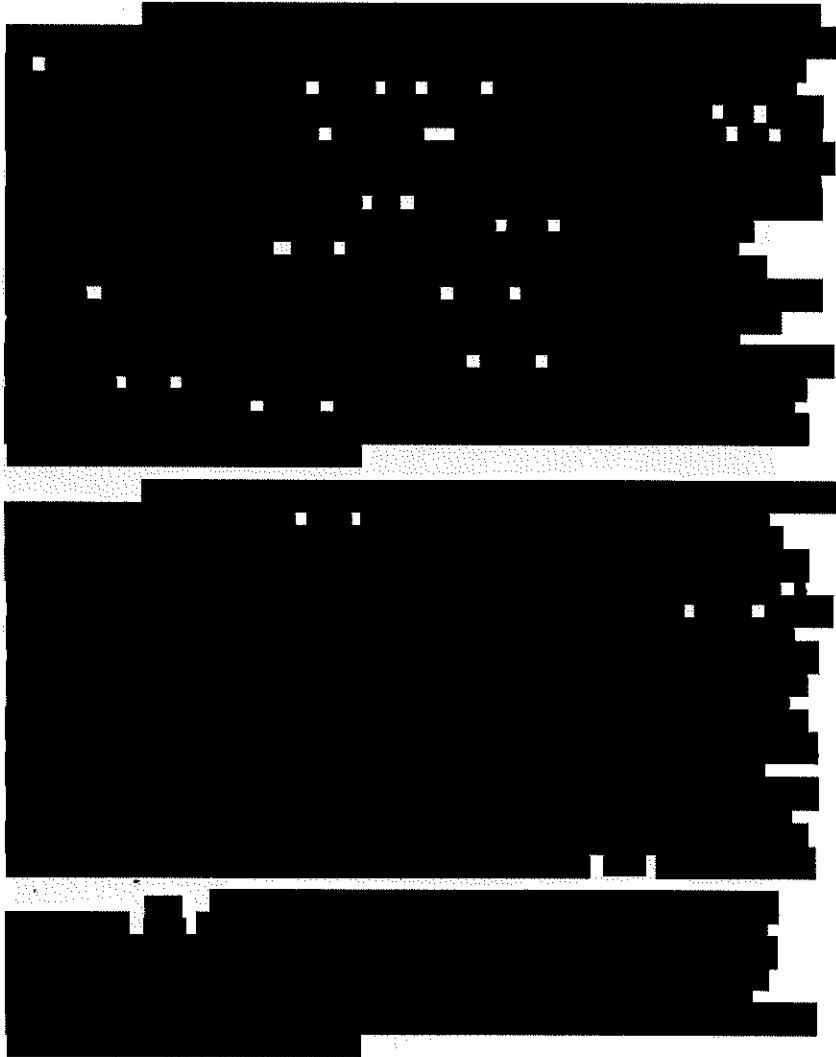




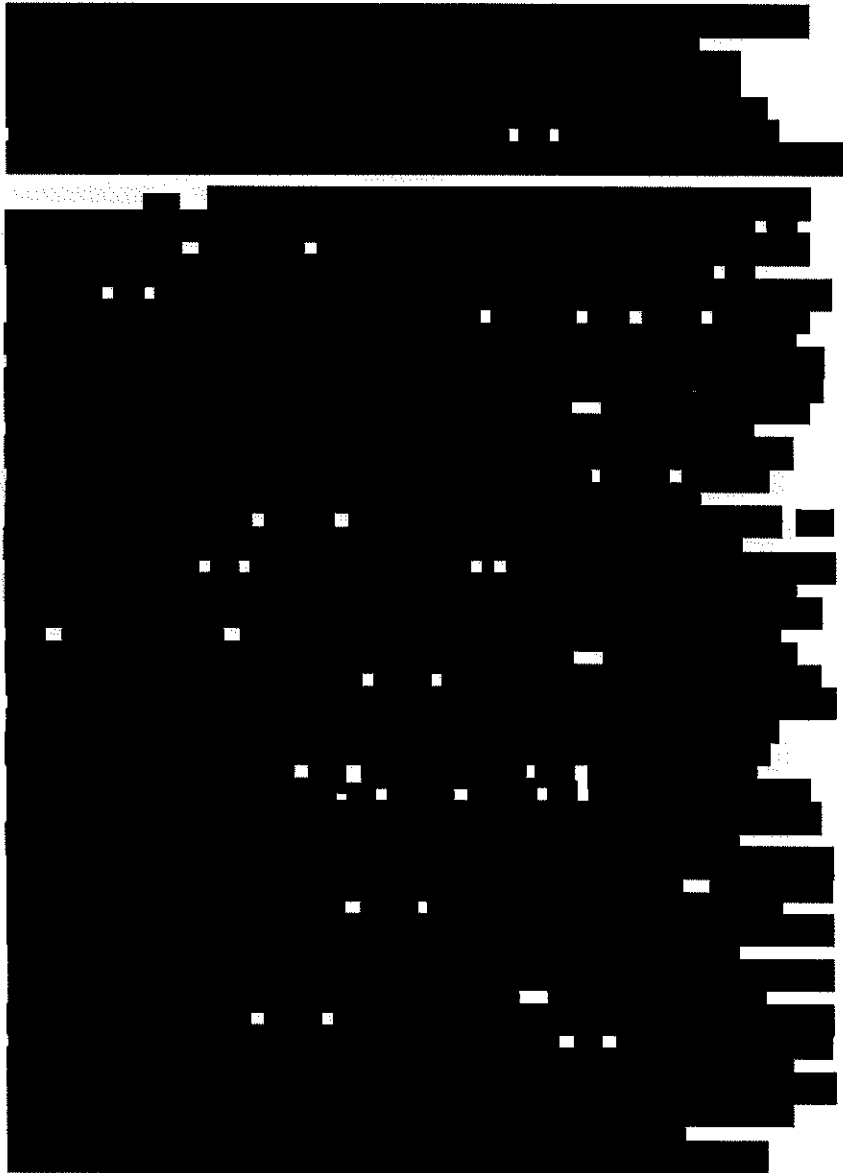
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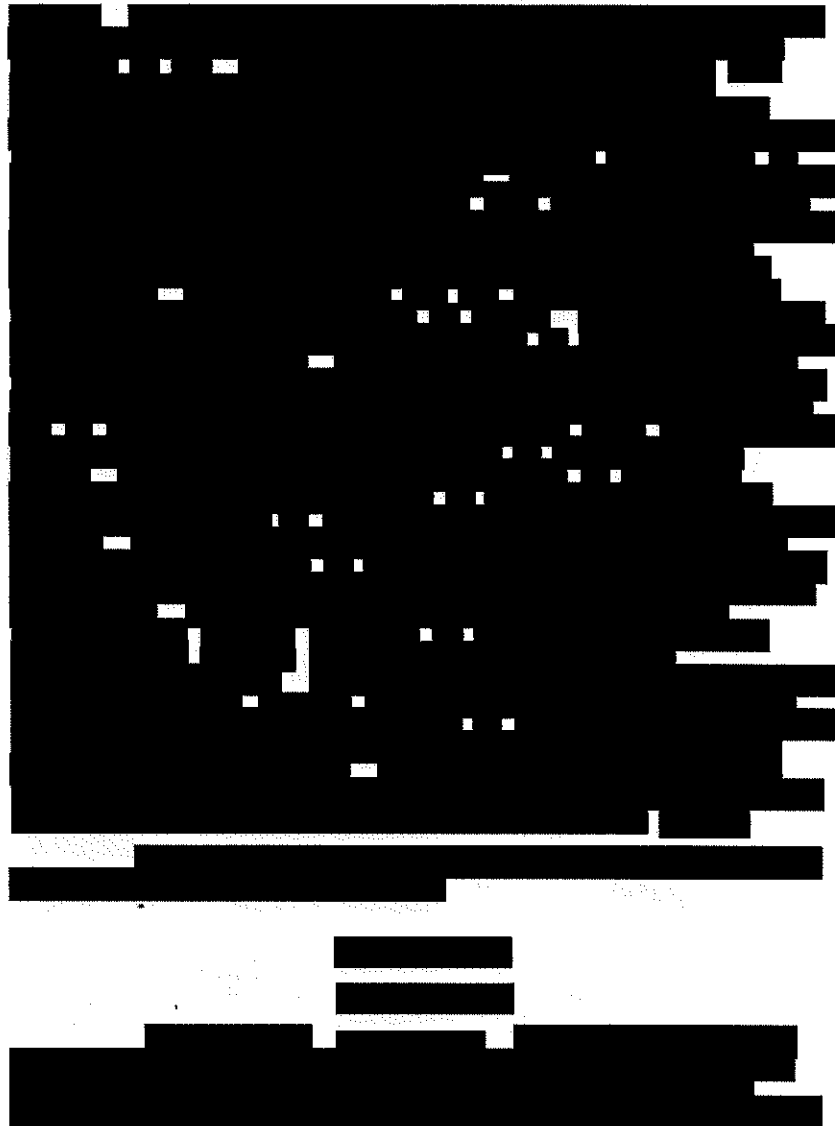
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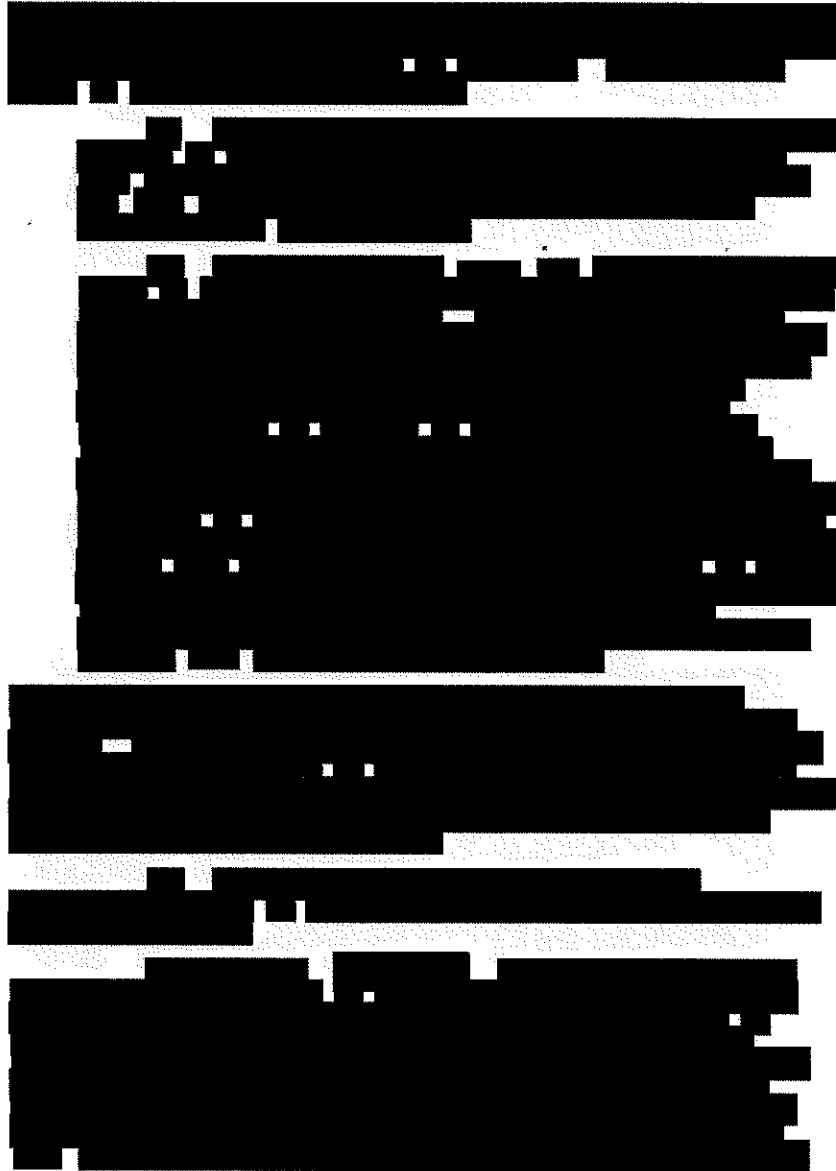
INSURANCE

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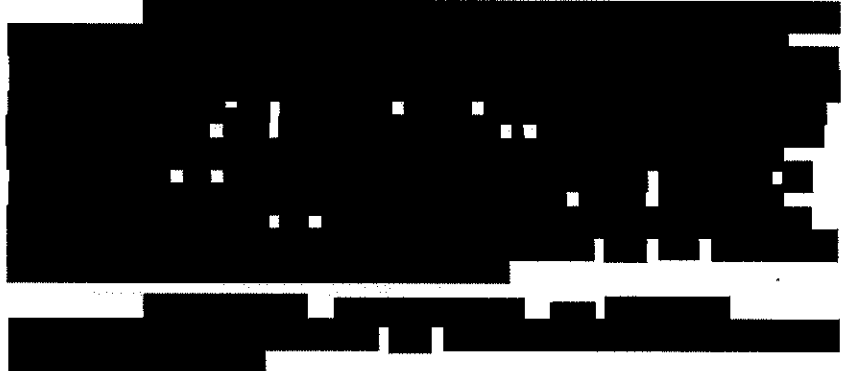


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ARTICLE XX
ENVIRONMENTAL MATTERS

Section 20.1 ENVIRONMENTAL REPRESENTATIONS AND WARRANTIES. Ground Lessor represents and warrants that

(i) to the best of its knowledge, except as would not have a Material Adverse Effect and except as indicated on Appendix 20.1, attached hereto:

(a) the SK Site is now in compliance, and Ground Lessor's operations thereon have been and are now in compliance, with all Environmental Laws;

(b) Hazardous Materials have not at any time been Released by Ground Lessor on, under or from any portion of the SK Site;

(c) there are no past, pending or threatened Environmental Claims against Ground Lessor or any of its officers, directors, employees, and agents or any of its lessees, Affiliates, partners, joint venturers, assignees or other Persons currently occupying, using, or conducting operations on or about the SK Site; and

(d) there are no facts, circumstances, conditions or occurrences regarding the SK Site that (i) form the basis of an Environmental Claim against the SK Site, Ground Lessor or any of its officers, directors, employees, and agents or, any of its lessees, partners,

joint venturers, assignees, Affiliates or other Persons occupying or conducting operations on or about the SK Site, (ii) cause the SK Site, the Facility, the Improvements or any ancillary properties or facilities thereto, to be subject to any restrictions on their ownership, occupancy, use or transferability under any Environmental Law, or (iii) require the filing or recording of any notice, registration, permit or disclosure documents under any Environmental Law.

(ii) The information provided by Ground Lessor which formed the basis of the Environmental Audit of the Jacksonville Recycled Linerboard Facility prepared by Sirrine Environmental Consultants dated October 17, 1990 is true, accurate and complete to the best of Ground Lessor's knowledge, and there have been no environmental investigations, studies, audits, reviews or other analyses conducted by, for, or in the possession of Ground Lessor in relation to the SK Site (other than as described in the above-referenced Environmental Audit) that have not been delivered to Ground Lessee and the Financing Parties, other than routine fire, safety, compliance sampling, studies related to modification of the Mill and similar reports.

(iii) Except as set forth in Appendix 20.1, each of the National Pollutant Discharge Elimination System (NPDES) permit, Florida Industrial Wastewater Treatment Facility permit, consumptive water use permits, and other Permits, pursuant to which Ground Lessor presently operates the Mill or which are necessary for the performance of its obligations under the Ground Lease, are in full force and effect and not subject to appeal, and Ground Lessor is operating in compliance therewith and has received no notices of noncompliance or warning notices in respect thereof from any Governmental Authority. Ground Lessor has made timely application for the renewal of such permits, which applications are complete and correct, and Ground Lessor is aware of no circumstances which could form the basis for a reasonable belief that such renewals will not be timely granted.

Section 20.2 ENVIRONMENTAL COVENANTS. (i) Ground Lessor covenants and agrees to provide and to cause each of the Persons hereinafter mentioned to provide Ground Lessee with written notice of (a) any fact, circumstances, condition, occurrence or Release at, on, or arising from the SK Site that results in Release of Hazardous Materials from the SK Site under, at or onto the Facility Site by Ground Lessor or any of its Affiliates, partners, joint venturers, contractors, lessees (other than Ground Lessee), assignees or

other Persons occupying or conducting operations on the SK Site, such notice to be given promptly after the condition, Release or occurrence is discovered and (b) any pending or threatened Environmental Claim against Ground Lessor or any of its Affiliates, partners, joint venturers, contractors, lessees (other than Ground Lessee) or any other Persons occupying or conducting operations on the SK Site based in whole or in part on the Release of Hazardous Materials under, at or onto the Facility Site, such notices to be given promptly after such Environmental Claim is commenced or threatened. To the extent possible, all such notices shall describe in reasonable detail the nature of the Environmental Claim, investigation, condition, incident, or occurrence and Ground Lessor's (and each such other Person's response) thereto. Ground Lessor shall also provide, and shall exercise its best efforts to cause all such other Persons hereinbefore mentioned to provide, such detailed reports of any Environmental Claim as may be reasonably requested by Ground Lessee or any Financing Party. Ground Lessee, including its agents and the Financing Parties, shall keep the documents required to be provided hereunder confidential and shall not disclose them to any other Person unless required by law and after reasonable consultation with Ground Lessor.

(ii) Ground Lessee covenants and agrees to provide and to cause each of the Persons hereinafter mentioned to provide Ground Lessor with written notice of (a) any Release of Hazardous Materials on or from the Facility Site by Ground Lessee or any of its affiliates, partners, joint venturers, contractors, lessees, assignees or licensees or other Persons occupying or conducting operations on the Facility Site that has resulted or may result or have a Material Adverse Effect, such notice to be given promptly after the condition, Release or occurrence is discovered and (b) any pending or threatened Environmental Claim against Ground Lessee or any of its Affiliates, partners, joint venturers, contractors, lessees (other than Ground Lessor) or any other Persons occupying or conducting operations on the Facility Site that is reasonably likely to have an impact on the SK Site or Ground Lessor's operations, such notices to be given immediately after such Environmental Claim is commenced or threatened. To the extent possible, all such notices shall describe in reasonable detail the nature of the Environmental Claim, investigation, condition, incident, or occurrence and Ground Lessee's (and each such other Person's response) thereto. In addition, Ground Lessee will provide, and shall exercise its best efforts to cause all such other Persons hereinbefore mentioned to provide copies of all written communications with any Governmental Authority relating to any matter for

which notice is required herein to Ground Lessor simultaneously with the giving or receiving of any such written communications. Ground Lessee shall also provide, and shall exercise its best efforts to cause all such other Persons hereinbefore mentioned to provide, such detailed reports of any Environmental Claim as may be reasonably requested by Ground Lessor. Ground Lessor, including its agents, shall keep the documents required to be provided hereunder confidential and shall not disclose them to any other Person unless required by law and after reasonable consultation with Ground Lessor.

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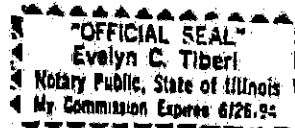
STATE OF Illinois
COUNTY OF Cook : ss.:

The foregoing instrument was acknowledged before me this 24th day of May, 1991, by Lester T. Linderer Vice President of Seminole Kraft Corporation, a Delaware corporation, on behalf of the corporation.

Evelyn C. Tiberl
Notary Public, State and
County Aforesaid

My Commission Expires:

(SEAL)



STATE OF New York)
) ss.:
COUNTY OF Westchester)

I HEREBY CERTIFY that on this day before
me, Gregory J. Hubok, an officer duly authorized
in the state and county aforesaid to take acknowledgements,
personally appeared [Signature] of AES Cedar Bay,
Inc. to me known to be the person described in and who
executed the foregoing instrument on behalf of the
corporation as partner of AES CB LIMITED PARTNERSHIP and he
acknowledged before me that the corporation executed the same
as such partner in the name and on behalf of said partnership.

WITNESS my hand and official seal in the county and
state last aforesaid this 5th day of May, 1991.

[Signature]
Notary Public

My commission expires:

[SEAL]

GREGORY J. HUBOK
Notary Public, State of New York
No. 41-497416
Qualified in Orange County
Certificate Filed in Orange County
Commission Expires Nov. 5, 1992

[Redacted text block]

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[REDACTED]

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[REDACTED]

[REDACTED]

IN WITNESS WHEREOF, Ground Lessor and Ground Lessee
have caused this Ground Lease to be executed as of the day and
year first above mentioned.

SEMINOLE KRAFT CORPORATION

By: [Signature]
Title:
Date:

Signed, Sealed and Delivered
in the presence of:

[Signature]
Witness

[Signature]
Witness

AES CB LIMITED PARTNERSHIP
By: AES Cedar Bay, Inc.
By: [Signature]
Title:
Date:

Alexander K. [Signature]
Witness

[Signature]
Witness

APPENDIX 1.1-A
30R/B:3213r
Ground Lease

FACILITY SITE DESCRIPTION

PARCEL A

A PORTION OF WEBB PLACE OF THE SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 46, TOWNSHIP 1 SOUTH, RANGE 27 EAST, JACKSONVILLE, DUVAL COUNTY, FLORIDA, AS RECORDED IN FLAT BOOK 1, PAGES 7 AND 8, OF THE FORMER PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR POINT OF REFERENCE, COMMENCE AT A CONCRETE MONUMENT LOCATED AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION (ALSO BEING THE SOUTHERLY LINE OF SECTION 19 OF SAID SUBDIVISION), WITH THE EASTERLY LINE OF SAID SUBDIVISION, SAID MONUMENT LYING SOUTH 89 DEGREES 37' 56" WEST, A DISTANCE OF 1,325.83 FEET FROM A CONCRETE MONUMENT LOCATED AT THE NORTHEASTERLY CORNER OF SAID SECTION 22; RUN THENCE SOUTH 89 DEGREES 37' 56" WEST, ALONG THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID SECTION 22, A DISTANCE OF 578.30 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF EASTPORT ROAD (A 66 FOOT PUBLIC RIGHT OF WAY AS NOW ESTABLISHED); RUN THENCE NORTH 10 DEGREES 23' 56" WEST ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 890.02 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY LINE; RUN THENCE SOUTH 79 DEGREES 36' 04" WEST, A DISTANCE OF 508.51 FEET TO A POINT AT THE NORTHEASTERLY CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217-2228 OF THE CURRENT PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA, RUN THENCE ALONG THE NORTHERLY AND WESTERLY LINE OF SAID LANDS RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217 THRU 2228, THE FOLLOWING THREE COURSES AND DISTANCES: FIRST COURSE; SOUTH 67 DEGREES 49' 32" WEST, A DISTANCE OF 316.23 FEET TO A POINT; SECOND COURSE; SOUTH 49 DEGREES 13' 44" WEST, A DISTANCE OF 270.00 FEET TO A POINT; THIRD COURSE; SOUTH 40 DEGREES 46' 16" EAST, A DISTANCE OF 644.88 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF SAID NORTHERLY LINE OF SAID SECTION 22; RUN THENCE SOUTH 89 DEGREES 37' 56" WEST, ALONG LAST SAID LINE A DISTANCE OF 618.79 FEET TO A POINT; RUN THENCE NORTH 40 DEGREES 49' 39" WEST A DISTANCE OF 128.34 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 11' 04" WEST, A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE NORTH 40 DEGREES 49' 39" WEST A DISTANCE OF 275.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 10' 21" WEST A DISTANCE OF 100 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 230.77

FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG LAST SAID LINE A DISTANCE OF 134.73 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, RUN SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 427.65 FEET TO A POINT; RUN THENCE SOUTH 03 DEGREES 45' 19" WEST, A DISTANCE OF 74.96 FEET TO A POINT; RUN THENCE SOUTH 41 DEGREES 14' 41" EAST, A DISTANCE OF 54.38 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 42.00 FEET TO A POINT; RUN THENCE SOUTH 41 DEGREES 14' 41" EAST, A DISTANCE OF 10.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 269.67 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 485.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 155.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 220.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 210.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 188.96 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 175 FEET, MORE OR LESS, TO THE MEAN HIGH WATER LINE OF THE BROWARD RIVER; RUN THENCE IN A GENERAL NORTHWESTERLY AND NORTHEASTERLY DIRECTION, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 2,350 FEET, MORE OR LESS, TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION, SAID POINT LYING SOUTH 89 DEGREES 57' 56" WEST, A DISTANCE OF 395 FEET, MORE OR LESS, FROM THE POINT OF BEGINNING; RUN THENCE NORTH 89 DEGREES 57' 56" EAST, ALONG AFOREMENTIONED LINE, A DISTANCE OF 395 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

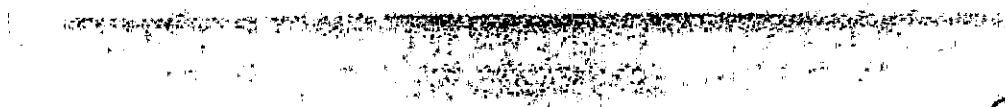
Together with
PARCEL B

A PORTION OF WEBB PLACE OF THE SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 46, TOWNSHIP 1 SOUTH, RANGE 27 EAST, JACKSONVILLE, DUVAL COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 1, PAGES 7 AND 8, OF THE FORMER PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR POINT OF REFERENCE, COMMENCE AT A CONCRETE MONUMENT LOCATED AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION, (ALSO BEING THE SOUTHERLY LINE OF SECTION 19 OF SAID SUBDIVISION), WITH THE EASTERLY LINE OF SAID SUBDIVISION, SAID MONUMENT LYING S-89°57'56"W. A DISTANCE OF 1,325.83 FEET FROM A CONCRETE MONUMENT LOCATED AT THE NORTHEASTERLY CORNER OF SAID SECTION 22; RUN THENCE S-89°57'56"W., ALONG THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID SECTION 22, A DISTANCE OF

578.30 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF EASTPORT ROAD (A 66-FOOT PUBLIC RIGHT-OF-WAY, AS NOW ESTABLISHED); RUN THENCE N-10°23'56"W., ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 890.02 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY LINE; RUN THENCE S-79°36'04"W. A DISTANCE OF 508.51 FEET TO A POINT AT THE NORTHEASTERLY CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217-2228 OF THE CURRENT PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA; RUN THENCE ALONG THE NORTHERLY AND WESTERLY LINE OF SAID LANDS RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217 THRU 2228, THE FOLLOWING THREE COURSES AND DISTANCES: FIRST COURSE, S-67°49'32"W. A DISTANCE OF 316.23 FEET TO A POINT; SECOND COURSE, S-49°13'44"W. A DISTANCE OF 170.00 FEET TO A POINT; THIRD COURSE, S-40°46'16"E. A DISTANCE OF 644.88 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF SAID NORTHERLY LINE OF SAID SECTION 22; RUN THENCE S-89°57'56"W., ALONG LAST SAID LINE, A DISTANCE OF 618.79 FEET TO A POINT; RUN THENCE N-40°49'39"W. A DISTANCE OF 128.34 FEET TO A POINT; RUN THENCE S-49°11'04"W. A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE N-40°49'39"W. A DISTANCE OF 275.00 FEET TO A POINT; RUN THENCE S-49°10'21"W. A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE S-40°49'39"E. A DISTANCE OF 230.77 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION; RUN THENCE S-89°57'56"W., ALONG LAST SAID LINE, A DISTANCE OF 134.73 FEET TO A POINT; RUN THENCE S-40°49'39"E. A DISTANCE OF 427.65 FEET TO A POINT; RUN THENCE S-03°45'19"W. A DISTANCE OF 74.96 FEET TO A POINT; RUN THENCE S-41°14'41"E. A DISTANCE OF 54.38 FEET TO A POINT; RUN THENCE S-49°09'38"W. A DISTANCE OF 42.00 FEET TO A POINT; RUN THENCE S-41°14'41"E. A DISTANCE OF 10.00 FEET TO A POINT; RUN THENCE S-49°09'38"W. A DISTANCE OF 269.67 FEET TO A POINT; RUN THENCE S-40°50'22"E. A DISTANCE OF 485.00 FEET TO A POINT; RUN THENCE S-49°09'38"W. A DISTANCE OF 155.00 FEET TO A POINT; RUN THENCE S-40°50'22"E. A DISTANCE OF 220.00 FEET TO A POINT; RUN THENCE S-49°09'38"W. A DISTANCE OF 15.00 FEET TO A POINT FOR POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, RUN S-49°09'38"W. A DISTANCE OF 195.00 FEET TO A POINT; RUN THENCE S-40°50'22"E. A DISTANCE OF 188.96 FEET TO A POINT; RUN THENCE N-49°09'38"E. A DISTANCE OF 93.32 FEET TO A POINT ON A CURVE, CONCAVE SOUTHEASTERLY; RUN THENCE NORTHEASTERLY, ALONG AND AROUND THE ARC OF A CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 118.15 FEET, AN ARC DISTANCE OF 105.15 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND N-50°21'58"E. A DISTANCE OF 101.71 FEET; RUN THENCE N-40°50'22"W. A DISTANCE OF 191.10 FEET TO THE POINT OF BEGINNING.



APPENDIX 1.1-B

MILL SITE DESCRIPTION

PARCEL A:

Portions of Sections 19, 22, 24, and Webb Place, Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, according to Plat recorded in Plat Book 1, Pages 7 and 8, former Public Records of Jacksonville, Duval County, Florida, being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the North line of said Section 22 of said Subdivision, with the East line of Webb Place of said Subdivision, said monument lying S-89°57'56"W, a distance of 1,325.83 feet from a concrete monument located at the Northeast corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of said Northerly line of Section 22, a distance of 578.30 feet to a point on the Westerly right of way line of Eastport Road (a 66-foot right of way, as now established); run thence N-10°23'56"W., along said Westerly right of way line, a distance of 3,231.34 feet to a point; run thence S-89°21'22"W., parallel with the Southerly right of way line of Kraft Road (a 60-foot right of way, as now established), a distance of 1,639.56 feet to a point; run thence S-2°51'06"E. a distance of 1,845.0 feet to a point for point of beginning.

From the point of beginning thus described, run N-2°51'06"W. a distance of 1,845.0 feet to a point; run thence N-89°21'22"E., parallel with said Southerly right of way line of Kraft Road, a distance of 1,639.56 feet to a point on said Westerly right of way line of Eastport Road; run thence S-10°23'56"E., along said Westerly right of way line, a distance of 4,796.00 feet to a concrete monument at the point of curvature; run thence in a Southeasterly direction, along the arc of a curve in the Southwesterly right of way line of said Eastport Road, said curve being concave to the Northeast and having a radius of 592.89 feet, an arc distance of 317.83 feet to a concrete monument at the point of tangency, the aforementioned arc having a chord bearing and distance of S-25°45'21"E., 314.04 feet; run thence S-41°06'46"E., along said Southwesterly right of way

line, a distance of 806.21 feet to a concrete monument; run thence in a Southwesterly direction, along the arc of a curve in said Westerly right of way line, not tangent to last described line, said curve being concave to the Northwest and having a radius of 113.24 feet, an arc distance of 201.17 feet to a concrete monument at the point of tangency, the aforementioned arc having a chord bearing and distance of S-22°59'46"W., 175.74 feet; run thence S-73°53'14"W., along the Northerly right of way line of said Eastport Road, a distance of 166.73 feet to a concrete monument at the intersection of said Northerly right of way line, with the Northerly right of way line of Hecksher Drive, as now established; run thence in a Westerly direction, along the arc of a curve in last mentioned Northerly right of way line, said curve not being tangent to last described line, said curve being concave to the South and having a radius of 766.78 feet, an arc distance of 387.82 feet to a concrete monument at a point on a second non-tangent curve, the aforementioned arc having a chord bearing and distance of S-72°37'12"W., 383.70 feet; run thence in a Southwesterly direction, along the arc of a curve in the Northwesterly right of way line of said Hecksher Drive, said curve being concave to the Southeast and having a radius of 483.06 feet, an arc distance of 275.68 feet to the point of tangency, the aforementioned arc having a chord bearing and distance of S-59°21'27"W., 271.95 feet; run thence S-43°00'30"W., along said Northwesterly right of way line, a distance of 129.62 feet to a point on the Southwesterly line of lands described in deed recorded in Official Records Volume 1344, Page 261, Public Records of said County; run thence N-56°55'00"W., along said Southwesterly line, a distance of 2,485.40 feet to the point of curvature; run thence in a Northwesterly direction, along the arc of a curve in said Southwesterly deed line, said curve being concave to the Northeast and having a radius of 1000.00 feet, an arc distance of 122.00 feet to the Westerly corner of said deed, the aforementioned arc having a chord bearing and distance of N-53°25'18"W., 121.92 feet; run thence in a Northerly direction, along the waters of the Broward River, following the meanderings of same, a distance of 3,150 feet, more or less, to a point which bears S-87°08'54"W. from the point of beginning; run thence N-87°08'54"E. a distance of 40 feet, more or less, to the point of beginning.

Parcel B:

Portions of Sections 18, 19, 22, 23, and Webb Place, Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, according to plat recorded

in Plat Book 1, Pages 7 and 8, former Public Records of Jacksonville, Duval County, Florida, being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the North line of said Section 22 of said Subdivision, with the East line of Webb Place of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeast corner of said Section 22; run thence N-89°57'56"E., along said North line, a distance of 1,325.83 feet to said concrete monument located at the Northeast corner of said Section 22; run thence S-76°37'10"W. a distance of 146.58 feet to a point for point of beginning.

From the point of beginning thus described, run N-00°24'12"W. a distance of 682.91 feet to a point; run thence N-53°56'47"E. a distance of 1,076.13 feet to a point; run thence S-60°07'28"E. a distance of 417.67 feet to a point; run thence S-36°36'37"E. a distance of 454.27 feet to a point; run thence S-41°25'48"W. a distance of 871.81 feet to a point; run thence S-35°36'59"E. a distance of 1,515.38 feet to a point; run thence S-54°38'17"W. a distance of 1,833.10 feet to a point lying on the Easterly prolongation of the Northerly line of lands described in Official Records Volume 365, Page 583, Public Records of said County; run thence S-89°57'39"W., along said Easterly prolongation and along said Northerly line, a distance of 742.41 feet to the Northwesterly corner of said lands; run thence S-0°02'21"E., along the Westerly line of said lands, a distance of 202.96 feet to the Easterly corner of lands described in Official Records Volume 3204, Page 401, Public Records of said County; run thence S-54°56'50"W., along the Southeasterly line of said lands, a distance of 210.95 feet to a point lying on the Northeasterly right of way line of Eastport Road (a 66-foot right of way, as now established); run thence N-41°06'46"W., along said Northeasterly right of way line, a distance of 200.02 feet to a point lying on the Northwesterly line of said lands described in Official Records Volume 3204, Page 401; run thence N-54°56'50"E., along said Northwesterly line, a distance of 211.16 feet to the Northerly corner thereof; run thence N-51°36'05"W. a distance of 346.25 feet to a point; run thence N-26°44'44"W. a distance of 905.69 feet to a point; run thence N-10°06'08"W. a distance of 778.33 feet to a point; run thence S-79°36'04"W., perpendicular to the Easterly right of way line of said Eastport Road, a distance of 200.85 feet to a point lying on said Easterly right of way

line; run thence N-10°23'56"W., along said Easterly right of way line, a distance of 434.92 feet to a point; run thence N-79°36'04"E., perpendicular to said Easterly right of way line, a distance of 418.59 feet to a point; run thence S-10°23'56"E., parallel to said Easterly right of way line, a distance of 432.27 feet to a point; run thence N-79°28'07"E. a distance of 751.68 feet to a point; run thence N-53°38'14"E. a distance of 226.55 feet to a point; run thence N-63°51'10"E. a distance of 297.92 feet to the point of beginning.

Less and except

A PORTION OF WEBB PLACE OF THE SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 46, TOWNSHIP 1 SOUTH, RANGE 27 EAST, JACKSONVILLE, DUVAL COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 1, PAGES 7 AND 8, OF THE FORMER PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR POINT OF REFERENCE, COMMENCE AT A CONCRETE MONUMENT LOCATED AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION (ALSO BEING THE SOUTHERLY LINE OF SECTION 19 OF SAID SUBDIVISION), WITH THE EASTERLY LINE OF SAID SUBDIVISION, SAID MONUMENT LYING SOUTH 89 DEGREES 57' 56" WEST, A DISTANCE OF 1,325.83 FEET FROM A CONCRETE MONUMENT LOCATED AT THE NORTHEASTERLY CORNER OF SAID SECTION 22; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID SECTION 22, A DISTANCE OF 578.30 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF EASTPORT ROAD (A 66 FOOT PUBLIC RIGHT OF WAY AS NOW ESTABLISHED); RUN THENCE NORTH 10 DEGREES 23'56" WEST ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 890.02 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY LINE; RUN THENCE SOUTH 79 DEGREES 36' 04" WEST, A DISTANCE OF 508.51 FEET TO A POINT AT THE NORTHEASTERLY CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217-2228 OF THE CURRENT PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA, RUN THENCE ALONG THE NORTHERLY AND WESTERLY LINE OF SAID LANDS RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217 THRU 2228, THE FOLLOWING THREE COURSES AND DISTANCES: FIRST COURSE; SOUTH 67 DEGREES 49' 32" WEST, A DISTANCE OF 316.23 FEET TO A POINT; SECOND COURSE; SOUTH 49 DEGREES 13' 44" WEST, A DISTANCE OF 270.00 FEET TO A POINT; THIRD COURSE; SOUTH 40 DEGREES 46' 16" EAST, A DISTANCE OF 644.88 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF SAID NORTHERLY LINE OF SAID SECTION 22; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG LAST SAID LINE A

DISTANCE OF 618.79 FEET TO A POINT; RUN THENCE NORTH 40 DEGREES 49'39" WEST A DISTANCE OF 128.34 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 11' 04" WEST, A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE NORTH 40 DEGREES 49'39" WEST A DISTANCE OF 275.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 10'21" WEST A DISTANCE OF 100 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 230.77 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG LAST SAID LINE A DISTANCE OF 134.73 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, RUN SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 427.65 FEET TO A POINT; RUN THENCE SOUTH 03 DEGREES 45' 19" WEST, A DISTANCE OF 74.96 FEET TO A POINT; RUN THENCE SOUTH 41 DEGREES 14' 41" EAST, A DISTANCE OF 54.38 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 42.00 FEET TO A POINT; RUN THENCE SOUTH 41 DEGREES 14' 41" EAST, A DISTANCE OF 10.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 269.67 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 485.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 155.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 220.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 210.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 188.96 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 175 FEET, MORE OR LESS, TO THE MEAN HIGH WATER LINE OF THE BROWARD RIVER; RUN THENCE IN A GENERAL NORTHWESTERLY AND NORTHEASTERLY DIRECTION, ALONG SAID MEAN HIGH WATER LINE, A DISTANCE OF 2,350 FEET, MORE OR LESS, TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION, SAID POINT LYING SOUTH 89 DEGREES 57' 56" WEST, A DISTANCE OF 395 FEET, MORE OR LESS, FROM THE POINT OF BEGINNING; RUN THENCE NORTH 89 DEGREES 57' 56" EAST, ALONG AFOREMENTIONED LINE, A DISTANCE OF 395 FEET, MORE OR LESS TO THE POINT OF BEGINNING.

and

A PORTION OF WEBB PLACE OF THE SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 46, TOWNSHIP 1 SOUTH, RANGE 27 EAST, JACKSONVILLE, DUVAL COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 1, PAGES 7 AND 8, OF THE FORMER PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR POINT OF REFERENCE, COMMENCE AT A CONCRETE MONUMENT LOCATED AT THE POINT OF INTERSECTION OF THE

NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION, (ALSO BEING THE SOUTHERLY LINE OF SECTION 19 OF SAID SUBDIVISION), WITH THE EASTERLY LINE OF SAID SUBDIVISION, SAID MONUMENT LYING S-89°57'56"W. A DISTANCE OF 1,325.83 FEET FROM A CONCRETE MONUMENT LOCATED AT THE NORTHEASTERLY CORNER OF SAID SECTION 22; RUN THENCE S-89°57'56"W., ALONG THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID SECTION 22, A DISTANCE OF 578.30 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF EASTPORT ROAD (A 66-FOOT PUBLIC RIGHT-OF-WAY, AS NOW ESTABLISHED); RUN THENCE N-10°23'56"W., ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 890.02 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY LINE; RUN THENCE S-79°36'04"W. A DISTANCE OF 508.51 FEET TO A POINT AT THE NORTHEASTERLY CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217-2228 OF THE CURRENT PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA; RUN THENCE ALONG THE NORTHERLY AND WESTERLY LINE OF SAID LANDS RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217 THRU 2228, THE FOLLOWING THREE COURSES AND DISTANCES: FIRST COURSE, S-67°49'32"W. A DISTANCE OF 316.23 FEET TO A POINT; SECOND COURSE, S-49°13'44"W. A DISTANCE OF 270.00 FEET TO A POINT; THIRD COURSE, S-40°46'16"E. A DISTANCE OF 644.88 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF SAID NORTHERLY LINE OF SAID SECTION 22; RUN THENCE S-89°57'56"W., ALONG LAST SAID LINE, A DISTANCE OF 618.79 FEET TO A POINT; RUN THENCE N-40°49'39"W. A DISTANCE OF 128.34 FEET TO A POINT; RUN THENCE S-49°11'04"W. A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE N-40°49'39"W. A DISTANCE OF 275.00 FEET TO A POINT; RUN THENCE S-49°10'21"W. A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE S-40°49'39"E. A DISTANCE OF 230.77 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION; RUN THENCE S-89°57'56"W., ALONG LAST SAID LINE, A DISTANCE OF 134.73 FEET TO A POINT; RUN THENCE S-40°49'39"E. A DISTANCE OF 427.65 FEET TO A POINT; RUN THENCE S-03°45'19"W. A DISTANCE OF 74.96 FEET TO A POINT; RUN THENCE S-41°14'41"E. A DISTANCE OF 54.38 FEET TO A POINT; RUN THENCE S-49°09'38"W. A DISTANCE OF 42.00 FEET TO A POINT; RUN THENCE S-41°14'41"E. A DISTANCE OF 10.00 FEET TO A POINT; RUN THENCE S-49°09'38"W. A DISTANCE OF 269.67 FEET TO A POINT; RUN THENCE S-40°50'22"E. A DISTANCE OF 485.00 FEET TO A POINT; RUN THENCE S-49°09'38"W. A DISTANCE OF 155.00 FEET TO A POINT; RUN THENCE S-40°50'22"E. A DISTANCE OF 220.00 FEET TO A POINT; RUN THENCE S-49°09'38"W. A DISTANCE OF 15.00 FEET TO A POINT FOR POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, RUN S-49°09'38"W. A DISTANCE OF 195.00 FEET TO A POINT; RUN THENCE S-40°50'22"E. A DISTANCE OF 188.96 FEET TO A POINT;

RUN THENCE N-49°09'38"E. A DISTANCE OF 93.32 FEET TO A POINT ON A CURVE, CONCAVE SOUTHEASTERLY; RUN THENCE NORTHEASTERLY, ALONG AND AROUND THE ARC OF A CURVE, CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 118.15 FEET, AN ARC DISTANCE OF 105.15 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND N-50°21'58"E. A DISTANCE OF 101.71 FEET; RUN THENCE N-40°50'22"W. A DISTANCE OF 191.10 FEET TO THE POINT OF BEGINNING.

CHARACTERISTICS OF LIME SOFTENED WATER

The water supplied pursuant to Section 3.1 shall be from Seminole Kraft's deep-well system or such other source as shall be reasonably satisfactory to AES-CB and shall be processed through the Mill's present lime softening system, or any replacement system which may be installed in the future, and such processed water shall have the characteristics described below:

	<u>24 Hour Average Concentration</u>
Calcium and Magnesium as CaCO ₃	145-165 ppm
M - Alkalinity as Ca	30-40 ppm
Silica as SiO ₂	15-24 ppm

3

4

5

3

3

3

[REDACTED]

[REDACTED]

[REDACTED]



8

[REDACTED]

[REDACTED]

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APPENDIX 3.1(8)(1)

DESCRIPTION OF EASEMENTS

1. WATER LINES:

An easement for the installation, maintenance, repair, replacement and use by Ground Lessee of water lines, whether above, below or upon ground, a pump station and a lift station, servicing the Facility with water used for cooling, processing, boiler feedwater make-up and all other water necessary in the operation and maintenance of the Facility, with said water lines, pump station and lift station to be located as described in Schedule C.1 hereof, which easement is granted (i) for and in consideration of the rental herein provided and (ii) for, and subject to, the term of this Ground Lease with respect to the Facility Site.

2. LIME MUD STORAGE PARCEL:

An easement for the relocation, disposal and storage of lime mud suitable (including, without limitation, licensed, or with all necessary approvals, if any, of governmental authorities having jurisdiction) under Applicable Laws for disposal of the lime mud specified in Section 3.4(a)(ii) hereof as described in Section C.2 hereof, which easement is granted (i) for and in consideration of the rental herein provided, and (ii) for and subject to the term of this Ground Lease with respect to the Facility Site.

3. Intentionally Deleted.

4. INGRESS, EGRESS AND REGRESS:

An easement for all purposes of ingress, egress and regress for pedestrian traffic and the movement of vehicles and rail cars over, upon and across those certain roads and railways as described in Schedule C.4 hereof, and said easement with respect to said roads shall be for the use in common of the Parties, and their agents, employees, tenants and business invitees, which easement is granted (i) for and in consideration of the rental herein provided, and (ii) for and subject to the term of this Ground Lease with respect to the Facility Site.

The Parties covenant that they will neither obstruct said easement areas nor authorize the same to be obstructed by any means whatsoever, including but not limited to the parking of a vehicle or vehicles thereon.

5. CONSTRUCTION LAYDOWN AREA:

An easement for accessory parking and storage facilities, to be located at such location as described on Schedule C.5-A hereof for construction equipment, machinery and parts adjacent to the Facility Site as may be reasonably necessary for Ground Lessee and Ground Lessee's contractor in connection with construction of the Facility, and their employees, laborers, subcontractors and assigns in conjunction with the proper execution and performance under the terms of the Construction Contract, which easement is granted (i) for and in consideration of the rental herein provided, and (ii) for a term (if not sooner terminated in accordance with the provisions of the Ground Lease pertaining to the Facility Site) ending on the date of Initial Commercial Operation.

6. POWER LINES:

An easement for the installation, maintenance, repair, replacement and use by Ground Lessee of power lines and electrical utility services in a manner consistent with generally accepted utility practices, together with such surface and air rights as are reasonable and necessary for ingress, egress and regress to and from the Facility for such purpose, with said lines and services to be located as described in Schedule C.6 hereof, which easement is granted (i) for and in consideration of the rental herein provided, and (ii) for and subject to the term of this Ground Lease with respect to the Facility Site.

7. SIGNAGE:

An easement for use by Ground Lessee upon and over the Mill Site for purposes of erecting a sign or signs displaying Ground Lessee's and its tenants or assignees names or symbols, which signs shall be located, installed and maintained in the manner designated by Ground Lessee at the location reasonably designated by Ground Lessor as described in Schedule C.7 hereof and the design of which shall be subject to Ground Lessor's approval, which approval shall not be unreasonably withheld, which easement is granted (i) for and in consideration of the rental herein provided.

and (ii) for and subject to the term of this Ground Lease with respect to the Facility Site.

8. STEAM AND CONDENSATE LINES:

An easement for the installation, maintenance, repair, replacement and use of steam and condensate lines, whether above, below or upon ground, together with such surface, subsurface and air rights as are reasonable and necessary for ingress, egress and regress to and from the Facility for such purpose, with said lines to be located as described in Schedule C.8 hereof, which easement is granted (i) for and in consideration of the rental herein provided, and (ii) for a term (if not sooner terminated in accordance with the provisions of the Ground Lease pertaining to the Facility Site) ending on the date of Initial Commercial Operation. Ground Lessor further covenants to grant additional steam and condensate line easements and rights-of-way which may be necessary or desirable to the Ground Lessee for the proper and efficient operation of the Facility and the transmission of steam produced therefrom and condensate returned thereto, whether to or from Ground Lessor or any other customer/supplier of such steam and condensate; provided that any such additional easements and rights-of-way shall not unreasonably interfere with Ground Lessor's then current or planned and likely future use, enjoyment and operation of the Mill and shall be maintained in a condition comparable to those maintained by Ground Lessor which easements are granted (a) for and in consideration of the rental herein provided, and (b) for and subject to the term of this Ground Lease with respect to the Facility Site.

Specific legal descriptions to be determined in accordance with the provisions relating to Additional Easements as set forth in Section 3.1(b) hereof.

9. TELEPHONE LINES:

An easement for the installation, maintenance, repair, replacement and use by the Ground Lessee of the telephone lines and service to be located as shown in Schedule C.9 hereof, together with such surface, subsurface and air rights as may be reasonable and necessary therefor, which easement is granted (i) for and in consideration of the rental herein provided, and (ii) for and subject to the term of this Ground Lease with respect to the Facility Site.

10. INTENTIONALLY DELETED.

11. ALL UTILITIES:

An easement for the installation, maintenance, repair, replacement and use of all Utilities together with such surface and air rights as are reasonable and necessary for ingress, egress and regress to and from the Facility for such purposes, with said Utilities to be located as described on Schedule C.11 hereof, which easement is granted (i) for and in consideration of the rental herein provided, and (ii) for and subject to the term of this Ground Lease with respect to the Facility Site.

Specific legal descriptions to be determined in accordance with the provisions relating to Additional Easements as set forth in Section 3.1(b) hereof.

12. CAUSEWAY EASEMENT:

An easement for the construction, operation and maintenance of railroad facilities (including rails, ties, tracks, ballast, signals, switches and related equipment) over, upon and across a portion of the Mill Site as more particularly described in Schedule C.12 hereof, which easement is granted (i) for and in consideration of the rental provided herein, and (ii) for and subject to the term of this Ground Lease with respect to the Facility Site.

13. SOUTH RAILROAD EASEMENT:

An easement for the construction, operation and maintenance of railroad facilities (including rails, ties, tracks, ballast, signals, switches and related equipment) over, upon and across a portion of the Mill Site as more particularly described in Schedule C.13 hereof, which easement is granted (i) for and in consideration of the rental provided herein, and (ii) for and in subject to the term of this Ground Lease with respect to the Facility Site.

SCHEDULE C.1
Water Lines

South Railroad Easement

A PORTION OF WEBB PLACE OF THE SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 46, TOWNSHIP 1 SOUTH, RANGE 27 EAST, JACKSONVILLE, DUVAL COUNTY, FLORIDA AS RECORDED IN PLAT BOOK 1, PAGES 7 AND 8, OF THE FORMER PUBLIC RECORDS OF SAID DUVAL COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR POINT OF REFERENCE, COMMENCE AT A CONCRETE MONUMENT LOCATED AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION (ALSO BEING THE SOUTHERLY LINE OF SECTION 19 OF SAID SUBDIVISION), WITH THE EASTERLY LINE OF SAID SUBDIVISION, SAID MONUMENT LYING SOUTH 89 DEGREES 57' 56" WEST, A DISTANCE OF 1,325.83 FEET FROM A CONCRETE MONUMENT LOCATED AT THE NORTHEASTERLY CORNER OF SAID SECTION 22; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID SECTION 22, A DISTANCE OF 578.30 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF EASTPORT ROAD (A 66-FOOT PUBLIC RIGHT-OF-WAY, AS NOW ESTABLISHED); RUN THENCE NORTH 10 DEGREES 23' 56" WEST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 890.02 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY LINE; RUN THENCE SOUTH 79 DEGREES 36' 04" WEST, A DISTANCE OF 508.51 FEET TO A POINT AT THE NORTHEASTERLY CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217-2228 OF THE CURRENT PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA; RUN THENCE ALONG THE NORTHERLY AND WESTERLY LINE OF SAID LANDS RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217 THRU 2228, THE FOLLOWING THREE COURSES AND DISTANCES: FIRST COURSE: SOUTH 67 DEGREES 49' 32" WEST, A DISTANCE OF 316.23 FEET TO A POINT; SECOND COURSE: SOUTH 49 DEGREES 13' 44" WEST, A DISTANCE OF 270.00 FEET TO A POINT, THIRD COURSE: SOUTH 40 DEGREES 46' 16" EAST, A DISTANCE OF 644.88 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF SAID NORTHERLY LINE OF SAID SECTION 22; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG LAST SAID LINE, A DISTANCE OF 618.79 FEET TO A POINT; RUN THENCE NORTH 40 DEGREES 49' 39"

WEST, A DISTANCE OF 128.34 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 11' 04" WEST, A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE NORTH 40 DEGREES 49' 39" WEST, A DISTANCE OF 275.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 10' 21" WEST, A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 230.77 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG LAST SAID LINE, A DISTANCE OF 134.73 FEET; RUN SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 427.65 FEET TO A POINT; RUN THENCE SOUTH 03 DEGREES 45' 19" WEST, A DISTANCE OF 74.96 FEET TO A POINT; RUN THENCE SOUTH 41 DEGREES 14' 41" EAST, A DISTANCE OF 54.38 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 42.00 FEET TO A POINT; RUN THENCE SOUTH 41 DEGREES 14' 41" EAST, A DISTANCE OF 10.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST A DISTANCE OF 269.67 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 485.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 155.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 220.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 210.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 188.96 FEET TO A POINT FOR POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, RUN SOUTH 54 DEGREES 16' 48" EAST, A DISTANCE OF 103.22 FEET TO A POINT ON A CURVE LEADING SOUTHEASTERLY; RUN THENCE SOUTHEASTERLY, ALONG AND AROUND THE ARC OF A CURVE, CONCAVE EASTERLY AND HAVING A RADIUS OF 118.15 FEET, AN ARC DISTANCE OF 70.04 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 54 DEGREES 16' 48" EAST, 69.02 FEET; RUN THENCE SOUTH 54 DEGREES 16' 48" EAST, A DISTANCE OF 564.62 FEET TO A POINT; RUN THENCE SOUTH 33 DEGREES 14' 16" WEST, A DISTANCE OF 125 FEET, MORE OR LESS, TO THE MEAN HIGH WATERLINE OF THE BROWARD RIVER; RUN THENCE ALONG LAST SAID LINE IN A GENERAL NORTHWESTERLY, WESTERLY AND EASTERLY DIRECTION, A DISTANCE OF 1,530 FEET, MORE OR LESS, TO A POINT WHICH LIES SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 175 FEET, MORE OR LESS, FROM THE POINT OF BEGINNING; RUN THENCE NORTH 49 DEGREES 09' 38" EAST, A DISTANCE OF 175 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

Transmission Right-Of-Way Easement

A portion of Section 19 and Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as

recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision, (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeasterly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 1,341.87 feet to the point of beginning.

From the point of beginning thus described, run S-59°21'07"W. a distance of 1,959.89 feet; run thence N-40°49'39"W. a distance of 53.60 feet; run thence S-87°08'54"W. a distance of 155 feet, more or less, to the mean high water line of the Broward River; run thence in a general Southerly direction, along said mean high water line of the Broward River, a distance of 360 feet, more or less, to an intersection with said Westerly prolongation of the Northerly line of said Section 22, of the Subdivision of the John Broward Grant; run thence N-89°57'56"E., along last said line (also being the Northerly line of those lands known as the Cogeneration Plant Site), a distance of 395 feet, more or less, to the Easterly line of said lands known as the Cogeneration Plant Site; run thence along last said line, the following courses: first course, S-40°49'39"E. a distance of 427.65 feet; second course, S-03°45'19"W. a distance of 74.96 feet; third course, S-41°14'41"E. a distance of 54.38 feet; fourth course, S-49°09'38"W. a distance of 42.00 feet; fifth course, S-41°14'41"E. a distance of 10.00 feet; sixth course, S-49°09'38"W. a distance of 269.67 feet; seventh course, S-40°50'22"E. a distance of 150.00 feet; run thence N-12°28'54"W. a distance of 125.00 feet to a point which lies 40.0 feet, when measured perpendicular to the line of those lands known as the Cogeneration Plant Site; run thence N-49°09'38"E., parallel to last said line, a distance of 233.19 feet; run thence N-03°45'19"E. a distance of 172.74 feet to a point which lies 50.0 feet when measured perpendicular to said Easterly line of the lands known as the Cogeneration Plant site; run thence N-40°49'39"W., parallel to last said line, a distance of 605.14 feet; run thence

N-49°10'21"E. a distance of 127.00 feet; run thence
S-40°49'39"E. a distance of 300.00 feet; run thence
N-49°11'04"E. a distance of 50.00 feet; run thence
N-40°49'39"W. a distance of 300.00 feet; run thence
N-49°10'21"E. a distance of 196.55 feet; run thence
N-59°21'07"E. a distance of 683.87 feet; run thence
N-79°36'04"E. a distance of 791.45 feet to an intersection
with said Westerly right-of-way line of Eastport Road; run
thence N-10°23'56"W., along last said line, a distance of
40.00 feet; run thence S-79°36'04"W. a distance of 479.92
feet; run thence N-05°09'16"W. a distance of 122.19 feet; run
thence N-59°21'07"E. a distance of 499.62 feet to an
intersection with said Westerly right-of-way line of Eastport
Road; run thence N-10°23'56"W., along last said line, a
distance of 117.25 feet to the point of beginning.

Pump Station Easement

A portion of Webb Place of the Subdivision of the
John Broward Grant, Section 46, Township 1 South, Range
27 East, Jacksonville, Duval County, Florida, as recorded in
Plat Book 1, Pages 7 and 8, of the former Public Records of
said Duval County, Florida and being more particularly
described as follows:

For point of reference, commence at a concrete
monument located at the point of intersection of the
Northerly line of Section 22 of said Subdivision, (also being
the Southerly line of Section 19 of said Subdivision), with
the Easterly line of said Subdivision, said monument lying
S-89°57'56"W. a distance of 1,325.83 feet from a concrete
monument located at the Northeasterly corner of said
Section 22; run thence S-89°57'56"W., along the Westerly
prolongation of the Northerly line of said Section 22, a
distance of 578.30 feet to a point on the Westerly
right-of-way line of Eastport Road (a 66-foot public
right-of-way, as now established); run thence N-10°23'56"W.,
along said Westerly right-of-way line, a distance of 890.02
feet to a point on said Westerly right-of-way line; run
thence S-79°36'04"W. a distance of 508.51 feet to a point at
the Northeasterly corner of those lands described and
recorded in Official Records Volume 6652, Pages 2217-2228 of
the current Public Records of said Duval County, Florida; run
thence along the Northerly and Westerly line of said lands
recorded in Official Records Volume 6652, Pages 2217 thru
2228, the following three courses and distances: first
course, S-67°49'32"W. a distance of 316.23 feet to a point;
second course, S-49°13'44"W. a distance of 270.00 feet to a
point; third course, S-40°46'16"E. a distance of 644.88 feet

to an intersection with said Westerly prolongation of said Northerly line of said Section 22; run thence S-89°57'56"W., along last said line, a distance of 612.79 feet to a point; run thence N-40°49'39"W. a distance of 128.34 feet to a point; run thence S-49°11'04"W. a distance of 100.00 feet to a point; run thence N-40°49'39"W. a distance of 275.00 feet to a point; run thence S-49°10'21"W. a distance of 100.00 feet to a point; run thence S-40°49'39"E. a distance of 230.77 feet to an intersection with said Westerly prolongation of the Northerly line of Section 22 of said Subdivision; run thence S-89°57'56"W., along last said line a distance of 134.73 feet; run S-40°49'39"E. a distance of 427.65 feet to a point; run thence S-03°45'19"W. a distance of 74.96 feet to a point; run thence S-41°14'41"E. a distance of 54.38 feet to a point; run thence S-49°09'38"W. a distance of 42.00 feet to a point; run thence S-41°14'41"E. a distance of 10.00 feet to a point; run thence S-49°09'38"W. a distance of 269.67 feet to a point; run thence S-40°50'22"E. a distance of 485.00 feet to a point; run thence S-49°09'38"W. a distance of 155.00 feet to a point; run thence S-40°50'22"E. a distance of 220.00 feet to a point; run thence S-49°09'38"W. a distance of 210.00 feet to a point; run thence S-40°50'22"E. a distance of 188.96 feet to a point; run thence S-54°16'48"E. a distance of 103.22 feet to a point on the arc of a curve, leading Southeasterly; run thence Southeasterly, along and around the arc of a curve, concave Easterly and having a radius of 118.15 feet; an arc distance of 70.04 feet, said arc being subtended by a chord bearing and distance of S-54°16'48"E., 69.02 feet; run thence S-54°16'48"E. a distance of 564.62 feet to the point of beginning.

From the point of beginning thus described, run N-54°16'48"W. a distance of 48.28 feet to a point; run thence N-46°03'56"E. a distance of 75.72 feet to a point; run thence S-43°56'04"E. a distance of 105.22 feet to a point; run thence S-33°14'16"W., 160 feet, more or less, to the mean high water line of the Broward River (formerly known as Cedar Creek); run thence, in a general Northwesterly direction, along last said line, a distance of 80 feet, more or less, to a point which bears S-33°14'16"W., 125 feet, more or less, from the point of beginning; run thence N-33°14'16"E. a distance of 125 feet, more or less, to the point of beginning.

Pipeline Easement

A PORTION OF WEBB PLACE OF THE SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 46, TOWNSHIP 1 SOUTH, RANGE 27 EAST, JACKSONVILLE, DUVAL COUNTY, FLORIDA, AS RECORDED IN

PLAT BOOK 1, PAGES 7 and 8, OF THE FORMER PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR POINT OF REFERENCE, COMMENCE AT A CONCRETE MONUMENT LOCATED AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION, (ALSO BEING THE SOUTHERLY LINE OF SECTION 19 OF SAID SUBDIVISION), WITH THE EASTERLY LINE OF SAID SUBDIVISION, SAID MONUMENT LYING S-89°57'56"W. A DISTANCE OF 1,325.83 FEET FROM A CONCRETE MONUMENT LOCATED AT THE NORTHEASTERLY CORNER OF SAID SECTION 22; RUN THENCE S-89°57'56"W., ALONG THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID SECTION 22, A DISTANCE OF 578.30 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF EASTPORT ROAD (A 66-FOOT PUBLIC RIGHT-OF-WAY, AS NOW ESTABLISHED); RUN THENCE N-10°23'56"W., ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 890.02 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY LINE; RUN THENCE S-79°36'04"W. A DISTANCE OF 508.51 FEET TO A POINT AT THE NORTHEASTERLY CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217-2228 OF THE CURRENT PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA, RUN THENCE ALONG THE NORTHERLY AND WESTERLY LINE OF SAID LANDS RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217 THRU 2228, THE FOLLOWING THREE COURSES AND DISTANCES: FIRST COURSE, S-67°49'32"W. A DISTANCE OF 316.23 FEET TO A POINT; SECOND COURSE, S-49°13'44"W. A DISTANCE OF 270.00 FEET TO A POINT; THIRD COURSE, S-40°46'16"E. A DISTANCE OF 644.88 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF SAID NORTHERLY LINE OF SAID SECTION 22; RUN THENCE S-89°57'56"W., ALONG LAST SAID LINE, A DISTANCE OF 618.79 FEET TO A POINT; RUN THENCE N-40°49'39"W. A DISTANCE OF 128.34 FEET TO A POINT; RUN THENCE S-49°11'04"W. A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE N-40°49'39"W. A DISTANCE OF 275.00 FEET TO A POINT; RUN THENCE S-49°10'21"W. A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE S-40°49'39"E. A DISTANCE OF 230.77 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION; RUN THENCE S-89°57'56"W., ALONG LAST SAID LINE, A DISTANCE OF 134.73 FEET; RUN S 40°49'39"E. A DISTANCE OF 427.65 FEET TO A POINT; RUN THENCE S 03°45'19"W. A DISTANCE OF 74.96 FEET TO A POINT; RUN THENCE S-41°14'41"E. A DISTANCE OF 54.38 FEET TO A POINT; RUN THENCE S-49°09'38"W. A DISTANCE OF 42.00 FEET TO A POINT; RUN THENCE S-41°14'41"E. A DISTANCE OF 10.00 FEET TO A POINT; RUN THENCE S-49°09'38"W. A DISTANCE OF 269.67 FEET TO A POINT; RUN THENCE S-40°50'22"E. A DISTANCE OF 485.00 FEET TO A POINT; RUN THENCE S-49°09'38"W. A DISTANCE OF 155.00 FEET TO A POINT; RUN THENCE

S-40°50'22"E. A DISTANCE OF 220.00 FEET TO A POINT; RUN
THENCE S-49°09'38"W. A DISTANCE OF 210.00 FEET TO A POINT;
RUN THENCE S-40°50'22"E. A DISTANCE OF 188.96 FEET TO A
POINT; RUN THENCE S-54°16'48"E. A DISTANCE OF 103.22 FEET TO
A POINT ON THE ARC OF A CURVE, LEADING SOUTHEASTERLY; RUN
THENCE SOUTHEASTERLY, ALONG AND AROUND THE ARC OF A CURVE,
CONCAVE EASTERLY AND HAVING A RADIUS OF 118.15 FEET, AN ARC
DISTANCE OF 70.04 FEET, SAID ARC BEING SUBTENDED BY A CHORD
BEARING AND DISTANCE OF S-54°16'48"E., 69.02 FEET; RUN THENCE
S-54°16'48"E. A DISTANCE OF 516.34 FEET TO A POINT; RUN
THENCE N-46°03'56"E. A DISTANCE OF 75.72 FEET TO A POINT; RUN
THENCE S-43°56'04"E. A DISTANCE OF 105.22 FEET TO A POINT;
RUN THENCE S-33°14'16"W. A DISTANCE OF 5.06 FEET TO A POINT
FOR POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED,
CONTINUE S-33°14'16"W. A DISTANCE OF 40.05 FEET TO A POINT;
RUN THENCE S-53°57'14"E. A DISTANCE OF 87.85 FEET TO A POINT;
RUN THENCE N-85°18'30"E. A DISTANCE OF 219.06 FEET TO A POINT
OF CURVATURE OF A CURVE, LEADING SOUTHEASTERLY; RUN THENCE
SOUTHEASTERLY, ALONG AND AROUND THE ARC OF A CURVE, CONCAVE
SOUTHWESTERLY AND HAVING A RADIUS OF 569.94 FEET, AN ARC
DISTANCE OF 471.19 FEET TO THE POINT OF TANGENCY OF SAID
CURVE, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND
DISTANCE OF S-71°00'27"E., 457.89 FEET; RUN THENCE
S-47°19'24"E., ALONG SAID TANGENCY, A DISTANCE OF 206.72 FEET
TO THE POINT OF CURVATURE, LEADING SOUTHERLY; RUN THENCE
SOUTHERLY, ALONG AND AROUND THE ARC OF A CURVE, CONCAVE
WESTERLY AND HAVING A RADIUS OF 150.00 FEET, AN ARC DISTANCE
OF 117.81 FEET TO THE POINT OF REVERSE CURVATURE OF A CURVE,
LEADING SOUTHERLY; SAID ARC BEING SUBTENDED BY A CHORD
BEARING AND DISTANCE OF S-24°49'24"E., 114.81 FEET; RUN
THENCE SOUTHERLY, ALONG AND AROUND THE ARC OF SAID CURVE, AN
ARC DISTANCE OF 209.63 FEET, SAID ARC BEING SUBTENDED BY A
CHORD BEARING AND DISTANCE OF S-18°24'04"E., 206.89 FEET; RUN
THENCE N-53°31'17"E., 179.60 FEET TO A POINT; RUN THENCE
N-34°28'43"W. A DISTANCE OF 12.50 FEET TO A POINT; RUN THENCE
N-55°31'17"E. A DISTANCE OF 6.26 FEET TO A POINT; RUN THENCE
N-47°19'24"W. A DISTANCE OF 790.54 FEET TO A POINT; RUN
THENCE S-85°18'30"W. A DISTANCE OF 471.75 FEET TO A POINT;
RUN THENCE N-53°57'14"W. A DISTANCE OF 74.96 FEET TO THE
POINT OF BEGINNING.

Pipeline Easement Number 2

A portion of Webb Place of the Subdivision of the
John Broward Grant, Section 46, Township 1 South, Range 27
East, Jacksonville, Duval County, Florida, as recorded in

Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeastly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 890.02 feet to a point on said Westerly right-of-way line; run thence S-79°36'04"W. a distance of 508.51 feet to a point at the Northeastly corner of those lands described and recorded in Official Records Volume 6652, Pages 2217-2228 of the current Public Records of said Duval County, Florida; run thence along the Northerly and Westerly line of said lands recorded in Official Records Volume 6652, Pages 2217 thru 2228, the following three courses and distances; first course, S-67°49'32"W. a distance of 316.23 feet to a point; second course, S-49°13'44"W. a distance of 270.00 feet to a point; third course, S-40°46'16"E. a distance of 644.88 feet to an intersection with said Westerly prolongation of said Northerly line of said Section 22; run thence S-89°57'56"W., along last said line, a distance of 618.79 feet to a point; run thence N-40°49'39"W. a distance of 128.34 feet to a point; run thence S-49°11'04"W. a distance of 100.00 feet to a point; run thence N-40°49'39"W. a distance of 275.00 feet to a point; run thence S-49°10'21"W. a distance of 100.00 feet to a point; run thence S-40°49'39"E. a distance of 230.77 feet to an intersection with said Westerly prolongation of the Northerly line of Section 22 of said Subdivision; run thence S-89°57'56"W., along last said line, a distance of 134.73 feet to a point; run thence S-40°49'39"E. a distance of 427.65 feet to a point; run thence S-03°45'19"W. a distance of 74.96 feet to a point; run thence S-41°14'41"E. a distance of 54.38 feet to a point; run thence S-49°09'38"W. a distance of 42.00 feet to a point; run thence S-41°14'41"E. a distance of 10.00 feet to a point; run thence S-49°09'38"W. a distance of 269.67 feet to a point; run thence E-40°50'22"E. a distance of 485.00 feet to a point; run thence S-49°09'38"W. a distance of 135.00 feet to a point for point of beginning.

From the point of beginning thus described, run S-49°09'38"W. a distance of 20.00 feet to a point; run thence S-40°50'22"E. a distance of 322.59 feet to a point; run thence S-49°25'03"W. a distance of 26.97 feet to a point; run thence S-40°34'57"E. a distance of 70.00 feet to a point; run thence N-49°25'07"E. a distance of 95.00 feet to a point; run thence S-40°34'57"E. a distance of 463.42 feet to a point; run thence S-21°23'12"E. a distance of 233.68 feet to a point; run thence N-46°03'56"E. a distance of 37.90 feet to a point; run thence S-43°56'04"E. a distance of 91.28 feet to a point; run thence N-21°23'12"W. a distance of 254.46 feet to a point; run thence N-40°34'57"W. a distance of 602.70 feet to a point; run thence S-49°25'03"W. a distance of 98.03 feet to a point; run thence N-40°50'22"W. a distance of 322.68 feet to the point of beginning.

Lift Station Easement

A portion of Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision, (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeasterly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 890.02 feet to a point on said Westerly right-of-way line; run thence S-79°36'04"W. a distance of 508.51 feet to a point at the Northeasterly corner of those lands described and recorded in Official Records Volume 6652, Pages 2217-2228 of the current Public Records of said Duval County, Florida; run thence along the Northerly and Westerly line of said lands recorded in Official Records Volume 6652, Pages 2217 thru 2228, the following three courses and distances: first course, S-67°49'32"W. a distance of 316.23 feet to a point; second

course, S-49°13'44"W. a distance of 270.00 feet to a point;
third course, S-40°46'16"E. a distance of 644.88 feet to an
intersection with said Westerly prolongation of said
Northerly line of said Section 22; run thence S-89°57'56"W.,
along last said line, a distance of 618.79 feet to a point
run thence N-40°49'39"W. a distance of 128.34 feet to a
point; run thence S-49°11'04"W. a distance of 100.00 feet to
a point; run thence N-40°49'39"W. a distance of 275.00 feet
to a point; run thence S-49°10'21"W. a distance of 100.00
feet to a point; run thence S-40°49'39"E. a distance of
230.77 feet to an intersection with said Westerly
prolongation of the Northerly line of Section 22 of said
Subdivision; run thence S-89°57'56"W., along last said line,
a distance of 134.73 feet; run S-40°49'39"E. a distance of
427.65 feet to a point; run thence S-03°45'19"W. a distance
of 74.96 feet to a point; run thence S-41°14'41"E. a distance
of 54.38 feet to a point; run thence S-49°09'38"W. a distance
of 42.00 feet to a point; run thence S-41°14'41"E. a distance
of 10.00 feet to a point; run thence S-49°09'38"W. a distance
of 269.67 feet to a point; run thence S-40°50'22"E. a
distance of 485.00 feet to a point; run thence S-49°09'38"W.
a distance of 155.00 feet to a point; run thence
S-40°50'22"E. a distance of 220.00 feet to a point; run
thence S-49°09'38"W. a distance of 210.00 feet to a point;
run thence S-40°50'22"E. a distance of 188.96 feet to a
point; run thence S-54°16'48"E. a distance of 103.22 feet to
a point on the arc of a curve, leading Southeasterly; run
thence Southeasterly, along and around the arc of a curve,
concave Easterly and having a radius of 118.15 feet, an arc
distance of 70.04 feet, said arc being subtended by a chord
bearing and distance of S-54°16'48"E., 69.02 feet; run thence
S-54°16'48"E. a distance of 516.34 feet to a point; run
thence N-46°03'56"E. a distance of 75.72 feet to a point; run
thence S-43°56'04"E. a distance of 105.22 feet to a point;
run thence S-33°14'16"W. a distance of 5.06 feet to a point;
run thence S-53°57'14"E. a distance of 74.96 feet to a point;
run thence N-85°18'30"E. a distance of 471.75 feet to a
point; run thence S-47°19'24"E. a distance of 590.54 feet to
a point for point of beginning.

From the point of beginning thus described, run
N-55°31'17"E. a distance of 63.20 feet to a point; run thence
S-34°28'43"E. a distance of 340.00 feet to a point; run
thence S-55°31'17"W. a distance of 99.55 feet to a point on a
curve and the Northwesterly right of way line of Heckscher
Drive, State Road No. 105 (as said right of way is now
established); run thence along said right of way line, the
following two courses: first course, along the arc of said

curve, concave Southeasterly and having a radius of 766.78 feet, an arc distance of 104.65 feet to a point on a non-tangent curve, said arc being subtended by a chord bearing and distance of S-62°02'26"W., 104.57 feet; second course, along the arc of said curve, concave Southeasterly and having a radius of 483.06 feet, an arc distance of 17.53 feet to a point, said arc being subtended by a chord bearing and distance of S-74°40'02"W., 17.52 feet; thence departing from said right of way line, run N-34°28'43"W. a distance of 322.38 feet to a point; run thence N-55°31'17"E. a distance of 156.80 feet to the point of beginning.

SCHEDULE C.2
Line Mud Storage Parcel

A portion of Section 19 of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeastly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 3,231.34 feet to an intersection with the Northerly line of Parcel "A", Exhibit "B" (plant site), as recorded in Official Records Volume 6222, Pages 511-535, of the current Public Records of said Duval County, Florida; run thence S-89°21'22"W., along last said line, a distance of 901.78 feet to the point of beginning.

From the point of beginning thus described, continue S-89°21'22"W., along said Northerly line of Parcel "A", Exhibit "B" (plant site), a distance of 487.97 feet; run thence S-00°20'37"W., a distance of 637.57 feet; run thence N-84°01'01"E. a distance of 583.72 feet; run thence S-35°40'41"E. a distance of 502.30 feet; run thence N-34°15'20"E. a distance of 569.33 feet; run thence N-53°29'51"W. a distance of 873.57 feet to the point of beginning.

Schedule C.4
Ingress, Egress and Regress

Essement for Road

A portion of Section 19 and Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For a point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeasterly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 1,745.28 feet to the point of beginning.

From the point of beginning thus described, run S-29°53'29"W. a distance of 626.29 feet; run thence S-08°42'09"W. a distance of 15.66 feet; run thence S-05°09'16"E. a distance of 64.63 feet; run thence S-59°21'07"W. a distance of 88.63 feet; run thence N-05°09'16"W. a distance of 112.50 feet; run thence N-08°42'09"E. a distance of 163.84 feet; run thence N-02°24'20"W. a distance of 190.16 feet; run thence N-01°22'46"E. a distance of 54.12 feet; run thence N-10°03'24"W. a distance of 206.69 feet; run thence N-27°56'55"W. a distance of 610.19 feet; run thence N-34°15'20"E. a distance of 90.43 feet; run thence S-27°56'55"E. a distance of 500.27 feet; run thence N-35°01'15"E. a distance of 62.78 feet; run thence N-79°37'58"E. a distance of 321.43 feet to an intersection with said Westerly right of way line of Eastport Road; run thence S-10°23'56"E., along last said line, a distance of 80.00 feet; run thence S-79°37'58"W. a distance of 288.65 feet; run thence S-35°01'15"W. a distance of 70.78 feet; run thence S-27°56'55"E. a distance of 74.88 feet; run thence S-10°03'24"E. a distance of 227.29 feet; run thence

S-01°22'46"W. a distance of 59.49 feet; run thence
S-02°24'20"E. a distance of 144.49 feet; run thence
N-29°53'29"E. a distance of 541.37 feet to said westerly
right of way line of Eastport Road; run thence S-10°23'56"E.
along last said line, a distance of 123.71 feet to the point
of beginning.

South Railroad Easement

A PORTION OF WEBB PLACE OF THE SUBDIVISION OF THE
JOHN BROWARD GRANT, SECTION 46, TOWNSHIP 1 SOUTH, RANGE 27
EAST, JACKSONVILLE, DUVAL COUNTY, FLORIDA AS RECORDED IN PLAT
BOOK 1, PAGES 7 AND 8, OF THE FORMER PUBLIC RECORDS OF SAID
DUVAL COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS
FOLLOWS:

FOR POINT OF REFERENCE, COMMENCE AT A CONCRETE
MONUMENT LOCATED AT THE POINT OF INTERSECTION OF THE
NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION (ALSO BEING
THE SOUTHERLY LINE OF SECTION 19 OF SAID SUBDIVISION), WITH
THE EASTERLY LINE OF SAID SUBDIVISION, SAID MONUMENT LYING
SOUTH 89 DEGREES 57' 56" WEST, A DISTANCE OF 1,325.83 FEET
FROM A CONCRETE MONUMENT LOCATED AT THE NORTHEASTERLY CORNER
OF SAID SECTION 22; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST,
ALONG THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID
SECTION 22, A DISTANCE OF 578.30 FEET TO A POINT ON THE
WESTERLY RIGHT-OF-WAY LINE OF EASTPORT ROAD (A 66-FOOT PUBLIC
RIGHT-OF-WAY, AS NOW ESTABLISHED); RUN THENCE NORTH 10
DEGREES 23' 56" WEST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE,
A DISTANCE OF 890.02 FEET TO A POINT ON SAID WESTERLY
RIGHT-OF-WAY LINE; RUN THENCE SOUTH 79 DEGREES 36' 04" WEST,
A DISTANCE OF 508.51 FEET TO A POINT AT THE NORTHEASTERLY
CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL
RECORDS VOLUME 6652, PAGES 2217-2228 OF THE CURRENT PUBLIC
RECORDS OF SAID DUVAL COUNTY, FLORIDA; RUN THENCE ALONG THE
NORTHERLY AND WESTERLY LINE OF SAID LANDS RECORDED IN
OFFICIAL RECORDS VOLUME 6652, PAGES 2217 THRU 2228, THE
FOLLOWING THREE COURSES AND DISTANCES: FIRST COURSE: SOUTH
67 DEGREES 49' 32" WEST, A DISTANCE OF 316.23 FEET TO A
POINT; SECOND COURSE: SOUTH 49 DEGREES 13' 44" WEST, A
DISTANCE OF 270.00 FEET TO A POINT, THIRD COURSE: SOUTH 40
DEGREES 46' 16" EAST, A DISTANCE OF 644.88 FEET TO AN
INTERSECTION WITH SAID WESTERLY PROLONGATION OF SAID
NORTHERLY LINE OF SAID SECTION 22; RUN THENCE SOUTH 89
DEGREES 57' 56" WEST, ALONG LAST SAID LINE, A DISTANCE OF
618.79 FEET TO A POINT; RUN THENCE NORTH 40 DEGREES 49' 39"
WEST, A DISTANCE OF 128.34 FEET TO A POINT; RUN THENCE SOUTH
49 DEGREES 11' 04" WEST, A DISTANCE OF 100.00 FEET TO A
POINT; RUN THENCE NORTH 40 DEGREES 49' 39" WEST, A DISTANCE
OF 275.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 10' 21"

WEST, A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 230.77 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG LAST SAID LINE, A DISTANCE OF 134.73 FEET; RUN SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 427.65 FEET TO A POINT; RUN THENCE SOUTH 03 DEGREES 45' 19" WEST, A DISTANCE OF 74.96 FEET TO A POINT; RUN THENCE SOUTH 41 DEGREES 14' 41" EAST, A DISTANCE OF 54.38 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 42.00 FEET TO A POINT; RUN THENCE SOUTH 41 DEGREES 14' 41" EAST, A DISTANCE OF 10.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST A DISTANCE OF 269.67 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 485.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 155.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 220.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 210.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 188.96 FEET TO A POINT FOR POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, RUN SOUTH 54 DEGREES 16' 48" EAST, A DISTANCE OF 103.22 FEET TO A POINT ON A CURVE LEADING SOUTHEASTERLY; RUN THENCE SOUTHEASTERLY, ALONG AND AROUND THE ARC OF A CURVE, CONCAVE EASTERLY AND HAVING A RADIUS OF 118.15 FEET, AN ARC DISTANCE OF 70.04 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 54 DEGREES 16' 48" EAST, 69.02 FEET; RUN THENCE SOUTH 54 DEGREES 16' 48" EAST, A DISTANCE OF 564.62 FEET TO A POINT; RUN THENCE SOUTH 33 DEGREES 14' 16" WEST, A DISTANCE OF 125 FEET, MORE OR LESS, TO THE MEAN HIGH WATERLINE OF THE BROWARD RIVER; RUN THENCE ALONG LAST SAID LINE IN A GENERAL NORTHWESTERLY, WESTERLY AND EASTERLY DIRECTION, A DISTANCE OF 1,530 FEET, MORE OR LESS, TO A POINT WHICH LIES SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 175 FEET, MORE OR LESS, FROM THE POINT OF BEGINNING; RUN THENCE NORTH 49 DEGREES 09' 38" EAST, A DISTANCE OF 175 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

Causeway Easement

A portion of Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeasterly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 890.02 feet to a point on said Westerly right-of-way line; run thence S-79°36'04"W. a distance of 508.51 feet to a point at the Northeasterly corner of those lands described and recorded in Official Records Volume 6652, Pages 2217 thru 2228 of the current Public Records of said Duval County, Florida; run thence along the Northerly and Westerly line of said lands recorded in Official Records Volume 6652, Pages 2217 thru 2228, the following three courses and distances: first course, S-67°49'32"W. a distance of 316.23 feet to a point; second course, S-49°13'44"W. a distance of 270.00 feet to a point; third course, S-40°46'16"E. a distance of 644.88 feet to an intersection with said Westerly prolongation of said Northerly line of said Section 22; run thence S-89°57'56"W., along last said line, a distance of 618.79 feet to a point; run thence N-40°49'39"W. a distance of 128.34 feet to a point; run thence S-49°11'04"W. a distance of 100.00 feet to a point; run thence N-40°49'39"W. a distance of 275.00 feet to a point; run thence S-49°10'21"W. a distance of 100.00 feet to a point; run thence S-40°49'39"E. a distance of 230.77 feet to an intersection with said Westerly prolongation of the Northerly line of Section 22 of said Subdivision; run thence S-89°57'56"W., along last said line, a distance of 332.50 feet to the point of beginning.

From the point of beginning thus described, run N-02°51'06"W. a distance of 2,025.47 feet; run thence S-86°59'53"W. a distance of 112.66 feet to an intersection with the Westerly line of Parcel A, of those lands described and recorded in Official Records Volume 6222, Pages 511 thru 535, of the current Public Records of said County; run thence along last said line the following three courses: first course, S-02°51'06"E. a distance of 699.63 feet to a point; second course, S-87°08'54"W. a distance of 40 feet, more or less, to the mean high water line of the Broward River; third course, thence in a general Southerly direction, along said mean high water line of the Broward River, a distance of 1,320 feet, more or less, to an intersection with said

Westerly prolongation of the Northerly line of Section 22 of said Subdivision, and lying S-89°57'56"W. a distance of 198 feet, more or less, from the point of beginning; run thence N-89°57'56"E., along said Westerly prolongation, a distance of 198 feet, more or less, to the point of beginning.

Less and Except those easements, right-of-ways, and rights of easements recorded in the following instruments, in the current Public Records of said County:

- A.) Deed Book 1769, Page 253 et seq
- B.) Deed Book 190, Page 156 et seq
- C.) Official Records Volume 452, Page 337 et seq.
- D.) Official Records Volume 2517, Page 291 et seq.

Causeway Easement Number 2

A portion of Section 19 and Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision, (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeasterly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 890.02 feet to a point; run S-79°36'04"W. a distance of 508.51 feet to an intersection with those lands described and recorded in Official Records Volume 6652, Pages 2217 thru 2228 of the current Public Records of said County; run thence along the Northerly and Westerly line of said lands the following three courses: first course, S-67°49'32"W. a distance of 316.23 feet to a point; second course, S-49°13'44"W. a distance of 270.00 feet to a point; third course, S-40°46'16"E. a distance of 644.88 feet to an intersection with the Westerly prolongation of said North line of Section 22; run thence S-89°57'56"W., along aforementioned line, a distance of

618.79 feet to a point; run thence N-40°49'39"W. a distance of 128.34 feet to a point; run thence S-49°11'04"W. a distance of 100.00 feet to a point; run thence N-40°49'39"W. a distance of 275.00 feet to a point; run thence S-49°10'21"W. a distance of 100.00 feet to a point; run thence S-40°49'39"E. a distance of 230.77 feet to an intersection with said Westerly prolongation of the Northerly line of said Section 22; run thence S-89°57'56"W., along last said line, a distance of 332.50 feet; run thence N-02°51'06"W. a distance of 1029.79 feet to the point of beginning.

From the point of beginning thus described, continue N-02°51'06"W. a distance of 600.00 feet to a point; run thence N-87°08'54"E. a distance of 150.00 feet to a point; run thence S-02°51'06"E. a distance of 600.00 feet to a point; run thence S-87°08'54"W. a distance of 150.00 feet to the point of beginning.

Permanent Access Road Easement

A portion of Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For a point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision, (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56" W. a distance of 1,325.83 feet from a concrete monument located at the Northeastery corner of said Section 22; run thence S-89°57'56" W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road, (a 66 foot public right-of-way, as now established); run thence S-10°23'56" E., along said Westerly right-of-way line, a distance of 144.81 feet, to the Point of Beginning.

From the Point of Beginning, thus described, continue S-10°23'56" E., along said Westerly right-of-way line of Eastport Road, a distance of 40.04 feet; thence S-77°06'14" W., 158.21 feet; thence S-61°04'42" W., 416.47 feet, to the point of curvature, of a curve leading Southwesterly; thence Southwesterly, along and around the arc

of a curve, concave Northwesterly and having a radius of 469.48 feet, an arc distance of 162.33 feet, to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of S-70°59'02" W., 161.53 feet; thence S-80°53'23" W., along said tangency, a distance of 31.76 feet, to the point of curvature, of a curve leading Southwesterly; thence Southwesterly, along and around the arc of curve, concave Southeasterly, having a radius of 249.08 feet, an arc distance of 126.46 feet, to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of S-66°20'43" W., 125.10 feet; thence S-51°48'04" W., along said tangency, a distance of 42.83 feet, to the point of curvature, of a curve leading Northwesterly; thence Northwesterly, along and around the arc of a curve, concave Northerly, and having a radius of 100.00 feet, an arc distance of 152.46 feet, to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of N-84°31'18" W., 138.12 feet; thence N-40°50'41" W., along said tangency, a distance of 141.15 feet, to the point of curvature, of a curve leading Westerly; thence Westerly, along and around the arc of a curve, concave Southerly and having a radius of 20.11 feet, an arc distance of 29.56 feet, to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of N-82°56'42" W., 26.97 feet; thence S-54°57'18" W., along said tangency, a distance of 131.41 feet, to the point of curvature, of a curve leading Northwesterly; thence Northwesterly, along and around the arc of a curve, concave Northeasterly, and having a radius of 60 feet an arc distance of 88.19 feet, to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of N-82°56'11" W., 80.46 feet; thence N-40°49'39" W., along said tangency a distance of 653.03 feet, to an intersection with said Westerly prolongation of the Northerly line of said Section 22, of the Subdivision of the John Broward Grant; thence N-89°57'56" E., along last said line, a distance of 52.83 feet, to a point; thence S-40°49'39" E., 618.51 feet, to the point of curvature of a curve leading Southeasterly; thence Southeasterly along and around the arc of a curve, concave Northeasterly, and having a radius of 20.00 feet, an arc distance of 29.40 feet, to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of S-82°56'11" E., 26.82 feet; thence N-54°57'18" E., along said tangency, a distance of 131.41 feet, to the point of curvature, of a curve leading Southeasterly; thence Southeasterly, along and around the arc of a curve, concave Southerly, and having a radius of 60.11 feet, an arc distance of 88.34 feet, to the point of tangency of said curve, said

arc being subtended by a chord bearing and distance of S-82°56'42" E., 80.60 feet; thence S-40°50'41" E., along said tangency, a distance of 141.15 feet, to the point of curvature, of a curve leading Southeasterly; thence Southeasterly, along and around the arc of a curve, concave Northeasterly, having a radius of 60.00 feet, an arc distance of 91.48 feet, to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of S-84°31'18" E., 82.87 feet thence N-51°48'04" E., along said tangency, a distance of 42.83 feet, to the point of curvature of a curve leading Northeasterly; thence Northeasterly, along and around the arc of a curve, concave Southeasterly, and having a radius of 289.08 feet, an arc distance of 146.76 feet, to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of N-66°20'43" E., 145.19 feet; thence N-80°53'23" E., along said tangency, a distance of 31.76 feet, to the point of curvature, of a curve leading Northeasterly; thence Northeasterly, along and around the arc of a curve, being concave Northwesterly, and having a radius of 429.48 feet, an arc distance of 148.50 feet, to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of N-70°59'02" E., 147.76 feet; thence N-61°04'42" E., along said tangency, a distance of 422.10 feet, to a point; thence N-77°06'14" E., a distance of 165.58 feet, to an intersection with said Westerly right-of-way line of Eastport Road, and the Point of Beginning.

Transmission Right-Of-Way Easement

A portion of Section 19 and Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision, (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeasterly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of

Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 1,341.87 feet to the point of beginning.

From the point of beginning thus described, run S-59°21'07"W. a distance of 1,959.89 feet; run thence N-40°49'39"W. a distance of 53.60 feet; run thence S-87°08'54"W. a distance of 155 feet, more or less, to the mean high water line of the Broward River; run thence in a general Southerly direction, along said mean high water line of the Broward River, a distance of 360 feet, more or less, to an intersection with said Westerly prolongation of the Northerly line of said Section 22, of the Subdivision of the John Broward Grant; run thence N-89°57'56"E., along last said line (also being the Northerly line of those lands known as the Cogeneration Plant Site), a distance of 395 feet, more or less, to the Easterly line of said lands known as the Cogeneration Plant Site; run thence along last said line, the following courses: first course, S-40°49'39"E. a distance of 427.65 feet; second course, S-03°45'19"W. a distance of 74.96 feet; third course, S-41°14'41"E. a distance of 54.38 feet; fourth course, S-49°09'38"W. a distance of 42.00 feet; fifth course, S-41°14'41"E. a distance of 10.00 feet; sixth course, S-49°09'38"W. a distance of 269.67 feet; seventh course, S-40°50'22"E. a distance of 150.00 feet; run thence N-12°28'54"W. a distance of 125.00 feet to a point which lies 40.0 feet, when measured perpendicular to the line of those lands known as the Cogeneration Plant Site; run thence N-49°09'38"E., parallel to last said line, a distance of 233.19 feet; run thence N-03°45'19"E. a distance of 172.74 feet to a point which lies 50.0 feet when measured perpendicular to said Easterly line of the lands known as the Cogeneration Plant site; run thence N-40°49'39"W., parallel to last said line, a distance of 605.14 feet; run thence N-49°10'21"E. a distance of 127.00 feet; run thence S-40°49'39"E. a distance of 300.00 feet; run thence N-49°11'04"E. a distance of 50.00 feet; run thence N-40°49'39"W. a distance of 300.00 feet; run thence N-49°10'21"E. a distance of 196.55 feet; run thence N-59°21'07"E. a distance of 683.87 feet; run thence N-79°36'04"E. a distance of 791.45 feet to an intersection with said Westerly right-of-way line of Eastport Road; run thence N-10°23'56"W., along last said line, a distance of 40.00 feet; run thence S-79°36'04"W. a distance of 479.92 feet; run thence N-05°09'16"W. a distance of 122.19 feet; run thence N-59°21'07"E. a distance of 499.62 feet to an intersection with said Westerly right-of-way line of Eastport Road; run thence N-10°23'56"W., along last said line, a distance of 117.25 feet to the point of beginning.

SCHEDULE C.5-A
Construction Laydown

Construction Warehouse and Office Area

A PORTION OF WEBB PLACE OF THE SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 46, TOWNSHIP 1 SOUTH, RANGE 27 EAST, JACKSONVILLE, DUVAL COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 1, PAGES 7 AND 8, OF THE FORMER PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR POINT OF REFERENCE, COMMENCE AT A CONCRETE MONUMENT LOCATED AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION, (ALSO BEING THE SOUTHERLY LINE OF SECTION 19 OF SAID SUBDIVISION), WITH THE EASTERLY LINE OF SAID SUBDIVISION, SAID MONUMENT LYING SOUTH 89 DEGREES 57' 56" WEST, A DISTANCE OF 1,325.83 FEET FROM A CONCRETE MONUMENT LOCATED AT THE NORTHEASTERLY CORNER OF SAID SECTION 22; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID SECTION 22, A DISTANCE OF 578.30 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF EASTPORT ROAD (A 66-FOOT PUBLIC RIGHT-OF-WAY, AS NOW ESTABLISHED); RUN THENCE NORTH 10 DEGREES 23' 56" WEST ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 890.02 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY LINE; RUN THENCE SOUTH 79 DEGREES 36' 04" WEST, A DISTANCE OF 508.51 FEET TO A POINT AT THE NORTHEASTERLY CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217-2228, OF THE CURRENT PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA; RUN THENCE ALONG THE NORTHERLY AND WESTERLY LINE OF SAID LANDS RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217 THRU 2228, THE FOLLOWING THREE COURSES AND DISTANCES: FIRST COURSE: SOUTH 67 DEGREES 49' 32" WEST, A DISTANCE OF 316.23 FEET TO A POINT; SECOND COURSE: SOUTH 49 DEGREES 13' 44" WEST, A DISTANCE OF 270.00 FEET TO A POINT; THIRD COURSE: SOUTH 40 DEGREES 46' 16" EAST, A DISTANCE OF 644.88 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF SAID NORTHERLY LINE OF SAID SECTION 22 AND SAID SUBDIVISION; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG LAST SAID LINE, A DISTANCE OF 618.79 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING TRUS DESCRIBED, RUN NORTH 40 DEGREES 49' 39" WEST, A DISTANCE OF 128.34 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 11' 04" WEST, A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE NORTH 40 DEGREES 49' 39" WEST, A DISTANCE OF 275.00 FEET TO A POINT; RUN THENCE

SOUTH 49 DEGREES 10' 21" WEST, A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 688.13 FEET TO A POINT; RUN THENCE NORTH 49 DEGREES 09' 38" EAST, A DISTANCE OF 200.00 FEET; RUN THENCE NORTH 40 DEGREES 49' 39" WEST, A DISTANCE OF 284.73 FEET TO THE POINT OF BEGINNING.

Construction Laydown Area 1

A PORTION OF WEBB PLACE OF THE SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 46, TOWNSHIP 1 SOUTH, RANGE 27 EAST, JACKSONVILLE, DUVAL COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 1, PAGES 7 AND 8, OF THE FORMER PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR POINT OF REFERENCE, COMMENCE AT A CONCRETE MONUMENT LOCATED AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION, (ALSO BEING THE SOUTHERLY LINE OF SECTION 19 OF SAID SUBDIVISION), WITH THE EASTERLY LINE OF SAID SUBDIVISION, SAID MONUMENT LYING SOUTH 89 DEGREES 57' 56" WEST, A DISTANCE OF 1,325.83 FEET FROM A CONCRETE MONUMENT LOCATED AT THE NORTHEASTERLY CORNER OF SAID SECTION 22; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID SECTION 22, A DISTANCE OF 578.30 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF EASTPORT ROAD (A 66-FOOT PUBLIC RIGHT-OF-WAY, AS NOW ESTABLISHED); RUN THENCE NORTH 10 DEGREES 23' 56" WEST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 890.02 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY LINE; RUN THENCE SOUTH 79 DEGREES 36' 04" WEST, A DISTANCE OF 508.51 FEET TO A POINT AT THE NORTHEASTERLY CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217-2228, OF THE CURRENT PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA; RUN THENCE ALONG THE NORTHERLY AND WESTERLY LINE OF SAID LANDS RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217 THRU 2228. THE FOLLOWING THREE COURSES AND DISTANCES: FIRST COURSE: SOUTH 67 DEGREES 49' 32" WEST, A DISTANCE OF 316.23 FEET TO A POINT; SECOND COURSE: SOUTH 49 DEGREES 13' 44" WEST, A DISTANCE OF 270.00 FEET TO A POINT; THIRD COURSE: SOUTH 40 DEGREES 46' 16" EAST, A DISTANCE OF 644.88 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF SAID NORTHERLY LINE OF SAID SECTION 22; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG LAST SAID LINE, A DISTANCE OF 618.79 FEET TO A POINT; RUN THENCE NORTH 40 DEGREES 49' 39" WEST, A DISTANCE OF 128.34 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 11' 04" WEST, A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE NORTH 40 DEGREES 49' 39" WEST, A DISTANCE OF 275.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 10'

21° WEST, A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 230.77 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG LAST SAID LINE, A DISTANCE OF 134.73 FEET; RUN SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 427.65 FEET TO A POINT; RUN THENCE SOUTH 03 DEGREES 45' 19" WEST, A DISTANCE OF 74.96 FEET TO A POINT; RUN THENCE SOUTH 41 DEGREES 14' 41" EAST, A DISTANCE OF 54.38 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 42.00 FEET TO A POINT; RUN THENCE SOUTH 41 DEGREES 14' 41" EAST, A DISTANCE OF 10.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 269.67 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 485.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 155.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 220.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 210.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 188.96 FEET TO A POINT FOR POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, RUN NORTH 40 DEGREES 50' 22" WEST, A DISTANCE OF 188.96 FEET TO A POINT; RUN THENCE NORTH 49 DEGREES 09' 38" EAST, A DISTANCE OF 195.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 191.10 FEET TO A POINT ON A CURVE, LEADING SOUTHWESTERLY; RUN THENCE SOUTHWESTERLY, ALONG AND AROUND THE ARC OF A CURVE, CONCAVE SOUTHERLY AND HAVING A RADIUS OF 118.15 FEET, AN ARC DISTANCE OF 454.61 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 34 DEGREES 22' 10" EAST, 221.72 FEET TO A POINT ON SAID CURVE, THENCE DEPARTING FROM SAID CURVE, RUN SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 330.00 FEET; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 195 FEET, MORE OR LESS, TO THE MEAN HIGH WATER LINE OF THE BROWARD RIVER; RUN THENCE ALONG LAST SAID LINE, IN A GENERAL NORTHWESTERLY, WESTERLY AND EASTERLY DIRECTION, A DISTANCE OF 1,310 FEET, MORE OR LESS, TO A POINT WHICH LIES SOUTH 49 DEGREES 09' 38" WEST, 175 FEET, MORE OR LESS, FROM THE POINT OF BEGINNING; RUN THENCE NORTH 49 DEGREES 09' 38" EAST, A DISTANCE OF 175 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

Construction Laydown Area 2

A portion of Section 19 and Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeasterly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 1,341.87 feet; run thence S-59°21'07"W. a distance of 1,493.54 feet to the point of beginning.

From the point of beginning thus described, run N-39°57'23"W. a distance of 330.35 feet; run thence N-70°51'19"W. a distance of 355.62 feet; run thence S-02°55'20"E. a distance of 435.27 feet to the point of a curve, leading Southeasterly; run thence Southeasterly, along and around the arc of a curve, being concave Easterly and having a radius of 88.46 feet, an arc distance of 58.52 feet to the point of tangency of said curve, said arc being subtended by a chord bearing and distance of S-21°52'10"E. a distance of 57.46 feet; run thence along said tangent, S-40°49'39"E. a distance of 292.28 feet; run thence N-49°10'21"E. a distance of 351.77 feet; run thence N-59°21'07"E. a distance of 107.85 feet; run thence N-39°57'23"W. a distance of 70.93 feet to the point of beginning.

Construction Laydown Area 3

A portion of Section 19 and Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeasterly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of

578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 1,341.87 feet; run thence S-59°21'07"W. a distance of 532.07 feet to the point of beginning.

From the point of beginning thus described, run S-05°09'16"E. a distance of 77.55 feet; run thence S-59°21'07"W. a distance of 458.07 feet; run thence N-17°54'38"W. a distance of 923.07 feet; run thence S-87°31'54"E. a distance of 676.01 feet; run thence S-10°03'24"E. a distance of 20.71 feet; run thence S-01°22'46"W. a distance of 54.12 feet; run thence S-02°24'20"E. a distance of 190.16 feet; run thence S-08°42'09"W. a distance of 163.84 feet; run thence S-05°09'16"E. a distance of 112.50 feet to the point of beginning.

Construction Laydown Area 4

A portion of Section 19 and Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeasterly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 1,341.87 feet to a point; run thence S-59°21'07"W. a distance of 443.44 feet to the point of beginning.

From the point of beginning thus described, continue S-59°21'07"W. a distance of 44.31 feet; run thence S-05°09'16"E. a distance of 180.16 feet; run thence N-47°18'53"E. a distance of 122.13 feet; run thence N-03°53'21"W. a distance of 180.40 feet; run thence N-58°09'11"E. a distance of 153.94 feet; run thence

N-10°55'34"W. a distance of 711.20 feet; run thence
S-79°37'58"W. a distance of 75.01 feet; run thence
S-35°01'15"W. a distance of 70.78 feet; run thence
S-27°56'55"E. a distance of 74.88 feet; run thence
S-10°03'24"E. a distance of 227.29 feet; run thence
S-01°22'46"W. a distance of 59.49 feet; run thence
S-02°24'20"E. a distance of 195.29 feet; run thence
S-08°42'09"W. a distance of 161.89 feet; run thence
S-05°09'16"E. a distance of 64.63 feet to the point of
beginning.

SCHEDULE C.6
Power Line

Transmission Right-Of-Way Easement

A portion of Section 19 and Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision, (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeasterly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 1,341.87 feet to the point of beginning.

From the point of beginning thus described, run S-59°21'07"W. a distance of 1,959.89 feet; run thence N-40°49'39"W. a distance of 53.60 feet; run thence S-87°08'54"W. a distance of 155 feet, more or less, to the mean high water line of the Broward River; run thence in a general Southerly direction, along said mean high water line of the Broward River, a distance of 360 feet, more or less, to an intersection with said Westerly prolongation of the Northerly line of said Section 22, of the Subdivision of the John Broward Grant; run thence N-89°57'56"E., along last said line (also being the Northerly line of those lands known as the Cogeneration Plant Site), a distance of 395 feet, more or less, to the Easterly line of said lands known as the Cogeneration Plant Site; run thence along last said line, the following courses: first course, S-40°49'39"E. a distance of 427.65 feet; second course, S-03°45'19"W. a distance of 74.96 feet; third course, S-41°14'41"E. a distance of 54.38 feet; fourth course, S-49°09'38"W. a distance of 42.00 feet; fifth course, S-41°14'41"E. a distance of 10.00 feet; sixth course, S-49°09'38"W. a distance of 269.67 feet; seventh course, S-40°50'22"E. a distance of 150.00 feet; run thence

N-12°28'54"W. a distance of 125.00 feet to a point which lies 40.0 feet, when measured perpendicular to the line of those lands known as the Cogeneration Plant Site; run thence N-49°09'38"E., parallel to last said line, a distance of 233.19 feet; run thence N-03°45'19"E. a distance of 172.74 feet to a point which lies 50.0 feet when measured perpendicular to said Easterly line of the lands known as the Cogeneration Plant site; run thence N-40°49'39"W., parallel to last said line, a distance of 605.14 feet; run thence N-49°10'21"E. a distance of 127.00 feet; run thence S-40°49'39"E. a distance of 300.00 feet; run thence N-49°11'04"E. a distance of 50.00 feet; run thence N-40°49'39"W. a distance of 300.00 feet; run thence N-49°10'21"E. a distance of 196.55 feet; run thence N-59°21'07"E. a distance of 683.87 feet; run thence N-79°36'04"E. a distance of 791.45 feet to an intersection with said Westerly right-of-way line of Eastport Road; run thence N-10°23'56"W., along last said line, a distance of 40.00 feet; run thence S-79°36'04"W. a distance of 479.92 feet; run thence N-05°09'16"W. a distance of 122.19 feet; run thence N-59°21'07"E. a distance of 499.62 feet to an intersection with said Westerly right-of-way line of Eastport Road; run thence N-10°23'56"W., along last said line, a distance of 117.25 feet to the point of beginning.

SCHEDULE C.7
Signage

**See generally Mill Site Description
set forth in Appendix 1.1B hereof**

SCHEDULE C.8
Steam and Condensate Lines

**See generally Mill Site description
set forth in Appendix 1.1-B hereof**

SCHEDULE C.9
Telephone Lines

Transmission Right-Of-Way Easement

A portion of Section 19 and Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision, (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeasterly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 1,341.87 feet to the point of beginning.

From the point of beginning thus described, run S-59°21'07"W. a distance of 1,959.89 feet; run thence N-40°49'39"W. a distance of 53.60 feet; run thence S-87°08'54"W. a distance of 155 feet, more or less, to the mean high water line of the Broward River; run thence in a general Southerly direction, along said mean high water line of the Broward River, a distance of 360 feet, more or less, to an intersection with said Westerly prolongation of the Northerly line of said Section 22, of the Subdivision of the John Broward Grant; run thence N-89°37'56"E., along last said line (also being the Northerly line of those lands known as the Cogeneration Plant Site), a distance of 395 feet, more or less, to the Easterly line of said lands known as the Cogeneration Plant Site; run thence along last said line, the following courses: first course, S-40°49'39"E. a distance of 427.65 feet; second course, S-03°45'19"W. a distance of 74.96 feet; third course, S-41°14'41"E. a distance of 54.38 feet; fourth course, S-49°09'38"W. a distance of 42.00 feet; fifth course, S-41°14'41"E. a distance of 10.00 feet; sixth course, S-49°09'38"W. a distance of 269.67 feet; seventh course, S-40°50'22"E. a distance of 150.00 feet; run thence

N-12°28'54"W. a distance of 125.00 feet to a point which lies 40.0 feet, when measured perpendicular to the line of those lands known as the Cogeneration Plant Site; run thence N-49°09'38"E., parallel to last said line, a distance of 233.19 feet; run thence N-03°45'19"E. a distance of 172.74 feet to a point which lies 50.0 feet when measured perpendicular to said Easterly line of the lands known as the Cogeneration Plant site; run thence N-40°49'39"W., parallel to last said line, a distance of 605.14 feet; run thence N-49°10'21"E. a distance of 127.00 feet; run thence S-40°49'39"E. a distance of 300.00 feet; run thence N-49°11'04"E. a distance of 50.00 feet; run thence N-40°49'39"W. a distance of 300.00 feet; run thence N-49°10'21"E. a distance of 196.55 feet; run thence N-59°21'07"E. a distance of 683.87 feet; run thence N-79°36'04"E. a distance of 791.45 feet to an intersection with said Westerly right-of-way line of Eastport Road; run thence N-10°23'56"W., along last said line, a distance of 40.00 feet; run thence S-79°36'04"W. a distance of 479.92 feet; run thence N-05°09'16"W. a distance of 122.19 feet; run thence N-59°21'07"E. a distance of 499.62 feet to an intersection with said Westerly right-of-way line of Eastport Road; run thence N-10°23'56"W., along last said line, a distance of 117.25 feet to the point of beginning.

SCHEDULE C.11
All Utilities

See generally Mill Site description
set forth in Appendix 1.1-B hereof

SCHEDULE C.12
Causeway Easement

A portion of Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeastly corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 890.02 feet to a point on said Westerly right-of-way line; run thence S-79°36'04"W. a distance of 508.51 feet to a point at the Northeastly corner of those lands described and recorded in Official Records Volume 6652, Pages 2217 thru 2228 of the current Public Records of said Duval County, Florida; run thence along the Northerly and Westerly line of said lands recorded in Official Records Volume 6652, Pages 2217 thru 2228, the following three courses and distances: first course, S-67°49'32"W. a distance of 316.23 feet to a point; second course, S-49°13'44"W. a distance of 270.00 feet to a point; third course, S-40°46'16"E. a distance of 644.88 feet to an intersection with said Westerly prolongation of said Northerly line of said Section 22; run thence S-89°57'56"W., along last said line, a distance of 618.79 feet to a point run thence N-40°49'39"W. a distance of 128.34 feet to a point; run thence S-49°11'04"W. a distance of 100.00 feet to a point; run thence N-40°49'39"W. a distance of 275.00 feet to a point; run thence S-49°10'21"W. a distance of 100.00 feet to a point; run thence S-40°49'39"E. a distance of 230.77 feet to an intersection with said Westerly prolongation of the Northerly line of Section 22 of said Subdivision; run thence S-89°57'56"W., along last said line, a distance of 332.50 feet to the point of beginning.

From the point of beginning thus described, run N-02°51'06"W. a distance of 2,025.47 feet; run thence S-86°59'53"W. a distance of 112.66 feet to an intersection with the Westerly line of Parcel A, of those lands described and recorded in Official Records Volume 6222, Pages 511 thru 535, of the current Public Records of said County; run thence along last said line the following three courses: first course, S-02°51'06"E. a distance of 699.63 feet to a point; second course, S-87°08'54"W. a distance of 40 feet, more or less, to the mean high water line of the Broward River; third course, thence in a general Southerly direction, along said mean high water line of the Broward River, a distance of 1,320 feet, more or less, to an intersection with said Westerly prolongation of the Northerly line of Section 22 of said Subdivision, and lying S-89°57'56"W. a distance of 198 feet, more or less, from the point of beginning; run thence N-89°57'56"E., along said Westerly prolongation, a distance of 198 feet, more or less, to the point of beginning.

Less and Except those easements, right-of-ways, and rights of easements recorded in the following instruments, in the current Public Records of said County:

- A.) Deed Book 1769, Page 253 et seq
- B.) Deed Book 190, Page 156 et seq
- C.) Official Records Volume 452, Page 337 et seq.
- D.) Official Records Volume 2517, Page 291 et seq.

Together with

A portion of Section 19 and Webb Place of the Subdivision of the John Broward Grant, Section 46, Township 1 South, Range 27 East, Jacksonville, Duval County, Florida, as recorded in Plat Book 1, Pages 7 and 8, of the former Public Records of said Duval County, Florida, and being more particularly described as follows:

For point of reference, commence at a concrete monument located at the point of intersection of the Northerly line of Section 22 of said Subdivision, (also being the Southerly line of Section 19 of said Subdivision), with the Easterly line of said Subdivision, said monument lying S-89°57'56"W. a distance of 1,325.83 feet from a concrete monument located at the Northeast corner of said Section 22; run thence S-89°57'56"W., along the Westerly prolongation of the Northerly line of said Section 22, a distance of 578.30 feet to a point on the Westerly right-of-way line of Eastport Road (a 66-foot public

right-of-way, as now established); run thence N-10°23'56"W., along said Westerly right-of-way line, a distance of 890.02 feet to a point; run S-79°36'04"W. a distance of 508.51 feet to an intersection with those lands described and recorded in Official Records Volume 6652, Pages 2217 thru 2228 of the current Public Records of said County; run thence along the Northerly and Westerly line of said lands the following three courses: first course, S-67°49'32"W. a distance of 316.23 feet to a point; second course, S-49°13'44"W. a distance of 270.00 feet to a point; third course, S-40°46'16"E. a distance of 644.88 feet to an intersection with the Westerly prolongation of said North line of Section 22; run thence S-89°57'56"W., along aforementioned line, a distance of 618.79 feet to a point; run thence N-40°49'39"W. a distance of 128.34 feet to a point; run thence S-49°11'04"W. a distance of 100.00 feet to a point; run thence N-40°49'39"W. a distance of 275.00 feet to a point; run thence S-49°10'21"W. a distance of 100.00 feet to a point; run thence S-40°49'39"E. a distance of 230.77 feet to an intersection with said Westerly prolongation of the Northerly line of said Section 22; run thence S-89°57'56"W., along last said line, a distance of 332.50 feet; run thence N-02°51'06"W. a distance of 1029.79 feet to the point of beginning.

From the point of beginning thus described, continue N-02°51'06"W. a distance of 600.00 feet to a point; run thence N-87°08'54"E. a distance of 150.00 feet to a point; run thence S-02°51'06"E. a distance of 600.00 feet to a point; run thence S-87°08'54"W. a distance of 150.00 feet to the point of beginning.

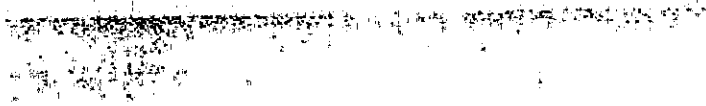
SCHEDULE C.13
South Railroad Easement

A PORTION OF WEBB PLACE OF THE SUBDIVISION OF THE JOHN BROWARD GRANT, SECTION 46, TOWNSHIP 1 SOUTH, RANGE 27 EAST, JACKSONVILLE, DUVAL COUNTY, FLORIDA AS RECORDED IN PLAT BOOK 1, PAGES 7 AND 8, OF THE FORMER PUBLIC RECORDS OF SAID DUVAL COUNTY, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

FOR POINT OF REFERENCE, COMMENCE AT A CONCRETE MONUMENT LOCATED AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION (ALSO BEING THE SOUTHERLY LINE OF SECTION 19 OF SAID SUBDIVISION), WITH THE EASTERLY LINE OF SAID SUBDIVISION, SAID MONUMENT LYING SOUTH 89 DEGREES 57' 56" WEST, A DISTANCE OF 1,325.83 FEET FROM A CONCRETE MONUMENT LOCATED AT THE NORTHEASTERLY CORNER OF SAID SECTION 22; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG THE WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SAID SECTION 22, A DISTANCE OF 578.30 FEET TO A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF EASTPORT ROAD (A 66-FOOT PUBLIC RIGHT-OF-WAY, AS NOW ESTABLISHED); RUN THENCE NORTH 10 DEGREES 23' 56" WEST, ALONG SAID WESTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 890.02 FEET TO A POINT ON SAID WESTERLY RIGHT-OF-WAY LINE; RUN THENCE SOUTH 79 DEGREES 36' 04" WEST, A DISTANCE OF 508.51 FEET TO A POINT AT THE NORTHEASTERLY CORNER OF THOSE LANDS DESCRIBED AND RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217-2228 OF THE CURRENT PUBLIC RECORDS OF SAID DUVAL COUNTY, FLORIDA; RUN THENCE ALONG THE NORTHERLY AND WESTERLY LINE OF SAID LANDS RECORDED IN OFFICIAL RECORDS VOLUME 6652, PAGES 2217 THRU 2228, THE FOLLOWING THREE COURSES AND DISTANCES: FIRST COURSE: SOUTH 67 DEGREES 49' 32" WEST, A DISTANCE OF 316.23 FEET TO A POINT; SECOND COURSE: SOUTH 49 DEGREES 13' 44" WEST, A DISTANCE OF 270.00 FEET TO A POINT, THIRD COURSE: SOUTH 40 DEGREES 46' 16" EAST, A DISTANCE OF 644.88 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF SAID NORTHERLY LINE OF SAID SECTION 22; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG LAST SAID LINE, A DISTANCE OF 618.79 FEET TO A POINT; RUN THENCE NORTH 40 DEGREES 49' 39" WEST, A DISTANCE OF 128.34 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 11' 04" WEST, A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE NORTH 40 DEGREES 49' 39" WEST, A DISTANCE OF 275.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 10' 21" WEST, A DISTANCE OF 100.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 230.77 FEET TO AN INTERSECTION WITH SAID WESTERLY PROLONGATION OF THE NORTHERLY LINE OF SECTION 22 OF SAID SUBDIVISION; RUN THENCE SOUTH 89 DEGREES 57' 56" WEST, ALONG LAST SAID LINE, A DISTANCE OF

134.73 FEET; RUN SOUTH 40 DEGREES 49' 39" EAST, A DISTANCE OF 427.65 FEET TO A POINT; RUN THENCE SOUTH 03 DEGREES 45' 19" WEST, A DISTANCE OF 74.96 FEET TO A POINT; RUN THENCE SOUTH 41 DEGREES 14' 41" EAST, A DISTANCE OF 54.38 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 42.00 FEET TO A POINT; RUN THENCE SOUTH 41 DEGREES 14' 41" EAST, A DISTANCE OF 10.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST A DISTANCE OF 269.67 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 485.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 155.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 220.00 FEET TO A POINT; RUN THENCE SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 210.00 FEET TO A POINT; RUN THENCE SOUTH 40 DEGREES 50' 22" EAST, A DISTANCE OF 188.96 FEET TO A POINT FOR POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS DESCRIBED, RUN SOUTH 54 DEGREES 16' 48" EAST, A DISTANCE OF 103.22 FEET TO A POINT ON A CURVE LEADING SOUTHEASTERLY; RUN THENCE SOUTHEASTERLY, ALONG AND AROUND THE ARC OF A CURVE, CONCAVE EASTERLY AND HAVING A RADIUS OF 118.15 FEET, AN ARC DISTANCE OF 70.04 FEET, SAID ARC BEING SUBTENDED BY A CHORD BEARING AND DISTANCE OF SOUTH 54 DEGREES 16' 48" EAST, 69.02 FEET; RUN THENCE SOUTH 54 DEGREES 16' 48" EAST, A DISTANCE OF 364.62 FEET TO A POINT; RUN THENCE SOUTH 33 DEGREES 14' 16" WEST, A DISTANCE OF 125 FEET, MORE OR LESS, TO THE MEAN HIGH WATERLINE OF THE BROWARD RIVER; RUN THENCE ALONG LAST SAID LINE IN A GENERAL NORTHWESTERLY, WESTERLY AND EASTERLY DIRECTION, A DISTANCE OF 1,530 FEET, MORE OR LESS, TO A POINT WHICH LIES SOUTH 49 DEGREES 09' 38" WEST, A DISTANCE OF 175 FEET, MORE OR LESS, FROM THE POINT OF BEGINNING; RUN THENCE NORTH 49 DEGREES 09' 38" EAST, A DISTANCE OF 175 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.



[REDACTED]

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[REDACTED]

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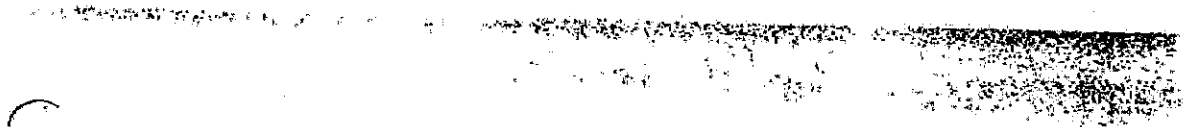
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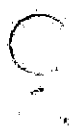
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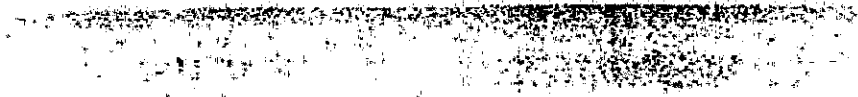
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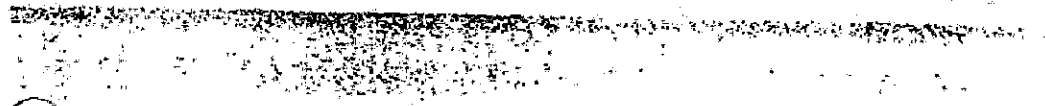
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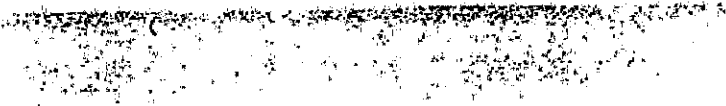
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[REDACTED]

[REDACTED]



APPENDIX 20.1

Schedule of Environmental Concerns

(i) Environmental Matters

(a) Compliance with Law

1. Stipulation between City of Jacksonville and Seminole Kraft regarding reduction in TRS emissions and schedule for such reduction. The company recently paid a stipulated penalty for excess TRS emissions under the Stipulation, finally resolving the matter.
2. Cease and Desist Citation W-90-2 dated March 7, 1990, from the City of Jacksonville raising concerns over violations of groundwater standards and petroleum contamination. The citation is near resolution through entry of a Consent Order between the City, the Florida Department of Environmental Regulation, and Seminole Kraft.

(b) Releases of Hazardous Materials

1. Asbestos containing materials are present throughout the mill in transite siding, paper machine braking equipment, hoods and insulation materials. Any asbestos removal has been handled by Paul McGowan Co., a licensed asbestos removal contractor.
2. Since 1952 the mill has operated at least seven underground storage tanks for gasoline (2), Number 6 fuel oil (2), and Diesel fuel (3). All oil tanks have been removed from service. Residual contamination (soil and groundwater) will be remediated by the State of Florida under its Early Detection Incentive Program or by AES.
3. During the period from 1957 to 1989 small incidental spills of Number 6 oil occurred within the diked area of the 1.2 million

gallon Number 6 oil storage tank. Beginning in 1989, Seminole Kraft began remediation of the contaminated soil and has removed and disposed of, off-site, all contaminated soils. Characterization and cleanup of contaminated groundwater may be required and would be accomplished by AES at their cost.

4. Slightly elevated concentrations of certain metals were noticed by AES' consultant, Dames and Moore, during a site assessment performed in connection with their Site Certification Application for their proposed cogeneration project.

(c) Environmental Claims

Negotiations with the Jacksonville BESP are currently underway on a groundwater monitoring plan to permit assessment of the groundwater contamination alleged by the BESP (See Serrine Environmental report pages 43-45). The mill's consultant, CH2M Hill has developed a plan to address remediation, if required, and has estimated the cost at \$1.5MM.

(d) Facts, Circumstances, Conditions or Occurrences

1. Seminole Kraft currently has 36 PCB transformers in service and one PCB transformer in storage as a spare. All are labeled and contained within diked areas. Quarterly inspections of all PCB transformers are conducted and appropriate records are kept.
2. The modified operation of the Mill may require Ground Lessor to seek modifications to its air and water permits. It is possible but appears unlikely that acceptance of waste materials contained in wastewater discharge from Ground Lessee would trigger a permitting requirement for solid waste management.
3. The Facility and SK Site contain lime mud (as defined in Section 3.4(a)(ii)).

In addition, see matters listed under (b) and (c).

10/1/2014

10/1/2014

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(iii) Permits

1. NPDES Permit No. FL0000400. The final permit was issued on April 30, 1991 but is subject to a 30-day appeal period.
2. Consumptive Use Permit renewal and modification currently being processed by St. Johns Water Management District. The request for renewal and modification requests less withdrawal of groundwater than in current permit, so there is no reason to believe it will not be granted in the normal processing of permit.

An environmental audit of the facility was conducted by Sirrine Environmental Consultants, Greenville, South Carolina and a full audit report dated October 17, 1990 has been issued and provided to Ground Lessees. That report, in its entirety, is incorporated into this schedule by reference.

CB-Workings Set-Tab 10

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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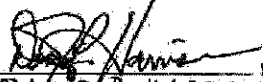
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[REDACTED]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their respective duly authorized officers as of the date first written above.

SMURFIT-STONE CONTAINER ENTERPRISES, INC.


Name: DAVID P. HARRISON
Title: VP - Strategic Sourcing

CEDAR BAY GENERATING COMPANY, L.P.


Name: Thomas J. Borner
Title: President

**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

**DOCKET NO. 150075-EI
FLORIDA POWER & LIGHT COMPANY**

JUNE 17, 2015

**IN RE: PETITION FOR APPROVAL OF
ARRANGEMENT TO MITIGATE IMPACT OF
UNFAVORABLE CEDAR BAY POWER PURCHASE
OBLIGATION, BY FLORIDA POWER & LIGHT
COMPANY**

REBUTTAL TESTIMONY & EXHIBITS OF:

T. L. HARTMAN

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF THOMAS L. HARTMAN**

4 **DOCKET NO. 150075-EI**

5 **JUNE 17, 2015**

6

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

8 A. My name is Thomas L. Hartman. My business address is 700 Universe Blvd., Juno
9 Beach, FL 33408.

10 **Q. By whom are you employed and what is your position?**

11 A. I am employed by Florida Power & Light Company (“FPL” or the “Company”) as
12 the Director - Business Development in Energy Marketing and Trading.

13 **Q. Did you previously submit direct testimony in this proceeding?**

14 A. Yes. My direct testimony was submitted on March 6, 2015.

15 **Q. What is the purpose of your rebuttal testimony?**

16 A. The purpose of my testimony is to respond to the testimonies of OPC’s witnesses
17 Dawson and Brunault, and FIPUG’s witnesses Lane and Pollock who erroneously
18 allege that (1) the five percent bonus capacity payment used in FPL’s analysis is too
19 high, (2) the St. Johns River Coal price forecast used in FPL’s analysis is too high,
20 (3) FPL agreed to pay an excessive price under the transaction due to “undue
21 stimulus”, (4) FPL should keep the facility operating past 2016 because the unit is
22 viable and provides fuel diversity, (5) FPL has not properly accounted for the costs
23 and benefits associated with either needing additional capacity, or having excess

1 capacity to sell, and (6) a pure PPA buyout is a practical alternative to the current
2 transaction.

3

4 My testimony will show that intervener witnesses are wrong on each of these
5 points:

- 6 • The Cedar Bay generating unit (“the Cedar Bay Facility” or “the Facility”) has
7 achieved an average Capacity Factor (as defined in the Purchase Power
8 Agreement (“PPA”)) of 98.61% for each month from January 2010 through
9 February 2015, which is above the level needed to earn the 5% bonus. In 2014,
10 the average was 101.465%. I will show why continued performance above the
11 98% threshold is a reasonable estimate of future performance.
- 12 • FPL’s forecast of fuel cost for St. Johns River Power Park (“SJRPP”) is
13 reasonable, and the unsupported conjecture of lower prices by the intervener
14 witness is unreasonable.
- 15 • What the intervener witness characterizes as “undue stimulus” is, in fact, simply
16 the unfavorable economics of the PPA, which Cedar Bay Generating Company,
17 Limited Partnership. (“Cedar Bay Genco”) presently is entitled to enforce.
18 Those unfavorable economics can be avoided only by negotiating an alternative,
19 mutually beneficial transaction. This is exactly what FPL has done, in order to
20 save our customers money.
- 21 • FPL plans to operate the Facility through the end of 2016 for reliability reasons.
22 Under current economic conditions it is projected not to be in our customers’

1 interests to continue operation of the unit past that point.

2 • FPL has properly accounted for the costs of PPAs to meet the 20% reserve
3 margin. FPL has not included the potential benefit of selling excess capacity in
4 the analysis, because the market for such capacity is highly speculative,
5 particularly at the price point of this unit.

6 • Finally, FPL pursued the current transaction to acquire both the plant and the
7 PPA. We wanted the plant for its short term reliability value. The benefits of a
8 sole PPA buyout are pure speculation and unlikely to be realized in any event.

9 **Q. Do you have any exhibits to your testimony?**

10 A. Yes.

11 • Exhibit TLH-5 – Historical operating performance of the Cedar Bay Facility

12 • Exhibit TLH-6 – Graph of Monthly Capacity Factor from January 2010 through
13 December 2014

14 • Exhibit TLH-7 – Economics of operating the Cedar Bay Facility through 2024

15 **Q. What do the interveners claim about FPL’s estimate of bonus capacity
16 payments that would be made if the Cedar Bay PPA remained in effect?**

17 A. This is primarily addressed by witness Brunault, although his analysis is also
18 adopted by witness Dawson. Witness Brunault makes three assertions: (1)
19 historically from 2007 through 2014 the capacity bonus earned was 2.59% [page 7,
20 line 4], (2) nothing has changed at the Facility to more reliably earn a capacity
21 bonus [page 7 line 9] and (3) a target Equivalent Forced Outage Rate (“EFOR”) in
22 the business plan of 3.5% translates to an approximate 2.5% bonus. Each of these

1 assertions is incorrect. Let me address them in reverse order.

2

3 Witness Brunault asserts (page 8, line 5) that an EFOR rate of 3.5% results in an
4 equivalent availability of 96.5%, translating into an approximate 2.5% Bonus
5 Capacity Revenue. This is not true. Consider actual historical performance data
6 from the Cedar Bay Facility from 2010 through 2013 (see Exhibit TLH-5). During
7 that period the EFOR averaged 3.34% with an Equivalent Availability Factor
8 (“EAF”) of 85.23%. Witness Brunault neglects to account for the fact that Capacity
9 Factor, as defined in the PPA, is significantly different from either capacity factor
10 or equivalent availability as generally used in the industry. As a simple example, if
11 during on-peak hours FPL dispatches the Facility above 175 MW, it is credited with
12 an output of 258 MW, or 103.2% of rated capacity. The Capacity Factor, as
13 defined in the PPA, from 2010 through 2014 has averaged 98.79%, which, under
14 the terms of the PPA would result in the Cedar Bay Facility earning slightly better
15 than the 5% bonus.

16

17 Witness Brunault is also in error when he states that “Nothing stands out to
18 demonstrate that extraordinary efforts are being undertaken to overcome the effects
19 of aging on the plant’s ability to earn bonus payments” [page 7 line 9]. He then
20 goes on to note that “there have been significant problems over the years with
21 erosion-related tube leaks in all three boilers, although most of those issues were
22 prior to 2007....” While dismissed by witness Brunault in a cavalier fashion, this
23 is exactly the point. As noted by URS Corporation in their 2012 review of the

1 Cedar Bay Facility's operations, the Facility has proactively addressed the EFOR
2 problems. According to URS "[m]ost of the improvement over the past few years
3 is attributable to the programs put in place in previous years that appear to be
4 providing meaningful and early warnings of potential equipment/system
5 performance." Witness Patterson testifies to the technical and operational changes
6 that have been successfully implemented. The effectiveness of these efforts is
7 demonstrated by the performance achievements of the Facility.

8
9 The final point to be addressed is witness Brunault's belief that the historic
10 achieved capacity bonus of 2.59% since 2007 is the appropriate value to be used for
11 the future. FPL believes that a capacity bonus of 5% (reflecting a 98% capacity
12 factor) is appropriate for the future. Exhibit TLH-6 provides the monthly data for
13 Capacity Factor as defined in the PPA. The dramatic impact of the performance
14 improvements is readily apparent. According to witness Brunault's Exhibit GB-1,
15 the average annual bonus capacity revenue over the last three years was 6.25%,
16 which was worth \$20.9 million in additional revenue to Cedar Bay Genco.

17
18 Witness Brunault apparently believes that the performance improvements evident
19 since January 2010 are not sustainable, and denies that plant improvements can be
20 sustained over the remaining life of the PPA, as discussed above. This is refuted by
21 the testimony of witness Patterson. Sustainability is demonstrated by the fact that
22 the Facility is meeting its debt service obligations and generating profits for the
23 owners as demonstrated by the financial statements of Cedar Bay Genco. FPL

1 believes that the Cedar Bay Facility has demonstrated that operating at this
2 Capacity Factor is profitable and technically achievable. We see no reason why the
3 Cedar Bay Facility would not continue to operate at this high level.

4 **Q. Why is the intervener’s projection of SJRPP fuel costs unreasonable?**

5 A. Witness Dawson notes that SJRPP obtains coal from the Ace In The Hole mine in
6 Indiana under a contract that expires at the end of 2015 and Colombian coal under a
7 contract that expires at the end of 2016 [page 8 line 2]. Witness Dawson posits that
8 using lower current spot prices for coal instead of the expiring contract will result in
9 a lower overall price of coal at SJRPP [page 8 line 22]. Additionally, witness
10 Dawson eliminates FPL’s expected cost increase for 2016 in estimating his savings.

11
12 SJRPP is subject to the Mercury and Air Toxics Standards (“MATS”) rule,
13 effective April of this year. [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED].

1 Witness Dawson’s assumptions, based upon which he reduced customer savings of
2 this transaction by \$14 million due to lower cost coal for SJRPP, are simply not
3 valid.

4 **Q. Was FPL subject to “undue stimulus” in negotiating the transaction as claimed**
5 **by witness Lane?**

6 A. No. This is an unusually reckless assertion, unsupported by any facts. This was an
7 arm’s length transaction between two independent organizations. Witness Lane
8 appears to believe that because the PPA resulted in prices above market, the very
9 presence of the PPA represents “undue stimulus.” Under witness Lane’s definition,
10 a simple buyout of the PPA for any price could not be accomplished at “Fair
11 Market Value” because the PPA would represent “undue stimulus.” This is
12 ludicrous. The definition cited by witness Lane is commonly used in real estate
13 appraisal. This transaction is not real estate – it is the acquisition of a group of
14 corporate entities which control and own not only the physical assets of Cedar Bay
15 Genco, but also the rights to the PPA. This “undue stimulus” claimed by witness
16 Lane – i.e., the above market PPA – is one of the assets being acquired in the
17 transaction.

18 **Q. Why would FPL not continue to operate the Cedar Bay Facility until at least**
19 **2024 as suggested by witness Pollock?**

20 A. FPL’s decisions regarding whether and when to continue operating the Cedar Bay
21 Facility will be based on the best interest of its customers. While FPL agrees with
22 witness Pollock that “[i]f well operated and maintained, the Cedar Bay Facility can
23 be used and useful until at least 2024,” at the present time it is not in the best

1 interest of FPL's customers to do so. FPL intends to operate the Cedar Bay Facility
2 through the end of 2016 for reliability reasons. Extending the operations until the
3 end of 2024, as suggested by witness Pollock, would cost our customers \$70
4 million (CPVRR) more than shutting it down as currently anticipated, as shown in
5 Exhibit TLH-7. Operation past 2016 would be justified only for reliability
6 requirements, which is not expected.

7 **Q. Witness Dawson believes that FPL is subject to potentially much higher costs**
8 **for additional capacity in 2018 and has the opportunity to sell capacity in 2022**
9 **if the Cedar Bay Transaction does not occur. Do you agree?**

10 A. No. FPL's forecast, as witness Dawson notes, uses a 2015 purchase proxy price of
11 \$■■■■/kW-month in 2015, which FPL believes is conservative. Presently FPL can
12 purchase capacity in the market with high heat rates for pricing between \$■■■■ and
13 \$■■■■/kW-month. Witness Dawson indicates that FPL's cost for peaking capacity
14 could go much higher, based upon an EIA forecast cost of a new peaking unit [page
15 12 line 2]. Witness Dawson, however, fails to recognize market realities. There is
16 excess short term peaking capacity available in Florida. In this environment,
17 market participants only sell above their variable cost, without regard to their fixed
18 costs, in order to generate a contribution margin. As a result, market prices are
19 much lower than witness Dawson has indicated.

20
21 Witness Dawson also suggests that the capacity from the Cedar Bay Facility would
22 result in FPL being above the 20% capacity reserve margin in 2022, leading to the
23 capability of selling this capacity into the market. FPL occasionally does sell

1 capacity into the market when above the required 20% reserve margin. Such sales
2 however, are system sales, not sales from a particular unit. Additionally, for
3 planning purposes, although FPL considers purchases to maintain the required 20%
4 capacity margin, we do not plan for short term sales. FPL's capacity, including its
5 reserve margin, is to meet the needs of its customers. Short term sales of energy
6 and capacity are normally recallable by FPL to meet our customers' requirements.
7 As a result, these sales are not as firm as those from a generating company and this
8 can be expected to be reflected in the price. A short term capacity sale by FPL in
9 2022 would be purely speculative at this point.

10 **Q. Could FPL consider a pure PPA buyout as suggested by witness Dawson?**

11 A. FPL pursued the current transaction as a clean way to acquire both the plant and the
12 PPA. We wanted the plant, although it didn't have long term economic value,
13 because it provides short term reliability value until both the new Port Everglades
14 Energy Center and the third natural gas pipeline into Florida go into service.
15 Accordingly, FPL pursued the better and necessary alternative of a transaction that
16 would allow ownership of the plant for a limited period of time for reliability
17 purposes and did not "dual track" negotiations to consider a pure PPA buy-out
18 option.

19
20 In any event, there is no guarantee that FPL could negotiate an agreement along the
21 terms outlined by witness Dawson, should the Florida Public Service Commission
22 ("FPSC" or "Commission") not approve the current transaction.

23

1 Witness Dawson’s estimate of \$129 million savings for a speculative and
2 hypothetical ██████████ PPA buyout shown in Exhibit CCD-5 incorporates a
3 number of additional assumptions which have already been addressed here or in
4 FPL witness Barrett’s rebuttal testimony as being unreasonable – reduction of the
5 bonus capacity payment to 2.59%, sale of capacity in 2022, adjustment in the
6 SJRPP fuel cost, and no equity return on the investment. Once these unreasonable
7 assumptions are eliminated it is likely that the benefits of this speculative and
8 hypothetical transaction would be comparable to the projected benefits for the
9 existing transaction before the Commission. Witness Dawson’s projections as
10 stated in his testimony and illustrated in his Exhibits CCD-5 and CCD-6 are simply
11 not likely to be achievable and are not before this Commission in this docket in any
12 case.

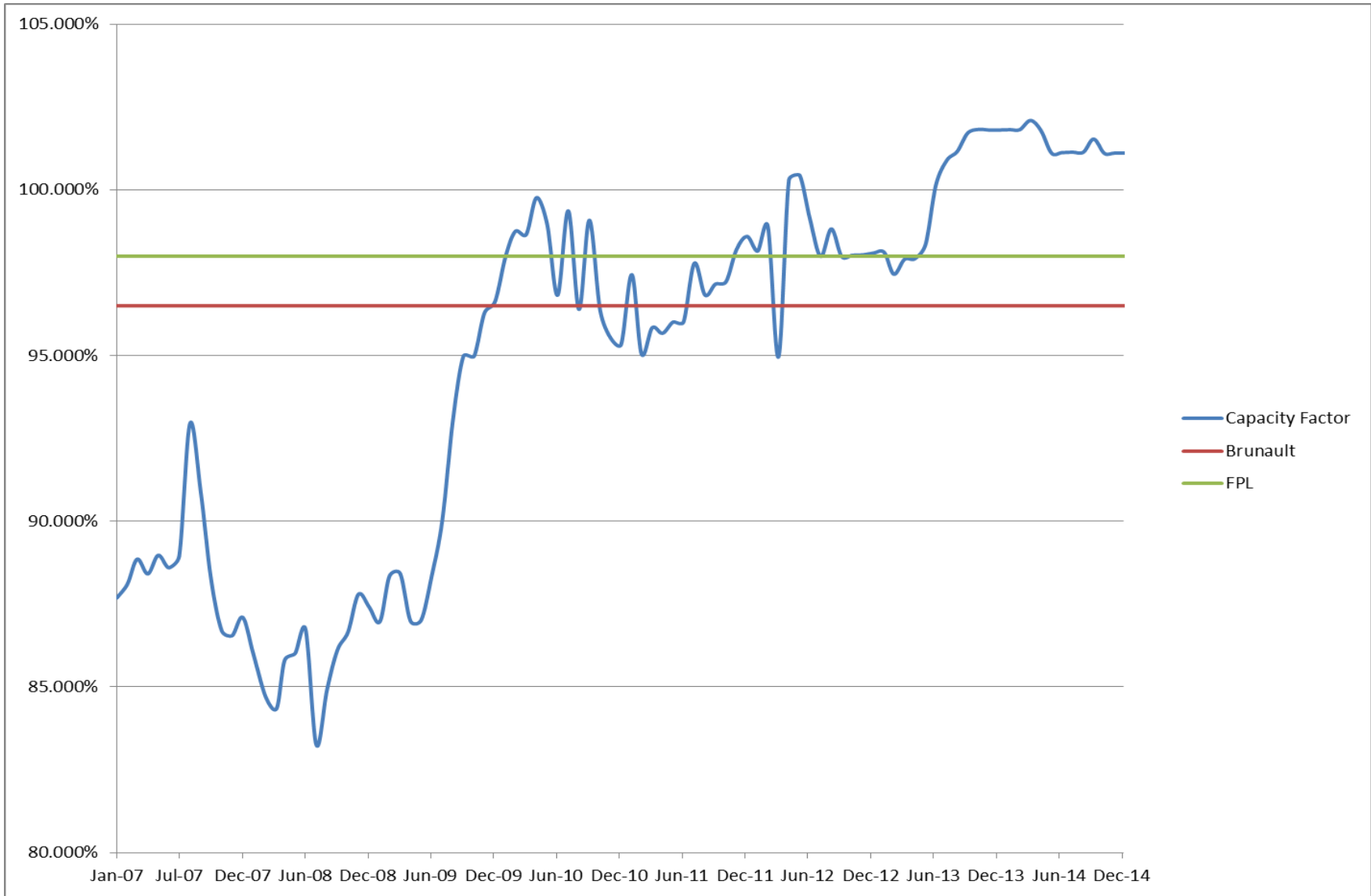
13 **Q. Do you have any final comments?**

14 A. Yes. In rebuttal I have shown that the intervener’s concerns are not valid.
15 However, please note that, in the most pessimistic case, as presented by witness
16 Dawson, containing a host of unrealistic or unfounded assumptions, the proposed
17 transaction still results in customer savings of \$32 million. The Commission should
18 approve the transaction.

19 **Q. Does this conclude your rebuttal testimony?**

20 A. Yes, it does.

	Average	2013	2012	2011	2010	
Capacity	250	250	250	250	250	MW
Net Generation	1,034,146	789,550	680,744	1,173,367	1,492,921	MWh
Capacity Factor	47.20%	36.05%	31.00%	53.58%	68.17%	Net Generation/(Capacity*PH)
EAF	85.23	88.08	85.35	85.53	81.96	Equivalent Availability Factor (%)
EFOR	3.34	0.70	3.91	3.43	5.30	Equivalent Forced Outage Rate ((FOH+EFDH)/(FOH+SH)*100 (%))
Billing Capacity	98.12%	99.61%	98.44%	96.55%	97.86%	Average annual billing capacity per the provisions of the PPA



Summary

Generation	Transmission		Capital	Firm Gas	Pipeline		Nuclear Fuel	Total		Startup			Total	Total
Capital	Capital	Generation	Replacement	Transport	Capital	Short Term Purchase	Unrecovered	Fixed	System	+ VOM	Emission	Transmission	VOM/Fuel	Annual
FPL	FPL	Fixed O&M	Charges	Costs	Costs		Investment	Costs	Net Fuel	Costs	Costs	Losses	Costs	Costs
(Millions)	(Millions)	(Millions)	(Millions)	(Millions)	(Millions)	(Millions)	(Millions)	(Millions)	(Millions)	(Millions)	(Millions)	(Millions)	(Millions)	(Millions)

1) Cedar Bay (own) through 2024

\$7,867	\$422	\$571	\$1,449	\$0	\$126	\$2	\$0	\$10,438	\$60,878	\$993	\$13,283	\$0	\$75,153	85,591
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2) Cedar Bay (own) Retired 2016

\$7,867	\$422	\$486	\$1,449	\$0	\$126	\$13	\$0	\$10,364	\$60,885	\$991	\$13,281	\$0	\$75,158	85,521
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Difference

\$0	\$0	\$85	\$0	\$0	\$0	(\$11)	\$0	\$74	(\$8)	\$1	\$2	\$0	(\$4)	\$70
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**BEFORE THE FLORIDA
PUBLIC SERVICE COMMISSION**

**DOCKET NO. 150075-EI
FLORIDA POWER & LIGHT COMPANY**

JUNE 17, 2015

**IN RE: PETITION FOR APPROVAL OF
ARRANGEMENT TO MITIGATE IMPACT OF
UNFAVORABLE CEDAR BAY POWER PURCHASE
OBLIGATION, BY FLORIDA POWER & LIGHT
COMPANY**

REBUTTAL TESTIMONY & EXHIBITS OF:

D. W. HERR

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **FLORIDA POWER & LIGHT COMPANY**

3 **REBUTTAL TESTIMONY OF DAVID W. HERR**

4 **DOCKET NO. 150075-EI**

5 **JUNE 17, 2015**

6
7 **Q. Please state your name and business address.**

8 A. My name is David W. Herr. My business address is Duff & Phelps LLC (“D&P”),
9 2000 Market Street, Suite 2700, Philadelphia, PA 19103.

10 **Q. Did you previously submit direct testimony in this proceeding?**

11 A. Yes. My direct testimony was submitted on March 6, 2015.

12 **Q. Have your position, duties, or responsibilities with D&P changed since you last**
13 **filed testimony in this docket?**

14 A. No.

15 **Q. Are you sponsoring any exhibits to your rebuttal testimony?**

16 A. Yes. I am sponsoring Exhibit DH-4 (Confidential), which provides a graphical
17 presentation of the factors impacting the increase in the Fair Value (“FV”) of the
18 Cedar Bay power purchase agreement with FPL (“Cedar Bay PPA” or “PPA”) from
19 [REDACTED] in December 2012 to \$520 million as of August 30, 2015 as discussed
20 on pages 9-12 of this rebuttal testimony.

21 **Q. What is the purpose of your testimony?**

22 A. The purpose of my rebuttal testimony is to respond to many of the positions and
23 recommendations contained in the testimony of witness Gary D. Brunault on behalf

1 of the Office of Public Counsel (“OPC”) and witness Michael G. Lane on behalf of
2 the Florida Industrial Power Users Group (“FIPUG”). Collectively, I refer to these
3 witnesses as “the intervenor witnesses.” Specifically, I will:

- 4 • Explain certain factors supporting the appropriateness of both the selected [REDACTED]
5 discount rate used to estimate the Fair Value (“FV”) of the Cedar Bay PPA as of
6 December 10, 2012 (as presented in the April 5, 2013 D&P document entitled
7 “Valuation of Certain Tangible and Intangible Assets & Liabilities of Cogentrix
8 Power Holdings LLC”, hereafter referred to as the “Cogentrix Valuation”) as
9 well as the 7% discount rate used to estimate the FV of the PPA as of August
10 30, 2015 (as presented in the March 4, 2015 D&P report entitled “Valuation of
11 Certain Tangible and Intangible Assets of CBAS Power, Inc.” submitted as
12 confidential exhibit DH-3, hereafter referred to as the “CBAS Valuation”) in the
13 context of relevant US Generally Accepted Accounting Principles (“GAAP”)
14 guidance.
- 15 • Clarify the reasonableness of the inputs reflected in the CBAS Valuation for
16 purposes of estimating FV pursuant to relevant US GAAP guidance, including
17 Accounting Standards Codification (“ASC”) 805, *Business Combinations* and
18 ASC 820, *Fair Value Measurements and Disclosures*.
- 19 • Confirm the reasonableness of the \$520 million FV for the CBAS PPA as of
20 August 30, 2015.

1 **Q. OPC witness Brunault indicates that the 7% cost of capital used in the CBAS**
2 **Valuation is too low. Do you agree with his assessment?**

3 A. No. OPC witness Brunault accepts the appropriateness of the majority of the
4 assumptions reflected on Exhibit D.1 within the CBAS Valuation, but elects to
5 revert to the leverage assumption in the Cogentrix Valuation. This judgment
6 disregards both the debt to capital ratio of the Independent Power Producers
7 (“IPPs”) which represent a pool of potential Market Participants (as defined in
8 Exhibit DH-3 and ASC 820) as well as the fact that CBAS’s long term debt
9 (including current portion) is [REDACTED]
10 [REDACTED].

11
12 The [REDACTED] leverage which OPC witness Brunault incorrectly deemed appropriate as
13 of August 30, 2015 reflected the specific risks relating to Cedar Bay as of
14 December 10, 2012 rather than IPP observed leverage. Specifically, when Carlyle
15 acquired Cogentrix, it assumed [REDACTED] of debt related to Cedar Bay, of which
16 [REDACTED] [REDACTED] As of the date of the Cogentrix Valuation,
17 Cedar Bay also lacked a firm contract with RockTenn, its steam offtaker, that it
18 needed to maintain its status as a Qualifying Facility (“QF”). Absent certainty as of
19 December 10, 2012 that Cedar Bay would retain QF status beyond January 2016², it
20 would have been extremely difficult for the Cedar Bay debt to be economically

¹ From Cedar Bay Generating Company, Limited Partnership Financial Statements as of December 31, 2012, note 5.

² Twenty-two year contract effective January 25, 1994 per note 8 from Cedar Bay Generating Company, Limited Partnership Financial Statements as of December 31, 2012

1 refinanced.

2

3 It is worth noting that OPC witness Brunault indicated in his own testimony that
4 “Contractual risks include the possibility of losing QF status...” (page 28, line 10)
5 were risks to be considered in establishing an appropriate discount rate to estimate
6 the FV of the PPA, but then he disregarded the fact that risk in his assessment of the
7 reasonableness of the 7% discount rate used in the CBAS Valuation.

8

9 Similarly, OPC witness Brunault indicated that “FPL may very likely dispatch
10 Cedar Bay significantly more than at the assumed [REDACTED] capacity factor” (page 28,
11 line 5-6) if natural gas prices increase, but disregards the fact that continued
12 domestic growth in natural gas supply could be as likely to put continued
13 downward pressure on forecasted natural gas prices and result in a lower capacity
14 factor. The 7% discount rate in the CBAS Valuation reflects both the possibility
15 that Cedar Bay’s capacity factor could increase in a rising gas price environment,
16 and the possibility that the capacity factor could decline to the [REDACTED]
17 [REDACTED] or lower if future gas (and power) prices
18 are lower than expected.

19

20 The extension of the RockTenn Steam contract to run coterminous with the Cedar
21 Bay PPA eliminated the contractual risk that was a primary factor justifying the
22 13% discount rate (which is a key factor impacting the [REDACTED] FV estimate in
23 the Cogentrix Valuation). In fact, once the risk of early loss of QF status was

1 eliminated, a \$250 million refinancing of most of the Cedar Bay debt was
2 completed resulting in an increase in total CBAS debt to approximately [REDACTED]
3 [REDACTED] the majority of which is due in April 2020.³ This ability to raise substantial
4 debt financing (in excess of the FV assigned to the PPA in the Cogentrix Valuation)
5 provides strong evidence of the appropriateness of using the [REDACTED]
6 to estimate the FV of the PPA, the only adjustment to the discount rate suggested in
7 OPC witness Brunault's testimony.

8 **Q. FIPUG witness Lane also indicated that the 7% cost of capital used in the**
9 **CBAS Valuation is too low and suggested on page 5, line 11 of his testimony**
10 **that the 11% discount rate presented on Exhibit D.2 in the CBAS Valuation is**
11 **more appropriate to estimate the FV of the Cedar Bay PPA. Do you agree**
12 **with his comments?**

13 A. No. As clearly noted on the referenced Exhibit D.2, the debt to capital assumption
14 of [REDACTED] is reflective of a risk profile that would presume [REDACTED] operations
15 without the benefit of the Cedar Bay PPA. As noted in the prior response, Cedar
16 Bay's own capital structure (assuming the \$520 million FV and approximately [REDACTED]
17 [REDACTED] of debt outstanding) reasonably supports the rounded debt to capital of [REDACTED]
18 that is estimated on Exhibit D.1 of the CBAS Valuation, which is based on the
19 observed leverage of the IPPs who represent possible Market Participants as
20 defined in ASC 820.

³ From Cedar Bay Generating Company, Limited Partnership Financial Statements as of December 31, 2013, note 5.

1 FIPUG witness Lane is also incorrect in the statement on page 5, lines 4-5 of his
2 testimony that “The 2015 report relied on a discount rate of 7%, based on the cost
3 of capital of Florida Power & Light.” The discount rate is based on observable data
4 for IPP Market Participant peers, and reflects the risk profile of Cedar Bay being a
5 coal plant under a long-term contract with FPL, a fact that is accurate for all Market
6 Participants.

7 **Q. FIPUG witness Lane asserts on page 5 of his testimony that the CBAS**
8 **Valuation included a tax amortization benefit that was not included in the**
9 **Cogentrix Valuation. Is that assertion correct?**

10 A. No. FIPUG witness Lane indicates that “the inclusion of a tax amortization benefit
11 in the 2015 valuation that was not included in the 2014 valuation difference...”
12 (page 5, lines 14-15), combined with discount rate, “...account for approximately
13 [REDACTED] of the increase in value from 2013 to 2015” (page 5, lines 16-17). In fact, the
14 Cogentrix Valuation did include a tax amortization benefit (“TAB”, which was
15 labeled [REDACTED] on Exhibit D.2 in the Cogentrix Valuation) of
16 approximately [REDACTED]. I should note that the magnitude of the TAB is a
17 function of the correct discount rate and the pre-TAB cash flows, so the TABs that
18 are reflected in the two valuations appropriately differ.

19 **Q. OPC witness Brunault’s direct testimony indicated that the 5% Bonus**
20 **Capacity Revenue is overly optimistic. What is the basis of the 5%**
21 **assumption?**

22 A. In fact, the exact data that set forth on Exhibit GB-1 to OPC witness Brunault’s
23 direct testimony is supportive of the 5% bonus capacity revenue assumption. OPC

1 witness Brunault uses low and negative bonus capacity revenue information from
2 2007-2011 (when the plant was running at higher capacity factors and was not
3 owned by Carlyle) to obscure the fact that the average bonus capacity payment for
4 the most recent 3 years has actually been 6.25% -- significantly higher than the 5%
5 reflected in the CBAS Valuation.

6
7 FV (as defined in ASC 820) represents an exit price to a market participant, but it is
8 worth noting that the exit price would be set by the highest bidder among market
9 participants. Any bidder who would use historical data reflecting prior ownership
10 performance during a period with much higher capacity factors would likely be
11 outbid by market participants who consider the most recent three years of bonus
12 payments received (which also coincide with a dispatch profile more similar to the
13 forecasted capacity factors). In my experience, including more than one hundred
14 power plant purchase accounting and valuation projects performed over the past
15 decade pursuant to ASC 805 and predecessor regulations, it is common that
16 capacity factors (and related availability / bonus payments) in transaction deal
17 models used to develop successful bids for power plants reflect sustained high
18 performance, particularly (as in this case) if the bonus revenue has been achieved
19 for three consecutive years. OPC witness Brunault may deem 2.6% to be more
20 conservative and achievable, but a bid to purchase Cedar Bay using that assumption
21 would likely fall short of the winning bid submitted (by a Market Participant).

22 **Q. OPC witness Brunault's direct testimony recommends modification to the**
23 **computation of power prices and fuel costs, based on data provided by FPL**

1 **witness Hartman, would reduce FV by \$21 million. Do you agree with his**
2 **assessment?**

3 A. No. Each Market Participant would have its own outlook on coal price and would
4 not have knowledge of FPL’s internally developed view of the future coal price at
5 St. Johns River Power Park (“SJRPP”), so any impact related to shifting the SJRPP
6 reference price would likely be well less than the \$21 million noted on page 19, line
7 17 of OPC witness Brunault’s direct testimony. Given SJRPP has sourced the
8 majority of its coal from Illinois Basin (“IB”) mines from 2011 through 2014, the
9 comment that an IB coal price would be a better alternative to compute the Energy
10 Revenue is reasonable with respect to a Market Participant with FPL’s knowledge.
11 However, the FPL internally generated forward price information (developed as a
12 co-owner of SJRPP) provided by FPL witness Tom Hartman would not be public
13 information available to Market Participants (other than FPL) as defined in ASC
14 820, so independent data sources and CBAS data are more appropriate for
15 estimating the FV pursuant to ASC 820 guidelines.

16
17 In assessing the relevant SJRPP pricing for use in estimating Energy Revenue, the
18 [REDACTED]
19 price. However, the July 2014 Cedar Bay Monthly Operations Summary Report
20 included reference to a SJRPP delivered coal price of \$3.472/MMBtu, well above
21 the 2015 and most of 2016 forecast, and [REDACTED] includes an
22 average delivered coal price (from IB to SJRPP) for 2013 and 2014 of \$79/ton (or
23 \$3.43/MMBtu based on the 11,515 heat content). As noted previously, it is likely

1 that Market Participants each would have its own outlook on coal price (both on
2 absolute terms and on the spread between basins), and the impact to the highest bid
3 of shifting to an IB price outlook is likely well less than the \$21 million noted on
4 page 19, line 17 of OPC witness Brunault's direct testimony.

5 **Q. Both OPC witness Brunault and FIPUG witness Lane broadly focused on the**
6 **magnitude of the increase of the FV of the Cedar Bay PPA from [REDACTED]**
7 **December 2012 to \$520 million as of August 30, 2015. Please explain the major**
8 **factor impacting the increase.**

9 A. My Confidential Exhibit DH-4 provides a graphical presentation of the factors
10 impacting the increased FV. I will discuss those factors below.

11
12 *Discount Rates*

13 First it is worth noting that the period of time between the valuation dates of the
14 Cogentrix Valuation and the CBAS Valuation was more than 2 ½ years (rather than
15 the 2 years referenced). The biggest single change impacting the increase in the FV
16 of the Cedar Bay PPA is the use of a [REDACTED] discount rate for the CBAS Valuation.
17 In fact, [REDACTED] of the [REDACTED] of the increase can be linked
18 directly to the [REDACTED] in discount rate from [REDACTED] to 7%. In addition to the factors
19 addressed previously in this rebuttal testimony, there are several other
20 considerations which support the reasonableness of the discount rate decline:

- 21 • In 2003, Goldman Sachs ("GS"), acquired Cogentrix, a privately-owned
22 company owning approximately 30 power plants and 5 GW of generation
23 capacity. GS opportunistically sold off the majority of Cogentrix's assets by

1 2007, ending with the Calypso transaction with Energy Investors Funds (“EIF”).
2 After the sale of the residual ownership interest in Calypso in 2011 to EIF,
3 Cogentrix consisted of Cedar Bay, two small coal-fired QFs in Virginia, a new
4 Solar Facility in Colorado and a small Solar Steam plant at the end of its
5 operational life. GS made the determination that it would realize greatest value
6 from its residual ownership in Cogentrix only in a sale of the entire remaining
7 business (rather than continued asset sales that would leave GS the expense of
8 winding down the Cogentrix management platform and liquidating its position
9 in certain of the remaining facilities).

10
11 In this context, it is necessary to consider the relevant guidance of *Unit of*
12 *Valuation* versus *Unit of Account*. Based on GS’s determination, the asset
13 grouping which yielded the highest overall net value to GS was a sale of the
14 entire portfolio (including the management team in North Carolina). An
15 extensive sale auction process was performed, and Carlyle’s offer was selected
16 by GS (who had no reason to accept less than the best available price). At the
17 Cogentrix level, the FV (exit price to a Market Participant) was established for
18 the entire portfolio as [REDACTED] including assumed debt, and therefore the
19 sum of the individual plants and PPAs (the *Unit of Account* at which the
20 transaction would be recorded) needed to not exceed the [REDACTED] purchase
21 price for the overall Unit of Valuation.

22
23 It is possible that Cedar Bay could have been sold for greater than [REDACTED]

1 if sold separately in 2012, but GS made the determination that incremental
2 value from such a sale would be more than offset by the adverse impact on
3 proceeds or ability to sell the balance of Cogentrix. The component assets
4 (*Units of Account*) in the Cogentrix Valuation had to total to no more than the
5 purchase price for the overall *Unit of Valuation* and hence the FV of the five
6 plants and related intangible assets had to align with the overall [REDACTED]
7 FV. The [REDACTED] assigned to the Cedar Bay PPA in the Cogentrix
8 Valuation reflected an appropriate proportion of the purchase price in the
9 context of its risk and forecasted profitability relative to that of the other four
10 plants.

- 11 • In the past twelve to eighteen months, there has been a significant increase in
12 the overall appetite among buyers for contracted power assets. Substantial
13 private equity capital focused on or allocated to the energy sector has been
14 raised, and “YieldCos” (public entities committed to providing consistently
15 growing distributions) have proliferated. While YieldCos may not be the most
16 likely buyers of CBAS in particular, prices (relative to earnings) for contracted
17 power plant transactions have increased as a result of the increased competition.
18 This fact has been amplified by the availability of higher leverage at financially
19 attractive rates and terms for plants with long-term PPAs (as evidenced by the
20 aforementioned [REDACTED] refinancing by Cedar Bay in mid-2013).
21 Altogether, the implied rates of return in transactions involving plants with
22 contracted cash flows have declined from December 2012 to now as
23 competition for acquisitions of contracted power generation assets has

1 substantially increased.

2

3 *Capacity Factor*

4 The second major factor relates to the decline in forecasted capacity factor, which is
5 directly a function of the lower natural gas and market power price expectations in
6 the CBAS Valuation. The intermediate and long-term expectation for natural gas
7 prices has declined significantly since 2012, and this “flattening” of the natural gas
8 price curve makes it much more likely that Cedar Bay will maintain a capacity
9 factor of approximately [REDACTED] rather than increase to the
10 [REDACTED] range as had been assumed in the Cogentrix Valuation. Because the
11 contractual energy price is less than the variable cost (including fuel) of generating
12 the power, the lower expected capacity factor increases the FV of the Cedar Bay
13 PPA by approximately [REDACTED].

14

15 *Steam Revenues*

16 Increased expectations regarding steam revenue also impacted the FV of the Cedar
17 Bay PPA. As previously discussed, a major uncertainty related to Cedar Bay in
18 2012 centered on the lack of a steam agreement beyond 2015. Carlyle and
19 Cogentrix had concerns regarding the pricing it might have to accept in a contract
20 extension with RockTenn, as a steam agreement is needed to retain Cedar Bay’s QF
21 status. The approximately [REDACTED] annual increase in expected steam revenue
22 equates to approximately [REDACTED].

23

1 *Bonus Payment / Other*

2 The remaining [REDACTED] of the increase in the Fair Value of the
3 Cedar Bay PPA relates to a combination of other items such as the increased Bonus
4 Payment to 5%, which had a [REDACTED] rounded value, and other items like minor
5 fixed cost differences, increased near-term cash flow which more than offsets the
6 fewer remaining years in the Discounted Cash Flow (“DCF”) and rounding (as all
7 of the FV estimates have been rounded to \$10 million).

8 **Q. Are there any other facts that support the reasonableness of the \$520 Million**
9 **FV for the Cedar Bay PPA?**

10 A. Yes. As previously noted, in the period between the Cogentrix Valuation and the
11 CBAS Valuation, Cogentrix extended the term of the RockTenn steam offtake
12 agreement to run coterminous with the Cedar Bay PPA which allowed them to
13 refinance the assumed Cedar Bay debt and increase its project level borrowing to
14 approximately [REDACTED]. As it is unlikely that lenders would provide 70% or
15 80% loan-to-value (“LTV”) on a QF with approximately 11 years of remaining
16 contract life (in fact both OPC witness Brunault and FIPUG witness Lane indicate
17 leverage of [REDACTED] would be more appropriate), the refinancing alone, assuming 50%
18 to 60% LTV, indicates a FV for CBAS and the Cedar Bay PPA of \$450 million to
19 \$550 million. The leverage recommended by OPC witness Brunault and FIPUG
20 witness Lane would imply a grossed up value exceeding \$1 billion, but they likely
21 did not consider the relevance of the refinancing to either the discount rate used in
22 the CBAS Valuation or the FV of the Cedar Bay PPA, a not uncommon mistake.

23 **Q. Are there any other concerns with the direct testimony of OPC witness**

1 **Brunault or FIPUG witness Lane?**

2 A. Yes. I take particular issue with FIPUG witness Lane’s implication that FPL’s
3 obligation “to pay higher than market rates for the power purchased from Cedar
4 Bay, the purchase price appears to have been affected by undue stimulus” (page 6,
5 lines 9-11). FPL has been paying higher than market rates for power from Cedar
6 Bay for some time. The incentive for FPL to acquire Cedar Bay in 2015 relates to
7 the amount of savings it can deliver to its customers as detailed in the direct
8 testimony of FPL witness Hartman, which in turn reflects the increased differential
9 between the combined price to FPL of all payments pursuant to the Cedar Bay PPA
10 and the cost of replacement power.

11
12 While the customer savings certainly provide an incentive for FPL to consummate
13 this transaction, the FV was not based on the Buyer Specific benefits associated
14 with those customer savings. As correctly noted in OPC witness Brunault’s
15 testimony, the FV in the CBAS Valuation was established using a method
16 consistent with that used in the Cogentrix Valuation. The assumptions reflected
17 independently established data combined with historical information from
18 Cogentrix that would be made available to Market Participants in a sales process.

19 **Q. Does the testimony of OPC witness Brunault or FIPUG witness Lane change**
20 **your opinion of the FV of the Cedar Bay PPA?**

21 A. No, it does not. Based on the analysis presented in the CBAS Valuation, the PPA
22 can be reasonably estimated at \$520 million. As noted in my direct testimony, this
23 indicates that substantially all of the price being paid for CBAS is related to the net

1 settlement of the PPA.

2

3 In fact, a point made by FIPUG witness Lane on page 3, line 20-22 of his direct
4 testimony is relevant: “The Goldman sale of the Cedar Bay generating assets in
5 2013 represents an arm’s length transaction and provides a strong market
6 comparable transaction that is useful in the Valuation of the Cedar Bay generating
7 assets.” What his direct testimony fails to acknowledge is that the negotiated price
8 of \$520 million between FPL and Carlyle also represents an arm’s length
9 transaction and provides the same strong corroborative evidence useful in
10 estimating the FV of CBAS and the Cedar Bay PPA.

11

12 Likewise, OPC witness Brunault “calls into question the fortuity of the FV of the
13 PPA matching the exact purchase price negotiated seven months earlier” on page
14 26, lines 4-5. However, a purchase price allocation pursuant to ASC 805 is
15 generally performed after the purchase price is set, and the alignment of the FV of
16 assets acquired with the purchase price is an integral part of the process. In the case
17 of the CBAS acquisition, there are no cash flow benefits being acquired other than
18 those associated with the Cedar Bay PPA, so the FV of \$520 million for the Cedar
19 Bay PPA is a reasonable conclusion given the arm’s length transaction price and
20 lack of other asset (including goodwill/going concern) that could be assigned a FV.

21

22 Much as was the case in the Cogentrix Valuation, the *Unit of Valuation* is a key
23 consideration in the CBAS Valuation. The sale of the entire CBAS entity allows

1 Carlyle to maximize the value of the component assets of CBAS, and so the
2 purchase price represents strong evidence of the FV of CBAS overall as the primary
3 *Unit of Valuation*.

4

5 FIPUG witness Lane incorrectly attempts to argue against this conclusion on page
6 5, lines 22-23 of his direct testimony when he stated “The premise of value was
7 intended to be Fair Market Value...” and further indicates on page 6, lines 15-18
8 that “Florida Power and Light’s ability to cease purchases of power at higher than
9 market rates after the purchase of Cedar Bay appears to meet the definition of
10 undue stimulus and the purchase price does not reflect Fair Market Value.” In
11 addition to the misuse of Fair Value as defined in ASC 820), FIPUG witness Lane’s
12 direct testimony demonstrates a lack of appropriate consideration of *Unit of*
13 *Valuation* and *Unit of Account* in commenting on the FV conclusions to be reflected
14 in the accounting for the contemplated transaction pursuant to ASC 805.

15

16 Once the negotiated price of \$520 million for CBAS is determined to be the
17 appropriate starting point for the Purchase Price Allocation pursuant to ASC 805, it
18 is then necessary to ascribe that total amount among the *Units of Account* acquired.
19 While FPL may perceive some backup capacity value to the plant in the short run,
20 this is clearly a Buyer Specific benefit, and the plant DCF without a contract
21 demonstrates that the physical plant otherwise has no FV. Therefore, it is
22 reasonable to conclude that the full \$520 million price to be paid for CBAS is
23 attributable to the net settlement of the PPA and represents FV.

1 Q. Does this conclude your rebuttal testimony?

2 A. Yes, it does.

Docket No. 150075-EI
Major Factors Impact FV of Cedar Bay PPA
Exhibit DH-4, Page 1 of 1

Confidential in its entirety.