

**DANSKAMMER ENERGY, LLC**

**TO**

**ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**

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**LEASE AGREEMENT**

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*This conveyance of leasehold interest concerns certain parcels of land located at  
West Hudson River Road and Old Post Road in the Town of Newburgh,  
Orange County, New York  
Tax Map ID Nos.: 8-1-78.2-1 and 8-1-80, respectively*

**Dated as of December 1, 2014**

**LEASE AGREEMENT**  
**(Company to Agency)**

THIS LEASE AGREEMENT, dated as of the 1<sup>st</sup> day of December, 2014 (the "Lease Agreement"), is by and between **DANSKAMMER ENERGY, LLC**, a limited liability company duly organized and validly existing under the laws of the State of Delaware, with offices at 994 River Road, Newburgh, New York 12550 (the "Company") and **ORANGE COUNTY INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with offices at Orange County Business Accelerator, 4 Crotty Lane, Suite 100, New Windsor, New York 12553 (the "Agency").

WITNESSETH:

The Company desires to rent to the Agency the real property described in Schedule A attached hereto, together with any buildings, structures and improvements located thereon (collectively, the "Leased Premises") pursuant to the terms contained herein, during the term of that certain leaseback agreement, between the Agency and the Company, dated as of the date hereof (the "Leaseback Agreement").

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Granting Clause. The Company hereby leases to the Agency the Leased Premises, upon the terms and conditions of this Lease Agreement.

2. Warranty of Leasehold Rights. The Company warrants that, as of the effective date hereof, pursuant to that certain Ground Lease dated May 12, 2014 (the "Ground Lease") between the Company and Helios Power Capital, LLC ("Helios"), the Company has the full right and authority to lease, occupy and operate the Leased Premises and an option to purchase the Leased Premises from Helios (which option to purchase has been exercised by the Company effective as of September 22, 2014).

3. Term. The term of this Lease Agreement shall be coterminous with the term of the Leaseback Agreement (the "Lease Term").

4. Rent. The Agency agrees that it will pay to the Company, for the use of the Leased Premises, rent of One Dollar (\$1.00) per annum.

5. Taxes. The Company agrees to pay all taxes to be assessed on, or charges or expenses incurred with respect to, the Leased Premises during the Lease Term.

6. Maintenance and Insurance of Premises. The Company shall maintain and insure the Leased Premises. The Agency shall not be required to maintain the Leased Premises or incur any costs with respect to the Leased Premises. All insurance or condemnation proceeds shall be distributed and governed by the Leaseback Agreement.

7. Lease Expiration. The parties agree that at the expiration of the Lease Term the Agency will surrender the Leased Premises to the Company pursuant to the terms and conditions of this Lease Agreement and the Leaseback Agreement in the then condition of the Leased Premises.

8. Hold Harmless. The Company hereby releases the Agency from, agrees that the Agency shall not be liable for, and agrees to indemnify, defend and hold the Agency and its executive director, officers, members and employees, and their respective successors or personal representatives, harmless from and against any and all (i) liability for loss or damage to property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Leased Premises or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Leased Premises or as a result of a breach by the Company of its representations or agreements contained herein or in the Leaseback Agreement, or (ii) liability arising from or expense incurred by the Agency's financing, renovating, repairing, replacing, equipping, owning and leasing of the Leased Premises, including without limiting the generality of the foregoing, all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing. The foregoing indemnities shall apply notwithstanding the fault or negligence on the part of the Agency, or any of its respective members, directors, officers, agents or employees and irrespective of the breach of a statutory obligation or the application of any rule of comparative or apportioned liability; except, however, that such indemnities will not be applicable with respect to willful misconduct or negligence on the part of the Agency and its executive director, officers, members and employees, and their respective successors or personal representatives or any other person indemnified hereunder.

9. Non-Merger. Upon any acquisition of the fee title to the Facility by the Company, the fee title to the Facility and the leasehold estate of the Agency therein created by this Lease Agreement shall not merge but shall remain separate and distinct, notwithstanding such acquisition of said fee title and said leasehold estate by the Company or by the Agency or by a third party, by purchase or otherwise.

10. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, addressed as follows:

To the Agency:

Orange County Industrial Development Agency  
Orange County Business Accelerator  
4 Crotty Lane, Suite 100  
New Windsor, New York 12553  
Attn: Executive Director

With Copy To:

Kevin T. Dowd, Esq.  
Attorney - Orange County IDA  
46 Daisy Lane  
Montgomery, New York 12549

And To:

Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attn: Russell E. Gaenzle, Esq.

To the Company:

Danskammer Energy, LLC  
994 River Road  
Newburgh, New York 12550  
Attn: Larry She

With Copy To:

Danskammer Energy, LLC  
c/o Mercuria Energy America, Inc.  
20 East Greenway Plaza, Suite 650  
Houston, Texas 77046  
Attn: Head of Legal – North America

And To:

Nixon Peabody LLP  
1300 Clinton Square  
Rochester, New York 14604  
Attn: Brian G. Flanagan, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section.

11. No Recourse; Special Obligation.

(a) The obligations and agreements of the Agency contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Agency, and not of any member, officer, agent (other than the Company) or employee of the Agency in his individual capacity, and the members, officers, agents (other than the Company) and employees of the Agency shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby; provided that such employees did not engage in willful misconduct or negligent acts or omissions. The obligations and agreements of the Company contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental thereto or hereto, shall be deemed the obligations and agreements of the Company, and not of any member, officer, agent or employee of the Company in his individual capacity, and the members, officers, agents and employees of the Company shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or thereof or of any transaction contemplated hereby or thereby; provided that such employees did not engage in willful misconduct or negligent acts or omissions.

(b) The obligations and agreements of the Agency contained hereby shall not constitute or give rise to an obligation of the State of New York (the "State") or Orange County, New York, and neither the State nor Orange County, New York, shall be liable hereon or thereon, and, further, such obligations and agreements shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency, payable solely from the revenues of the Agency derived and to be derived from the sale or other disposition of the Leased Premises (except for revenues derived by the Agency with respect to the Unassigned Rights (as such term is defined in the Leaseback Agreement)).

(c) No order or decree of specific performance with respect to any of the obligations of the parties hereunder shall be sought or enforced against a party unless (i) the party seeking such order or decree shall first have requested of the other party in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and such other party shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request) or failed to respond within such notice period, (ii) if such other party refuses to comply with such request and such other party's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall place, in an account with such other party, an amount or undertaking sufficient to cover such reasonable fees and expenses, and (iii) if such other party refuses to comply with such request and such other party's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents (other than the Company if the Company is such other party) or employees shall be subject to potential liability, the party seeking such order or decree shall agree to indemnify and hold harmless such other party and its members, officers, agents (other than the Company if the Company is such other party) and employees against all liability expected to be incurred as a result of compliance with such request.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, the Company and the Agency have caused this Lease Agreement to be executed in their respective names, all as of the date first above written.

**DANSKAMMER ENERGY, LLC**

By:    
Larry She, President

**ORANGE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

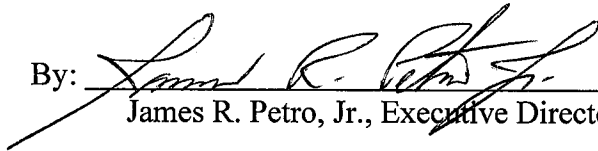
By: \_\_\_\_\_  
James R. Petro, Jr., Executive Director

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**DANSKAMMER ENERGY, LLC**

By: \_\_\_\_\_  
Larry She, President

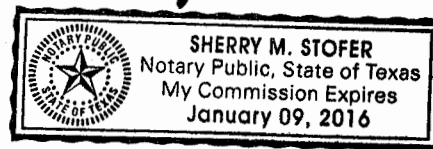
**ORANGE COUNTY INDUSTRIAL  
DEVELOPMENT AGENCY**

By:  \_\_\_\_\_  
James R. Petro, Jr., Executive Director

STATE OF NEW YORK     )  
COUNTY OF                )     SS.:

On the 1<sup>st</sup> day of December in the year 2014, before me, the undersigned, personally appeared **Larry She**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

*Sherry M. Stofer*  
Notary Public



STATE OF NEW YORK     )  
COUNTY OF ORANGE     )     SS.:

On the \_\_\_\_ day of December in the year 2014, before me, the undersigned, personally appeared **James R. Petro, Jr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

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Notary Public



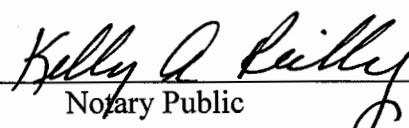
STATE OF NEW YORK     )  
COUNTY OF                )     SS.:

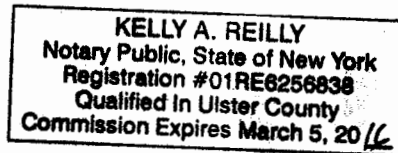
On the \_\_\_\_ day of December in the year 2014, before me, the undersigned, personally appeared **Larry She**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK     )  
COUNTY OF ORANGE     )     SS.:

On the 18<sup>th</sup> day of December in the year 2014, before me, the undersigned, personally appeared **James R. Petro, Jr.**, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public



## SCHEDULE A

ALL that certain plot, piece or parcel of land, situate, lying and being in the Town of Newburgh, County of Orange and State of New York, bounded and described as follows:

BEGINNING at a point on the easterly line of lands formerly of Penn Central Railroad, now CSX Rail Corp., with its intersection with the division line between lands of Central Hudson Gas and Electric Corporation, Consolidated Edison Company of New York Inc., and Niagara Mohawk Power Corporation, as tenants in common, by Deed dated May 14, 1969 on the south and Central Hudson Gas and Electric Corporation on the north, said point also being on the northwesterly projection of the northerly line of Parcel "B" (Conversion Grant) lands under waters of the Hudson River, Letters Patent dated April 20, 1971, Book 81 page 70, also filed in the Orange County Clerk's Office May 18, 1971 in Liber 1873 of Deeds at page 233;

THENCE along the aforementioned easterly line of lands now or formerly of CSX Rail Corp., North 27 degrees 01 minutes 46 seconds East 3,082.60 feet to the southwesterly corner of lands under water conveyed by Central Hudson Gas and Electric Corporation to New York Trap Rock Corporation by Deed dated August 30, 1960 and recorded in the Orange County Clerk's Office in Liber 1567 of Deeds at page 416;

THENCE through the waters of the Hudson River and along the southerly line of the aforementioned lands now or formerly of New York Trap Rock Corporation, South 62 degrees 58 minutes 16 seconds East 490.64 feet;

THENCE continuing through the waters of the Hudson River, the following two (2) courses and distances;

- (1) South 11 degrees 50 minutes 00 seconds West 1,586.71 feet; and
- (2) South 38 degrees 18 minutes 16 seconds West 1,734.12 feet to the northeasterly corner of the aforementioned Conversion Grant;

THENCE along the northerly line of said Conversion Grant, partially under the waters of the Hudson River and partially uplands, the following two (2) courses and distances:

- (1) North 43 degrees 00 minutes 24 seconds West 451.71 feet; and
- (2) North 64 degrees 57 minutes 14 seconds West 143.02 feet to the point of BEGINNING.