

INDENTURE

RIGHT OF FIRST OFFER

PREAMBLE: INDENTURE made as of February 5, 1993, by and between Cambridge Electric Light Company, a Massachusetts corporation ("Grantor"), and President and Fellows of Harvard College, a Massachusetts corporation ("Harvard").

WITNESSETH

Grantor COVENANTS AND AGREES with Harvard and its successors and assigns, for Grantor its successors and assigns, as follows:

1. DEFINITIONS AND OTHER GENERAL PROVISIONS. The following terms, when used in this Indenture, shall have the meanings indicated and the following shall apply generally in implementing this Indenture:

(a) "Fair Market Value" - means either (i) the fair market value of the Premises, as of the time in question, as agreed upon by Harvard and Grantor or (ii) absent such agreement, as determined by Appraisal (as described below), or (iii) if there exists a Valid Offer, the Fair Market Value shall be equal to the "Valid Value" as defined below.

(b) "Appraisal" - If Harvard and Grantor are unable to agree upon Fair Market Value and if the determination of the same is to be made by "Appraisal," then the procedure shall be as follows: The party (the "First Party") who rejects (or does not timely accept) the other party's (the "Opining Party") stated opinion of the fair market value, shall, at the First Party's own cost and expense obtain and deliver within thirty days to the Opining Party an appraisal report (the "First Appraisal") stating the fair market value of the Premises prepared by Qualified

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Appraiser. A "Qualified Appraiser" means a competent, reputable appraiser with ten years experience appraising properties similar to the Premises in the Greater Boston Area. The Opining Party shall be deemed to have accepted the First Appraisal as the Fair Market Value unless the Opining Party by notice to the First Party within ten days rejects the First Appraisal, in which case, the Opining Party shall, at the Opining Party's sole cost and expense, obtain and deliver to the First Party within forty-five days after such rejection an appraisal report (the "Second Appraisal") stating the fair market value of the Premises prepared by a Qualified Appraiser. The First Party shall be deemed to have accepted the Second Appraisal as the Fair Market Value, unless within ten days after the Opining Party gives notice of such Second Appraisal (including in such notice a copy of the Second Appraisal report), the First Party by notice to the Opining Party rejects the Second Appraisal, in which event the two Qualified Appraisers shall select a third Qualified Appraiser who shall within forty-five days after the First Party's notice of rejection of the Second Appraisal, render an appraisal report (the "Third Appraisal") specifying the fair market value of the Premises, in which case the Fair Market Value of the Premises shall be deemed to be either (i) average of the closest two of the three appraisals, or (ii) the middle appraisal if the three appraisals are equidistant. If two qualified Appraisers cannot within ten days agree upon a third Qualified Appraiser, then either party may request the then President of the Greater Boston Real Estate Board (or the Board's successor if such board has ceased to exist) to select the third Qualified Appraiser. Each party shall bear the cost of the Qualified Appraiser selected by such party, and shall share equally the cost of the Third Appraisal.

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(c) "Valid Offer" - an unsolicited, bona fide, written offer to purchase the Premises or the Steam Operation or both, made by a third party known by the Grantor and Harvard to have adequate financial strength and wherewithal (either alone or with committed lenders) sufficient to effectuate the purchase, a complete copy of which offer is delivered to Harvard within ten days after it is received by Grantor, together with a certificate of Grantor that neither Grantor, nor anyone acting by or on behalf of Grantor, solicited the offer.

(d) "Valid Value" - the present value of a Valid Offer using customary discount rates applicable to purchase terms such as those set forth in the Valid Offer.

(e) "Good Title" - means a good and clear record and marketable title to the Premises (or the Steam Operation, if only the Steam Operation is to be conveyed) free from all encumbrances, except (i) the easements, restrictions and other matters, if any, insofar as the same may then be in force and applicable or that are existing of record as of the date hereof, (ii) current taxes, if not then delinquent, (iii) provisions of the then existing and applicable zoning, building, environmental and other land use control laws, codes, rules, and regulations, and (iv) any liens for municipal betterments. For purposes of the prior sentence, the term "encumbrances" shall be deemed not to include takings for such things as street widenings, slope easements, or utility easements except that Harvard may decline to complete the purchase on account of such takings, in which case Grantor may thereafter Sell the Premises (or the Steam Operation, if that was the subject of the offer) free of any obligations hereunder.

(f) "Proper Condition" - the Premises will be in "Proper Condition" at the time for delivery of a deed to Harvard if the Premises are then (i) in the same condition as at the time of Harvard's acceptance of an offer to purchase the Premises, reasonable wear and tear

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excepted, (ii) not in violation of then existing and applicable zoning, building, and other land use control laws, codes, rules, and regulations, (iii) not in violation of those environmental protection laws that are necessary to the efficient operation of the Steam Operation, and (iv) free of all tenants and occupants, except as Harvard and Grantor shall otherwise mutually agree.

(g) "Now" - means the date first above written.

(h) "Harvard" - means President and Fellows of Harvard College, a charitable and educational corporation existing under the laws and the Constitution of The Commonwealth of Massachusetts, and its successors and assigns, and without limitation, all rights, options, and other interests of Harvard under this Indenture, shall benefit and run to Harvard's successors and assigns, even though not specifically mentioned.

(i) "Grantor" - means Cambridge Electric Light Company, a Massachusetts corporation, its successors and assigns, and without limitation, all covenants and agreements of Grantor in this Indenture shall, bind all those included within the definition of Grantor even though not specifically mentioned, and all such covenants and agreements shall run with the land.

(j) "Premises" - means the land, buildings, and improvements, being a portion of Grantor's property known as the "Blackstone Steam Plant," located at the corner of Memorial Drive and Western Avenue, Cambridge, Massachusetts, said Premises being labeled "A", "B", "C", and "E" on Exhibit A attached hereto and incorporated herein and Appurtenances thereto (subject to paragraph 4), together with rights of access thereto necessary for delivery of fuel and the operation of the Steam Operation, and (to the extent that they are assignable to Harvard) all

rights, contracts, licenses, permits, permissions, easements, or other rights used in the Steam Operation and needed by Harvard to continue to conduct the Steam Operation.

(k) "Steam Operation" - means the operation of steam production at the Premises which are producing steam service for use by Harvard and for use by other users from time to time of said steam service, together with such inventory, plans, books, manuals, and the like, and such contract rights, leases, licenses, permits, easements, and other rights needed to conduct the Steam Operation. As of Now, the Steam Operation is that which is presently carried on by COM/Energy Steam Company at the Premises.

(l) "Sell" - includes without limitation any act that causes or would result in an alienation, conveyance, transfer, assignment, license, lease, sublease, grant of operating rights, in either case, whether directly, indirectly, or through the sale of all or substantially all of the stock of the corporation that operates the Steam Operation, or through the use or creation of a cooperative, condominium, or other method of joint ownership.

(m) "Grantor Affiliate" - means, any corporation, partnership, or other entity that is wholly-owned by the Grantor named in the Preamble, or by a legal entity that is wholly-owned by the legal entity that now owns said named Grantor.

(n) "Convey" (including "Conveyance" and "Conveyed" where the usage so requires) - means, the conveyance, transfer, assignment, license, lease, sublease, grant of operating rights, in either case, whether directly or indirectly, and is necessary and practical under the circumstances, taking into account the fact that the Steam Operation is a somewhat integral aspect of Grantor's total operations at Blackstone Street Station.

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(o) "Entire Site" - the parcel of land now owned by Grantor and bounded by Western Avenue, Memorial Drive, Albro Street (which is a discontinued private way), and Blackstone Street, together with the buildings and improvements thereon, located in Cambridge, Massachusetts.

(p) A reference to a numbered or lettered paragraph or subparagraph is a reference to the corresponding paragraph or subparagraph of this Indenture; a reference to a paragraph, is a reference to all subparagraphs thereof.

2. HARVARD'S RIGHT OF FIRST OFFER. During the period identified in Section 2(g), Grantor will not Sell the Premises, or the Steam Operations, or both, and will not agree to Sell to any person other than a Grantor Affiliate, the Premises or the Steam Operation or both, without first offering in writing to Harvard to Convey the Premises (or the Steam Operation, or both, as the case may be) to Harvard in accordance with the following:

[In this paragraph 2, a reference to "the Premises" in connection to the right of first offer with respect to the Premises, shall, in the case where Grantor desires to Sell the Steam Operation exclusive of the Premises, be deemed to be a reference instead to "the Steam Operation," and shall, in the case where Grantor desires to Sell the Premises together with the Steam Operation, be deemed to be a reference instead to "the Premises together with the Steam Operation."]

(a) Grantor's offer shall state Grantor's opinion as to the fair market value of the Premises as of the date of the offer, and, if accepted by Harvard by notice to Grantor, shall bind Grantor and Harvard, and shall be the Fair Market Value:

(b) After Harvard receives Grantor's offer, Harvard shall have sixty days in which either (i) to accept the offer at the purchase price stipulated in subparagraph 2(a), using Grantor's opinion under subparagraph 2(a) as determinative or (ii) to request an Appraisal by

giving notice of such request to Grantor together with Harvard's opinion of the fair market value of the Premises.

(c) If Harvard requests an Appraisal under subparagraph 2(b), Harvard shall have sixty days from the determination of the Fair Market Value, in which to accept Grantor's offer, by giving notice of such acceptance to Grantor.

(d) If Harvard accepts Grantor's offer under either subparagraph 2(b) or 2(c), the Premises shall be Conveyed at 11:00 A.M. at the Office of the General Counsel, Holyoke Center, Suite 980, 1350 Massachusetts Avenue, Cambridge, Massachusetts (the "Place of Closing"), upon the later of (i) ninety days after Harvard's acceptance of such offer (or if the ninetieth day falls on a Saturday, Sunday, or holiday, on the next business day thereafter) or (ii) twenty-one business days after Harvard gives notice ("Title Notice") to Grantor that Harvard has determined that Grantor is able to convey Good Title, provided the Title Notice is given within said ninety-day period. Harvard will complete its examination of title and give the Title Notice within a reasonable time. As used in this Indenture, the term "Closing Time" means the time and date for conveyance determined under the immediately preceding sentence. Grantor's Conveyance shall be effected by a good and sufficient deed with Quitclaim Covenants running to Harvard, or its nominee, conveying Good Title. (In the case of a Conveyance involving the Steam Operation either with or exclusive of the Premises, Grantor shall deliver to Harvard the assignments, warranty bills of sale transferring to Harvard the personalty, fixtures, and, equipment and other documents transferring to Harvard, the extent the same can be transferred in the case of governmentally-issued permits and licenses, the rights needed for the Steam Operation.) The Premises shall at the Closing Time be in Proper Condition. Harvard shall pay

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the Fair Market Value (subject to adjustments herein described) to Grantor at the Closing by wire transfer of good funds or by certified check or other immediately available funds. Current taxes, rentals (if applicable), fuel inventory, operating expenses (if any), and water and sewer use charges shall be adjusted as of the Closing Time. Betterment assessments assessed prior to the date Harvard accepts Grantor's offer shall be paid in full by Grantor prior to or at the Closing Time. Subject to paragraph 2(g), Harvard's acceptance of a deed shall be deemed full performance by Grantor of Grantor's agreements herein with respect to the item(s) purchased.

(e) Notwithstanding any other provision of this Indenture, if Grantor is unable to Convey Good Title, or if the Premises are not in Proper Condition, in either case by six months from the date of which Harvard accepts Grantor's offer or sixty days from the date Harvard notifies Grantor of any defects in the title or condition, Harvard shall have the right to accept such title as Grantor can give to the Premises, in their then condition at the time in question, and the full purchase price payable by Harvard shall be so paid, but if Harvard elects not to accept such title, then the obligations of the parties under this Indenture shall cease as to the Premises (or the Steam Operation, as the case may be) that was the subject of the offer, without recourse by or to the parties hereto.

(f) If Harvard fails, within the prescribed time, to accept Grantor's offer to Convey, or if, having accepted Grantor's offer, Harvard fails to complete the purchase (and the reasons for such failure are due to Harvard's failure or inability to perform), then, except as otherwise provided, Grantor may Sell the Premises (or the Steam Operation if it was the subject of the offer) free from any obligation under this Indenture, and Harvard shall reimburse Grantor for

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all appraisal, legal, and other documented expenses that are paid by Grantor in connection with Grantor's performance of Grantor's obligations hereunder.

(g) The right of first offer herein given to and held by Harvard shall continue for sixty years (or the longest period permitted by law), but shall expire in any event twenty-one years following the death of the last survivor among the following named persons: Richard J. Morrison and the children of Richard J. Morrison, namely, Joseph R. Morrison and Juliana Morrison; and Robert E. McGaw, the children of Robert E. McGaw, namely, Bridger E. McGaw and Kaitlin S. McGaw. Harvard's purchase of (or failure to purchase) the Premises without the Steam Operation shall not exhaust Harvard's right of first offer described in this Indenture with regard to the Steam Operation, and this Indenture shall continue to apply to the Steam Operation. Similarly, Harvard's purchase of (or failure to purchase) the Steam Operation shall not exhaust Harvard's right of first offer described in this Indenture with regard to the Premises, and this Indenture shall continue to apply to the Premises.

(h) The right of first offer herein given to and held by Harvard, shall not be assignable (except to a corporation affiliated with Harvard) and shall be deemed not a right "in gross," but shall be deemed to be appurtenant to and burden the Premises for the period referred to in subparagraph 2(g). Neither this Indenture nor a notice thereof shall be recorded. Each party will cause its copies of this Indenture to be filed with its important papers relating to the Steam Operation, and Grantor will place a copy with the Grantor's deed file relating to the Premises. Each party shall within twenty days after the other party's request therefor, provide a certificate duly executed by an authorized officer of the party, stating that this Indenture continues in full

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force and effect, and that it continues to be enforceable against such party in accordance with the tenor and provisions of this Indenture.

(i) Harvard and Grantor each warrant to the other that they have not used and will not use the services or facilities of any broker, salesperson, agent, or finder (collectively, "Broker") in connection with this Indenture and the transaction contemplated by this Indenture. Harvard and Grantor will indemnify and save harmless the other from any claims for any brokerage commission or fee that is asserted against the indemnified party by any Broker claiming to be entitled to a commission or fee resulting from such Broker's representation of or providing services to the indemnifying party. The provisions of this subparagraph 2(i) shall survive delivery of the Title Deed. The fact that a Qualified Appraiser is also a Broker, shall not disqualify such person as a Qualified Appraiser, but such person shall be entitled to be paid only for services rendered with respect to the appraisal.

(j) The provisions of this Indenture do not apply if Grantor desires to Sell the Entire Site.

3. NOTICES AND OTHER LOCATIONS. Any notice or other communication from one party to the other shall be in writing and signed by the party or the party's attorney and shall be deemed duly given (a) when delivered, if delivered in hand, or (b) when mailed, if mailed by certified or registered mail, postage prepaid, return receipt requested, if to Grantor, at 1 Main Street, Post Office Box 9150, Cambridge, MA 02142-9150, Attention: General Attorney, and if to Harvard, Holyoke Center, Suite 1350, Massachusetts Avenue, Cambridge, Massachusetts 02138-3826. Any notice to Harvard shall not be complete unless a true copy thereof is also given by hand delivery or by mail, as above specified, to Harvard's attorney, namely, Office of the General Counsel, Harvard University, Holyoke Center, Suite 980, 1350

Massachusetts Avenue, Cambridge, Massachusetts 02138-3834. Notice may also be given by a sheriff or constable following methods then permitted under Massachusetts Rules of Civil Procedure (or Massachusetts rules of similar import). Either party may, by prior written notice to the other party given as aforesaid, change the address to which notices or other communications are to be sent hereunder.

4. RELOCATION OF APPURTENANCES. If Harvard elects to accept Grantor's offer to Convey the Premises, or the Steam Operation, or both, as the case may be, and if Grantor desires that some or all of the ancillary appurtenances thereto needed for the Steam Operation, such as fuel tanks, switch gear, and conduits, that are not located on or within the Premises (collectively, "Appurtenances"), be relocated on or nearer to the Premises so as to relieve or minimize Grantor's remaining property from the burden of such Appurtenances, then at Grantor's sole election, Harvard will either promptly relocate such Appurtenances to mutually acceptable locations near the Premises that are designed to relieve or minimize said burden, or promptly reimburse Grantor for Grantor's documented expenses incurred in performing such relocations; provided that Harvard may elect to abandon any of said Appurtenances, in which case said Appurtenance shall not be conveyed to Harvard.

5. STEAM COMPANY BOUND. COM/Energy Steam Company, a Massachusetts corporation, joins herein solely for the purpose of binding itself, and its successors and assigns, to transfer and deliver to Harvard such of its equipment, inventory, plans, books, manuals, rights, licenses, permits, etc., if any exist and as may be necessary to effectuate the transaction contemplated by this Indenture, namely to facilitate Harvard's ability to carry on the Steam Operation, in the event that the Steam Operation is Conveyed to Harvard.

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WITNESS the execution hereof in several counterparts each to be deemed an original and all to be deemed to constitute one and the same agreement, to take effect as an instrument under SEAL, as of the day and year first above written.

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE

By: [Signature]

By: [Signature]

[Signature]
Witness

CAMBRIDGE ELECTRIC LIGHT
COMPANY

By: [Signature]
Its: PRESIDENT

[Signature]
Witness

COM/ENERGY
STEAM COMPANY

By: [Signature]
Its: PRESIDENT

[Signature]
Witness

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THE COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

Date: February 5, 1993

Then personally appeared the above-named Thomas E. Vauth, being the Director of Facilities Management of President and Fellows of Harvard College, and acknowledged the foregoing to be the free act and deed of said President and Fellows of Harvard College, before me


Notary Public

My commission expires: Feb 7, 1997

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex County, ss.

Date: Feb 5, 1993

Then personally appeared the above-named Harold A. Haskes being the authorized signatory of President and Fellows of Harvard College, and acknowledged the foregoing instrument to be the free act and deed of President and Fellows of Harvard College, before me,


Notary Public

My commission expires: Feb 7, 1997

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Date: February 5, 1993

Then personally appeared the above-named Harold N. Scherer, Jr. and acknowledged the foregoing instrument to be the free act and deed of Cambridge Electric Light Company, before me,


Notary Public

My commission expires: 1/21/1994

THE COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

Date: February 5, 1993

Then personally appeared the above-named Harold N. Scherer, Jr. and acknowledged the foregoing instrument to be the free act and deed of COM/Energy Steam Company, before me,


Notary Public

My commission expires: 1/21/1994



EXHIBIT A TO RIGHT OF FIRST OFFER

SITE PLAN

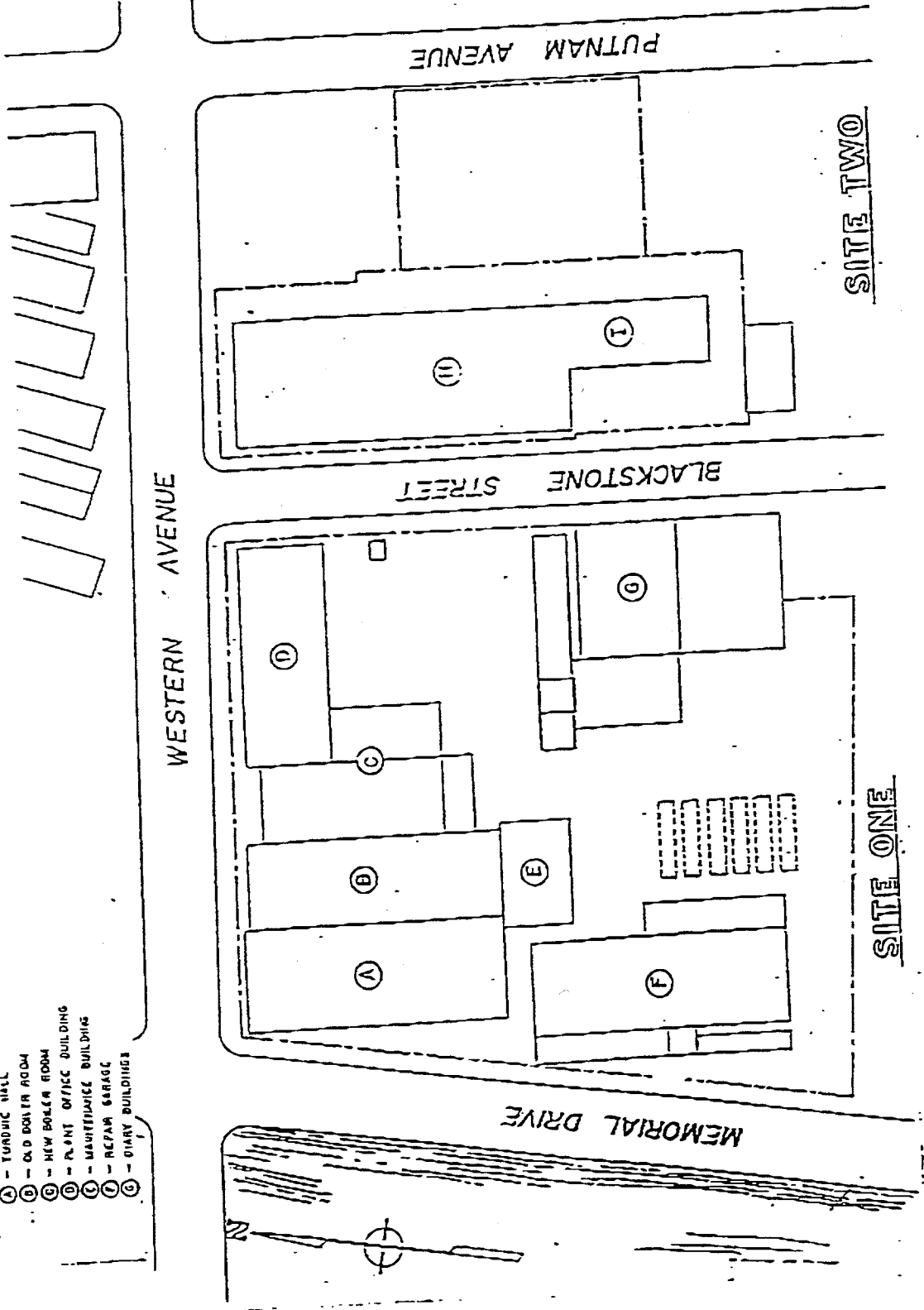
LEGEND

① SITE ONE - BLACKSTONE PLANT

- Ⓐ - TURBINE HALL
- Ⓑ - OLD DRYER ROOM
- Ⓒ - NEW BOILER ROOM
- Ⓓ - PLANT OFFICE BUILDING
- Ⓔ - MAINTENANCE BUILDING
- Ⓕ - REPAIR SHED
- Ⓖ - DIARY BUILDINGS

② SITE TWO - BLACKSTONE SWITCH 1106

- Ⓐ - ORIGINAL SWITCH BUILDING
- Ⓒ - ADDITION



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