

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT is made and entered into this the _____ day of June, 2003, by and among **LONGVIEW POWER, LLC**, a Delaware limited liability company (herein "Longview Power"); the **COUNTY COMMISSION OF MONONGALIA COUNTY, WEST VIRGINIA** (herein the "Commission ") and the **MONONGALIA COUNTY, WEST VIRGINIA BOARD OF EDUCATION** (herein the "County Board"); the **SHERIFF OF MONONGALIA COUNTY, WEST VIRGINIA**, (herein the "Sheriff") and the **ASSESSOR OF MONONGALIA COUNTY, WEST VIRGINIA**, (herein the "Assessor").

RECITALS

1. Longview Power desires to develop a 600 MW supercritical, coal-fired, electric power generation plant (the "Facility") on an approximately two hundred twenty-five (225) acre parcel of land (the "Land") located in an unincorporated area of Monongalia County, West Virginia, and more particularly described in Exhibit A attached hereto and made a part hereof, which Land may be purchased by Longview Power pursuant to an option it holds.
2. The costs of acquiring and developing the Land and the Facility and the cost of equipping the Facility, including the acquisition and installation of new machinery and equipment therein (the "Equipment"), (the Land, Facility and Equipment, are collectively referred to herein as the "Project") will be financed through certain loans issued by certain private lenders (the "Loans "), and by equity investment arrangements with certain private investors.
3. The obligations under the Loans will be secured by certain liens, deeds of trusts and other security instruments executed by Longview Power and encumbering the Project (the "Liens").
4. In furtherance of the Project, Longview Power has entered into a certain Facility Development Agreement ("FDA") with the Monongalia County Development Authority ("MCDA") and the Commission, the performance of which FDA is subject to certain conditions precedent - including the execution of this Agreement.
5. Pursuant to the FDA, legal title in the Project will be acquired by MCDA from Longview Power to hold during the construction period, subject to the Liens and a repurchase option reserved by Longview Power.
6. Also pursuant to the FDA, the Project will be leased by MCDA back to Longview Power ("the Lease").
7. Also Pursuant to the Lease, Longview Power will be required to pay, as additional rent, all costs in connection with the acquisition and construction of the Facility and the installation of the Equipment, which additional rent will be paid by Longview Power's remittance directly to the contractors and vendors of such sums it may owe them for

providing the same; and, in addition, Longview Power will be solely responsible for repayment of the Loans.

8. During the term of the Lease, MCDA will own the real and personal property which comprises the Project, subject to the Liens, Lease and other rights and interests aforesaid.

9. Pursuant to the Lease, title to any property constituting improvements, repairs, alterations, renewals, substitutions and replacements of, and additions and appurtenances to, the Project or any part thereof, when made or installed in or about the Project shall, subject to the Lease, the Liens and the other rights and interests, immediately become vested in MCDA without further act.

10. During the term of the Lease, MCDA's freehold interest in the real and personal property which comprise the Project, and which is covered by the Lease, will be, by law, exempt from *ad valorem* property taxes.

11. Upon completion of the construction and equipping of the Facility, the Project will be conveyed by MCDA, by deed, subject to the Lease, the Liens and the other rights and interests, to the Commission for a term of years during which the Commission will succeed MCDA as the lessor under the Lease.

12. Pursuant to the term of years conveyance of the Project by MCDA to the Commission, title to any property constituting improvements, repairs, alterations, renewals, substitutions and replacements of, and additions and appurtenances to, the Project or any part thereof, when made or installed in or about the Project shall, during its term of years ownership, and subject to the Lease, the Liens and the other rights and interests, immediately vest in the Commission without further act.

13. The parties acknowledge that by virtue of the approval of the Project by the Commission and the County Board, and the terms of this Agreement, during the term of years ownership by the Commission, all of the real and personal property which comprise the Project, and any leasehold interest therein, shall be exempt from *ad valorem* property taxes pursuant to W.Va. Code § 8-19-4.

14. Longview Power has agreed to make payments of certain amounts in lieu of *ad valorem* property taxes and the Commission and the County Board have approved the acquisition and construction of the Project.

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

ARTICLE I
REPRESENTATIONS AND WARRANTIES, ETC.

Section 1.01. Commission Representations, Warranties, Agreements and Findings.

The Commission hereby represents, warrants, agrees, finds and confirms its findings that:

(a) The Commission is a public corporation, acting on behalf of the County of Monongalia, a political subdivision of the State of West Virginia (the "State"), validly created and existing under the Constitution and laws of the State, and is authorized and empowered by the provisions of the Constitution and laws of the State to enter into this Agreement.

(b) The Commission has found, and hereby finds, that the agreements herein contained and the consummation of the transactions in connection herewith will promote the public interest and public purposes by, among other things, providing certainty and soundness in fiscal planning and promoting the present and prospective prosperity, health, happiness, safety and general welfare of the people of Monongalia County.

(c) The execution of this Agreement and the consummation of the transactions in connection herewith and therewith, have been approved by the Commission at one or more duly called and constituted meetings, throughout which quorums of duly elected, qualified and acting members of the Commission were present and acting. The Commission's approval of the acquisition and construction of the Project and its authorization for the execution of this Agreement are embodied in a Resolution adopted on June _____, 2003.

Section 1.02. County Board Representations, Warranties, Agreements and Findings.

The County Board hereby represents, warrants, agrees, finds and confirms its findings that:

(a) The County Board is a public corporation of the State of West Virginia and has the power and authority to enter into the transaction contemplated this Agreement.

(b) The County Board has found, and hereby finds, that the agreements herein contained and the consummation of the transactions in connection herewith will promote the public interest and public purposes by, among other things, providing certainty and soundness in fiscal planning and promoting the present and prospective prosperity, health, happiness, safety and general welfare of the public school students in Monongalia County.

(c) The approval of the acquisition and construction of the Project, and the authorization for the execution of this Agreement, by the County Board are embodied in a Resolution adopted on June _____, 2003.

Section 1.03. Sheriff Representations, Warranties, Agreements and Findings.

The Sheriff hereby represents, warrants, agrees, finds, and confirms his findings that:

(a) Pursuant to W.Va. Code §§ 11A-1-1 et. seq., he is the officer responsible for collecting *ad valorem* property taxes levied in Monongalia County, West Virginia, and for disbursing the payments provided for in this Agreement.

(b) The Sheriff has the power to enter into this Agreement and to carry out his obligations hereunder.

(c) To the knowledge of the Sheriff, no consent, or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Sheriff is required as a condition precedent to the execution, delivery or performance of this Agreement by the Sheriff or as a condition precedent to the performance by the Sheriff of his duties contemplated hereby.

Section 1.04. Assessor Representations, Warranties, Agreements and Findings.

The Assessor hereby represents, warrants, agrees, finds, and confirms his findings that:

(a) Pursuant to W.Va. Code § 11-3-1 et seq., he is the officer responsible for assessing properties in Monongalia County, West Virginia, for *ad valorem* property tax purposes.

(b) The Assessor has the power to enter into this Agreement and to carry out his obligations hereunder.

(c) To the knowledge of the Assessor, no consent, or authorization of, or filing, registration or qualification with, any governmental or public authority on the part of the Assessor is required as a condition precedent to the execution, delivery or performance of this Agreement by the Assessor or as a condition precedent to the making of the findings by the Assessor of the matters regarding the assessment of property for taxation purposes contemplated hereby.

Section 1.05. Longview Power Representations, Warranties and Agreements.

Longview Power represents, warrants and agrees that:

(a) It is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, and is duly qualified and authorized to

conduct affairs or do or transact business in the State of West Virginia, with full power and legal right to enter into this Agreement and to perform its obligations hereunder.

(b) The making and performance of this Agreement and all documents, agreements and instruments in connection herewith, on Longview Power's part, are not prohibited under and have been duly authorized in accordance with, and will not violate the terms and provisions of, Longview Power's articles of organization and operating agreement, and are not prohibited by, and will not violate or conflict with or constitute default under, any statute, order, governmental rule or regulation, agreement, instrument or document by which Longview Power or any of its properties are bound.

ARTICLE II

AD VALOREM PROPERTY TREATMENT OF THE PROJECT DURING THE CONSTRUCTION PERIOD AND WHILE MCDA LEASES IT TO LONGVIEW POWER

Section 2.01. MCDA's Freehold Interest in Property Comprising the Project Shall be Exempt from Property Taxes.

During the term of the Lease, the freehold interest of MCDA, in all of the real and personal property which comprise the Project, shall not be subject to any *ad valorem* property taxes, the same being exempt by operation of law.

Section 2.02. Commission's Term of Years Interest in Property Comprising the Project Shall be Exempt from Property Taxes.

During its term of years interest, the ownership interest of the Commission in all of the real and personal property which comprise the Project, shall not be subject to any *ad valorem* property taxes, the same being exempt by operation of law.

Section 2.03. Leasehold Interest Assessed and Taxed at Nominal Value.

Except as described in this Section 2.03, the leasehold interest of Longview Power created by the Lease, and of any assignees or sublessees thereunder, shall be subject to assessment, and shall be entered accordingly on the property books of Monongalia County, provided however, that the assessed values of such interests shall be the nominal value of only One Dollar (\$1.00) for each such interest under the Lease or any sublease or interest thereunder, it being the understanding, agreement and finding of the parties that: (i) the rents, to be paid under the Lease by Longview Power (which rents shall include, without limitation, sums sufficient to fully construct and equip the Facility and all costs of maintaining and insuring the Project), constitute rental payments that equal, or significantly exceed, fair market rental payments for such property during the entire term of the Lease; (ii) under the Lease, the leasehold interest of Longview Power is not freely assignable; and (iii) the Lease does not constitute a

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“bargain lease” to Longview Power which would increase any assessment of the said leasehold interest above the said nominal value.

ARTICLE III

APPROVAL OF ACQUISITION AND CONSTRUCTION OF THE PROJECT AND PAYMENT IN LIEU OF TAX

Section 3.01. Approval of Construction of the Facility

The Commission and the County Board each hereby approves the acquisition construction of the Project pursuant to the terms of the Facility Development Agreement.

Section 3.02. Tax Exemption.

The Commission and the County Board recognize that under W.Va. Code § 8-19-4, all real and personal property owned by the Commission which is part of the Project, as well as any leasehold or similar interest held by Longview Power, its successors or assigns, are exempt from *ad valorem* property taxation.

Section 3.03. Payment in Lieu of Taxes.

(a) On the date that actual, physical construction of the Facility begins, Longview Power shall make the initial payment of lieu of taxes in the amount of Five Million Dollars (\$5,000,000.00) as shown on Attachment A, PILOT Payment Schedule attached hereto and made a part hereof.

(b) Commencing with the first tax year next following the tax year in which commercial operation of the Facility begins, Longview Power agrees to make the annual payments in lieu of taxes in the amounts as set forth on Attachment A aforesaid during the period that this Agreement remains in effect as provided in Section 4.02 below.

(c) Longview Power hereby agrees to make the initial payment in lieu of taxes and each annual payment in lieu of taxes to the Sheriff who shall distribute each such payment to the Commission and the County Board in proportion with the applicable combined levy rates (including regular and special levies, if any) , for each tax year during the term of this Agreement in which such payments are made.

Section 3.04. Payment in Lieu of Tax Payable in Installments.

Longview Power may pay each annual payment in lieu of tax payable under Subsection 3.03(b) in two equal installments, the first installment of which shall be paid by each September 1 and the second installment of which shall be paid by each

March 1, or Longview Power may pay the entire annual payment amount on or before September 1.

ARTICLE IV
GENERAL AND MISCELLANEOUS PROVISIONS

Section 4.01. Expenses and Costs.

Except as otherwise expressly provided in the FDA, each party will bear its own respective legal and other costs and expenses associated with this Agreement and all documents, instruments and agreements in connection herewith, and the consummation of the transactions set forth herein and therein.

Section 4.02. Term of This Agreement.

Unless terminated sooner by the express provisions hereof, this Agreement shall remain in effect for (a) a period of thirty (30) years from the date Longview Power commences commercial operation of the Facility, or (b) for the entire term of the Lease, and any renewals thereof, whichever is the shorter period of time. Beginning with the first tax year after the thirty-year period described above, and for each tax year thereafter, so long as Longview Power has an interest in the Facility it shall pay the full amount of the *ad valorem* property taxes on the real and personal property which comprise the Facility, as determined by applicable law, as if Longview Power at that time held fee simple title to the Project. This provision shall survive the termination of this Agreement.

Section 4.03. Notices.

All notices to Longview Power, the Commission, the County Board, the Sheriff and the Assessor with respect to this Agreement, shall be deemed to be completed upon mailing by registered or certified mail, postage prepaid, addressed as follows or to such other address as shall be furnished in writing by any party to the remaining parties hereto:

If to Longview Power, as follows:
Thomas W. Wheble, Project Director
1040 Great Plain Avenue
Needham, Massachusetts 02492

b) If to the Commission, as follows:

Asel Kennedy, President
243 High Street
Morgantown, West Virginia 26505

c) If to the Assessor, as follows:

Rodney A. Pyles, Assessor
263 High Street
Morgantown, West Virginia 26505

d) If to the Sheriff, as follows:

Joseph Bartolo, Sheriff
242 High Street
Morgantown, West Virginia 26505

If to the Board, as follows:

c/o Michael Vetere, Superintendent
13 South High Street
Morgantown, West Virginia 26501

Section 4.04. Credit for Payments Made.

In the event that any amounts are paid by Longview Power, its successors or assigns, as *ad valorem* property taxes levied by the Commission or the County Board on their leasehold interests in the Project, such amounts shall be fully credited against and reduce the payments in lieu of taxes otherwise due pursuant to Article III herein, and Longview Power, its successors or assigns, shall, likewise, be entitled to a refund of the same by virtue of any overpayment thereof resulting from such credit and reduction.

Section 4.05. Use of Payments in Lieu of Taxes

Longview Power shall not have any responsibility or liability for the application or expenditure by the Sheriff, the County Board or by the Commission of any amount paid to the Sheriff by Longview Power pursuant to this Agreement. The Sheriff alone shall be responsible for the proper disposition of any amount paid by Longview Power, and (to the extent of any *ad valorem* property taxes determined to be due with respect to the Project), subject to the Constitution and laws of the State of West Virginia, Longview Power is hereby indemnified and held harmless, by the other parties hereto, from any lawsuit or legal action, and any liability, arising from or relating to the manner in which the Sheriff distributes or the County Board or the Commission applies, expends or otherwise distributes or disposes of any such amount paid by Longview Power under this Agreement.

Section 4.06. Construction.

It is the intention of the parties in entering into this Agreement to provide for certainty in the assessment of *ad valorem* property taxes with respect to the Project, to provide an inducement for Longview Power to invest in the Project in Monongalia

County, West Virginia, to clarify ambiguities as to the appropriate assessment of leasehold interests in the Project during the period it is leased by MCDA, and to provide for payments in lieu of taxes as an inducement for the Commission, the County Board, the Sheriff and the Assessor to enter into this Agreement. It is the intention of the parties that this Agreement be construed liberally in order to effect the aforesaid intent of the parties.

Section 4.07. Miscellaneous .

Neither this Agreement nor any provision hereof may be amended, modified, waived, discharged or terminated orally, except by an instrument in writing signed by the parties hereto. With the written consent of the Commission, which consent shall not be unreasonably withheld or delayed, this Agreement may be assigned by Longview Power and the provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of each of the parties hereto. The captions in this Agreement are for the convenience of reference only and shall not define or limit the provisions hereof.

Section 4.08. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia.

Section 4.09. Severability.

The parties hereby agree that in the event one or more portions of this Agreement shall be declared to be invalid by appropriate authority, the remaining provisions of this Agreement shall continue in full force and effect, provided, however, that should the aggregate *ad valorem* property taxes charged to Longview Power, its successors or assigns, by the Sheriff, with respect to the Project, or the leasehold interests in it, in any one year after the tax year 2003, exceed the payments in lieu of taxes provided for in Article III herein (prior to the adjustment as provided in Section 4.04 herein), for that year, then, at the election of Longview Power, in its sole discretion, this Agreement may be canceled and rendered void and of no further force and effect from and after the earlier of the dates on which such taxes are paid to the Sheriff or the ownership interests of both MCDA and the Commission are terminated.

Section 4.10. Condition to Agreement Becoming Effective.

Notwithstanding any other provision herein, this Agreement shall not become effective unless and until Longview Power satisfies each of the conditions precedent described in paragraph 6 of the FDA, and acquires the Land and title and transfers ownership in and to the Project to the MCDA. In the event that Longview Power does not satisfy the conditions precedent in the FDA aforesaid, or does not acquire the Land or ownership of the Project is not held by either the MCDA or the

Commission, it is expressly agreed that this Payment in Lieu of Taxes Agreement shall terminate and be null and void.

Section 4.11. Indemnification.

Longview Power agrees, whether or not the transactions contemplated by this Agreement, the FDA or the Lease shall be consummated, to protect, indemnify and save the Commission, the County Board, the Sheriff and the Assessor (hereinafter individually called "Indemnified Party" and collectively called the "Indemnified Parties") harmless from and against all liability, loses, damages, costs, reasonable expenses (including reasonable counsel fees), taxes, causes of action, suits, claims, demands and judgments of any nature or form, by or on behalf of any person arising in any manner from the transactions of which this Agreement is a part or arising in any manner in connection with the Project, and, without limiting the generality of the foregoing, arising from (i) this Agreement [except the obligations expressly undertaken by the Indemnified Parties hereby], (ii) the design, acquisition, construction, installation, operation, use, occupancy, maintenance, ownership or leasing of the Project; (iii) any written statements or representations made or given by Longview Power or any of its officers, employees or agents to any person, with respect to Longview Power, the Project, and any financing therefor, including, but not limited to, statements or representations of facts, financial information or corporate affairs; (iv) damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project; (v) any breach or default on the part of Longview Power in the performance of any of its obligations under this Agreement; (vi) any violation of contract, agreement or restriction by Longview Power relating to the Project; or (vii) any violation of law, ordinance or regulation affecting the Project or any part thereof or the ownership or occupancy or use thereof.

In the event that any action or proceeding is brought against any of the Indemnified Parties by reason of any such claim, such action or proceeding shall be defended against by counsel to such Indemnified Party or Indemnified Parties or by Longview Power, as the Indemnified Party or Indemnified Parties, upon advice of counsel, shall determine. In the event such defense is by counsel to the Indemnified Party or Indemnified Parties, Longview Power shall indemnify the Indemnified Party or Indemnified Parties for reasonable costs of counsel allocated to such defense and charged to the Indemnified Party or Indemnified Parties. Longview Power, upon notice from an Indemnified Party, shall resist and defend such an action or proceeding on behalf of such Indemnified Party.

The provisions of this Section shall apply to any claim or liability not resulting from an Indemnified Party's own negligence, but shall not apply to any claim or liability resulting from an Indemnified Party's negligence, bad faith, fraud or deceit or for any claim or liability which Longview Power was not given the opportunity to contest.

The provisions of this Section shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties have signed this as Agreement as of the date first written above.

LONGVIEW POWER, LLC
a Delaware limited liability company

By: GenPower, LLC
Its: Sole Member

By: _____
Its:

THE COUNTY COMMISSION
MONONGALIA COUNTY, WEST VIRGINIA

By: _____
Its: _____

Clerk of the County Commission
of Monongalia County, West Virginia

ASSESSOR OF MONONGALIA COUNTY,
WEST VIRGINIA

SHERIFF OF MONONGALIA COUNTY,
WEST VIRGINIA

THE BOARD OF EDUCATION
MONONGALIA COUNTY, WEST VIRGINIA

By:
Its:

**Attachment A
PILOT Payment Schedule**

<u>Payment Date</u>	<u>Amount (\$)</u>
Start of Construction	5,000,000
	-
	-
Commercial Operation Date (COD)	2,100,000
Year 2	2,163,000
Year 3	2,227,890
Year 4	2,294,727
Year 5	2,363,569
Year 6	2,434,476
Year 7	2,507,510
Year 8	2,582,735
Year 9	2,660,217
Year 10	2,740,024
Year 11	2,822,224
Year 12	2,906,891
Year 13	2,994,098
Year 14	3,083,921
Year 15	3,176,438
Year 16	3,271,732
Year 17	3,369,884
Year 18	3,470,980
Year 19	3,575,109
Year 20	3,682,363
Year 21	3,792,834
Year 22	3,906,619
Year 23	4,023,817
Year 24	4,144,532
Year 25	4,268,868
Year 26	4,396,934
Year 27	4,528,842
Year 28	4,664,707
Year 29	4,804,648
Year 30	5,040,414
	-
	-
TOTAL=	105,000,000

EXHIBIT A

Re: Longview Power, LLC
 Parcel Description
 225.9432 Acres, Cass District,
 Monongalia County, West Virginia

Beginning at a stone (fnd.) in WV Route No. 53, a forty (40') foot street, corner to lands of John W. Garlow Trust, from which an iron pin (fnd.) bears, S1°57'W, 101.55'; thence, S24°08'34"W, 1,280.80' to a point in said WV Route No. 53; thence, S23°24'05"W, 240.04' to an iron pin (set) in said WV Route No. 53, corner to lands of The Monongalia County Commission (Deed Book 1147 Page 482); thence with said Commission lands, S23°24'05"W, 89.96' (330' in all) to an iron pin (set); thence with same, S36°24'05"W, 173.25' to a point; thence, S36°24'05"E, 217.25' (390.5' in all) to an old fence post (fnd.); thence, S63°50'55"E, 163.42' to an old fence post (fnd.); thence, S63°50'55"E, 29.77' (193.19' in all) to a point in said WV Route No. 53; thence, S11°24'05"W, 745.88' to a point in said WV Route No. 53; thence, N83°28'25"W, 542.85' to a point in WV Route No. 53/2 (Sease Lane), a thirty (30') foot street; thence N84°06'51"W, 13.13' to a point in said WV Route No. 53/2 at the junction of Sease Lane with the Old Reppert Road; thence, N84°06'51"W, 2,359.50' (2,372.63' in all) to a point in said WV Route No. 53/2, on line of lands of MEPCO, Inc. (Deed Book 1199 Page 389 Tract 9); thence with said MEPCO, Inc. lands, N12°03'37"E, 26.28' to a stone (fnd.); thence with same, N12°03'37"E, 60.75' to an old metal fence post (fnd.), 87.03' on line; thence with same, N12°03'37"E, 98.08' to an old fence post (fnd.), 185.11' on line; thence with same, N12°03'37"E, 76.40' to an old fence post (fnd.), 261.51' on line; thence with same, N12°03'37"E, 314.40' (575.91' in all) to an iron pin (set); thence with same, N47°47'32"W, 830.64' to an iron pin (set), corner to other lands of said MEPCO, Inc. (Deed Book 1199 Page 401 Tract 3), from which an old fence post (fnd.) bears, N47°47'32"W, 83.85'; thence N17°32'28"W, 1,784.44' to an iron pipe (fnd.), corner to lands of said John W. Garlow Trust (First Tract Deed Book 338 Page 136); thence with said John W. Garlow Trust lands (Sixth Tract Deed Book 338 Page 136), S83°21'E, 1,605.28' to an iron pipe (fnd.); thence with same (Seventh Tract Deed Book 338 Page 136), S66°03'09"E, 361.73' to an iron pipe (fnd.); thence with same, S68°09'17"E, 2,874.30' to the beginning. Containing 225.9432 acres.