

RESOLUTION AUTHORIZING A SIXTH AMENDMENT TO THE GROUND LEASE AND WATER USAGE AGREEMENT AT STILLWATER

WHEREAS, the Hudson River – Black River Regulating District Board (“Regulating District”) entered into a Ground Lease and Water Usage Agreement with Stillwater Associates, dated as of October 21, 1985 (the “*Original Ground Lease and Water Usage Agreement*”), later amended by an Amendment to Ground Lease and Water Usage Agreement, dated as of February 17, 2006 (the “*Amendment to Ground Lease and Water Usage Agreement*”); later amended by that certain Second Amendment to Ground Lease and Water Usage Agreement, dated as of October 14, 2021 (the “*Second Amendment to Ground Lease and Water Usage Agreement*”) later amended by that certain Third Amendment to Ground Lease and Water Usage Agreement, dated as of March 31, 2022 (the “*Third Amendment to Ground Lease and Water Usage Agreement*”) that certain Fourth Amendment to Ground Lease and Water Usage Agreement, dated as of June 15, 2022 (the “*Fourth Amendment to Ground Lease and Water Usage Agreement*”) and that certain Fifth Amendment to Ground Lease and Water Usage Agreement, dated as of September 15, 2022 (the “*Fifth Amendment to Ground Lease and Water Usage Agreement*”) and

WHEREAS, the Original Ground Lease and Water Usage Agreement, dated as of October 21, 1985, was set to end on December 31, 2016 (the “*Original Term*”); and

WHEREAS, the parties did not agree as to terms and conditions for an additional fifteen (15) year Term at the end of the Original Term and thus, under the Original Ground Lease and Water Usage Agreement, the Term of the Original Ground Lease and Water Usage Agreement was extended to December 31, 2021 (the “*Extended Term*”), later extended to March 31, 2022, June 30, 2022, September 30, 2022 and then December 31, 2022; and

WHEREAS, as the expiration of the extended term approaches, the parties have not been able to agree upon rent and other terms and conditions extending the Term past the Extended Term, thus requiring, pursuant to provisions in the original agreement, the District to purchase the Plant at its Appraised Value; and

WHEREAS, the parties have agreed to further extend the Extended Term through June 30, 2023 (the “*first 2023 Extension*”), to allow the appraisers for the parties sufficient time to determine the Plant’s Appraised Value and to allow the parties sufficient time to prepare for the purchase and sale of the Plant by the District; and

WHEREAS, notwithstanding the 2022 Extension, the second 2022 Extension, the third 2022 Extension, the fourth 2022 Extension, the fifth 2022 Extension or anything else set forth in the attached Second Amendment, Third Amendment, Fourth Amendment, Fifth Amendment, or this Sixth Amendment, neither party desires to relinquish or waive any of the terms, conditions or obligations of either party under the Lease; and

WHEREAS, the Regulating District has shared with Stillwater Associates the valuation of its appraiser to determine the fair market value of Stillwater Associates’ use of the lands upon which the Stillwater Associates plant (co-located at the Regulating District’s Stillwater Dam) is based and that Plant’s use of water from the Regulating District’s Stillwater Reservoir; and

WHEREAS, the Regulating District intends to rely upon that appraisal in the negotiation of a new long-term replacement to the expiring Ground Lease and Water Usage Agreement or sale of the asset; and

WHEREAS, the parties acknowledge that additional time may be required for the appraisers for the parties, any third appraiser chosen by the appraisers for the parties, or the parties themselves to determine the plant's appraised value and to allow the parties sufficient time to prepare for the purchase and sale of the plant by the District; and

NOW, THEREFORE BE IT RESOLVED, the Hudson River – Black River Regulating District Board hereby authorizes the Executive Director to execute a Sixth Amendment to the Ground Lease and Water Usage Agreement extending the extended term up to six months to June 30, 2023.

Approved as to form:



Robert P. Leslie
General Counsel

Motion was made by Mr. Candido and seconded by Mr. DeWitt that the Resolution be approved.

Present and voting:

<u>MEMBER</u>	<u>AYE</u>	<u>NOE</u>	<u>ABSTAIN</u>
Mr. Finkle.....	<u> X </u>	_____	_____
Mr. Hayes.....	<u> X </u>	_____	_____
Mr. DeWitt.....	<u> X </u>	_____	_____
Mr. Bird.....	<u> X </u>	_____	_____
Mr. Candido.....	<u> X </u>	_____	_____
Mr. Reagan.....	<u> X </u>	_____	_____
Ms. Allen.....	<u> X </u>	_____	_____