

APPENDIX 1-3  
NEW HAMPSHIRE WATER RESOURCE BOARD LEASE  
DATED FEBRUARY 20, 1986

LEASE AGREEMENT

This Lease, dated this *20<sup>th</sup>* day of *February*, 1986, is by and between the New Hampshire Water Resources Board, a public corporation and an agency of the State of New Hampshire, hereinafter called the "Board" or "Lessor", and Briar-Hydro Associates, a New Hampshire limited partnership, hereinafter called the "Lessee".

## WITNESSETH

WHEREAS, New Hampshire Revised Statutes Annotated (hereinafter, "RSA") Chapter 481-B-1 authorized the Board to acquire and maintain the York Dam (Dam No. 51.02) and related structures and all rights appurtenant to the York Dam and related structures located on the Contoocook River and the so-called Outlet or Rolfe Canal in the City of Concord (Village of Penacook), New Hampshire (hereinafter, the "Dam Facilities");

WHEREAS, the Governor and Council of the State of New Hampshire (hereinafter, the "Governor and Council") and the Board have determined that the redevelopment and use of the Dam Facilities for the production of hydroelectric power is beneficial to and in the best interest of the State;

WHEREAS, RSA 481:8 and action by the Governor and Council on June 19, 1981 authorized the Board to lease the Dam Facilities; and

WHEREAS, the Board has selected Briar-Hydro Associates to be the Lessee of the Dam Facilities upon the terms and conditions set forth in this Lease;

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions, and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1- PREMISES. For purposes of this Lease, the term "Premises" shall include the entire real property at the Dam Facilities as more particularly described in Exhibit A attached hereto, which Exhibit is incorporated herein by this reference, together with the following:

- (a) the Dam Facilities;
- (b) all of Lessor's water, flowage and dam rights at or associated with the Dam Facilities;
- (c) all other rights and easements necessary to carry out the purposes set forth in this Lease; and
- (d) any and all present or future civil works, structures, and improvements located on the Premises, including, without limitation, all structures adapted for the production of

hydroelectric power, such as the spillway, abutments, gates, all existing features, and all civil works as constructed or reconstructed under the terms of this Lease.

2- AMENDMENT OF DESCRIPTION. Lessee and Lessor may make, by written amendment to this Lease, such minor adjustments in the description of the Premises as may subsequently be found necessary to achieve the purposes of this Lease.

3- PURPOSES. This Lease is being executed to permit Lessee to use the Premises (including the water power created by the York Dam) in connection with its development, construction and operation of a hydroelectric power production facility on the so-called Outlet or Rolfe Canal off the Contoocook River (the "Project"). Lessee's use of the Premises shall include (a) the above purposes; (b) such other purposes as may be set forth in the FERC License issued on December 5, 1984 (FERC Project No. 3240), as the same may be amended from time to time (the "FERC License"); and (c) such other purposes as are not inconsistent with the terms of this Lease and the Board's statutory responsibilities to protect the public interest, so long as Lessee's rental payments and repair obligations under this Lease are not reduced thereby. The development, construction and operation of the Project as it relates to the Premises shall be carried out in accordance with and subject to the conditions set forth in the permits (including the FERC License) issued in connection therewith and with this Lease.

4- COOPERATION. Within the scope of their respective obligations hereunder, Lessor and Lessee shall cooperate to achieve the purposes of this Lease. Such cooperation shall include, but not be limited to, (a) keeping the other party reasonably informed as to all matters relating to the achievement of the purposes of this Lease, and (b) the performance of the parties' obligations under this Lease. Furthermore, Lessee agrees to take all steps necessary to make Lessor a co-licensee under the FERC License and Lessor agrees to cooperate with Lessee in such matter.

5- LEASE, EFFECTIVE DATE, TERM, AND RENEWAL.

(a) Lessor hereby leases the entire Premises described in Section 1 to Lessee for a term which shall expire on the date which is fifty (50) years from the effective date of this Lease, subject to the provisions of subparagraph (c) below and to the termination provisions contained herein.

(b) This Lease and all obligations of Lessor and Lessee hereunder shall become effective upon approval of this Lease by the Governor and Council.

(c) Provided there is legal authority therefor, this Lease may be renewed, at the option of the Lessee and subject to the approval of the Board and the Governor and Council, on a

year-to-year basis or longer term, each of which shall not exceed the original term of this Lease. This renewal option shall be exercised by the Lessee in writing not later than 120 days before the expiration of the original term or any renewal term of this Lease.

6- EARLY TERMINATION OF LEASE.

(a) Within six (6) months from the effective date of this Lease, Lessee will undertake to satisfy itself as to the status of Lessor's title to the Premises and the extent of Lessor's existing rights relating to the Premises to permit the development, construction and operation of the Project. If, during said six (6) month period, Lessee determines (i) that Lessor does not hold good, marketable, and insurable title to the Premises, or (ii) that there are questions concerning the existence of any rights relating to the Premises that are necessary to facilitate the Project, the parties agree to extend said period for a reasonable time to allow Lessee to take, or request Lessor to take, such curative action as may be necessary. Lessor agrees to cooperate fully in the taking of any such curative action; provided, that all out-of-pocket expenses incurred with respect to the same shall be the obligation of the Lessee (if incurred by Lessor, after first obtaining Lessee's prior approval). If, during the period(s) of time provided above, any defect in title or questions as to Lessor's rights are not cured or resolved to Lessee's satisfaction, then Lessee shall be entitled to terminate this Lease.

(b) Notwithstanding anything to the contrary set forth in this Lease, Lessee shall have the full right and option to terminate this Lease by giving Lessor written notice thereof upon the occurrence of any one (1) or more of the following events:

(i) A denial or refusal of any federal, state or local agency to issue any license, permit or approval necessary for Lessee to develop, construct and/or operate the Project or any such license, permit or approval is revoked.

(ii) the inability of Lessee, on or before June 30, 1986, to purchase, lease or otherwise acquire any necessary real property, easements, rights-of-way, water, flowage or dam rights, or other rights for the development, construction and/or operation of the Project, on such terms and conditions as are acceptable to Lessee;

(iii) if, within two (2) years from the effective date of this Lease, Lessee's leasehold interest in the Premises, or any mortgage or security interest therein, is not insurable at a reasonable cost, or if a title insurance binder issued in connection therewith contains any nonstandard exceptions to Lessee's ownership of good and marketable leasehold title to the Premises;

(iv) if, prior to completion of construction of the Project, Lessee is unable to secure financing on terms acceptable to the Lessee for the development, construction and operation of the Project;

(v) if within two (2) years from the effective date of this Lease, the Lessee is unable to obtain insurance pursuant to Section 16(b), at a reasonable cost.

(c) Upon termination of this Lease as permitted by subparagraphs (a) or (b) above, Lessee shall have no further obligations for rental payments or otherwise hereunder, except for obligations accrued prior to the date of termination.

(d) In addition to Lessee's rights to terminate this Lease as provided in subparagraphs (a) and (b) above, Lessee shall also be entitled to terminate this Lease at any time and for any reason, if Lessee shall give Lessor written notice of termination of this Lease and shall pay Lessor a final rental payment equal to the sum of (i) the pro rata share of the then-present calendar year's annual rental installment computed as of the date of said notice, plus (ii) an additional payment equal to two (2) years' rental installments based on the average annual rental payments having been paid to Lessor to the date of termination.

(e) If, solely by reason of Lessee's fault, Lessee does not procure the necessary federal and state licenses and permits within two (2) years from the effective date of this Lease, then the Lessor shall have the sole option to terminate this Lease at the end of such two (2) year period with no remaining obligation of any kind on the part of Lessor. Termination of this Lease pursuant to this paragraph shall be made in writing and shall become effective immediately upon receipt by Lessee.

(f) If this Lease is terminated at any time prior to completion of construction, Lessee will make available to Lessor copies of all studies, reports, or other documents prepared by or on behalf of Lessee in connection with the Premises.

7- RELATED RIGHTS AND OBLIGATIONS IN THE PREMISES.

(a) In addition to its rights and possession, use, operation and occupancy of the Premises, Lessee shall also have the following rights:

(i) the right to construct, reconstruct, modify, repair, and use all areas within the Premises and all structures and improvements located or to be located on the Premises, as may be necessary for (A) the production of hydroelectric power by the Project, (B) the construction,

reconstruction, repair and/or operation of any part of such structures and improvements, and (C) any planning in connection therewith; and

(ii) the exclusive benefit of, and right to use, all available head and water flows at the York Dam, as well as all other water, flowage and dam rights owned by Lessor and associated with the Premises.

(b) Lessor also agrees (i) to grant Lessee and utility companies, easements or other rights in property and public ways owned or controlled by Lessor in order to permit necessary utility services to be supplied to the Premises, and (ii) to permit the interconnection necessary for the sale and delivery of any electric power generated at the Premises; provided always, that the location of all such installations shall be subject to the prior approval of Lessor (such approval not to be unreasonably withheld) and in accordance with the reasonable requirements of Lessor with respect to appearance, safety, and public convenience.

(c) Lessee shall operate the Premises consistent with the terms of the FERC License held by Lessee, and with the other licenses and permits issued in connection therewith. Lessor reserves the right to enter the Premises and to undertake any necessary activities for the purpose of assuring compliance with the FERC imposed conditions that relate to the Premises where required to avoid the loss of that License.

(d) Lessor shall have the right to inspect and to enter the Premises pursuant to subparagraph (c) at reasonable times and in such a manner so as to reduce to a minimum interference with Lessee's operation and use thereof; provided, however, that in the event of situations requiring immediate actions, Lessor's right of entry and inspection shall be absolute and unquestioned.

(e) Nothing contained in this Lease shall be construed to relieve Lessee of the duty to perform all of the obligations contained in the FERC License.

(f) Nothing contained in this Lease shall be construed to relieve Lessee of the duty to perform all of the obligations contained in Order No. 51.46H issued by the Board on January 8, 1986.

(g) Lessor and Lessee shall have the right to pass over any existing or subsequently constructed access roads to or across the Premises.

(h) Lessor and Lessee agree to add the plans and specifications of any structures or improvements constructed or reconstructed on the Premises under the terms of this Lease to this Lease, in order that the descriptions of the Premises shall remain as accurate as possible.

8- QUIET POSSESSION.

(a) Lessor covenants and warrants that:

(i) it has full right and lawful authority to enter into this Lease for the full term set forth and for any renewal or extension hereof;

(ii) all legal requirements for the execution hereof have been complied with; and

(iii) the Board and the State of New Hampshire are lawfully seized of the entire Premises and have good, marketable, and insurable title thereto, free and clear of all tenancies, liens, mortgages, security interests and encumbrances.

(b) Lessor further covenants and warrants that if Lessee shall discharge the obligations herein set forth to be performed by it, then Lessee shall have and enjoy, during the term and any renewal or extension hereof, the quiet and undisturbed possession of the Premises, and the appurtenant rights thereto, for the uses herein described, without interference, hindrance or ejection.

9- LICENSES, PERMITS, CONSTRUCTION.

(a) Lessee shall make application for all necessary and appropriate exemptions, certificates, permits, and approvals of local and state agencies and FERC and Lessor agrees to fully cooperate and assist Lessee therewith. Said exemptions, certificates, permits, and approvals shall include, but are not limited to, the FERC License and a determination relative to the need for a water quality certificate as prescribed by Sec. 401 of the Clean Water Act.

(b) At the earliest opportunity, Lessee shall submit its construction, reconstruction, and repair plans relating to the Premises to Lessor for Lessor's approval, and Lessee shall not proceed with such construction, reconstruction, or repair until Lessor has approved such plans. Lessor's review of such plans shall be confined to such review as may be necessary to protect the Premises from damage and to discharge Lessor's contractual and statutory obligations. Lessor shall respond to Lessee within thirty (30) days from the date of receiving the plans, except for any proceedings held pursuant to RSA Chapter 482, as to which the time limits allowed therein shall be applicable.

10- RENT.

(a) For the purposes of this section, the following terms shall be defined as follows:

(i) The term "Gross Revenue" shall mean the money received by Lessee from the sale of electrical power produced by the Project.

(ii) The term year one (1) will commence at the time the Project begins Commercial Operations.

(iii) The term "Commercial Operations" shall mean the date on which Lessee first produces and delivers electrical power from the Project to the purchasing party.

(b) The following are the schedule of lease payments to be made to the Lessor:

<u>Year</u>	<u>Percent of Gross Revenue</u>
1	1.0%
2	1.2%
3	1.4%
4	1.6%
5	1.8%
6	2.0%
7	2.2%
8	2.4%
9	2.6%
10	2.8%
11	3.0%
12	3.2%
13	3.4%
14	3.5%
15-30	3.5%

(i) After the thirtieth year, and therefore at the end of the term of the rate order issued by the New Hampshire Public Utilities Commission, if the audited budget for operations and maintenance of the Partnerships does not exceed twenty-five percent (25%) of Gross Revenue, the annual lease payment to the Lessor will be an amount equal to ten (10%) percent of Gross Revenue. If the audited budget for operations and maintenance does exceed twenty-five percent (25%) of Gross Revenue, then the annual lease payment will be reduced as follows: for every percentage point by which the audited budget for operations and maintenance exceeds 25% of Gross Revenue, Lessee will reduce the annual lease payment by .25% of Gross Revenue.

(ii) Said audits shall be conducted by an independent auditor to be mutually agreed upon by Lessor and Lessee.

(c) At any time or times during the term of this Lease, Lessee may request from Lessor a waiver or deferral of any or all amounts owed as rent to Lessor for any rental period under this Lease. Such request shall be in written form and shall be documented sufficiently to allow Lessor to determine whether or not such request is warranted. Within sixty (60) days of Lessor's receipt of such a request, Lessor will notify Lessee in writing regarding Lessor's determination of whether or not to grant Lessee's request in full or in part and any conditions with respect thereto.



(d) In the event of any actual or proposed sale, assignment, conveyance, lease, or other transfer by Lessee of its rights under this Lease and/or in the Project to an unrelated party, either Lessee or said party may request from Lessor a readjustment in the rent to be paid under the terms of this Lease subsequent to such transfer. Such request shall be in the form of a written proposal, sufficiently documented to allow Lessor to determine whether or not such request is warranted. Within sixty (60) days of Lessor's receipt of such proposal, Lessor will notify Lessee and/or said party, as the case may be, in writing, regarding Lessor's determination of whether or not to grant such request; provided, that Lessor agrees not to withhold its consent if the projected present value (computed at the discount rate then approved for use of Public Service Company of New Hampshire by the New Hampshire Public Utilities Commission) of the total rent to be paid to Lessor over the then remaining term of this Lease under the terms of such proposal is greater than or equal to the projected present value of the total rent otherwise payable to Lessor under the terms of this Lease as then in effect.

11- CONSTRUCTION, REPAIRS, AND MAINTENANCE.

(a) Within eighteen (18) months from the effective date of this Lease, Lessee shall commence Project construction. Lessee shall be responsible for all damages caused to the Premises by Lessee's construction activities, including all labor, materials, and equipment costs involved in any repairs necessitated by any such damage.

(b) Lessee shall, at all times during the term of this Lease, and at Lessee's own cost and expense, keep and maintain in good condition and repair, all parts of the Premises utilized by Lessee, and Lessee shall use all reasonable precautions to prevent waste, damage, or injury to the Premises.

(c) Upon the expiration or termination of this Lease, Lessee shall quit and surrender the Premises in good condition and repair, ordinary wear and tear expected.

(d) After the commencement of construction, Lessee shall have the right, at its own cost and expense, to construct on the Premises such improvements and to make such alterations to the Premises as Lessee shall determine to be proper in connection with the development, construction, and operation of the Project; provided, that the same shall be in compliance with all applicable federal, state, and local requirements.

(e) Within six (6) months after completion of construction, Lessee shall remove all temporary structures from the Premises.

12- TITLE TO IMPROVEMENTS AND EQUIPMENT.

(a) Until the expiration or termination of this Lease, title shall remain solely in Lessee to any improvements, alternations, equipment, or other items erected or installed by Lessee on the Premises.

(b) Except as specifically set forth in subparagraph (c) below, upon any expiration or termination of this Lease, title to all equipment located on the Premises shall remain in Lessee, and Lessee, at its own cost and expense, may remove any of all such equipment. Alternatively, Lessee, at its option, may elect not to remove any such equipment, and, upon any such election, title to any such equipment shall vest in Lessor and Lessee shall have no further obligations to Lessor with respect thereto.

(c) Notwithstanding the provisions of subparagraph (b) above, if and only if the term of this Lease should expire (not including an early termination of this Lease as a result of a default hereunder, an election to terminate by Lessee as provided herein, or any other reason), at the end of the original term or any renewal or extension thereof, then Lessor, at its option, shall be entitled to purchase any equipment which is owned by Lessee and which is located on the Premises, at the fair market value thereof. Such option must be exercised by Lessor giving Lessee written notice thereof thirty (30) days prior to the expiration of this Lease. Said notice shall state the item or items of equipment which Lessor desires to purchase, Lessor's determination of the fair market value of each item listed, and the name and address of an appraiser selected by Lessor. Upon receipt of said notice, Lessee shall have thirty (30) days in which to reject Lessor's determination of the fair market value as to any one or more of the items listed. Upon rejection of Lessor's determination of the value of any of the items, Lessee shall give Lessor written notice thereof, together with a list of the disputed items, Lessee's determination of the fair market value of each such item, and the name and address of an appraiser selected by Lessee. Upon receipt of such notice of rejection, Lessor shall have fifteen (15) days in which to reject Lessee's determination of the fair market value of the items listed as disputed by Lessee. Upon Lessee's receipt of written notice of rejection by Lessor of Lessee's determination of the value of the remaining items in dispute, the two appraisers selected shall select a third appraiser and the three appraisers thus chosen shall determine the value of the remaining items in dispute, which determination shall be final and binding upon the parties. Each party shall be responsible for the cost of its respective appraiser, and both parties shall share equally the cost of the third appraiser. Lessor's above purchase option shall specifically not apply to equipment which is leased by Lessee from, or which is owned by, a third party, regardless of whether said third party is a shareholder,

partner, officer, director, or employee of, or is otherwise related to, Lessee or is an affiliated or related company or other entity of or to Lessee; provided, however, that Lessor shall be entitled to directly approach said third party to negotiate a purchase of said equipment. Until the expiration of this Lease and Lessor's exercise of its above purchase option, title to any equipment that might become subject to said purchase option shall remain solely in Lessee, and Lessee shall be entitled to buy, sell, lease, mortgage, encumber, substitute, and otherwise dispose of and deal freely with any such items of equipment without regard to Lessor's above purchase option.

(d) Notwithstanding the above, all buildings, structures and equipment essential to the structural integrity of the Premises shall not be removed from the Premises and shall be left in suitable repair, reasonable wear and tear excepted.

13- ASSIGNMENT, SUBLETTING AND FINANCING.

(a) Right to Assign or Sublet. Lessor agrees that Lessee may, with Lessor's written consent, said consent not to be unreasonably withheld, assign or sublet the Premises; provided, that any such assignee or sublessee shall have agreed with Lessor to perform all of Lessee's covenants and obligations hereunder. Lessor agrees to respond to Lessee's requests for a proposed assignment or sublease within sixty (60) days from the receipt thereof. Notwithstanding the above, Lessee shall be entitled to assign this Lease, without Lessor's consent, to a corporation, partnership or other entity directly or indirectly controlled by, controlling or under common control with, Lessee and which agrees with Lessor to perform all of Lessee's covenants and obligations hereunder; provided, however, that any assignment pursuant to this subparagraph (a) shall release Lessee from any further liability hereunder only if Lessee has obtained Lessor's approval thereof, which approval Lessor agrees not to unreasonably withhold.

(b) Financing. Lessor agrees that Lessee may mortgage, assign, transfer, lease, or otherwise create security interests (including, without limitation, sale and leaseback arrangements) in this Lease and/or the Premises, in order to secure indebtedness incurred by Lessee to finance the Project or to secure Lessee's obligations to a third party under a lease of the Premises; provided, that (i) any such encumbrance shall not be permitted to extend beyond the expiration date of this Lease; (ii) a copy (or notice) of any such mortgage, assignment, transfer, lease, or other security interest, together with the name and address of the holder thereof (hereinafter, the "Secured Party", which term shall also include any purchaser at any foreclosure sale), is duly recorded in the Merrimack County Registry of Deeds, if required by other provisions of law; and (iii) in the event of foreclosure, the purchaser thereof shall succeed to Lessee's interest therein, subject to the provisions of subparagraph (c) (i) below.

(c) Rights of Secured Party. In the event that Lessee shall create mortgages, assignments, transfers, leases, or other security interests in the Premises as permitted by subparagraph (b) above, then Lessor hereby agrees for the benefit of the Secured Party that:

(i) No Secured Party shall be liable under the terms and conditions of this Lease unless and until such Secured Party shall have exercised its rights to succeed to Lessee's interests hereunder by giving written notice thereof to Lessor, nor shall any Secured Party be liable thereafter nor for any default or breach of this Lease before Lessee's interests hereunder become vested in said Secured Party.

(ii) Lessor will, upon serving Lessee with any notice of default, simultaneously serve a copy of such notice upon the Secured Party, and no such notice to Lessee shall be effective unless a copy is so served upon the Secured Party.

(iii) In the event of any default by Lessee hereunder, or under the terms of the mortgage, lease, or other security interest, the Secured Party shall have the right to perform any of Lessee's covenants or to cure any defaults by Lessee hereunder, or to exercise any election, option, or right conferred upon Lessee by the terms of this Lease.

(iv) Lessor will not terminate this Lease for any default of Lessee (A) if within a period of one hundred twenty (120) days after the expiration of the period of time within which Lessee might cure said default under the provisions of this Lease, said default is cured or caused to be cured by the Secured Party, or (B) if within a period of ninety (90) days after the expiration of the period of time within which Lessee might commence to eliminate the cause of such default under the provisions of this Lease, the Secured Party commences to eliminate the cause of such default and proceeds diligently therewith; provided, that this subparagraph shall not apply to the obligation to pay rent, as to which the Secured Party is subject in the same manner as Lessee.

(v) Lessor will not terminate this Lease if the Secured Party takes possession of the Premises upon default by Lessee under the terms of the mortgage, lease, or other security interest; provided, that the rent due and payable under this Lease shall continue to be paid and the other covenants, conditions, and agreements of this Lease on Lessee's part to be kept and performed shall continue to be kept and performed by the Secured Party.

(vi) No exercise of any right, privilege, or option available to Lessee to cancel or terminate this Lease, nor any modification or amendment to this Lease, shall be effective without the prior written consent of the Secured Party; provided, that in the event the Lessor has the unilateral right to terminate this Lease, the Lessor need not obtain the prior written consent of the Secured Party, to do so. Nothing in this sub-paragraph shall deprive the Secured Party of its right to notice and all other rights (including the right to cure) provided herein.

(vii) Lessor agrees that it will, if requested by Lessee in writing, make such amendments to this Lease as are reasonably required by FERC or any other federal, state or municipal government, agency or organization having jurisdiction of the Project or by a Secured Party to facilitate the creation of mortgages, leases, or other security interests permitted hereunder, provided that the rent and other financial interests of Lessor are not impaired thereby. No amendment to this Lease shall be valid unless made in writing and signed by the parties.

14- TAXES, OTHER CHARGES, FEES, ETC. Lessee shall be responsible for real estate taxes assessed for and with respect to the Premises only (including assessments for betterments or improvements for all tax periods fully or partially included in the term of this Lease), or, at Lessee's option, any payments in lieu thereof pursuant to RSA 362-A:6, as amended, or otherwise. In accordance with RSA 72:23, I (1975 Supp.), Lessee shall pay all properly assessed real and personal property taxes no later than the due date, unless Lessee is in good faith contesting the same or seeking an abatement thereof.

15- PAYMENT FOR UTILITIES. Lessee shall pay promptly as and when the same become due and payable all charges for water, steam, heat, gas, hot water, electricity, light, power, and other services used by Lessee in connection with the Premises during the term of this Lease.

16- INSURANCE.

(a) Lessee shall, with respect to the Premises, provide, at Lessee's expense, and keep in force during the term of this Lease, general liability insurance with a good and solvent insurance company or companies, reasonably satisfactory to Lessor, in the amount of at least \$1,000,000 with respect to injury or death to any one person and \$1,000,000 with respect to damage to property, or, alternatively, a combined single limit of \$1,000,000. Such policy or policies shall include Lessor as an additional named insured.

(b) Commencing with construction of the Project, Lessee shall keep all existing structures, and all structures and improvements built or erected by Lessee on the Premises insured against the risk of fire and other perils, commonly called extended (all risk) coverage in an amount not less than eighty percent (80%) of the current replacement cost thereof. Any such insurance policy or policies shall name Lessor as an additional named insured, as its interest may appear, provided that in no event shall Lessor be entitled to any proceeds of such insurance policies attributable to structures, improvements, equipment or fixtures built or erected by the Lessee on the Premises.

17- MUTUAL REPRESENTATIONS.

(a) Lessor represents and warrants to Lessee that this Lease and the execution hereof have been duly authorized by all necessary action on the part of Lessor and its governing bodies.

(b) Lessee represents and warrants to Lessor that this Lease and the execution hereof have been duly authorized by all necessary action on the part of the Lessee.

18- DAMAGE CLAUSE. If the Premises and/or the Project shall be damaged, in whole or in part, by fire, casualty or action of public authority in consequence thereof, then:

(a) The rent hereinbefore reserved, or a just and proportionate part thereof according to the nature and extent of the damage sustained, shall be suspended or abated upon the mutual consent of Lessor and Lessee or their respective legal representatives (said consent not to be unreasonably withheld) until (i) the damage shall have been repaired, (ii) the Premises and/or the Project are restored substantially to their condition at the time of the damage, and (iii) the production of hydroelectric power resumes.

(b) If the Premises and/or the Project are, by such damage, rendered unsuitable for Lessee's use, then this Lease may be terminated by Lessee or its legal representative. Any such election shall be made in writing within ninety (90) days after such damage or destruction occurs, and this Lease shall terminate in accordance therewith as of the date of such damage or destruction.

(c) In the event of any damage or destruction, and this Lease is not to terminate as aforesaid, then the terms and conditions of this Lease shall remain unaltered, subject to the provisions of subparagraph (a) above, provided that in such case Lessee shall be entitled to all proceeds of insurance, whether payable to Lessor or Lessee, as a result of such damage or destruction.

19- DAM FAILURE. Notwithstanding the provisions of Sections 7(d) and 18 above, in the event of an imminent or actual failure of the York Dam (the "Dam"), the Lessor has the right to immediately re-enter onto the Premises for the purposes of making all necessary repairs to the Dam. In the event the Lessor repairs the Dam, the Lessee shall reimburse the Lessor for the reasonable cost of such repairs that were necessitated by Lessee's failure to maintain the Dam in good condition and repair, as required by Section 11(b) above. To the extent it is practical and reasonable, the Lessor shall first afford the Lessee the opportunity to make any such repairs itself. In other than emergency situations, before making any such repairs, Lessor shall obtain Lessee's prior written consent (which consent shall not be unreasonably withheld) and shall provide such plans and other information about the proposed repairs as Lessee may reasonably request. Such repairs shall be only those required to restore the Premises to their original sound and serviceable condition. Lessor shall not have the right to make significant improvements to the Premises under this sub-paragraph, but nothing herein shall be interpreted as limiting any of the Lessor's powers as provided by law.

20- INDEMNITY.

(a) Lessee does hereby agree to defend, indemnify, and save Lessor, its officers, employees and agents, harmless from and against any and all claims, losses, actions, damages, liabilities, and expenses (including, without limitation, reasonable legal fees) in connection with the loss of life, personal injury, and/or damage to property arising out of, or alleged to have arisen out of, any occurrence in, upon, and/or at the Premises occasioned by or resulting from (i) the occupancy or use by Lessee of the Premises or any part thereof, or (ii) by any act or omission of Lessee, its agents, contractors, or employees.

(b) Subject to subsection (c) below, Lessor does hereby agree to defend, indemnify, and save Lessee, its partners, officers, employees and agents, harmless from and against any and all claims, losses, actions, damages, liabilities, and expenses (including, without limitation, reasonable legal fees) in connection with the loss of life, personal injury, and/or damage to property arising out of, or alleged to have arisen out of, any occurrence in, upon, and/or at the Premises or other property of Lessor occasioned by or resulting from (i) the occupancy or use by Lessor of the Premises or any part thereof; (ii) any act or omission of Lessor, its agents, contractors, or employees; or (iii) any other cause whatsoever with the sole exception of those for which Lessor is to be indemnified by Lessee pursuant to subsection (a) above.

(c) Lessor's indemnification obligations pursuant to subsection (b) above shall only be enforceable and binding upon Lessor to the extent that Lessor's obligations thereunder (including, without limitation, the obligation to defend) are insured by a contractual liability or like insurance policy issued by a financially responsible insurance company licensed in the State of New Hampshire and approved by Lessee. The premium for such policy shall be the sole obligation of Lessee. Lessor agrees to cooperate with Lessee in obtaining or renewing any such policy during the term of this Lease (including without limitation, immediately advising Lessee of all notices or other communications received by Lessor with respect to any such policy).

(d) No provision in this Section 20 is intended to be, nor shall it be interpreted by either party to be, a general waiver of sovereign immunity; provided, that this subsection (d) shall not operate to relieve the Board and the State of New Hampshire from the limited obligation of indemnity set forth above.

21- LESSEE'S DEFAULT.

(a) If:

(i) Lessee neglects or fails to pay the rent and such default shall continue for a period of ninety (90) days;

(ii) Lessee neglects or fails to pay the real estate taxes (or payments in lieu thereof) payable pursuant to Section 14 hereof once the same become due and payable; provided that Lessee reserves unto itself all rights and remedies generally available to a person responsible for the payment of such real estate taxes (or payments in lieu thereof);

(iii) Lessee neglects or fails to perform or observe any of the other covenants, terms, provisions or conditions on its part to be performed or observed (except any such covenant, term, provision or condition which the neglect or failure to perform or observe does not materially affect Lessor's rights under this Lease and which does not give rise to any material liability or loss of revenue on the part of Lessor) and such default shall continue for a period of sixty (60) days from the date that written notice of such default is received by Lessee from Lessor;

(iv) the estate hereby created shall be taken on execution or by other process of law;

(v) a receiver, guardian, conservator, trustee in voluntary or involuntary bankruptcy, or other similar officer is appointed to take charge of all or any substantial part of the Lessee's property by a court of competent jurisdiction, and, in the case of an involuntary proceeding, said proceeding is not terminated within sixty (60) days; or



(vi) proceedings shall be commenced to dissolve or liquidate Lessee;

then, and in any of the said cases, Lessor lawfully may, upon the expiration of the notice periods provided herein, terminate this Lease by giving to Lessee at least thirty (30) days' written notice of such termination; provided, however, that, in the event that Lessor gives notice of a default of such a nature that it cannot reasonably be remedied within the notice period, other than a failure to pay rent as specified above, then such default shall not be deemed to continue so long as Lessee, after receiving such notice, proceeds to remedy the default as soon as is reasonably possible and continues diligently to take all steps necessary to complete such remedy within a reasonable period of time under the prevailing circumstances. Notwithstanding any such purported default, Lessor shall not have such right of termination if a Secured Party shall cause to be cured, within the time periods set forth in Section 13(c)(iv), all defaults of Lessee hereunder, whether in the payment of rent or the performance of any other agreement, which are then reasonably susceptible of being cured by the Secured Party, and shall continue to cause such rent to be paid and Lessee's other agreements to be performed.

(b) In the event of a judicially-enforced termination of this Lease following the occurrence of an event of default, as provided by and in accordance with subsection (a) above, Lessee shall be responsible for liquidated damages as more particularly set forth in this subsection. Said liquidated damages shall, at Lessor's sole option, be either (i) Lessee's payment to Lessor of an additional one (1) year's rental installment based on the average of the annual rental payments paid to Lessor to the date of termination; provided, that said additional rental installment shall not exceed five percent (5%) of the long term average annual gross revenue for the Project calculated at Lessee's then current contracted price for power; or (ii) Lessee's transfer to Lessor of all unencumbered equipment which is owned by Lessee and which is located on the Premises. For purposes of (i) above, the long term average annual gross revenue shall be based on "period of record flows" recorded at the USGS Penacook Gauge No. 088000 on the Contoocook River, such period to be not less than thirty (30) years unless agreed to in writing by Lessee. With respect to (ii) above, Lessee shall only be required to transfer equipment and only equipment which is owned by Lessee and which is not subject to any mortgage, security interest, or other lien. Said equipment shall specifically not include equipment which is leased by Lessee from, or which is owned by, a third party; regardless or whether said third party is a shareholder, partner, officer, director, or employee of, or otherwise related to, Lessee or is an affiliated or related company or other entity of or to Lessee. Until the termination of this Lease as provided above, title to any equipment that might become subject to Lessee's

aforesaid option shall remain solely in Lessee, and Lessee shall be entitled to buy, sell, lease, mortgage, encumber, substitute, and otherwise dispose of and deal freely with any such items of equipment without regard to said option.

22- LESSOR'S DEFAULT. If Lessor shall fail to perform any of its obligations set forth herein and such failure shall continue for more than thirty (30) days after written notice by Lessee to Lessor thereof (or such lesser period as may be appropriate to protect Lessee's leasehold interest or to preserve or protect persons or property from injury), Lessee may, in addition to any other remedy specified herein or available to it by law or otherwise, (i) correct such failure to perform and deduct the cost thereof (including without limitation reasonable attorneys' fees) from the installments of lease payments thereafter coming due or (ii) in the case of a material default by Lessor, terminate this Lease upon giving Lessor ten (10) days' written notice thereof, whereupon all obligations of Lessee and all lease payments due from Lessee hereunder shall cease as of the date of such termination.

23- FORCE MAJEURE. In the event Lessor or Lessee shall be delayed, hindered in, or prevented from the performance of any act required hereunder, except the payment of rent, by reason of fire, floods, storms, or other casualties, acts of God, strikes, labor troubles, inability to procure materials, failure of power, riots, insurrection, declared or undeclared acts of war, the act or failure to act of the other party, or any other event beyond such party's control, the affected party shall give the other party written notice of the duration thereof, and then the performance of such act shall be excused for the period of delay occasioned thereby and the period for the performance of any such act shall be extended for a period equivalent to the period of the delay occasioned thereby.

24- EMINENT DOMAIN.

(a) Taking. If the Premises, and/or the Project, or such portion thereof as to render the balance unsuitable for the purposes of Lessee, shall be taken by condemnation or by right of eminent domain, then either party, upon ninety (90) days' prior written notice to the other, shall be entitled to terminate this Lease.

(b) Apportionment. Notwithstanding any contrary provision of law, the award granted for any taking of all or any part of the Premises shall be fairly and equitably apportioned between the Lessor and the Lessee, based on their percentage interests in the proportion taken on the Premises. Lessor and Lessee agree to cooperate in applying for and in prosecuting any claim for an award for any such taking.

(c) Termination and Abatement. In the event that this Lease is terminated as a result of such taking, the terms of this Lease shall cease and come to an end as of the date of such taking, with the same force and effect as if such date had originally been set forth as the expiration of the term hereof, and any rental payments in advance shall be promptly refunded by Lessor to Lessee. If this Lease is not terminated as result of such taking, a fair and just proportion of the rent thereafter payable shall be suspended or abated, depending upon the extent to which the Lessee may be required to discontinue its business in the Premises and/or the Project and depending upon the nature and extent of the taking.

25- MISCELLANEOUS PROVISIONS.

(a) Recordation. Lessor and Lessee shall execute a "Notice of Lease", conforming to the standards of New Hampshire RSA 477:7-a and reasonably acceptable in form to both parties and their counsel, which notice shall be recorded in the Merrimack County Registry of Deeds.

(b) Headings. The article, Section, paragraph, and subparagraph headings throughout this instrument are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Lease.

(c) Succession; Binding Agreement. Except as otherwise set forth herein, all of the terms and provisions of this Lease shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assignees of the respective parties thereto. All of the terms and provisions of this Lease which are binding upon the Board (or Lessor) shall also be binding upon the State of New Hampshire and its agencies.

(d) Exhibits. Each exhibit attached to this Lease shall be incorporated into and be part of this Lease. If any exhibit referred to in this Lease shall not be attached hereto at the time of execution of this Lease, or if any such exhibit shall be incomplete, then any such exhibit may be later attached or completed by mutual consent of the parties evidenced by their respective initialing of such exhibits, and such exhibits shall, as later attached or completed, for all purposes be deemed a part of this Lease as if attached hereto or completed at the time of execution thereof.

(e) Merger. This agreement, including all exhibits attached hereto, constitutes the entire agreement between the parties, and all prior understandings, agreements, and representations have been merged herein.

(f) Waiver. The waiver by either party of any breach of this Lease shall not be deemed to be a waiver of a subsequent breach of the same or any other covenant, condition, or term of this Lease.

(g) Amendment of Lease. This Lease may be modified or amended only by an instrument in writing signed by all parties hereto. If both parties hereto agree in writing to such modification or amendment, then such modification or amendment shall be executed by both parties and shall become part of this Lease. In approving this Lease, the Governor and Council thereby authorize Lessor to make subsequent minor amendments hereto which shall not require further approval by the Governor and Council.

(h) Severability. If any term or provision of this Lease, or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than to those which it is held invalid or unenforceable, shall not be affected and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

(i) Governing Law. This Lease and the performance thereof shall be governed and interpreted exclusively by the laws of the State of New Hampshire.

(j) Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given when delivered in hand against receipt to such party or mailed by certified or registered mail, postage prepaid, return receipt requested, addressed:

(i) if to Lessor: Water Resources Board  
P.O. Box 2008  
Concord, NH 03301-2008  
Attn: Delbert F. Downing  
Chairman

with a copy to: New Hampshire Attorney  
General's Office  
State House Annex  
Concord, NH 03301

(ii) if to Lessee: Briar Hydro Associates  
c/o Essex Hydro Associates  
99 North State Street  
Concord, NH 03301  
Attn: Thomas A. Tarpey

with a copy to: Essex Hydro Associates  
89 State Street, Suite 1400  
Boston, MA 02109  
Attn: Richard A. Norman

and to: Orr and Reno  
One Eagle Square  
P.O. Box 709  
Concord, NH 03301-0709  
Attn: Howard Moffett, Esq.

or to such other address as shall by like notice by sent to the other party.

(k) Counterparts. This Lease may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

(l) Mechanics Liens. Lessee agrees to promptly take steps to discharge or cause to be discharged (either by payment or the filing of a necessary bond, the contesting of an attachment, or otherwise) any mechanic's, materialman's or similar lien placed against the Premises, arising out of any payment due for labor, services, materials, supplies or equipment which may have been furnished to or for the Lessee, its contractors or subcontractors.

(m) Progress Reports. Lessee shall submit to Lessor written quarterly progress reports detailing the Lessee's progress in constructing the Project, and in bringing the Project on line.

(n) Third Parties. Except as specifically provided in Section 13 hereof, the parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

26- COMPLIANCE WITH THE LAW. Lessee shall comply promptly with all laws, regulations, rules, requirements, and orders of federal, state, and other public authorities, any local board of fire underwriters and similar organizations having jurisdiction which are applicable to the Premises. Lessor agrees to cooperate with Lessee in connection with the foregoing, and agrees to execute any filing or petition which may be required in its name as owner of record of the Premises and which may be necessary or convenient, in the opinion of Lessee, to the development, construction and/or operation of the Project, provided that Lessor, in its judgment, determines that such execution or filing is of beneficial use.

27- SHORTAGE CRISES. Pursuant to the express provisions of RSA 481:8, III, as amended, in the event of a shortage crisis, as determined by the Governor and Council, in either the water

resources of the State of New Hampshire or the capacity to fulfill the electrical requirements of the State of New Hampshire, then the Governor and Council may suspend the terms of this Lease (but only to the extent that hydroelectric power generated at the Premises is provided outside of the State of New Hampshire) in order to fulfill the needs and requirements of the citizens of the State of New Hampshire.

28- EXECUTION AGAINST LESSOR'S PROPERTY. Nothing in this Lease shall be deemed to be a waiver by Lessor of the benefit of the provisions of RSA 481:6-C with respect to levy and sale, execution, or other judicial process against property of Lessor.

29- NO WAIVER OF SOVEREIGN IMMUNITY. No provision in this Lease is intended to be, nor shall it be, interpreted by either party to be a waiver of sovereign immunity; provided, that this provision shall not operate to relieve Lessor or the State of New Hampshire from their obligations set forth herein.

30- EMERGENCY ACTION PLAN. If, by virtue of Lessee's construction, operation or maintenance of the Project, a Flood or Emergency Action Plan (the "Plan") is required by FERC (pursuant to FERC Order No. 122, Docket No. RM80-31, issued January 21, 1982) or any other agency having jurisdiction, then Lessee agrees to prepare the Plan and to pay the cost thereof.

31- CERTIFICATES. Upon its execution of this Lease, Lessee shall attach hereto a Certificate of Authority to execute and be bound by this Lease, together with a Certificate of Registration with the New Hampshire Secretary of State, all as required by RSA 5:18-a.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the date first above written.

NEW HAMPSHIRE WATER RESOURCES BOARD

By: Delbert F. Downing  
Delbert F. Downing, Chairman

BRIAR-HYDRO ASSOCIATES

By: James L. Greenhalgh, Jr.  
General Partner

STATE OF NEW HAMPSHIRE  
COUNTY OF

On this, the 12 day of February, 1986, before me the undersigned offer, personally appeared Delbert F. Downing, who acknowledged himself to be the Chairman of the Water Resources Board, a public corporation created by the State of New Hampshire, and that he, as Chairman, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Before me:

William A. Knowlton  
~~NOTARY PUBLIC~~ / JUSTICE OF THE PEACE

My Commission expires: 5-23-88.

STATE OF NEW HAMPSHIRE  
COUNTY OF

On this, the 5<sup>th</sup> day of February, 1986, before me, the undersigned officer, personally appeared James H. Steenbete, Jr. who acknowledged himself to be a General Partner of Briar-Hydro Associates, a New Hampshire limited partnership, and that he, as such Partner, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

Before me:

Howard M. Moffet  
NOTARY PUBLIC/JUSTICE OF THE  
PEACE

My Commission expires: 1/29/91.

Approved by Attorney General this 12<sup>th</sup> day of February, 1986 as to form, substance and execution, subject to substitution at a later date of final certification by the partnership.

[Signature]  
ASSISTANT ATTORNEY GENERAL

At the meeting on February 20, 1986, the Governor and Council determined that the proposed project will be of public use and benefit and within the authority conferred upon the Board, and approved execution of this Lease.

[Signature]  
Dep. SECRETARY OF STATE  
ON BEHALF OF THE GOVERNOR  
AND COUNCIL



CERTIFICATION

The undersigned Secretary of the New Hampshire Water Resources Board (the Board) does hereby certify that at a meeting of the Board held on the 30<sup>th</sup> of JANUARY, 1986, said Board voted affirmatively as follows:

Upon motion made and seconded, it was voted to approve the lease with Briar-Hydro Associates to develop the hydropower at The York Dam and to authorize Delbert F. Downing, Chairman to execute said lease on behalf of the Board.

I further certify that the above vote is official and still in force and effect and that Delbert F. Downing is Chairman of the Board as of the 12<sup>th</sup> of FEBRUARY, 1986.

NEW HAMPSHIRE WATER RESOURCES BOARD

June B. LaFrance  
WITNESS

PETER B. HANCE  
PETER B. HANCE, SECRETARY

STATE OF NEW HAMPSHIRE  
COUNTY OF MERRIMACK

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of February, 1986, by Peter B. Hance, Secretary of the New Hampshire Water Resources Board.

Before me:

Sarah G. Dawson  
NOTARY PUBLIC

My Commission expires: Feb 1990



## EXHIBIT A

Premises. For purposes of this Lease, the term "Premises" shall include the rights and easements over certain tracts or parcels of land in the City of Concord, Merrimack County and State of New Hampshire situated along and near the Contoocook River in the vicinity of the former Contoocook River Park, the canal and "Outlet", together with all rights and easements pertaining to the construction, reconstruction, repair, maintenance operation and inspection of certain dams, dikes, structures, abutments, gates and other improvements used or useful in the production of hydroelectric power, and all of Lessor's water, flowage and dam rights, as conveyed to the Lessor by deed of the City of Concord dated October 3, 1967, and recorded in Merrimack County Records at Book 1015, Page 435, or as may be hereafter acquired by the Lessor, including, without limitation, the following structures and all such rights appurtenant thereto: York Dam, New Hampshire Water Resources Board (NHWRB) No.51.02, Outlet Dam, NHWRB No. 51.03; Water Control Structure, NHWRB No.51.43 and Canal Dike NHWRB No.51.45.

MERRIMACK COUNTY RECORDS  
Recorded Feb.28,11-35A.M.1986

With Lease  
NH Water Resources Act

Brown - 3/2/80

MERRIMACK COUNTY RECORDS  
Received Feb. 28, 11-35A.M. 1986  
Recorded Lib. 1551, Fol. 129  
Examined;

*John S. Strong*  
Register

11-35

*John S. Strong, Esq.*

BY 1415  
Grand. DK.