LEGISLATIVE, FINANCE, AND ADMINISTRATION COMMITTEE

The Legislative, Finance, and Administration Committee meeting was held on July 23, 2012 at 6:30 p.m. with Councilman Hare presiding in the absence of Chairman Lynn. Members present were Mr. Anderson, Mr. Rushe, and Mr. Shevock. Members of Council present were Mrs. Russell, Mr. Perza, Mr. Bonar, Mr. Hutchison, and Council President Leary. Mayor Carey was also present.

AGENDA ADDITIONS/DELETIONS

Mr. Anderson moved for approval of the agenda, as presented, seconded by Mr. Rushe and unanimously carried.

Proposed Amendments to Ground Lease Agreement Between Calpine and the City of Dover

Mr. William Neaton, Economic Development Manager, reviewed proposed amendments to the Ground Lease Agreement with Garrison Energy Center, LLC (Calpine Corporation) for the Garrison Oak Technology Park, as follows:

1) Paragraph 3 Lease of Premises: The property has been identified as being a portion of Lot 7, which is 36.8 acres and is depicted in Exhibit B.

2) Paragraph 5A defines the number of acres to be leased and the cost per acre. The previous agreement required quarterly lease payments. The change will read "tenant shall pay the landlord once per year."

3) Paragraph 42E, previously titled Publicity, is now deleted.

4) Now included in the Ground Lease are Exhibits A and B. Exhibit A is the description and depiction of the property, Lots 1 through 15 of the Garrison Oak Technical Park. Exhibit B is the description and depiction of the premises Lot 7 (86.4211 acres) and the leased portion of Lot 7 (36.7971 acres).

5) There are a number of grammatical and punctuation changes agreed upon between the City of Dover's attorney and Garrison Energy Center.

Mr. Neaton assured members that Mr. Kirk Betts, Attorney for the City of Dover, and Mr. John Watson, Land Specialist, Calpine Corporation, had reviewed the documents and that Calpine had accepted the revised Ground Lease Agreement as presented.

Responding to Mr. Bonar, Mr. Neaton announced that the Air Permitting is scheduled for August 8, 2012 at the Richardson & Robbins Building.

Staff recommended approval of the revised Ground Lease.

Mr. Anderson moved to recommend approval of the revised Ground Lease Agreement with the Garrison Energy Center, LLC (Calpine) as presented *(Attachment #1)*, seconded by Mr. Shevock and unanimously carried.

Review of Grant Application - Two-Way 800 MHz Radios - Fire Marshal's Office

Mr. Scott Koenig, City Manager, advised members that the Fire Marshal and the Mayor's Office had requested authorization to apply for a Delaware Emergency Management Agency (DEMA) Grant for two-way 800 MHz Radios. The City of Dover requested funding from DEMA for the purchase of 12 portable radios and five (5) mobile radios. Mr. Koenig noted that the total cost of the radios would not exceed the grant amount of $83,328.00. Members reviewed a cost analysis from Motorola Solutions provided by Magnum Electronics, which is a State vendor.

Mr. Koenig indicated that the funding for this project was provided under short notice because other municipalities in the State had not completed their projects by the due date set forth by the Federal Government. He stated that all costs associated with the project would be charged to the Fire Marshal's Office and that 100% of the project costs would be reimbursed to the City of Dover upon application for reimbursement. He advised members that it was possible that the radios would be borrowed by Public Works supervisors while assisting the Fire Marshal's Office during an emergency situation, such as a disaster; however, he noted that the use of the 800 MHz system is very restricted throughout the State.

Staff recommended authorization to complete the project and request reimbursement for all costs associated with the purchase of two-way radios and accessories.

Responding to Mr. Shevock, Mr. Koenig stated that the maintenance costs would be covered under warranty for the first year and thereafter would become a part of the radio maintenance contract. Since a majority of the radios would be replacements and the maintenance contract was based on the number of radios, staff did not anticipate any additional costs.

Mr. Shevock moved to recommend that staff be authorized to complete the project and request reimbursement from the Delaware Emergency Management Agency (DEMA) for all costs associated with the purchase of two-way 800 MHz radios and accessories. The motion was seconded by Mr. Rushe and unanimously carried.

By unanimous consent, the meeting adjourned at 6:40 p.m.

Meeting Adjourned at 6:40 P.M.

William F. Hare
Acting Chairman

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Attachment
Attachment #1 - Revised Ground Lease Agreement (Garrison Energy Center, LLC and City of Dover)

(Execution Copy)

GROUND LEASE AGREEMENT

This Ground Lease Agreement (this "**Agreement**"), dated for reference purposes only as of _____, 2012, is between The City of Dover, a Delaware municipality ("**Landlord**"), and Garrison Energy Center LLC, a Delaware limited liability company ("**Tenant**"). Landlord and Tenant shall sometimes be referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Landlord owns certain real property consisting of approximately 387 acres located in the City of Dover, County of Kent, State of Delaware, commonly known as the Garrison Tract, and more particularly described and depicted in Exhibit A attached hereto and incorporated herein by this reference (the "**Property**").

B. Pursuant to that certain Option Agreement, dated as of April 14, 2010, between Landlord, as "Optionor", and Tenant, as "Optionee" (the "**Option Agreement**"), Tenant acquired from Landlord an exclusive option to lease a portion of the Property consisting of up to 80 acres (subject to the terms of Section 3 of this Agreement) (the "**Premises**") on the terms and conditions set forth in this Agreement (the "**Option**"), for the purpose of designing, developing, constructing, installing, operating, using, maintaining and testing a dual-fuel combustion turbine power plant facility, together with appurtenant fixtures, facilities and equipment, including, but not limited to, an electric transmission line, a waste water discharge line, a gas supply pipeline, water supply line and ancillary and related uses (collectively, the "**Project**"). The Premises is described and depicted on Exhibit B attached hereto and incorporated herein by this reference.

C. Tenant has exercised the Option in accordance with the Option Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Definitions. The following terms, as used in this Agreement, shall have the definitions set forth below:

"**Applicable Laws**" shall mean any and all applicable laws, ordinances, codes, statutes, rules, regulations, orders, decisions, decrees, edicts, directives, permits and approvals issued by any Governmental Authority.

"**Business Day**" shall mean any day other than (a) a Saturday or Sunday, or (b) a day on which banking and savings and loan institutions in Dover, Delaware are authorized or obligated by law or executive order to be closed.

"**Claims**" shall mean all losses, liabilities, claims, demands, damages, causes of action, liens, obligations, fines, penalties, costs and expenses (including but not limited to all

investigation costs and reasonable consulting, engineering, reasonable in-house or outside attorney's fees or other professional fees).

"**Confidential Information**" means any and all non-public proprietary written information, data, analyses, documents, and materials furnished or made available by a Party or its Disclosure Representatives to the other Party or its Disclosure Representatives in connection with this Agreement, and any and all analyses, compilations, studies, documents, or other material prepared by the receiving Party or its Disclosure Representatives to the extent containing or based upon such information, data, analyses, documents, and materials, but does not include information, data, analyses, documents, or materials that (a) are when furnished or thereafter become available to the public other than as a result of a disclosure by the receiving Party or its Disclosure Representatives, or (b) are already in the possession of or become available to the receiving Party or its Disclosure Representatives on a non-confidential basis from a source other than the disclosing Party or its Disclosure Representatives, provided that, to the best knowledge of the receiving Party or its Disclosure Representatives, as the case may be, such source is not and was not bound by an obligation of confidentiality to the disclosing Party or its Disclosure Representatives, or (c) the receiving Party or its Disclosure Representatives can demonstrate has been independently developed without a violation of this Agreement. The Parties understand that Landlord's ability to protect confidential information is governed by the Delaware Freedom of Information Act which requires disclosure of public records (as defined by said act) upon request.

"**Disclosure Representatives**" shall mean the officers, directors, employees, legal counsel, accountants, lenders, advisors, or ratings agencies and other agents or representatives of a Party or of its affiliates.

"**Governmental Authority**" shall mean any federal, state, regional, county, municipal or other local government, authority, agency, commission, body, court, tribunal, department or division, including but not limited to Kent County Conservation District and/or any school, agricultural, conservation, landscaping, lighting, sanitary, fire, street, drainage or other improvement district.

"**Hazardous Materials**" shall mean all chemicals, materials, substances, or items in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste materials, raw materials, chemicals, finished products, by-products, or any other materials or articles, that because of their physical, chemical, or other characteristics may pose a risk of endangering human health or safety or of degrading the environment and are regulated under any environmental law, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. § 2701 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*) and, the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*).

"**Official Records**" shall mean the official records of the county where the Premises is located.

"**Personal Property Taxes**" shall mean, collectively, all personal property taxes assessed against and levied upon the Project or Tenant's fixtures, facilities, equipment or personal property located on or used in connection with the Premises.

"**Real Property Taxes**" shall include any form of real estate or ad valorem tax or assessment, general, special, ordinary or extraordinary, and any license fee, rental tax, improvement bond or bonds, levy or tax against any legal or equitable interest of Tenant or Landlord in the Project or the Premises.

"**Related Agreements**" shall mean, collectively, this Agreement, and the Power Purchase Agreement.

"**Representatives**" shall mean, collectively, a Party's employees, contractors, subcontractors, consultants, agents, representatives, invitees, licensees or permittees.

2. Effectiveness of Agreement. This Agreement shall be effective upon execution and delivery of this Agreement by both Parties hereto in accordance with the Option Agreement, however if the last Party to sign this Agreement signs on a date other than the 1st of the month, the effective date of this Agreement shall be on the 1st day of the following month or _____, 1, 2012 (the "**Effective Date**").

3. Lease of Premises. Landlord hereby leases, transfers and demises to Tenant, and Tenant hereby leases, hires and takes from Landlord, the Premises, on the terms and conditions set forth in this Agreement. The parties acknowledge that the term "Premises" as of the Effective Date and up to the day prior to the delivery of the Final Determination Notice (as defined in this Section 3 below) (the "**Construction Term**") shall mean that certain 36.8-acre portion of the Property, as determined by Tenant, being a portion of Lot 7 and depicted on Exhibit B; however, in the event that Tenant constructs a power plant (the "**Power Plant**") on a portion of the Premises (the "**Power Plant Area**"), which portion Tenant shall determine in its sole and absolute discretion, then at least sixty (60) days prior to substantial completion of the construction of the Power Plant, Tenant shall provide Landlord with written notice (the "**Final Determination Notice**") (i) describing the area and approximate number of acres comprising the "Premises", which area shall not be less than 35 acres nor more than 40 acres and shall encompass the entire Project, including the Power Plant Area, the Access Roads (as defined in Section 6 below) and Easements (as defined in Section 6 below) but excluding any portion used in connection with the construction of the Project and not incorporated into the Power Plant Area, the Access Roads or Easements and (ii) depicting the Premises, which depiction shall replace that certain Exhibit B attached hereto. Therefore, upon the delivery of the Final Determination Notice and throughout the remainder of the Term (the "**Operation Term**"), the term "Premises" shall mean that certain portion of the Property described and depicted in the Final Determination Notice.

4. Term of Lease.

(a) Term. The term of this Agreement (the "**Term**") shall commence as of the Effective Date and shall expire as of 11:59 p.m. Eastern time on the date that is thirty (30) years after the date the Final Determination Notice is delivered (the "**Expiration Date**").

(b) Extensions. Provided that the Power Plant has not been permanently retired or abandoned and a Tenant Default (as defined in Section 18) does not exist on the date that the then-current term expires, this Agreement shall automatically be extended for four (4) additional five (5) year periods on the same terms and conditions as the initial term unless Tenant terminates this Agreement at the end of the then current term by giving Landlord written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

(c) Early Termination. At any time during the Term, as the same may be extended, Tenant shall have the option (the "**Termination Option**") by providing written notice ("**Termination Notice**") to Landlord to terminate this Agreement for any reason, in which event, this Agreement shall be deemed terminated as of the

expiration of the Winding Down Period (as defined in Section 9(c) of this Agreement).

5. Base Rent.

(a) Base Rent. The annual base rent for the Premises during the Construction Term shall be Twenty Five Thousand Seven Hundred Sixty Dollars ($25,760.00) (which annual rental sum was determined by multiplying $700.00 by 36.8, which is the number of acres that Tenant will be leasing from Landlord during the Construction Term; however if that leased acreage shall at any time during the Construction Term be more or less than 36.8 acres, then the annual base rent shall be adjusted accordingly), to be to be billed by Landlord to Tenant annually and due and payable each and every year during the term of this agreement starting on the Effective Date as provided for in paragraph 2, and annually thereafter, with the first payment, if necessary, prorated to the Effective Date and the annual base rent for the Premises during the Operation Term shall be Seven Hundred and No/100ths Dollars ($700.00) per acre of Premises actually being leased pursuant to the Final Determination Notice, as adjusted periodically pursuant to Section 5(b) below (the "**Base Rent**"). Tenant shall pay to Landlord Base Rent once per year. The first Installment and each annual payment of Base Rent shall be due and payable thirty (30) days after the Landlord mails the bill to the Tenant. If the Final Determination Notice is delivered during any period for which the Base Rent has already been paid, Landlord shall prorate the Installment based on the number of days covered by the Installment and reimburse Tenant within thirty (30) days of the receipt of the Final Determination Notice.

(b) Base Rent Adjustment. The Base Rent shall be adjusted as of the first day of the first month (the "**First Adjustment Month**") of the first anniversary of the Effective Date and each subsequent annual anniversary of the Effective Date (each, an "**Adjustment Date**") to an amount equal to the product obtained when the Base Rent for the First Adjustment Month is multiplied by a fraction, the numerator of which is the "Comparison Index" (as hereinafter defined), and the denominator of which is the "Beginning Index" (as hereinafter defined). For the purpose of this Section 5(b), the following terms shall be defined as noted below:

(i) Index - The "**Index**" for computing the increases shall be the Consumer Price Index for All Urban Consumers U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics. In the event that the Index shall ever be converted to a different standard reference base or otherwise be revised, a determination of subsequent adjustment to the Base Rent shall be made with the use of such conversion factor, formula or table for converting the Index as may be published by the Bureau of Labor Statistics. In the event the Index shall cease to be published, the index designated by the Bureau of Labor Statistics as replacing the Index, or the most comparable substitute if said Bureau fails to designate a replacement, shall be used thereafter.

(ii) Beginning Index - The "**Beginning Index**" shall be defined as the Index published for the month and year that is twelve (12) months prior to the Adjustment Date or, if the Index was not published in such month, the previous month in which the Index was published.

(iii) Comparison Index - The "**Comparison Index**" shall be defined as the Index published for the month in which the applicable Adjustment Date occurs or, if the Index was not published in such month, the previous month in which the Index was published.

(c) Proration. Tenant's obligation to pay Base Rent shall be prorated, if required, at the agreements initial commencement and at the expiration of the Term.

6. Ancillary Rights.

(a) To enable Tenant to design, develop, construct, install, operate, use, maintain and test the Project, Landlord shall do the following at no additional charge to Tenant:

(i) Grant to Tenant and its Representatives a non-exclusive license to use the access roads (the "**Access Roads**") that are located on the Property and any adjacent property owned by Landlord ("**Landlord's Property**") for necessary vehicular and pedestrian ingress and egress to and from the Premises.

(ii) Grant to Tenant and its Representatives irrevocable and exclusive easements and rights-of-way (acceptable to Tenant) (the "**Exclusive Easements**") for the Term on, over, across, above and under a portion of Landlord's Property for the purpose of installing, constructing, laying, operating, using, inspecting, accessing, maintaining, repairing, altering, improving, reconstructing, replacing, removing, and abandoning the following: (1) electric transmission lines and facilities, (2) a pipeline or pipelines for the interconnection to other pipelines and transportation of oil, gas, petroleum products or any other liquids, gases, or substances which can be transported through pipelines, and (3) such utilities, lines, facilities and services that Tenant reasonably determines are necessary or appropriate. Upon the termination of this Agreement, Tenant shall have no further rights or interest in the Exclusive Easements and shall return the easement areas to Landlord in their then as-is condition with no obligations of removal, repair or replacement of any existing improvements or fixtures.

(iii) Grant to Tenant and its Representatives non-exclusive easements and rights-of way (acceptable to Tenant) (the "**Non-Exclusive Easements**," which together with the Exclusive Easements shall hereinafter be collectively referred to as the "**Easements**") on, over, across, above and under a portion of Landlord's Property for the purpose of installing, constructing, laying, operating, using, inspecting, accessing, maintaining,

repairing, altering, improving, reconstructing, replacing, removing, and abandoning the following: (1) utility lines and facilities for such utility services including, without limitation, for water, electricity, gas, steam, sewer and storm water drainage and (2) telephone, communication and information services lines and facilities (items 1-3 in Section 6(a)(ii) and items 1-2 in this Section 6(a)(iii) shall be collectively referred to herein as the "**Facilities**"), and shall also include such other activities and uses related to the Project that Tenant reasonably determines are necessary or appropriate. Landlord shall negotiate in good faith and enter into utility service agreements for services that may be provided by Landlord or other service providers at rates no less favorable than the prevailing tariff rates for industrial customers in the City of Dover.

(iv) Assist Tenant in obtaining rights-of-way and entering into easement agreements acceptable to Tenant that would burden other real property adjacent to the Premises and Landlord's Property and benefit the Premises and/or Tenant for the purpose of installing, constructing, laying, operating, using, inspecting, accessing, maintaining, repairing, altering, improving, reconstructing, replacing, removing, and abandoning the Facilities and for such other activities and uses related to the Project that Tenant reasonably determines are necessary or appropriate; provided, however, nothing herein shall be construed to obligate Landlord to take any action that would violate Applicable Laws.

(b) Provided that (i) the Relocation (as defined below) does not interrupt Tenant's access to the Project, operation of the Power Plant or the utilities services to the Power Plant, (ii) Landlord provides to Tenant alternative means of access and/or utility service to the Project during the Relocation, (iii) the rights of Tenant to the Premises are not affected by the Relocation, (iv) the new Access Roads and/or easement areas are of a similar size, type and construction as the previous Access Roads and/or easement areas, and (v) Tenant is not required to obtain any revisions to its existing licenses or permits, Landlord shall have the right to relocate (the "Relocation Right"), if necessary, at Landlord's sole cost and expense, all or part of the Access Roads and/or easement areas and the utilities and other improvements located thereon to another portion of the Property (any such relocation shall hereinafter be referred to as a "Relocation"). Landlord shall exercise its Relocation Right by delivering a written notice ("**Relocation Notice**") to Tenant at least six (6) months prior the Relocation, which Relocation Notice shall depict and describe the portion of the Access Road and/or easement area being relocated and that portion of the Property to which the Access Road and/or easement area shall be relocated. Landlord and Tenant shall mutually agree on the new location of the Access Road and/or easement area, and shall acknowledge in writing the new location of the Access Road and/or easement area. To the extent allowed by Applicable Laws, Landlord shall reimburse Tenant for any reasonable direct costs incurred by Tenant in connection with the Relocation.

7. Quiet Enjoyment. Subject to the terms of this Agreement, Tenant shall enjoy the peaceful and quiet use, possession and enjoyment of the Premises without hindrance or disturbance by Landlord or any persons claiming by, through or under Landlord.

8. Use of Premises. Tenant and its Representatives may use the Premises for the purpose of designing, developing, constructing, installing, operating, using, maintaining and testing the Project and ancillary and incidental uses, all of which shall comply with Applicable Laws, and for no other use without Landlord's prior written consent, which may not be unreasonably withheld, conditioned or delayed.

9. Title to Project.

(a) Tenant to Retain Title during Term. At all times until the expiration or earlier termination of the Term, the Project shall remain the property of Tenant for all purposes. Landlord and Tenant agree that all improvements, including fixtures, at any time constructed by or for Tenant on the Premises shall be considered with respect to the interest of Landlord and Tenant as the real property of Tenant and any Leasehold Mortgagee designated by Tenant. The Parties understand and agree that nothing in the preceding sentence shall be interpreted to bind Tenant with respect to its characterization of such improvements, including fixtures, for book and tax depreciation purposes.

(b) Title Insurance. Tenant may obtain, at Tenant's sole cost and expense, a policy of title insurance in an amount equal to the reasonable value of the Tenant's interest in the Premises, insuring Tenant's marketable title in the leasehold estate created hereunder. Landlord hereby agrees to execute all documents reasonably requested by the title company selected by Tenant in order for said title company to issue such policy of title insurance.

(c) End of Term; Removal. At the end of the Term (as may be extended) or any early termination thereof, unless Tenant provides Landlord with written notice of Tenant's desire to extend the Term beyond the extension provided for herein and continue its operations on the Premises or enter into a new lease, the Term shall be extended for thirty-six (36) months (the "**Winding Down Period**") in order to permit Tenant with sufficient time to remove the Project and all above-ground improvements, and any underground facilities (including equipment) used for the storage or movement of fuel oil, constructed by Tenant, or on behalf of Tenant (collectively, the "**Improvements**"), from the Premises. Tenant shall be responsible for the payment of rental on the Premises from the start of the Winding Down Period until the completion of the Improvement removal. During the Winding Down Period, Tenant shall also perform a Phase I inspection of the Premises and shall remove from the Premises, in compliance with Applicable Laws, any Hazardous Materials identified on the Phase I inspection that were not on the Premises prior to the Effective Date and were not placed on the Premises by Landlord, its agents or contractors, but only to the extent such removal is required under Applicable Laws. Notwithstanding anything in this Section 9 to the contrary, Tenant shall not be responsible for, and Landlord and Tenant shall

cooperate with each other in determining and/or prosecuting the source of, any Hazardous Materials that migrate, flow, percolate, diffuse, or in any way move on to, or under, the Premises after the Effective Date. The Premises shall be returned to Landlord at the expiration of the Winding Down Period with all Improvements removed or in such other condition mutually acceptable to Tenant and Landlord.

10. Purchase Option. Notwithstanding anything in Sections 4(c) and 9(c) to the contrary, Landlord shall have the right to purchase the Project (the "**Purchase Option**") by delivering written notice (the "**Option Notice**") to Tenant with one hundred twenty (120) days after Tenant has delivered the Termination Notice to Landlord, if applicable, or no later than one hundred eighty (180) days prior to expiration of Term. If Landlord fails to timely exercise the Purchase Option as provided herein, then Landlord shall have no right to exercise the Purchase Option and it shall terminate and be of no further force or effect. Time is of the essence with respect to the time deadline imposed on Landlord in this Section 10. The Project shall be sold to Landlord pursuant to terms and conditions mutually acceptable to Landlord and Tenant, provided, however, if Landlord and Tenant cannot agree on the terms of the purchase and sale of the Project within one hundred twenty (120) days of the delivery of the Option Notice to Tenant, the Purchase Option shall be deemed terminated, Landlord shall have no further rights to purchase the Project, and Tenant shall proceed as provided in Section 9(c) above.

11. Required Permits. Tenant shall apply for and obtain at Tenant's sole cost and expense all governmental and non-governmental authorizations, consents, permits, approvals, entitlements, licenses, rulings, exemptions, variances, orders, judgments, decrees, declarations or regulations necessary to design, develop, construct, install, operate, use, maintain and test the Project (collectively, the "**Required Permits**"). Landlord shall (i) promptly sign applications for such Required Permits in its capacity as the record owner of the Premises if the record owner's signature is required by the issuing authority, (ii) not oppose or delay Tenant's efforts to acquire such Required Permits, and (iii) reasonably cooperate with Tenant with respect to such Required Permits. During the Term, Tenant shall, at Tenant's sole cost and expense, maintain the Required Permits and all other authorizations necessary in connection with the construction, operation and maintenance of the Project.

12. Maintenance and Repair. Tenant shall promptly and diligently maintain the Project in good condition and repair, ordinary wear and tear accepted, and shall maintain both the Project and the Premises in material compliance with all Applicable Laws and Required Permits. Tenant shall be responsible and liable for any damage to or destruction of the Premises, except to the extent such damage or destruction is the result of the negligence or willful misconduct of Landlord or Landlord's Representatives. Whether such damage or destruction results from an occurrence that is insured by Tenant, Tenant shall promptly repair, restore and remedy any damage to or destruction of the Premises, except to the extent such damage or destruction is the result of the negligence or willful misconduct of Landlord or Landlord's Representatives, or in the event that Tenant determines, in Tenant's sole and absolute discretion, that the Premises or the Project cannot be substantially repaired and restored within one (1) year from the date of the casualty or in the event that there is less than five (5) years left in the Term, in which event Tenant shall

have the right to terminate this Agreement by providing Landlord with written notice.

13. Pre-Existing Environmental Conditions. Landlord agrees to assume full and complete responsibility for any and all excavation, cleanup, assessment, remediation and/or monitoring activities that may be required during the Term by any Governmental Authority (including, without limitation, any federal or state court, any federal, state or local agency with jurisdiction over the Premises) for any and all materials, pollutants, irritants, contaminants and Hazardous Material (as defined in Section 1) that would constitute a violation of environmental laws existing in, on, under, or emanating from the soil, surface water, groundwater or subsurface at the Premises, in each case prior to the Effective Date. As of the date of this Agreement, Tenant has inspected the Premises and that inspection has not revealed any conditions that would constitute a violation of environmental laws. The parties agree that the foregoing does not constitute a waiver as to any conditions that Tenant may later discover on the Premises.

14. Taxes. Tenant shall be responsible and shall pay all real and personal property taxes imposed by a Governmental Authority on the Premises and the Project.

15. Compliance Inspections. Landlord shall have the right to enter the Premises (i) at any time, in the case of an emergency, and (ii) otherwise at reasonable times upon not less than five (5) Business Days' prior notice via the telephone or e-mail and during normal business hours, in each case for the purpose of inspecting the condition of the Premises and for verifying compliance by Tenant with this Agreement and all Applicable Laws and Required Permits. Nothing herein shall limit the right of Landlord or other governmental employees to access said Premises in the course of normal governmental business for safety, health or taxing, or to exercise normal police powers.

16. Mutual Indemnification. Landlord and Tenant shall each indemnify, defend, protect and hold harmless the other and its successors and assigns, and each of their respective Representatives from and against any and all Claims related to or arising out of (i) any breach of the indemnifying party's representations or warranties contained in this Agreement, (ii) the actions or omissions of the indemnifying party (or the indemnifying party's Representatives and any other entity or individual for whom the indemnifying party is responsible), or (iii) any default by the indemnifying party under any provisions of this Agreement; except to the extent such Claims may be due to or caused by the negligence or willful misconduct of the other party or its Representatives. The indemnifying party shall pay all reasonable attorneys' fees and legal costs incurred by the other party in order to enforce the indemnifying party's obligations hereunder.

17. Landlord Default and Remedies.

(a) Landlord Default. The occurrence of the following shall constitute a "**Landlord Default**" under this Agreement: Landlord shall have failed to perform any obligation to be performed by Landlord or violated any material term, covenant or condition applicable to Landlord under this Agreement within the time frame specified, and such failure or violation shall be continuing following written notice and the expiration of a thirty (30) day remedy period (provided, however,

that if more than thirty (30) days is reasonably required in order to perform such obligations or remedy such violations, Landlord shall have such longer period as reasonably necessary to complete such performance or remedy, provided that Landlord commences such performance or remedy within such thirty (30) day period and thereafter diligently prosecutes such performance or remedy to completion).

(b) Remedies. Upon the occurrence of a Landlord Default, without any requirement of further notice or demand, Tenant shall be entitled to pursue any remedy at law or in equity available to Tenant as a result of such Landlord Default.

18. Tenant Default and Remedies.

(a) Tenant Default. The occurrence of any of the following shall constitute a "**Tenant Default**" under this Agreement:

(i) Tenant shall have failed to make any payment of Base Rent or any other payment required to be made by Tenant to any third party under this Agreement, and such failure shall have continued for a period of thirty (30) days after Tenant's receipt of written notice of such failure.

(ii) Tenant shall have failed to perform any obligation to be performed by Tenant or violated any material term, covenant or condition applicable to Tenant under this Agreement (other than those set forth in Section 18(a)(i) above) within the time frame specified and such failure or violation shall be continuing following written notice and the expiration of a thirty (30) day remedy period (provided, however, that if more than thirty (30) days is reasonably required in order to perform such obligations or remedy such violations, Tenant shall have such longer period as reasonably necessary to complete such performance or remedy, provided that Tenant commences such performance or remedy within such thirty (30) day period and thereafter diligently prosecutes such performance or remedy to completion).

(b) Remedies. Upon the occurrence of a Tenant Default, without any requirement of further notice or demand but subject to the rights of the Leasehold Mortgagee under Section 22 of this Agreement, Landlord shall thereafter have the right to reenter or repossess the Premises, either by summary proceedings, surrender or otherwise, and dispossess and remove therefrom Tenant or other occupants thereof and their effects. In such case, Landlord shall use reasonable efforts to re-let the Premises or any part thereof at the highest rental rate reasonably attainable as the agent of Tenant, with Tenant remaining liable to pay Landlord rent and other charges reserved herein for the balance of the term, less the actual rental received for the Premises for the same period; or Landlord at its option may terminate this Agreement, thereby releasing Tenant from any further liabilities hereunder. Should the actual rental received for the Premises be less than the rent provided herein, Tenant shall pay such deficiency on a monthly basis. The

remedy provided herein for the breach of any obligation shall be exclusive, with the exception that Landlord may bring an action for any rent that has accrued and is otherwise delinquent. Neither consequential nor punitive damages are recoverable.

19. Dispute Resolution.

(a) General. It is the intent of the Parties that disputes arising from or related to this Agreement shall be resolved as quickly as possible. Accordingly, each Party shall designate a representative in writing (which representative may be changed from time to time in accordance with the notice provision set forth in Section 20 of this Agreement) to whom disputes shall be referred. The Parties shall attempt in good faith to resolve any such dispute by negotiations between such representatives. When resolution is not possible, the Parties may seek to resolve such disputes in the manner set forth elsewhere in this Section 19.

(b) Escalated Dispute Resolution Procedure. The Parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiations between a decision-making representative designated by Landlord and an executive of similar authority of Tenant. Either Party may give the other Party written notice of any such dispute. Within ten (10) days after delivery of the notice, the designated representatives shall meet at a mutually acceptable time in the City of Dover, and thereafter as often as they reasonably deem necessary to exchange information and attempt to resolve the dispute.

(c) Confidentiality of Dispute Resolution Negotiations. All negotiations conducted pursuant to this Section shall be confidential and treated as compromise and settlement negotiations. Each Party is required to continue to perform its obligations under this Agreement pending resolution of any dispute arising out of or relating to this Agreement.

(d) Injunction. Notwithstanding the foregoing provisions, a Party may seek a preliminary injunction or other provisional judicial remedy if in its judgment such action is necessary to avoid irreparable damage.

(e) Jurisdiction. All disputes shall be litigated in a Delaware State Court, or if jurisdiction cannot be obtained in a Delaware State Court, then in a Federal Court of competent jurisdiction, and the Parties hereby agree to the jurisdiction of such courts.

20. Notices.

(a) All notices to be given under this Agreement shall be in writing and either: (i) sent by a nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) Business Day after deposit with this courier, or (ii) sent by telecopy or similar means, if a copy of the notice is also sent by United States mail or overnight courier, in which case notice shall be deemed delivered on

transmittal by telecopier or other similar means, provided that a transmission report is generated reflecting the accurate transmission of the notices, as follows:

Landlord:	City of Dover 15 E. Loockerman St. Dover, DE 19903 Attention: City Manager Telephone: (302) 736-7005 Facsimile: (302) 270-6246 Email: skoenig@dover.de.us
Tenant:	Calpine Corporation 717 Texas Avenue Suite 1000 Houston, TX 77002 Attn: Legal Department Telephone: 713 830 8667 Facsimile: 713 830 8705 Calpine Corporation VP of Strategic Origination 500 Delaware Avenue Suite 600 Wilmington, DE 19801 Telephone 302 468 5325 Facsimile: 302 468 5401 Email: champe.fisher@calpine.com

(b) These addresses may be changed by written notice to the other Party provided that no notice of a change of address shall be effective until actual receipt by the Parties of the notice.

(c) In the event that Tenant receives notice that it is allegedly in default of any agreement entered into by Tenant with a party other than Landlord directly relating to the Project, Tenant shall notify Landlord of said default within 30 days of Tenant's receipt of said notice.

21. Assignment.

(a) Tenant shall have the right, without Landlord's consent, to assign this Agreement if the assignment is an Excluded Transaction (as defined below). As used in this Agreement, the term "Excluded Transaction" shall mean any of the following: (i) any assignment of this Agreement to any corporation or entity which is directly or indirectly (1) the parent of Tenant, (2) a subsidiary of Tenant, or (3) an affiliate

of Tenant; (ii) any assignment of this Agreement or sublease of all or any part of the Premises to any entity succeeding to substantially all the business and assets of Tenant, whether by merger, consolidation, purchase of assets or otherwise; or (iii) any collateral assignment of this Agreement to a Leasehold Mortgagee. In connection with Tenant's collateral assignment of this Agreement to a Leasehold Mortgagee (as defined in Section 22 below), Landlord shall execute a consent to the collateral assignment in a form and substance reasonably satisfactory to Landlord, Tenant and such Leasehold Mortgagee. Tenant shall be released from its obligations under this Agreement following an Excluded Transaction. No change of stock ownership, partnership interest or control of Tenant or transfer upon partnership or corporate dissolution of Tenant shall constitute an assignment hereunder.

(b) Except as set forth above, Tenant may not assign its rights, title or interest under this Agreement without Landlord's consent, which may not be unreasonably withheld, conditioned or delayed. Landlord shall consent to the assignment if (i) Tenant's assignee has fully assumed all of the obligations of Tenant under this Agreement, (ii) Tenant's assignee has the same, or greater, creditworthiness as Tenant as of the execution of this Agreement, and (iii) Tenant's assignee has the same, or greater, level of experience as Tenant in developing and operating a power plant project. In the event that Landlord does not respond to Tenant's request for consent to its assignment of this Agreement within thirty (30) days after Tenant's delivery of said request to Landlord, Landlord shall be deemed to have consented to the assignment.

(c) In no event shall Landlord sell or assign Landlord's interest in the Premises, unless Tenant has consented to said assignment or sale in writing, which consent shall not be unreasonably withheld or delayed, provided that the transferee has fully assumed all of the obligations of Landlord (including the liability for any existing or uncured defaults) under this Agreement.

22. Leasehold Mortgage Provisions.

(a) Encumbrance by Leasehold Mortgagee. Tenant shall have the right at any time during the Term, without obtaining Landlord's consent, to encumber the leasehold estate created by this Agreement and the Project with a mortgage, deed of trust or other security instrument (each, a "**Leasehold Mortgage**") to secure repayment of any loan or financing to Tenant by any lender (a "**Leasehold Mortgagee**") and to record such Leasehold Mortgage in the public records.

(b) Leasehold Mortgagee Protection Provisions.

(i) Landlord shall deliver to the Leasehold Mortgagee a copy of any written notice relating to Tenant's breach, violation or failure to perform its obligations under this Agreement, concurrently with the delivery to Tenant of such notice. For such purpose, Tenant shall notify Landlord of the name and address for each Leasehold Mortgagee in writing. Landlord

shall only have the obligation to deliver notices to a Leasehold Mortgagee for whom it has received written notification from Tenant pursuant to the terms of this Agreement. There shall be no cancellation, surrender or modification of this Agreement by joint action of Landlord and Tenant without the prior written consent of each Leasehold Mortgagee.

(ii) Upon the receipt of any written notice relating to Tenant's breach, violation or failure to perform its obligations under this Agreement, the Leasehold Mortgagee shall have the right, but not the obligation, to cure such breach, violation or failure within sixty (60) days after the expiration of Tenant's grace period set forth in Section 18(a), if any, given Tenant for such cure under this Agreement. If prior to the expiration of the applicable grace period, the Leasehold Mortgagee shall cure all monetary breaches and give Landlord written notice that Leasehold Mortgagee intends to (A) undertake the cure of any non-monetary breaches, violations or failures, or (B) exercise its rights to acquire the interest of Tenant in this Agreement by foreclosure or otherwise, and shall immediately commence and then proceed with all due diligence to completion, then Landlord shall not terminate or take any action to effect a termination of this Agreement or reenter or take possession of the Premises so long as the Leasehold Mortgagee is diligently effecting such cure or foreclosure (or deed in lieu of foreclosure).

(iii) Landlord shall accept such performance by the Leasehold Mortgagee as though the same had been performed by Tenant, and for such purpose Landlord hereby authorizes the Leasehold Mortgagee to enter upon the Premises and to exercise any of Tenant's rights and duties under this Agreement, so long as the Leasehold Mortgagee complies in all material respects with the terms and conditions of this Agreement as the same relate to the Tenant hereunder.

(iv) If this Agreement terminates for any reason prior to the Expiration Date other than for an uncured Tenant Default, or in the event of the rejection of this Agreement by Tenant or a trustee in bankruptcy under the provisions of the Bankruptcy Code, 11 United States Code Section 365, then within sixty (60) days following such termination or such rejection of this Agreement, the Leasehold Mortgagee or any purchaser at a foreclosure sale or any purchaser, grantee, or assignee of a deed in lieu of foreclosure shall have the right, but not the obligation, to receive from Landlord a duly executed and valid and enforceable agreement granting the Leasehold Mortgagee or such purchaser, grantee or assignee the right to use the Premises for the balance of the then-unexpired Term (immediately prior to the termination or rejection) containing provisions identical to the provisions of this Agreement, except such provisions designating the parties thereto, and accompanied by a duly executed memorandum of such new agreement in suitable form for recording. In connection with such new agreement, the ownership of the Project located

on the Premises, if any, shall be deemed to have been transferred to the Leasehold Mortgagee, and in the event of a subsequent assignment by the Leasehold Mortgagee, then to such assignee and its successors and assigns, in each case subject to the provisions of this Agreement relating to title of the Project upon the expiration of the Term or termination of this Agreement. Any new agreement entered into between Landlord and the Leasehold Mortgagee shall have the same relative priority as this Agreement. Leasehold Mortgagee shall have no obligations or liability under any of the terms of this Agreement unless and until Leasehold Mortgagee shall become the owner of the leasehold estate by way of foreclosure, by a deed in lieu of foreclosure or otherwise.

(v) Tenant's interest in this Agreement may be assigned pursuant to judicial or non-judicial foreclosure or a conveyance in lieu of foreclosure (a "**Foreclosure Transfer**"). Any transferee under a Foreclosure Transfer, and any Leasehold Mortgagee that acquires Tenant's interest under this Agreement, may assign this Agreement and shall thereupon be released from all liability as Tenant under this Agreement from and after the date of such assignment.

(vi) The cancellation or surrender of this Agreement by Tenant, or any amendment that shall materially impair Leasehold Mortgagee's security interest in the leasehold estate, shall not be effective as against a Leasehold Mortgagee without the written consent of the Leasehold Mortgagee (which consent may be given or withheld in its reasonable discretion).

(vii) Landlord shall negotiate in good faith with any proposed Leasehold Mortgagee regarding a commercially reasonable amendment to this Agreement or other documents necessary to implement the Leasehold Mortgagee protection provisions contained in this Agreement and allow such Leasehold Mortgagee reasonable means to protect or preserve the lien of the Leasehold Mortgage upon the occurrence of a Tenant Default.

23. Estoppel Certificates.

(a) Estoppel Certificate by Landlord. Within thirty (30) days after written request therefor from a Leasehold Mortgagee or from Tenant, Landlord shall deliver to the Leasehold Mortgagee (and any other party identified by the Leasehold Mortgagee or by Tenant) an estoppel certificate signed by Landlord in form reasonably designated by the Leasehold Mortgagee certifying: (i) that this Agreement is unmodified and in full force and effect, (ii) the Base Rent payable under this Agreement, (iii) the nature of any Tenant Default alleged by Landlord, (iv) that no Landlord Default has occurred and is continuing, and (v) such other matters as are reasonable and customary in a landlord estoppel certificate.

(b) Estoppel Certificate by Tenant. Within thirty (30) days after written request therefore from Landlord, Tenant shall deliver to Landlord (and any other party identified by Landlord) an estoppel certificate signed by Tenant in form reasonably designated by Landlord certifying: (i) that this Agreement is unmodified and in full force and effect, (ii) the Base Rent payable under this Agreement, (iii) the nature of any Landlord Default alleged by Tenant, (iv) that no Tenant Default has occurred and is continuing, and (v) such other matters as are reasonable and customary in a tenant estoppel certificate.

24. Landlord's Representations and Warranties.

(a) Landlord hereby represents and warrants to Tenant, as of the Effective Date:

(i) Landlord has the requisite right, power and authority to execute, deliver and perform the terms and conditions of this Agreement. Landlord has taken all action necessary to authorize the execution, delivery and performance of the terms and conditions of this Agreement, including, but not limited to, obtaining any city council or board approval and any other necessary government approvals. The individual executing this Agreement has been duly authorized to do so. The performance by Landlord of Landlord's obligations and responsibilities under this Agreement will not violate or constitute a default under the terms and provisions of any material agreement, document or instrument to which Landlord is a party or by which Landlord or the Premises is bound or affected. All proceedings required to be taken by or on behalf of Landlord to authorize Landlord to execute, deliver and perform the terms and conditions of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by Landlord of its obligations under this Agreement.

(ii) This Agreement constitutes or shall constitute the valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms.

(iii) Landlord owns the Premises in fee and has marketable and good title of public record and in fact.

(iv) Landlord has not received written notice from any party of any actions, suits, claims, legal proceedings or any other proceedings affecting the Premises, or any portion thereof, at law or in equity, before any court or governmental agency, domestic or foreign.

(v) Landlord has not received written notice from any governmental agency pertaining to the violation of any law or regulation affecting the Premises.

(vi) Landlord has not received written notice of any pending or threatened governmental proceedings in eminent domain, for rezoning or otherwise, which would affect the Premises or any portion thereof.

(vii) No prior agreements have been entered into or options or rights granted by Landlord to any third parties to purchase or lease any interest in the Premises, or any part thereof.

(viii) Landlord has not received written notice of any default with respect to any of its obligations or liabilities pertaining to the Premises.

(b) The representations and warranties set forth in this Section 24 shall survive the expiration or earlier termination of the Term for a period of twelve (12) months.

25. Tenant's Representations and Warranties.

(a) Tenant hereby represents and warrants to Landlord, as of the Effective Date:

(i) Tenant is a limited liability company, duly organized and existing in the State of Delaware, and has the requisite right, power and authority to execute, deliver and perform the terms and conditions of this Agreement and to consummate the transactions contemplated in this Agreement.

(ii) Tenant has taken all action necessary to authorize the execution, delivery and performance of the terms and conditions of this Agreement. The individual executing this Agreement has been duly authorized to do so.

(iii) The performance by Tenant of Tenant's obligations and responsibilities under this Agreement will not violate or constitute a default under the terms and provisions of Tenant's bylaws or any material agreement, document or instrument to which Tenant is a party or by which Tenant is bound or affected.

(iv) All proceedings required to be taken by or on behalf of Tenant to authorize Tenant to execute, deliver and perform the terms and conditions of this Agreement have been duly and properly taken. No further consent of any person or entity is required in connection with the execution and delivery of, or performance by Tenant of its obligations under this Agreement.

(v) There are no suits, proceedings, judgments, rulings or orders by or before any Governmental Authority or arbitrator or any pending or threatened action or proceeding affecting Tenant or its affiliates before any Governmental Authority or arbitrator (a) that could reasonably be expected to materially and adversely affect the ability of Tenant to perform its obligations under this Agreement or Tenant's ability to operate the Project, or (b) which purports to affect the legality, validity or enforceability of this Agreement.

(vi) It is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

(vii) There is no pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(viii) This Agreement is the legal, valid and binding obligation of Tenant, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(b) The representations and warranties set forth in this Section 25 shall survive the expiration or earlier termination of the Term for a period of twelve (12) months.

26. Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Delaware, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

27. No Joint Venture. Nothing contained in this Agreement shall be interpreted as creating a joint venture, partnership, or any other relationship between the Parties, other than the relationship described in this Agreement.

28. Legal Representation. The provisions of and exhibits to this Agreement have been prepared, examined, negotiated and revised by each Party and their respective lawyers, and no implication shall be drawn and no provision shall be construed against any Party hereto by virtue of the purported identity of the drafter of this Agreement, or any portion thereof.

29. Litigation Costs. If either party files any action or brings any proceeding against the other arising from or related to this Agreement, the prevailing party shall be entitled to recover from the other party as an element of its costs of suit, and not as damages, reasonable attorneys' fees, costs and expenses incurred in the action or proceeding, including any appeal thereof. The "**prevailing party**" within the meaning of this Section 29 shall be the party determined to be the prevailing party by a court of law. In the event the action is settled and subsequently dismissed (even in exchange for sums allegedly due) prior to final judgment, each party shall pay their own attorneys' fees.

30. Waiver of Right to Jury Trial. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER TRANSACTION, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF TENANT

OR LANDLORD. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT.

31. Force Majeure. The time periods for the performance of any obligations of each of the Parties under this Agreement, other than financial obligations, shall be extended by one (1) day for every day that such Party is prevented or delayed in performing such obligations by reason of any event or circumstance to the extent beyond the control of, and not the result of the negligence of, or caused by, the Party seeking to have its performance obligation excused thereby, which by the exercise of due diligence such party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome.

32. Memorandum of Lease. Landlord shall execute and deliver a memorandum of lease in the form attached hereto as Exhibit C in order to give notice of this Agreement; provided, however, the relations between Landlord and Tenant with respect to the Premises shall be governed solely by the provisions of this Agreement and not by any such memorandum of lease. The cost of recording such memorandum of lease and any and all state, county, and municipal conveyance and/or transfer or documentary taxes and fees due in connection with this Agreement shall be paid by Tenant.

33. Condemnation.

(a) Landlord hereby waives it right to terminate this Agreement or any portion thereof by condemnation, eminent domain or exercise of a similar power.

(b) If any portion of the Premises is taken pursuant to condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking by Governmental Authority having jurisdiction (other than Landlord, who has waived said rights pursuant to Section 33(a)above), then this Agreement shall terminate as to such portion. Upon a taking of any portion of the Premises, Base Rent shall be reduced by an amount equal to the product of (a) the Base Rent otherwise payable under this Agreement, multiplied by (b) a fraction, the numerator of which is the square footage of the Premises taken and the denominator of which is the square footage of Premises immediately prior to such taking. If the remaining portion of the Premises is insufficient for Tenant's use as determined by Tenant in Tenant's sole and absolute discretion, then Tenant shall have the right to terminate this Agreement upon providing thirty (30) days' written notice thereof to Landlord. In the event of a complete taking, this Agreement shall terminate and be of no further force or effect.

(c) Both Tenant and Landlord shall have the right to participate in any condemnation proceedings. Each shall notify the other promptly of any contemplated or threatened condemnation proceeding of which it shall become aware and shall keep the other informed of developments with respect thereto.

34. No Prior or Other Agreements. The Related Agreements contain all agreements between the parties with respect to any matter mentioned therein, and no other prior or

contemporaneous agreement or understanding shall be effective.

35. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Agreement.

36. Brokers. Tenant and Landlord each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder in connection with the negotiation of this Agreement or the consummation of the transactions contemplated hereby, and that no broker or other person, firm or entity is entitled to any commission or finder's fee in connection with said transactions.

37. Severability. The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof. In the event any such provision of this Agreement is so held invalid, the Parties shall promptly renegotiate in good faith new provisions to restore this Agreement as near as possible to its original intent and effect.

38. Amendment. This Agreement may not be amended, modified or supplemented except by a writing signed by all Parties.

39. Covenants and Conditions. All provisions of this Agreement to be observed or performed by the Parties are both covenants and conditions.

40. Further Assurances. Landlord and Tenant shall promptly sign all further commercially reasonable documents necessary to accomplish the intent of this Agreement.

41. Sovereign Immunity. By executing this Agreement, Landlord waives any right it may have to assert any defense of sovereign immunity from suit in any proceeding against it in any court or other tribunal of the United States that is based upon a claim arising out of this Agreement.

42. Confidentiality.

(a) Confidentiality Obligations. Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Section 42(b), each receiving Party shall (i) keep strictly confidential and take reasonable precautions to protect against the disclosure of all Confidential Information, and (ii) use all Confidential Information solely for the purposes of performing its obligations under this Agreement and not for any other purpose; provided that a Party may disclose the Confidential Information to those of its Disclosure Representatives who need to know such information for the purposes of performing the receiving Party's obligations under this Agreement if, but only if, prior to being told of such matters or being given access to Confidential Information, such Disclosure Representatives are informed of the confidentiality thereof and the requirements of this Agreement and are directed to comply with the requirements of this Agreement. Each Party will be responsible for any breach of this Agreement by its Disclosure Representatives.

(b) Disclosures to or by Governmental Authorities. Each Party and its Disclosure Representatives may disclose the terms, conditions or other facts with respect to this Agreement and all Confidential Information furnished or made available by either Party pursuant to this Agreement:

(i) To duly authorized Governmental Authorities; and

(ii) To the extent necessary to comply with any Applicable Law, including the Delaware Freedom of Information Act, Title 29, Chapter 100, of the Delaware Code;

Provided, however, that the disclosing Party shall, prior to any such disclosure by it or its Disclosure Representatives, use reasonable efforts to notify the other Party that a disclosure has been requested to allow said other Party to seek confidential treatment, at its own cost or said other Party's cost, by the Governmental Authority of the Confidential Information or other information disclosed to any of them by the disclosing Party or its Disclosure Representatives under this Section 42.

(c) Ownership and Return of Information. All Confidential Information shall be and remain the property of the Party providing it. Nothing in this Agreement shall be construed as granting any rights in or to Confidential Information to the Party or Disclosure Representatives receiving it, except the right of use in accordance with the terms of this Agreement. Upon the written request of a Party, all Confidential Information, including all written or recorded copies thereof, shall be promptly returned to the requesting Party or destroyed, and if destroyed, such destruction shall be certified in writing to the requesting Party by a responsible officer of the other Party.

(d) Enforcement. The Parties agree that irreparable damage would occur if the confidentiality obligations under this Agreement were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party will be entitled to seek an injunction or injunctions to prevent breaches of this Section 42 and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.

(e) Publicity. Intentionally Deleted.

[Signatures on Following Page]

The Parties have read this Agreement, understand it and agree to be bound by its terms as of the dates set forth below.

LESSOR:

The City of Dover, a Delaware municipality

By: _____

Name: _____

Title: _____

Date: _____

LESSEE:

Garrison Energy Center LLC, a Delaware
limited liability company
By: _____

Name: _____

Title: _____

Date:_____

EXHIBIT A

DESCRIPTION & DEPICTION OF THE PROPERTY (Lots 1-15)
Garrison Oak Technical Park

EXHIBIT B

DESCRIPTION & DEPICTION OF THE PREMISES
Lot 7 (86.4211 acres) & Leased Portion of Lot 7 (36.7971 acres)

EXHIBIT C

MEMORANDUM OF LEASE

RECORDING PREPARED BY AND
WHEN RECORDED, RETURN TO:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, TX, 77002
Attn: Jackie Thomas

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

TAX PARCEL NUMBER: LC-05-068.00-01-03.00-00001 (Portion of)

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this "**Memorandum**") is made and entered into as of the _____ day of _____, 2012, by and between _The City of Dover, a Delaware municipality, ("**Landlord**"), and Garrison Energy Center, LLC, a Delaware limited liability company, ("**Tenant**").

FACTUAL CONTEXT

A. Landlord is the owner of certain real property in the City of Dover, County of Kent, State of Delaware (the "**Property**"), which real property is more particularly shown and described in Exhibit A hereto as Lots 1 to 15 in the Garrison Oak Technical Park.

B. Landlord and Tenant are parties to that certain Ground Lease Agreement dated _____ 2012__ (the "**Lease**"), whereby Tenant leases a portion of Lot 7 on the Property (the "**Premises**"), as shown in Exhibit A hereto. All words and phrases used herein, and which are not defined herein, shall have the meaning given thereto in the Lease. As provided in the Lease, Landlord and Tenant desire to evidence the Lease in the Official Records of Kent County, Delaware (the "**Records**").

NOW, THEREFORE, in consideration of the foregoing and TEN DOLLARS ($10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord does hereby demise, lease and let unto Tenant the Premises, as follows:

1. The Term of the Lease shall be for a thirty (30) year period, subject to four (4) renewal terms of five (5) years each and Tenant's early termination option. The initial Term commenced on _____ ___, 2012 and shall expire on _____ ___, 2042.

2. This Memorandum is subject to all conditions, terms and provisions of the Lease (all of which are hereby ratified and affirmed), which agreement is hereby adopted and made a

part hereof by reference to the same in the same manner as if all the provisions thereof were copied herein in full.

3. In the event of a conflict between the terms of the Lease and this Memorandum, the Lease shall prevail. Reference should be made to the Lease for a more detailed description of all matters contained in this Memorandum.

4. The Lease provides that it binds and benefits Landlord and Tenant and their respective successors and assigns.

5. This Memorandum shall be recorded in the Records of Kent County, Delaware.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum effective as of the date first written above.

LANDLORD:	TENANT:
City of Dover , a Delaware municipality	Garrison Energy Center, LLC, a Delaware limited liability company
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

DESCRIPTION & DEPICTION OF THE PROPERTY & PREMISES

Garrison Oak Technical Park

EXHIBIT "A"

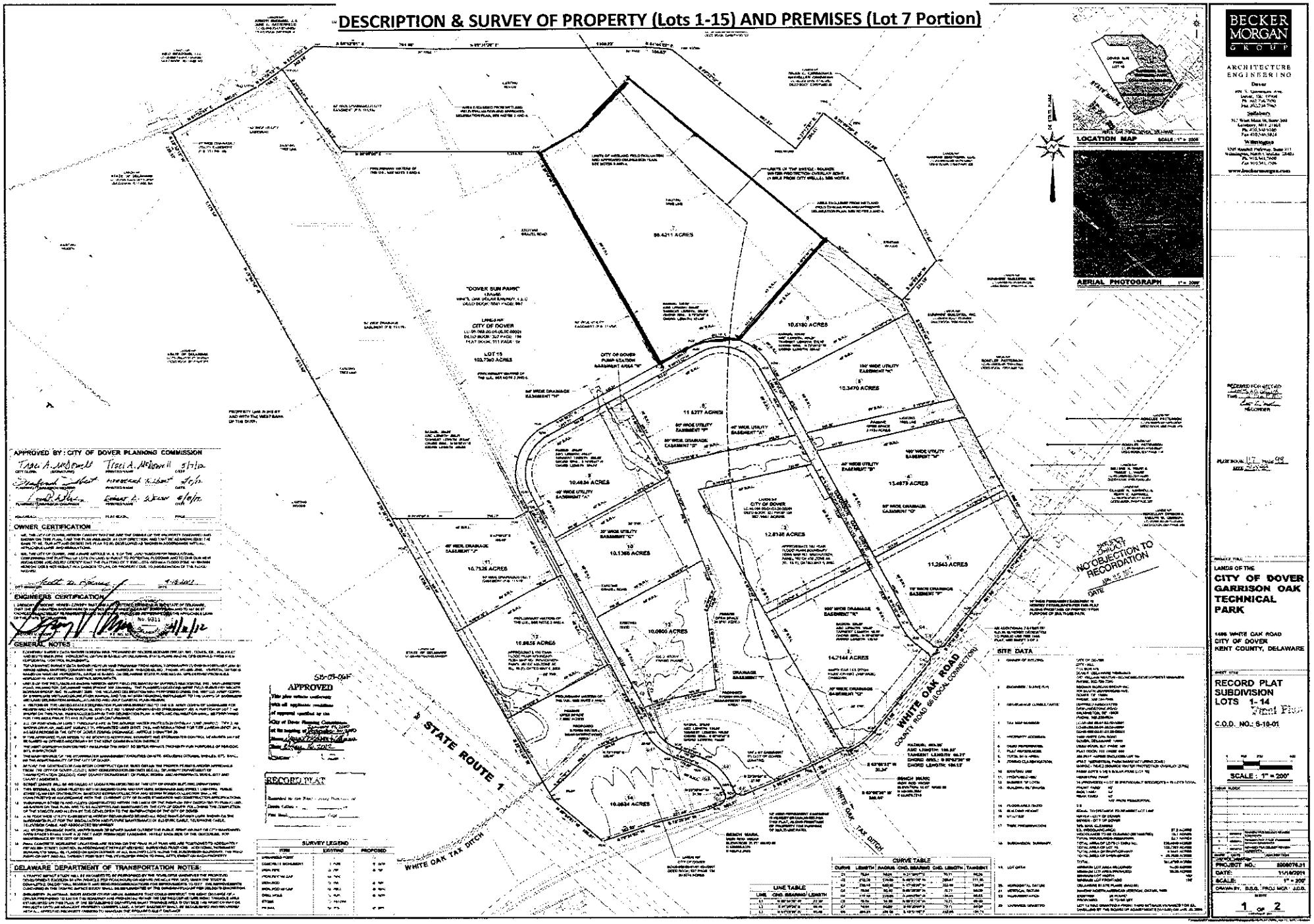
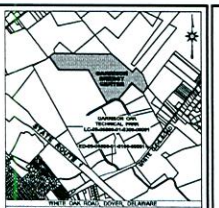
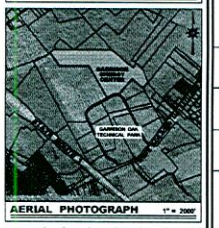

DESCRIPTION & SURVEY OF PROPERTY (Lots 1-15) AND PREMISES (Lot 7 Portion)
LOCATION MAP
AERIAL PHOTOGRAPH
BECKER MORGAN GROUP
ARCHITECTURE ENGINEERING
LANDS OF THE
CITY OF DOVER
GARRISON OAK TECHNICAL PARK
1496 WHITE OAK ROAD
CITY OF DOVER
KENT COUNTY, DELAWARE
RECORD PLAT
SUBDIVISION
LOTS 1-14
C.O.D. NO.: S-10-01
SCALE : 1" = 200'
APPROVED BY : CITY OF DOVER PLANNING COMMISSION
OWNER CERTIFICATION
ENGINEERS CERTIFICATION
GENERAL NOTES :
DELAWARE DEPARTMENT OF TRANSPORTATION NOTES:
SURVEY LEGEND
LINE TABLE
CURVE TABLE
SITE DATA
APPROVED
RECORD PLAT
NO OBJECTION TO RECORDATION
STATE ROUTE 1
WHITE OAK ROAD
COUNTY ROAD 66 (LOCAL CONNECTION)
WHITE OAK TAX DITCH
"DOVER SUN PARK"
CITY OF DOVER
LOT 15
103.7360 ACRES
99.4211 ACRES
10.5180 ACRES
10.3470 ACRES
11.6377 ACRES
10.4824 ACRES
13.4879 ACRES
12.8138 ACRES
11.2543 ACRES
10.1366 ACRES
10.7126 ACRES
10.0600 ACRES
10.8828 ACRES
14.7144 ACRES
10.2634 ACRES
PROJECT NO.: 2005078.01
DATE: 11/14/2011
SCALE: 1" = 200'
DRAWN BY: B.S.G. / PROJ. MGR.: J.D.D.
1 OF 2

EXHIBIT B

DESCRIPTION & DEPICTION OF THE PREMISES

Lot 7 (86.4211 acres) & Leased Portion of Lot 7 (36.7971 acres)





LINE TABLE		
LINE	CHD. BEARING	LENGTH
L1	S 81°23'30" E	90.46

CURVE TABLE					
CURVE	LENGTH	RADIUS	CHD. BEARING	CHD. LENGTH	TANGENT
C1	116.30	216.00	S 36°45'34" W	109.34	59.20

METES & BOUNDS DESCRIPTION

Leased Area – "Lot 7"

All that certain lot, piece or parcel of land situated in the City of Dover, Kent County, Delaware lying on the north side of White Oak Road but not adjacent to and the west side of State Route 1 but not adjacent to, being bounded on the west by lands now or formerly of the City of Dover, on the north by lands now or formerly of Joseph J. McDaniel and Jane E. Satterfield and Lands now or formerly of Harrison D. Brown, Jr., on the east by lands now or formerly of Harrison Brothers, LLC and lands now or formerly of Sunshine Builders, Inc., and on the south by lands now or formerly of the City of Dover (Lot 6) and the northerly right-of-way of Park Reservoir, containing all the lands shown as "Lot 7" on that certain survey entitled "Lands of the City of Dover – ALTA / ACSM Land Title Survey" as prepared by Becker Morgan Group, Inc. dated December 9, 2011, and being described as follows to wit:

Beginning at a point in line with the northerly right of way of Park Reservoir at a corner for this lot and Lot 6, thence running with right of way of Park Reservoir 1) curving to the left on an arc of a circle having a radius of 200.00 feet with an arc length of 262.10 feet, chord bearing and distance of said arc being South 83°38'55" West 244.26 feet to a point of tangency; thence 2) South 42°04'52" West 281.41 feet to a point at a corner for this lot and Lot 10; thence running and bounding with Lot 10 the following three courses and distances 3) North 29°05'08" West 1,840.00 feet to a point thence 4) South 60°05'00" West 1,000.00 feet to a point, thence 5) North 29°05'08" West 1,320.13 feet to a point at a corner for this parcel and lands of Joseph J. McDaniel et ux, thence running with the same, in part, generally continuing with north lands of Allott II) North 52°52'35" East 242.98 feet to a found iron pipe at a corner, thence 6) North 52°52'35" East 1,000.00 feet to a found iron pipe on the west bank of Isaac Branch, thence 7) North 52°52'35" East 1,000.00 feet to a found iron pipe at a corner of lands of Joseph J. McDaniel et ux, thence running and bounding with north lands of Allott the following two courses and distances 8) North 29°05'08" West 1,320.13 feet to a found iron pipe on north lands of Allott I thence 9) North 29°13'36" West 1,340.23 feet to a found iron pipe at a corner for this parcel and lands of Harrison Brothers, LLC thence running with lands of Harrison Brother, LLC generally following the north bank of Allott II) South 84°46'52" East 194.69 feet to a found stone on north bank of Allott II thence continuing with lands of Harrison Brothers, LLC but bending said north bank of Allott the following two courses and distances 10) South 80°52'10" East 992.21 feet to a found stone; thence 11) North 37°27'07" East 284.43 feet to a found iron pipe on west bank of a ditch; thence running and continuing with lands of Harrison Brothers, LLC generally following west bank of ditch 12) South 51°04'29" East 411.26 feet to set iron rod with cap on the west bank of ditch; thence continuing with lands of Harrison Brothers, LLC 13) South 27°04'19" East 717.84 feet crossing over said ditch to a found iron pipe with cap on the south bank of ditch at a corner for this parcel and lands of Sunshine Builders, Inc.; thence running and bounding with lands of Sunshine Builders, Inc. the following two courses and distances 14) South 60°05'00" West 331.30 feet to a found iron pipe on south bank of ditch at a corner for this lot and Lot 6; thence 15) South 29°05'08" East 1,320.13 feet to the point and place of beginning; thence 16) North 60°54'52" West 60.24 feet to a point thence 17) North 42°04'52" West 882.66 feet to the point and place of beginning and containing 86.421 acres of land, be the same or less.

Being the same lands and premises conveyed unto Ronald E. Gardiner and Clara H. Gardiner, his wife, by deed of Anthony B. Carroll, et ux., dated October 19, 1956 and of record in the Office of the Recorder of Deeds in and for Kent County, at Dover, Delaware, in Deed Book A15, page 40.

SURVEY CERTIFICATION

To CALIBRE CORPORATION, LLC and SITE SMART TITLE GUARANTY COMPANY, its successors and assigns:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items 1, 2, 3, 4(a)(b), 7(a)(b), 13, 16, 20(a)(b), 22 and 23 of Table A thereof. The field work was completed on November 30, 2011.

JEFFREY C. DODD P.L.S. NO. 782 DATE

TITLE COMMITMENT NO. 8876 SCHEDULE B PART II - SURVEY EXCEPTIONS

1. 24 FOOT WIDE STRIP OF LAND CONVEYED FROM ROLAND E. AND CLARA J. GARRISON TO THE STATE OF DELAWARE FOR THE PURPOSE OF CREATING WHITE OAK ROAD RIGHT OF WAY, DATED JULY 5, 1949, AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR KENT COUNTY AT DOVER, DELAWARE, IN DEED BOOK VOLUME W16 PAGE 36. (NOT LOCATED ON LOT 7 – SHOWN ON SURVEY)
2. PERMANENT EASEMENT AGREEMENT FROM ROLAND E. AND CLARA J. GARRISON TO THE CITY OF DOVER FOR THE PURPOSE OF UTILITY MAINTENANCE, DATED MARCH 8, 1988 AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR KENT COUNTY AT DOVER, DELAWARE, IN DEED BOOK VOLUME 1644 PAGE 41. (NOT LOCATED ON LOT 7 – SHOWN ON SURVEY)
3. ORDERS REGARDING A RIGHT OF WAY ASSESSMENT OF THE WHITE OAK TAX DITCH AS CONTAINED IN DEED BOOK 2004, PAGE 171 DATED JANUARY 29, 2007 AND DEED BOOK 4060 PAGE 104 DATED MARCH 26, 2009 AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR KENT COUNTY AT DOVER, DELAWARE. (NOT LOCATED ON SUBJECT PROPERTY – SHOWN ON SURVEY)
4. MEMORANDUM OF OPTION AGREEMENT BETWEEN THE CITY OF DOVER AND GARRISON ENERGY CENTER, L.L.C. DATED APRIL 16, 2010 AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR KENT COUNTY AT DOVER, DELAWARE, IN DEED BOOK 3285 PAGE 26. (NOT SHOWN ON SURVEY)
5. MEMORANDUM OF LEASE AGREEMENT BETWEEN THE CITY OF DOVER AND WHITE OAK SOLAR ENERGY, L.L.C. DATED SEPTEMBER 14, 2010 AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR KENT COUNTY AT DOVER, DELAWARE, IN DEED BOOK 3681 PAGE 47. (NOT LOCATED ON SUBJECT PROPERTY – SHOWN ON SURVEY)
6. RECORD PLAT CREATING LOT 15 OF THE GARRISON OAK TECHNICAL PARK, DATED SEPTEMBER 21, 2010 AND FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR KENT COUNTY AT DOVER, DELAWARE, IN DEED BOOK 3681 PAGE 61 (NOT LOCATED ON SUBJECT PROPERTY – SHOWN AS ALL OF LOT 15)

SURVEY LEGEND

ITEM	EXISTING	PROPOSED
UNMARKED POINT	○	○
CONCRETE MONUMENT	□ PCM	■ SCM
IRON PIPE	● IPF	● IPF
IRON PIPE W/ CAP	● PIPC	
IRON ROD	● PIR	● SIR
IRON ROD W/ CAP	● PIRC	● SIRC
DRILL HOLE	● PDH	● SDH
STONE	○ PSTONE	
PK NAIL	● PPK	● SPK

GENERAL NOTES :

1. BOUNDARY AND TOPOGRAPHIC SURVEY DATA SHOWN HEREON WAS PREPARED BY BECKER MORGAN GROUP, INC., DOVER, DE., IN NOVEMBER 2011. VERTICAL DATUM IS BASED ON NAVD 88. DERIVED FROM RTK/GL VERTICAL MONUMENTS. HORIZONTAL DATUM IS BASED ON DELAWARE STATE PLANE NAD 83, GPS DERIVED FROM RTK/GL HORIZONTAL CONTROL MONUMENTS.
2. LIMITS OF THE WETLANDS AS SHOWN HEREON WERE FIELD DELINEATED BY DUFFIELD ASSOCIATES, INC. 5400 LIMESTONE ROAD, WILMINGTON, DELAWARE 19808 (PHONE 302-239-6434). THE FLAGGED LOCATIONS WERE FIELD SURVEYED BY BECKER MORGAN GROUP, INC. IN AUGUST 2006. THE "WETLAND DELINEATION WAS PERFORMED USING THE 1987 U.S. ARMY CORPS OF ENGINEERS WETLAND DELINEATION MANUAL AND THE ATLANTIC AND GULF COASTAL PLAIN REGION.
3. A WATERS OF THE UNITED STATES DELINEATION PLAN WAS SUBMITTED TO THE U.S. ARMY CORPS OF ENGINEERS FOR REVIEW AND APPROVED ON MARCH 16, 2010 (FILE NO.: CENAP-OPR-2010-00142-23 (PREVIOUSLY 20)).

SITE DATA: GARRISON OAK TECHNICAL PARK - LOT 7

1.	OWNER OF RECORD:	CITY OF DOVER CITY HALL P.O. BOX 475 DOVER, DELAWARE 19903-0475 C/O: ANTHONY DEPRIMA - CITY MANAGER PHONE: 302-736-7000
2.	LESSEE:	GARRISON ENERGY CENTER, LLC NORTHERN REGION BUSINESS OFFICE 500 DELAWARE AVENUE SUITE 600 WILMINGTON, DELAWARE C/O: CHARPIE FISHER PHONE: 302-456-5225
3.	ENGINEER / SURVEYOR:	BECKER MORGAN GROUP, INC. 309 SOUTH GOVERNORS AVE. DOVER, DE. 19904 PHONE: 302-734-7950
4.	GEOSCIENCES CONSULTANTS:	DUFFIELD ASSOCIATES 5400 LIMESTONE ROAD WILMINGTON, DE 19808 PHONE: 800-239-6434
5.	TAX PARCEL NUMBER(S):	LC-05-048L00-01-5L00-00001 (PORTION OF)
6.	PROPERTY ADDRESS:	1499 WHITE OAK ROAD DOVER, DELAWARE 19901
7.	DEED REFERENCES:	DEED BOOK: 327 PAGE: 139
8.	PLAT REFERENCE:	PLATBOOK 111 PAGE 19
9.	TOTAL SITE AREA:	341.5817 ACRES (INCLUDES LOT 15)
10.	EXISTING USE:	VACANT LAND
11.	PROPOSED USE:	INDUSTRIAL PARK
12.	ZONING CLASSIFICATION:	PHLI (INDUSTRIAL PARK MANUFACTURING ZONE) SPROZ – TIER 2 (SOURCE WATER PROTECTION OVERLAY ZONE)
13.	BUILDING SETBACKS:	FRONT YARD: 50' SIDE YARD: 10' REAR YARD: 10' 100' FROM RESIDENTIAL
14.	LOT COVERAGE:	SPRZ ZONING - PERMITTED 85% OF EACH LOT
15.	BUILDING HEIGHT:	PERMITTED NO LIMIT
16.	UTILITIES:	WATER – CITY OF DOVER SEWER – CITY OF DOVER
17.	TREE PRESERVATION:	NON, NWI, DELAWARE R/A, WOODLAND AREAS: 55.36 ACRES ±.
18.	HORIZONTAL DATUM:	DELAWARE STATE PLANE (NAD 83)
19.	VERTICAL DATUM:	NAVD88, NORTH AMERICAN VERTICAL DATUM, 1988
20.	MONUMENTATION:	EXISTING: 31 POINTS PROPOSED: 3 TO BE SET ON LOT 7

ITEM NO. 12 AS TAKEN FROM THE CITY OF DOVER ZONING ORDINANCE FOR ZONE IPHLI AND AS SHOWN ON THE RECORD PLAN ENTITLED "LANDS OF THE CITY OF DOVER – RECORD PLAT SUBDIVISION LOT 15 OF GARRISON OAK TECHNICAL PARK" (PB. 111 PG. 19).

BECKER MORGAN GROUP

ARCHITECTURE
ENGINEERING

Dover
309 S. Governors Ave.
Dover, DE 19904
Ph. 302.734.7950
Fax 302.734.7965

Salisbury
312 West Main St. Suite 300
Salisbury, MD 21801
Ph. 410.546.9100
Fax 410.546.5824

Wilmington
3295 Randall Parkway, Suite 211
Wilmington, North Carolina 28403
Ph. 910.341.7600
Fax 910.341.7506

www.beckermorgan.com

PROJECT TITLE

LANDS OF THE
CITY OF DOVER
PREPARED FOR
GARRISON ENERGY CENTER
"GARRISON OAK TECHNICAL PARK"
1499 WHITE OAK ROAD
CITY OF DOVER
KENT COUNTY, DELAWARE

SHEET TITLE

ALTA / ACSM LAND TITLE SURVEY
GARRISON ENERGY CENTER - LEASE AREA
LOT 7 OF GARRISON OAK TECHNICAL PARK

SCALE : 1" = 200'

ISSUE BLOCK

MARK	DATE	DESCRIPTION

PROJECT NO.: 2010017.01
DATE: 12/09/11
SCALE: 1" = 200'
DRAWN BY: DJL/BJL CHKD. BY: PHOL/MGP, JJG/JL

SHEET
1 OF 1

MEMORANDUM OF GROUND LEASE **Execution Copy**

RECORDING PREPARED BY AND
WHEN RECORDED, RETURN TO:

Calpine Corporation
717 Texas Avenue, Suite 1000
Houston, TX, 77002
Attn: Jackie Thomas

_____

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

TAX PARCEL NUMBER: LC-05-068.00-01-03.00-00001 (Portion of)

MEMORANDUM OF GROUND LEASE

THIS MEMORANDUM OF GROUND LEASE (this "**Memorandum**") is made and entered into as of the _____ day of _____, 2012, by and between The City of Dover, a Delaware municipality, ("**Landlord**"), and Garrison Energy Center, LLC, a Delaware limited liability company, ("**Tenant**").

FACTUAL CONTEXT

A. Landlord is the owner of certain real property in the City of Dover, County of Kent, State of Delaware (the "**Property**"), which real property is more particularly shown and described in Exhibit A hereto as Lots 1 to 15 in the Garrison Oak Technical Park.

B. Landlord and Tenant are parties to that certain Ground Lease Agreement dated _____ 2012 (the "**Lease**"), whereby Tenant leases a portion of Lot 7 on the Property (the "**Premises**"), as shown in Exhibit B hereto. All words and phrases used herein, and which are not defined herein, shall have the meaning given thereto in the Lease. As provided in the Lease, Landlord and Tenant desire to evidence the Lease in the Official Records of Kent County, Delaware (the "**Records**").

NOW, THEREFORE, in consideration of the foregoing and TEN DOLLARS ($10.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord does hereby demise, lease and let unto Tenant the Premises, as follows:

1. The Term of the Lease shall be for a thirty (30) year period, subject to four (4) renewal terms of five (5) years each and Tenant's early termination option. The initial Term commenced on _____ ___, 2012 and shall expire on _____ ___, 2042.

2. This Memorandum is subject to all conditions, terms and provisions of the Lease (all of which are hereby ratified and affirmed), which agreement is hereby adopted and made a part hereof by reference to the same in the same manner as if all the provisions thereof were copied herein in full.

3. In the event of a conflict between the terms of the Lease and this Memorandum, the Lease shall prevail. Reference should be made to the Lease for a more detailed description of all matters contained in this Memorandum.

4. The Lease provides that it binds and benefits Landlord and Tenant and their respective successors and assigns.

5. This Memorandum shall be recorded in the Records of Kent County, Delaware.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Memorandum effective as of the date first written above.

LANDLORD:

City of Dover , a Delaware municipality

By: _____

Name: _____

Title: _____

TENANT:

Garrison Energy Center, LLC, a Delaware limited liability company

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

On this _____ day of _____, 2012, before me, _____ personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____
Print Name: _____
Title: Notary Public
Expiration Date: _____ **(Seal)**

ACKNOWLEDGMENT

State of _____)
) ss.
County of _____)

On this _____ day of _____, 2012, before me, _____ personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of _____ that the foregoing paragraph is true and correct.

WHITNESS my hand and official seal.

Signature: _____
Print Name: _____
Title: Notary Public
Expiration Date: _____ **(Seal)**