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As submitted to the Securities and Exchange Commission on February 13, 2013 pursuant to the Jumpstart Our Business Startups Act

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM S-1

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

NRG Yieldco, Inc.

(Exact name of registrant as specified in its charter)

Delaware	**4911**	**46-1777204**
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification No.)

211 Carnegie Center
Princeton, New Jersey 08540
(609) 524-9500
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

David R. Hill
Executive Vice President and General Counsel
211 Carnegie Center
Princeton, New Jersey 08540
(609) 524-9500
(Name, address, including zip code, and telephone number, including area code, of agent for service)

Copies of all communications, including communications sent to agent for service, should be sent to:

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Kirkland & Ellis LLP
300 North LaSalle
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Latham & Watkins LLP
885 Third Avenue, Suite 1000
New York, New York 10022
(212) 906-1200

Approximate date of commencement of proposed sale to the public:
As soon as practicable after this Registration Statement becomes effective.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933, check the following box: o

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. o

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer o	Accelerated filer o	Non-accelerated filer ☒ (Do not check if a smaller reporting company)	Smaller reporting company o

The registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until this Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

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Subject to Completion
Preliminary Prospectus dated February 13, 2013

Shares

NRG Yieldco, Inc.

Class A Common Stock

This is the initial public offering of the Class A common stock of NRG Yieldco, Inc. We were recently formed by NRG Energy, Inc. ("NRG"). We are offering shares of our Class A common stock in this offering.

We expect the public offering price to be between $ and $ per share. Currently, no public market exists for our Class A common stock. After pricing of the offering, we expect that our Class A common stock will trade on the New York Stock Exchange under the symbol " ".

Immediately following this offering, the holders of our Class A common stock will collectively own 100% of the economic interests in and will hold % of the voting power in NRG Yieldco, Inc. The holders of our Class B common stock will hold the remaining % of the voting power in NRG Yieldco, Inc. As a result, we will be a "controlled company" within the meaning of the corporate governance standards of the New York Stock Exchange.

We are an "emerging growth company" as defined in Section 2(a)(19) of the Securities Act of 1933, as amended, and, as such, are allowed to provide in this prospectus more limited disclosures than an issuer that would not so qualify. In addition, for so long as we remain an emerging growth company, we will qualify for certain limited exceptions from investor protection laws such as the Sarbanes-Oxley Act of 2002 and the Investor Protection and Securities Reform Act of 2010. Please read "Risk Factors—Risks Inherent in an Investment in Us—We are an "emerging growth company" and may elect to comply with reduced public company reporting requirements, which could make our Class A common stock less attractive to investors" and "Summary—JOBS Act."

Investing in our Class A common stock involves risks that are described in the "Risk Factors" section beginning on page 27 of this prospectus.

	Per Share	Total
Public offering price	$	$
Underwriting discount	$	$
Proceeds, before expenses, to us.	$	$

The underwriters may also exercise their option to purchase up to an additional shares of our Class A common stock from us at the public offering price, less the underwriting discount, for 30 days after the date of this prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Joint Book-Running Managers

BofA Merrill Lynch

Goldman, Sachs & Co.

Citi

The date of this prospectus is , 2013.

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YIELDCO ASSET OVERVIEW MAP

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You should rely only on the information contained in this prospectus, any free writing prospectus prepared by us or on our behalf or any other information to which we have referred you in connection with this offering. We have not, and the underwriters have not, authorized anyone to provide you with different information. If anyone provides you with different or inconsistent information, you should not rely on it. We are not, and the underwriters are not, making an offer to sell these securities in any jurisdiction where the offer or sale is not permitted. You should not assume that the information contained in this prospectus is accurate as of any date other than the date on the front of this prospectus.

Until , 2013 (25 days after the date of this prospectus), all dealers that buy, sell or trade our Class A common stock, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

Industry and Market Data

This prospectus includes industry data and forecasts that we obtained from industry publications and surveys, public filings and internal company sources. Industry publications and surveys and forecasts generally state that the information contained therein has been obtained from sources believed to be reliable, but there can be no assurance as to the accuracy or completeness of the included information. Statements as to our market position and market estimates are based on independent industry publications, government publications, third-party forecasts, management's estimates and assumptions about our markets and our internal research. While we are not aware of any

misstatements regarding the market, industry or similar data presented herein, such data involve risks and uncertainties and are subject to change based on various factors, including those discussed under the headings "Forward-Looking Statements" and "Risk Factors" in this prospectus.

Trademarks and Trade Names

We own or have rights to various trademarks, service marks and trade names that we use in connection with the operation of our business. This prospectus may also contain trademarks, service marks and trade names of NRG and third parties, which are the property of their respective owners. Our use or display of third parties' trademarks, service marks, trade names or products in this prospectus is not intended to, and should not be read to, imply a relationship with or endorsement or sponsorship of us. Solely for convenience, the trademarks, service marks and trade names referred to in this prospectus may appear without the ®, TM or SM symbols, but such references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or the right of the applicable licensor to these trademarks, service marks and trade names. See "Certain Relationships and Related Party Transactions—Licensing Agreement" for a description of the licensing agreement pursuant to which we have licensed the right to use the NRG name and logo in the United States and Canada, subject to certain exceptions and limitations.

Certain Terms Used in this Prospectus

Unless the context otherwise indicates, references within this prospectus to:

- "cash available for distribution" for any particular period refers to Adjusted EBITDA (as defined in Note 3 to the table set forth in the "Summary—Summary Historical and Pro Forma Financial Data" section of this prospectus) generated during the period plus cash distributions received from unconsolidated affiliates, less pro-rata EBITDA from unconsolidated affiliates, cash interest paid, income tax paid, maintenance capital expenditures, change in other assets, principal payments on indebtedness and reserves for future cash distributions by Yieldco LLC;
- "COD" refers to the commercial operation date of the applicable facility;
- "CVSR" refers to the California Valley Solar Ranch utility-scale solar generating facility;
- "DGCL" refers to Delaware General Corporation Law;
- "EBITDA" refers to earnings before interest expense, depreciation, amortization and income taxes;
- "EPC" refers to engineering, procurement and construction;
- "Management Services Agreement" or "MSA" refers to the agreement we will enter into with NRG upon consummation of this offering pursuant to which NRG, as manager, will agree to provide or arrange for the provision of operation, management and administrative services to us and our subsidiaries;
- "membership interest" refers to the ownership interest in the applicable entity, including such economic interest and right, if any, to participate in the management of the business and affairs of the entity, including the right, if any, to vote on, consent to or otherwise participate in any decision or action of or by the members of the entity and the right to receive information concerning the business and affairs of the entity, in each case to the extent expressly provided in the relevant operating agreement.
- "MW" refers to Megawatts;
- "MWh" refers to Megawatt hours;

- "MWt" refers to Megawatt Thermal Equivalents;
- "Net capacity" or "net MW" refers to the maximum, or rated, power generating capacity, in MW, of a facility or group of facilities multiplied by our percentage ownership interest in such facility as of the date of this prospectus;
- "NRG" refers to NRG Energy, Inc., a Delaware corporation, and its subsidiaries after giving effect to the Asset Transfer;
- "ROFO Agreement" refers to our five-year agreement with NRG that provides us a right of first offer to purchase any of the NRG ROFO Assets offered for sale;
- "NRG ROFO Assets" refers to the four late-stage construction assets set forth under the heading "Summary—Our Growth Strategy" elsewhere in this prospectus that, pursuant to the ROFO Agreement with NRG, we will have the right of first offer to acquire;
- "O&M" refers to operations and maintenance services provided at our various facilities;
- "PPA" refers to the power purchase agreements through which our facilities have contracted to sell energy to various offtakers;
- "RPS" refers to renewable portfolio standards adopted by 29 states that require a regulated retail electric utility to procure a specified percentage of its total electricity delivered to retail customers in the state from eligible renewable generation resources, such as solar or wind generation facilities, by a specified date;
- "sole managing member" means Yieldco Inc., which will be the sole managing member of Yieldco LLC and will have the sole power to manage the business of Yieldco LLC and shall have all powers and rights necessary, appropriate or advisable to effectuate and carry out the purposes and business of Yieldco LLC.
- "Yieldco Inc." refers to NRG Yieldco, Inc., a Delaware corporation, and the issuer of the shares of Class A common stock being offered hereby;
- "Yieldco LLC" refers to NRG Yieldco LLC, a Delaware limited liability company; and
- "Yieldco Operating LLC" refers to NRG Yieldco Operating LLC, a Delaware limited liability company.

Forward-Looking Statements

Certain statements made in this prospectus contain forward-looking statements. Forward-looking statements are subject to risks and uncertainties that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by these forward-looking statements. Forward-looking statements include information concerning our future financial performance, business strategy, plans, goals and objectives.

Statements preceded or followed by, or that otherwise include, the words "believes," "expects," "anticipates," "intends," "project," "estimates," "plans," "forecast," "is likely to" and similar expressions or future or conditional verbs such as "will," "may," "would," "should" and "could" are generally forward-looking in nature and not historical facts. Such statements are based upon the current beliefs and expectations of our management and are subject to significant risks and uncertainties. Actual results may differ materially from those set forth in the forward-looking statements.

The following factors, among others, could cause our actual results, performance or achievements to differ from those set forth in the forward-looking statements:

- hazards customary to the power production industry and power generation operations such as unusual weather conditions, catastrophic weather-related or other damage to facilities, unscheduled generation outages, maintenance or repairs, unanticipated changes to fuel supply costs or availability due to higher demand, shortages, transportation problems or other developments, environmental incidents, or electric transmission or gas pipeline system constraints and the possibility that we may not have adequate insurance to cover losses as a result of such hazards;
- our ability to operate our businesses efficiently, manage capital expenditures and costs tightly, and generate earnings and cash flows from our asset-based businesses in relation to our debt and other obligations;
- counterparties to our offtake agreements willingness and ability to fulfill their obligations under such agreements;
- our ability to enter into contracts to sell power and procure fuel on acceptable terms as our offtake agreements expire;
- government regulation, including compliance with regulatory requirements and changes in market rules, rates, tariffs and environmental laws and increased regulation of carbon dioxide and other greenhouse gas emissions;
- our ability to receive anticipated cash grants with respect to certain of our renewable (wind and solar) assets;
- our ability to borrow additional funds and access capital markets, as well as our substantial indebtedness and the possibility that we may incur additional indebtedness going forward;
- operating and financial restrictions placed on us and our subsidiaries that are contained in the debt facility and other agreements of certain of our subsidiaries and project-level subsidiaries generally and that may be contained in the revolving credit facility that we intend to enter into in connection with the consummation of this offering;
- our ability to maintain and grow our initial quarterly dividend; and
- our ability to successfully identify, evaluate and consummate acquisitions.

SUMMARY

The following summary highlights information contained elsewhere in this prospectus. It does not contain all the information you need to consider in making your investment decision. Before making an investment decision, you should read this entire prospectus carefully and should consider, among other things, the matter set forth under "Risk Factors," "Selected Historical Combined Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and our and our predecessor's financial statements and related notes thereto appearing elsewhere in this prospectus.

Unless the context provides otherwise, references herein to "we," "our," "our company" and "Yieldco" refer to Yieldco Inc., together with its consolidated subsidiaries after giving effect to the Organizational Structure, including Yieldco LLC and Yieldco Operating LLC.

About Yieldco Inc.

We are a dividend growth-oriented company formed to serve as the primary vehicle through which NRG Energy, Inc. (NYSE: NRG) will own, operate and acquire contracted renewable and conventional generation and thermal infrastructure assets. We believe we are well positioned to be a premier company for investors seeking stable and growing dividend income from a diversified portfolio of lower-risk high-quality assets. We intend to take advantage of favorable trends in the power generation industry including the growing construction of contracted generation that can replace aging or uneconomic facilities in competitive markets and the demand by utilities for renewable generation to meet their state's RPS. To that end, we believe that Yieldco's cash flow profile, coupled with its scale, diversity and lo cost business model, will offer us a lower cost of capital than that of a traditional independent power producer and provide us with a significant competitive advantage to execute our growth strategy.

With this business model, our objective is to pay a consistent and growing cash dividend to holders of our Class A common stock that is sustainable on a long term basis. We expect to target a payout ratio of 100% of the cash distributions received from our membership interest in our subsidiaries and increase such cash dividends over time as we acquire assets with characteristics similar to assets in our current portfolio. We will focus on high-quality, newly constructed and long-life facilities with credit-worthy counterparties that we expect will produce stable long term cash flows. Based on the completion of our two projects under construction, E Segundo and CVSR, and significant acquisition opportunities available to us, including the NRG ROFO Assets, we expect to grow our dividend each year over the next five years. See "Risk Factors—Risks Related to our Business—We may incur additional costs or delays in completing the construction of certain of our electric and thermal generation facilities, and may not be able to recover our investment in or complete such facilities."

Pursuant to our cash dividend policy, we intend to pay a cash dividend each quarter to holders of our Class A common stock. Our initial quarterly dividend will be set at $ per share of Class A common stock, or $ per share on an annualized basis. Our cash dividend policy reflects a basic judgment that holder of our Class A common stock will be better served by distributing all of the cash distributions received from Yieldco LLC each quarter in the form of a quarterly dividend rather than retaining it. See "Cash Dividend Policy."

Upon the consummation of this offering, (i) holders of our Class A common stock will collectively own 100% of the economic interests in us and hold % of the voting power in us; (ii) Yieldco Inc. will become the sole managing member of Yieldco LLC, hold approximately % of Yieldco LLC's outstanding membership units and be entitled to % of the cash distributions from Yieldco LLC; and (iii) Yieldco LLC will be obligated to distribute to its unit holders all of th cash available for distribution that is generated each quarter, less reserves for the prudent conduct of our

business. NRG will hold % of Yieldco LLC's outstanding membership units, be entitled to % of the cash distributions from Yieldco LLC and hold % of the voting power in us.

About NRG

NRG Energy, Inc. is a Fortune 300 and S&P 500 Index company with dual headquarters in Princeton, NJ and Houston, TX, and significant management presence in the East, Gulf Coast, and West regions of the United States. Following the completion of its merger with GenOn Energy Inc. (the "GenOn Merger") in December 2012, NRG became the nation's largest competitive power generator with approximately 47,000 MW of fossil fuel, nuclear, solar and wind capacity at almost 100 generating facilities located in 18 states, enough to supply electricity to nearly 40 million homes. In addition, NRG provides retail electricity and energy services directly to more than two million customers.

NRG is at the forefront of changing how people think about and use energy and is a pioneer in developing cleaner and smarter energy choices for its customers, whether as one of the largest solar power developers in the country, by building the first privately funded electric vehicle charging infrastructure or by giving customers the latest smart energy solutions to better manage their energy use. With these investments, NRG is working to help the United States transition to a clean energy economy.

Purpose of Yieldco

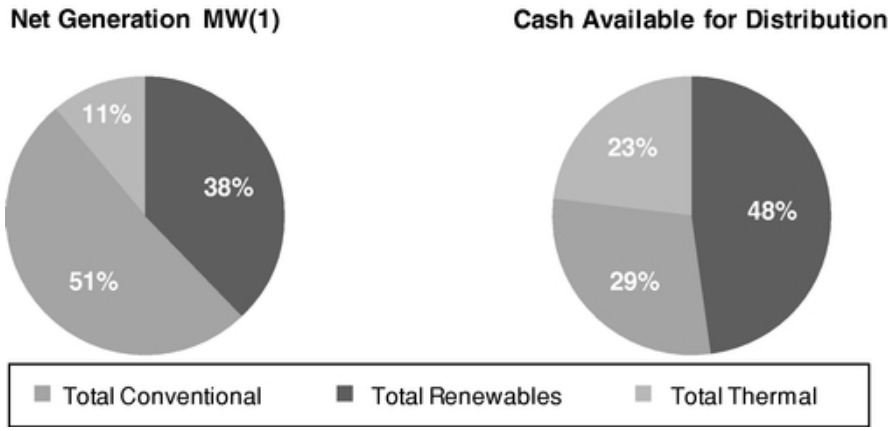
Through this offering, NRG and Yieldco intend to create enhanced value for holders of our Class A common stock by seeking to achieve the following objectives:

- Highlight the value inherent in our contracted conventional and renewable generation and thermal infrastructure assets by separating them from other NRG non-contracted assets.
- Create a pure-play public issuer with superior operating, financial and tax characteristics that will appeal to dividend growth-oriented investors seeking exposure to the contracted power sector.
- Gain access to an alternative investor base with a more competitive source of equity capital that would help accelerate our long-term growth and acquisition strategy and optimize our capital structure.

Current Operations

We own a diversified portfolio of contracted renewable and conventional generation and thermal infrastructure assets in the United States. Our contracted generation portfolio includes one natural gas-fired facility, eight utility-scale solar and wind generation facilities and two portfolios of distributed solar facilities that collectively represent 964 net MW. Each of these assets sells substantially all of its output pursuant to long-term, fixed price offtake agreements to credit-worthy counterparties. The average remaining contract life, weighted by MWs, of these offtake agreements was approximately 15 years as of December 31, 2012. Two of these facilities, El Segundo and CVSR, are in the final stages of construction with expected COD dates of August and October 2013, respectively. We also own thermal infrastructure assets with an aggregate steam and chilled water capacity of 1,098 net MWt and electric generation capacity of 123 net MW. These thermal infrastructure assets provide steam, hot water and/or chilled water, and in some instances electricity, to commercial businesses, universities, hospitals and governmental units in ten locations, principally through long-term contracts or pursuant to rates regulated by state utility commissions.

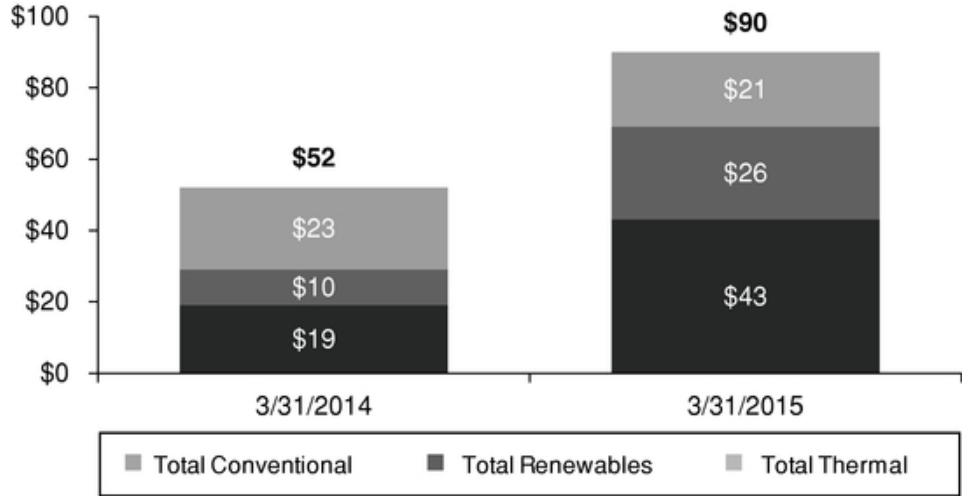
Our forecasted net MW and cash available for distribution for the twelve months ending March 31, 2015, which reflects the first full twelve months of operation of our portfolio including the two electric generation facilities currently under construction, are as follows:



(1) Excludes the 1,098 net MWt of steam and chilled water generating capacity.

Our annual forecasted cash available for distribution for the twelve months ending March 31, 2013 through the twelve months ending March 31, 2015 based on our current assets are as follows:

Cash Available for Distribution(1)



(1) Excludes approximately $7 million in management services payment to NRG under the MSA.

(2) Includes six months of actual and six months of forecasted results.

See "Cash Dividend Policy" for additional information regarding our forecasted net MW and cash available for distribution through the twelve months endin March 31, 2014 and 2015, and the related forecast assumptions and risks.

Our Growth Strategy

We intend to utilize the significant experience of our management team to take advantage of what we believe are favorable industry and market dynamics as we execute our growth strategy. In addition to the opportunities to increase our cash available for distribution upon the COD of the El Segundo and CVSR facilities, we expect to have the opportunity to increase our cash available for distribution and dividend per share by acquiring additional assets from NRG, including those available to us under the ROFO Agreement, and to pursue additional acquisition opportunities that are complementary to our business from persons other than NRG. This ROFO Agreement will provide us with the right of first offer to acquire the NRG ROFO Assets, as set forth in the following table, should NRG seek to sell any these assets.

ROFO Assets	Fuel Type	Net Capacity (MW)(1)	Expected COD	Term/Offtaker
Remaining NRG CVSR Interest	Solar	128	2013	25 year/PG&E
NRG's Ivanpah Solar Interest (49.95%)(2)	Solar	193	2013	20-25 year/PG&E and SCE
Marsh Landing	Natural Gas	760	2013	10 year/PG&E
NRG Agua Caliente Interest (51%)(3)	Solar	148	2014	25 year/PG&E
Total		1,229		

(1) Represents the maximum, or rated, electricity generating capacity of the facility in MW multiplied by NRG's percentage ownership interest in the facility as of the date of this prospectus.

(2) Remaining 50.05% of Ivanpah is owned by NRG, Google Inc. and BrightSource Energy, Inc.

(3) Remaining 49% of Agua Caliente is owned by MidAmerican Energy Holdings Inc.

NRG will not, however, be required to accept any offer we make to acquire any ROFO Asset, and may elect not to sell these assets or, following the completion of good faith negotiations with us and subject to certain exceptions, may choose to sell such assets to a third party.

NRG has informed us of its intention for Yieldco Inc. to serve as its primary vehicle for owning, operating and acquiring contracted renewable and conventional generation and thermal infrastructure assets. NRG will assist us in the pursuit of such acquisitions by presenting us with such opportunities and allocatin resources as defined in the Management Services Agreement. In general, we do not expect to acquire assets that are in development or early stages of construction, an expect NRG to continue to pursue these opportunities for its own account. Under the Management Services Agreement, NRG is not prohibited from acquiring or operating renewable and conventional generation and thermal infrastructure assets that are contracted. See "Risk Factor—Risks Related to Our Relationship with NRG".

NRG has also informed us that it intends to continue to pursue the development and construction of its currently-owned brownfield sites, where applicable, into electric generation assets and once completed it may decide to offer them for sale to us.

Our Operations

The following table provides an overview of our assets:

Assets	Location	COD(1)	Capacity		Offtake agreements			
			Rated MW(2)	Net MW(3)	Contracted Volume(4)	Counterparty	Counterparty Credit Rating(5)	Expiration
Conventional								
El Segundo	California	August 2013	550	550	100%	Southern California Edison	BBB+/A3/A-	2023
			550	550				
Utility Scale Solar								
Blythe	California	December 2009	21	21	100%	Southern California Edison	BBB+/A3/A-	2029
Roadrunner	New Mexico	August 2011	20	20	100%	El Paso Electric	BBB/Baa2/NR	2031
Avenal	California	August 2011	45	23	100%	Pacific Gas & Electric	BBB/A3/BBB+	2031
Avra Valley	Arizona	December 2012	25	25	100%	Tucson Electric Power	BB+/Baa3/BBB-	2032
Alpine	California	January 2013	66	66	100%	Pacific Gas & Electric	BBB/A3/BBB+	2033
Borrego	California	February 2013	26	26	100%	San Diego Gas and Electric	A/A2/A-	2038
CVSR	California	October 2013	250	122	100%	Pacific Gas & Electric	BBB/A3/BBB+	2038
			453	303				
Distributed Solar								
AZ DG Solar Projects	Arizona	December 2010-January 2013	5	5	100%	Various public entities		2025-2033
PFMG DG Solar Projects	California	October 2012-December 2012	9	5	100%	Various public entities		2032
			14	10				
Wind								
South Trent Wind Farm	Texas	January 2009	101	101	100%	AEP Energy Partners	BBB/NR/BBB(6)	2029
			101	101				
Total Conventional, Solar and Wind			1,118	964				
Thermal Energy								
Minneapolis	Minnesota	1993(7)	334	334	100%	Approx. 100 steam customers; long-term contracts		
			141	141		Approx. 50 chilled water customers; long-term contracts		
San Francisco	California	1995(7)	133	133	100%	Approx. 175 steam customers; regulated rates		
			87	87		Approx. 25 steam customers; long-term contracts/regulated rates		
Pittsburgh	Pennsylvania	1995(7)	46	46	100%	Approx. 25 chilled water customers; long-term contracts/regulated rates		
San Diego	California	1997(7)	26	26	100%	Approx. 20 chilled water customers; long-term contracts		
Dover	Delaware	2000(7)	22	22	100%	Kraft Foods Inc. and Procter & Gamble Company; three-year contracts		
Harrisburg	Pennsylvania	2000(7)	129	129	100%	Approx. 140 steam customers; regulated rates		
			8	8		3 chilled water customers; long-term contracts		
Phoenix	Arizona	2010(7)	134	134	100%	Approx. 30 chilled water customers; long-term contracts		
Princeton	New Jersey	2012	21	21	100%	Princeton HealthCare System; long-term contract		
			17	17		Princeton HealthCare System; long-term contract		
Total Steam			726	726				
Total Chilled Water			372	372				
Total Thermal Energy			1,098	1,098				
Thermal Generation								
Paxton	Pennsylvania	2000(7)	12	12		Power sold into PJM markets		
Princeton	New Jersey	2012	5	5		Excess power sold into local grid		
Dover	Delaware	2013	106	106		Power sold into PJM markets		
Total Thermal Generation			123	123				

(1) Represents date of actual or anticipated commencement of commercial operations, as applicable, unless otherwise indicated.

(2) For conventional, solar, wind and thermal generation, rated capacity represents the maximum generating capacity of a facility. Generating capacity may vary based on a variety of factors discussed elsewher in this prospectus. For thermal energy, rated capacity represents MWt for steam or chilled water.

(3) Net capacity represents the maximum, or rated, generating capacity of the facility multiplied by our percentage ownership interest in the facility as of the date of this prospectus.

(4) Represents the percentage of a facility's total estimated average annual capacity contracted under offtake agreement or other agreements.

(5) Reflects the counterparty's issuer credit ratings issued by Standard & Poor's Ratings Services ("S&P")/Moody's Investors Service Inc. ("Moody's")/Fitch Ratings Ltd. ("Fitch") as of the date of this prospectu

(6) Reflects the issuer credit ratings for American Electric Power Company, Inc., as guarantor of the related PPA.

(7) Represents year NRG acquired 100% ownership of these assets.

Our assets and operations are organized into the following four segments. See "Business—Our Operations" for additional information regarding our assets:

Conventional Operations: Our conventional operations consist of the 550 net MW El Segundo fast-start combined-cycle natural gas-fired generation facility, which is being constructed on the brownfield site adjacent to the existing NRG El Segundo facility in Los Angeles County, California. El Segundo's construction was approximately 84% complete as of December 31, 2012, and we anticipate we will reach COD in August 2013. NRG has already made all required capital contributions to the El Segundo project and all remaining construction costs will be funded with draws under the project's existing committed credit facility. El Segundo will sell all the energy and capacity it generates and ancillary products and services to Southern California Edison ("SCE") under a 10-year tolling agreemen

Utility Scale Solar Operations: Our seven utility-scale solar generation assets generate electricity though the use of photovoltaic panels, with each facility equal to or exceeding 20 MW and collectively totaling 303 net MW of capacity. These facilities are located in Arizona, California and New Mexico, all states with attractive solar resources. Each of these facilities has long-term offtake agreements with credit-worthy counterparties, consisting primarily of investment grade regulated electric utilities, with a weighted average remaining contract life of over 22 years as of December 31, 2012. In addition, all of these facilities have secured long-term debt financing, with the exception of Borrego, for which we expect to close a related debt financing in the first quarter of 2013. Six of these facilities, Blythe, Avenal, Roadrunner, Alpine, Borrego and Avra Valley, representing a total of 203 rated MW, are currently in operation and generating cash flows. Our utility-scale solar generation facilities also include a 48.95% ownership interest in CVSR, a 250 rated MW solar generation facility under construction in California. CVSR began construction of its four phases in September 2011. As of December 31, 2012, three of its phases totaling 127 rated MW had achieved COD and were generating electricity under CVSR's two 25-year PPAs with Pacific Gas & Electric Company ("PG&E"). We anticipate CVSR's final phase will reach COD in October 2013. CVSR's project-level financing includes a $1.2 billion construction and permanent financing facility guaranteed by the U.S. Department of Energy ("DOE"), as described in "Business—Our Operations—CVSR—Project-Level Financing." We intend to utilize draws under CVSR's DOE committed construction facility and to use approximately $40 million of proceeds from this offering to fund our required capital contributions to pay our portion of CVSR's remaining construction costs. W expect the asset will be fully financed following completion of this offering. The remaining 51.05% ownership interest in CVSR is held by NRG and is subject to the ROFO Agreement should NRG seek to sell its remaining interest.

Distributed Solar Operations: Our distributed solar generation facilities, which we generally define as facilities of less than 20 MW in operating capacity, each generate electricity through the use of photovoltaic panels. Our customers for these facilities are located in California and Arizona and primarily include governmental offtakers which are predominately of investment grade quality with offtake terms ranging from 15 to 20 years. Our distributed solar generation facilitie are deployed either on the customer's roof, parking facilities (as a canopy) or as ground mounted (open space) installations. We intend to finance the acquisition of future distributed solar generation facilities through proceeds from new equity offerings, the use of cash on hand or through various project

financing structures or "portfolios." Our distributed solar assets include two portfolios—a 100% membership interest in various facilities in Arizona (collectively, the "AZ DG Solar Projects") and a 51% membership interest in various facilities in California (collectively, the "PFMG DG Solar Projects"). Each of the AZ DG Solar Projects and the PFMG DG Solar Projects consists of multiple sites with an aggregate 5 net MW.

Wind Operations: Our wind operations are comprised of the 101 MW South Trent wind farm located near Sweetwater, Texas. It consists of 44 Siemens 2.3 MW wind turbines capable, at rated capacity, of powering approximately 80,000 homes. Our South Trent generation asset has a 20-year PPA with AEP Energy Partners, Inc., a subsidiary of American Electric Power Company, Inc. NRG acquired South Trent in June 2010 and financed the acquisition through a long-term non-recourse term loan which we will retain. See "Business—Our Operations-Wind-South Trent-Project-Level Financing" for additional information regarding this term loan.

Thermal Operations: Our thermal operations are comprised of district energy systems and combined heat and power plants (collectively, "Energy Centers" that utilize an energy-efficient, environmentally sound method of heating and cooling buildings. These Energy Centers produce steam, hot water and/or chilled water and in some instances, electricity at a central plant. The steam or water is then piped underground to individual buildings within a specific area for heating, cooling or industrial use. We have eight Energy Centers located in Arizona, California, Delaware, Minnesota, New Jersey and Pennsylvania totaling approximately 1,098 net MWt in capacity. We also operate five power generation and/or thermal facilities on behalf of customers under long term operating agreements. Our thermal contracts are long-term, typically 20 years at initiation, and have negotiated rates and/or have rates that are regulated by the applicable state public utility commission. We have over 550 steam and chilled water customers, with no one customer expected to account for more than 10% of our estimated 2013 thermal revenue. Electricity produced by the 123 net MW of our thermal generation assets is either sold to customers under contracts or to the local power grid. A majority of our projected gross margins from our thermal generation assets for the twelve months ending March 31, 2014 and 2015 are attributable to expected payments for electric capacity resources sold through the reliability pricing model ("RPM") auctions administered by PJM Interconnection, L.L.C. ("PJM"). One of our thermal generation assets, th Dover Energy Center ("Dover"), which consists of two combustion turbines and a coal-fired steam turbine with an aggregate net capacity of 106 MW, is currently in the process of converting the facility's coal-fired turbine to supply steam to the existing steam turbine in a combined cycle mode, thus using natural gas as its primary fuel instead of coal. We estimate this construction project, which is being funded with NRG Thermal's cash on hand, was approximately 55% complete as of December 31, 2012 and expect construction to be completed in June 2013 with no change in the facility's net capacity.

Industry Overview

The U.S. Electric Power Industry

The electric power industry is one of the largest industries in the United States, with an estimated end-user market of approximately $373 billion in electricity sales in 2011 based on information published by the Edison Electric Institute ("EEI").

Growth of Natural Gas and Renewable Generation Resources

Recently, industry participants in the United States have increasingly transitioned to building natural gas-fired and renewable generation resources in respons to more stringent environmental regulations, expectations for the continued relative abundance of low cost natural gas and supportive federal and state incentives and policy initiatives. EEI estimates that 21.8 gigawatts of new generation capacity was added in the United States in 2011. Natural gas-fired and renewables generation assets

were the two largest contributors of the capacity growth within the U.S. power generation industry, contributing 47.2% and 38.5%, respectively. According to EEI, solar generation represented the fastest growing segment with respect to capacity additions within the U.S. power generation industry from 2007 to 2011. In 2006, capacity additions of solar generation accounted for approximately 1 MW. In 2011, such additions accounted for approximately 942 MW. In its "Annual Energy Outlook 2012," the U.S. Energy Information Administration ("EIA") of the DOE forecasts in its reference case that 60% and 29% of all new electric generation capacity constructed in the U.S. between 2011 and 2035 will be comprised of natural gas-fired generation and renewable generation capacity, respectively.

We believe that over time continued growth in renewable and natural gas-fired generation in the United States will be driven by the following factors:

- *Natural gas-fired and renewable generation resources are increasingly becoming the generation sources of choice.* Over the last five years, natural gas production and estimates for natural gas reserves have increased substantially in the U.S., fueled by new drilling technologies that have provided producers access to shale deposits on a cost effective basis. Recently, the American Gas Association reported that at current rates of production the assessed volume of proven reserves and estimated undiscovered resources point to approximately 100 years of U.S. natural gas supplies. Such abundance of low-cost natural gas in North America presents a unique opportunity to replace aging electric generation facilities using a domestic fuel source that is cost effective and has a low environmental impact. According to the EIA, the decrease in delivered natural gas prices, coupled with highly efficient combined-cycle natural gas-fired generation facilities, have already resulted in coal-to-gas fuel switching. In addition, advancements in renewable generation technologies over the last decade continue to enhance renewable generation's competitiveness, as a complement to natural gas-fired generation, and provide a cost competitive solution to generate electricity while satisfying more stringent environmental standards. According to McKinsey & Company, the cost of solar photovoltaic modules has decreased from more than $4 per watt-peak in 2008 to just under $1 per watt-peak by January 2012. In addition, according to the DOE, wind turbine prices have decreased as much as 33% or more since late 2008. These price reductions have enhanced the cost competitiveness of renewable generation as an increasingly cost-competitive source of electricity production. In addition, technological advancements such as advanced trackers, taller towers and thinner blades have improved the capacity factors and the output efficiency of these generation resources.

- *Aging power plants face economic and regulatory challenges.* The average age of the coal fleet in the United States is over 35 years, weighted by MW. Many smaller, older, and less efficient coal-fired plants are increasingly facing regulatory pressures to undertake significant capital expenditures to comply with environmental regulations. These regulatory pressures, coupled with low natural gas prices, are accelerating the retirement of coal-fired generation plants as they become less competitive as compared to other types of generation, including natural gas and renewables. According to the Brattle Group, as of July 2012, approximately 30 GW of coal-fired generation capacity, which represents roughly 10% of the existing coal-fired generation capacity in the U.S., had announced plans to retire by 2016. Additionally, a number of nuclear facilities in the United States face difficult license renewals, or are planned for decommissioning.

- *New nuclear projects delayed or halted.* Following the Fukushima Dai-ichi nuclear disaster in Japan and in light of on-going uncertainties over waste disposal, public concern over new nuclear construction has increased. In addition, we believe tightening safety criteria and procedures will increase costs to build and operate nuclear facilities. These issues, coupled with the current low natural gas price environment, have delayed or halted most new nuclear development activities in the United States. According to the Nuclear Energy Institute,

future additions will remain modest for the next decade and will most likely come from life extensions of existing nuclear plants, uprates of existing nuclear reactors and a small number of new builds. As of September 2012, there were only three nuclear generation facilities under construction in the United States, all of which involve the construction of additional units on existing nuclear-fired generation sites.

We believe that the retirement of these types of facilities and the delays of new nuclear projects combined with the increasingly cost-competitive alternatives of natural gas-fired and renewable generation assets, will create opportunities to grow our portfolio of contracted generation assets in the future.

- *Government incentives for Renewables.* U.S. federal, state and local governments have established various incentives and financial mechanisms to reduce the cost and to accelerate the adoption of renewable generation facilities. These incentives include accelerated tax depreciation and 50% bonus depreciation for eligible renewable generation facilities, as well as tax credits, cash grants and rebate programs. These incentives help catalyze private sector investments in renewable generation and efficiency measures, including the installation and operation of both solar and wind energy generation facilities. The federal government provides an uncapped investment tax credit ("Federal ITC"), that allows a taxpayer to claim a credit of 30% of qualified expenditures for a solar power facility that is placed in service on or before December 31, 2016. This credit is scheduled to be reduced to 10% effective January 1, 2017. Many state governments, investor-owned utilities, municipal utilities and co-operative utilities offer a rebate or other cash incentives for the installation and operation of a solar generation facility or energy efficiency measures. Twenty-nine states have adopted RPS that requires regulated retail electric utilities to procure a specified percentage of total electricity delivered to retail customers in the state from eligible renewable generation resources, such as solar generation facilities, by a specified date. We have and expect to continue to avail ourselves of these government incentives which we believe improve and enhance our cash returns.

Continued Acquisition Opportunities for Natural Gas and Renewable Generation Assets

We believe there will continue to be acquisition opportunities for natural gas-fired generation and renewable energy in the United States. According to EIA's Electric Power Annual 2010 report, there were approximately 1,139 gigawatts of nameplate capacity in the United States. Also, according to SNL Financial LC, from 2007 to 2011, unregulated generation assets representing 116 gigawatts of generation capacity have been bought or sold on terms that are publicly disclosed, of which approximately 25 gigawatts were contracted, generating assets. Many of these transactions involved financial sponsors as acquirers and/or contracted assets under development or construction that have been sold by independent project developers during the same period. A significant number of these contracted assets possess characteristics that are attractive to us, such as long-term offtake contracts with credit-worthy counterparties, natural gas-fired and renewable energy generation capabilities and favorable tax profiles. We expect assets with similar attributes to be available in the future as potential acquisition targets to us as most financial sponsors have investment funds with relatively short lives and independent project developers, in particular smaller developers, seek sources of capital to construct their project or monetize their existing investment given their lack of expertise in operating electric generation assets.

The U.S. Thermal Power Industry

District energy systems produce steam, hot water and/or chilled water at a central plant and then pipe that thermal energy out through an underground dedicated piping network to heat or cool buildings in a given area. District energy systems can reduce energy costs and greenhouse gas

emissions, while freeing up valuable space in customer buildings by centralizing production equipment and, through economies of scale and equipment management, optimizing the use of fuels, power and resources.

In North America, district energy systems are typically located in dense urban settings in the central business districts of larger cities, on university or college campuses, on hospital or research campuses and on military bases and airports. District energy systems typically serve "clusters" of buildings, which are sometimes commonly owned, as in the case of a private or public university campus or hospital. The number of customer buildings served by a typical district energy system ma range from as few as three or four in the early stages of new system development to over 1,000 buildings in the largest district energy systems.

The district energy space is tracked by the growth of new customer buildings and the square footage from reporting systems on an annual basis. Based on information provided by International District Energy Association ("IDEA") members, since 1990 over 518 million square feet of new customer space has been committed or connected to district energy systems, averaging approximately 24.7 million square feet per year.

Our Business Strategy

Our primary business strategy is to increase the cash dividends that we intend to pay to holders of our Class A common stock over time while ensuring the ongoing stability of our business. Our plan for executing this strategy includes the following key components:

Focus on contracted renewable energy and conventional generation and thermal infrastructure assets. We intend to focus on owning and operating renewable energy and natural gas-fired generation, thermal and other infrastructure assets with proven technologies, low operating risks and stable cash flows consistent with the characteristics of our current portfolio. We believe by focusing on this core asset class and leveraging our industry knowledge, we will maximize our strategic opportunities, be a leader in operational efficiency and maximize our overall financial performance.

Capitalizing on embedded growth opportunities associated with our existing assets. We are completing construction of El Segundo, a 550 net MW combined cycle natural gas-fired generation facility located in the center of Los Angeles' load pocket that is subject to a 10-year tolling agreement with SCE, and CVSR, our 122 net MW utility-scale photovoltaic solar generation facility located in San Luis Obispo County, California, that is subject to two 25-year PPAs with PG&E. As of December 31, 2012, El Segundo's construction was approximately 84% complete and was on schedule to reach COD in August 2013. As of December 30, 2012, three phases of CVSR totaling 127 rated MW had been completed and were generating electricity, with the final phase, representing an additiona 123 rated MW, on schedule to reach COD in October 2013. Upon completion, we expect El Segundo and CVSR to substantially increase the cash available for distribution to our stockholders. See "Risk Factors—Risks Related to our Business—We may incur additional costs or delays in completing the construction of certain of our electric and thermal generation facilities, and may not be able to recover our investment in or complete such facilities."

Growing our business through acquisitions. We believe that our base of operations and relationship with NRG provide a platform in the power generation and thermal sectors for strategic growth through cash accretive and tax advantaged acquisitions complementary to our existing portfolio. NRG has granted us a right o first offer to acquire the NRG ROFO Assets that it may elect to sell within the five years following the completion of this offering. In addition, we expect to have significant opportunities to acquire other generation assets developed and constructed by NRG in the future as well as generation and thermal infrastructure assets from third parties where we believe our knowledge of the market, operating expertise and access to capital provides us with a competitive advantage.

Focus on the United States. We intend to focus our investments in the United States. We believe that industry fundamentals in the United States present us with significant opportunity to acquire renewable, natural gas-fired generation and thermal infrastructure assets, without creating exposure to currency and sovereign risk. By focusing our efforts in the United States, we believe we will best leverage our regional knowledge of power markets, industry relationships and skill sets to maximize value for our stockholders.

Maintain sound financial practices to grow our dividend. We intend to maintain our commitment to disciplined financial analysis and a balanced capital structure, to enable us to increase our dividend over time and serve the long-term interests of our stockholders. Our financial practices will include our risk and credit policy focused on transacting with credit-worthy counterparties; our financing policy focused on financing existing assets and future acquisitions with the appropriate mix of equity and long-term debt to minimize interest rate and refinancing risks, ensure stable long-term dividends and maximize value; and our dividend policy, which is based on distributing all or substantially all of our cash available for distribution each quarter. See "Cash Dividend Policy."

Our Competitive Strengths

We believe that we are well positioned to execute our business strategies because of the following competitive strengths:

Stable, high quality cash flows with attractive tax profile. Our facilities have a highly stable, predictable cash flow profile consisting of predominantly long-life electric generation assets that sell electricity under long-term fixed priced contracts or pursuant to regulated rates with credit-worthy counterparties. Additionally, our facilities have minimal fuel risk. For our conventional asset, fuel is provided by the toll counterparty. Renewable facilities have no fuel costs, and most of our thermal infrastructure assets have contractual or regulatory tariff mechanisms for fuel cost recovery. The offtake agreements for our conventional and renewable generation facilities have a weighted-average remaining duration of approximately 15 years based on net capacity under contract, providing long-term cash flow stability. Our generation offtake agreements for rated counterparties for whom credit ratings are available have a weighted-average Moody's rating of A3 based on rated capacity under contract. Based on our current portfolio of assets, we do not expect to pay significant federal income tax for a period of approximately ten years. All of our assets are in the United States and accordingly we have no currency or repatriation risks. See "Risk Factors—Tax Risks—Our future tax liability may be greater than expected if we do not generate NOLs sufficient to offset taxable income" and "Risk Factors—Tax Risks—Our ability to use NOLs to offset future income may be limited."

High quality, long-lived assets with low operating and capital requirements. We benefit from a portfolio of relatively newly constructed assets, with all of our conventional and renewable assets either having achieved COD within the past four years or in the late stages of construction. Our assets are comprised of proven and reliable technologies, provided by leading original equipment manufacturers ("OEMs") such as Siemens AG, SunPower Corporation ("SunPower") and First Solar Inc. ("First Solar"). Given the modern nature of our portfolio, which includes a substantial number of relatively low operating and maintenance cost solar generation assets, we expect to achieve high fleet availability and expend modest maintenance-related capital expenditures. Additionally, with the support of services provided by NRG, we expect to continue to implement the same rigorous preventative operating and management practices that NRG uses across its fleet of assets. In 2011, NRG achieved top decile plant operating performance for its entire fleet, based on applicable Occupational Safety and Health Administration ("OSHA") standards. We estimate our solar portfolio has a weighted average remaining expected life (based on rated MW) of approximately 29 years.

Significant scale and diversity. We are the owner and operator of a large and diverse portfolio of contracted electric generation and thermal infrastructure assets. Our 964 net MW contracted

generation portfolio, consisting of nine assets (two of which are in advanced stages of construction) and two distributed solar generation portfolios, benefits from significant diversification in terms of technology, fuel type, counterparty and geography. Our thermal business consists of eight Energy Centers and has over 550 steam and chilled water customers. We expect that our conventional and renewable generation and thermal infrastructure assets will contribute 29%, 48% and 23%, respectively, of cash available for distribution for the twelve month period ending March 31, 2015. We believe our scale and access to best practices across our fleet improves our business development opportunities through enhanced industry relationships, reputation and understanding of regional power market dynamics. Furthermore, our diversification reduces our operating risk profile and our reliance on any single market.

Our Relationship with NRG. We believe our relationship with NRG, including NRG's expressed intention to maintain a controlling interest in us, provides us with significant benefits, including management and operational expertise, and future growth opportunities. Our executive officers have considerable experience in owning and operating, as well as developing, acquiring and integrating, generation and thermal infrastructure assets, with on average over 15 years in the energy sector:

- *NRG Management and Operational Expertise.* We have access to the significant resources of NRG, the largest competitive power generator in the United States, to support the operational, finance, legal, regulatory and environmental aspects, and growth strategy of our business. As such we believe we avail ourselves of best-in-class resources, including management and operational expertise.

- *NRG Asset Development and Acquisition Track Record.* Over the last five years, excluding assets acquired in the GenOn Merger, NRG has constructed, is constructing or has acquired eight conventional assets totaling 2,420 MW, nine utility scale solar assets totaling 1,113 MW, four wind assets totaling 451 MW and 40 MW of distributed solar facilities (some of which are nearing the final stages of construction as described in this prospectus). In addition, NRG acquired the 134 MWt Phoenix Energy Center and recently constructed the 38 MWt Princeton Energy Center. NRG's growth is supported by considerable development and strategic teams, including over 71 professionals focused on the development and acquisition of renewable generation assets, as well as approximately 6,000 MW of conventional and other renewable projects under development as of December 31, 2012.

As discussed below in "—Our Agreements with NRG—ROFO Agreement," we have entered into an agreement with NRG that provides us with the right of first offer on four assets that if acquired would add approximately 1,229 MW of net capacity to our portfolio and significantly grow our cash available for distribution. We also expect to have the opportunity to acquire additional assets NRG develops or acquires in the future.

Environmentally well-positioned portfolio of assets. On a net capacity basis, our portfolio of electric generation assets consists of 414 net MW of renewable generation capacity that are non-emitting sources of power generation. Our conventional asset consists of the El Segundo combined cycle natural gas-fired generation facility. We do not anticipate having to expend any significant capital expenditures in the foreseeable future to comply with current environmental regulations applicable to our generation assets. Taken as a whole, we believe our strategy will be a net beneficiary of current and potential environmental legislation and regulatory requirements that may serve as a catalyst for capacity retirements and improve market opportunities for environmentally well-positioned assets like ours once our current offtake agreements expire.

Thermal infrastructure business has high entry costs. Significant capital has been invested to construct our thermal infrastructure assets, serving as a barrier to entry in the markets in which such

assets operate. As of September 30, 2012, our thermal gross property plant and equipment was approximately $330 million. Our district energy centers are located in urban city areas, with our chilled water and steam delivery systems located underground. Constructing underground delivery systems in urban areas requires long lead times for permitting, rights of way and inspections and is costly. By contrast our incremental cost to add new customers in existing markets is relatively low.

Once we have established an Energy Center, we believe we have the ability to retain customers over long periods of time and to compete effectively for additional business against stand-alone on-site heating and cooling generation facilities. Installation of stand-alone equipment can require significant modification to a building as well as significant space for equipment and funding for capital expenditures. Our system technologies often provide economies of scale in terms of fuel procurement, ability to switch between multiple types of fuel to generate thermal energy, and fuel conversion efficiency. Our top ten thermal customers, which make up over 20% of our estimated revenue for the twelve months ended December 31, 2012, have had a relationship with us for on average over 20 years. We believe that the significant capital investment, long lead times for construction and expertise required to operate thermal assets constitute significant costs for new competitors. As a result of these high entry costs, in most of the urban areas in which we operate, we are the only third party provider of thermal energy.

Our Agreements with NRG

The following agreements will be entered into subsequent to negotiations between affiliated parties and, consequently, may not be as favorable to us as they might have been if we had negotiated them with an unaffiliated third party. For a more comprehensive discussion of the agreements that we have entered into with NRG and certain of its affiliates, please see "Certain Relationships and Related Party Transactions." For a discussion of the risks related to our relationship with NRG please read "Risk Factors—Risks Related to Our Relationship with NRG."

Management Services Agreement. Upon consummation of this offering, we will enter into the Management Services Agreement with NRG, as manager (the "Manager"), and certain of its affiliates under which NRG will provide or arrange for the provision of operation, management and administrative services to us and our subsidiaries. Pursuant to the Management Services Agreement, we will pay quarterly a base management fee equal to approximately $1 million to the Manager. The base management fee will be subject to an inflation based adjustment annually beginning on January 1, 2014 at an inflation factor based on the year-over-year U.S. consumer price index ("CPI"). It will also be subject to adjustments following the consummation of future acquisitions (in an amount equal to 0.05% o the enterprise value of the acquired assets as of the acquisition closing date) and as a result of a change in the scope of services provided under the Management Services Agreement. See "Certain Relationships and Related Party Transactions—Management Services Agreement." In addition, many of our assets have entered int operations and administrative agreements with affiliates of NRG for their operating and administrative needs, which will remain in effect after the consummation of this offering and which are described in "Certain Relationships and Related Party Transactions—Project-Level Management and Administration Agreements."

ROFO Agreement. NRG has agreed to grant us a right of first offer on any proposed sale transfer or other disposition of any of the NRG ROFO Assets for period of five years following the completion of this offering. Under the terms of the ROFO Agreement, NRG has agreed to negotiate with us in good faith, for a period of 30 days, to reach an agreement with respect to any proposed sale of an NRG ROFO Asset for which we have exercised our right of first offer. NRG will not however, be required to accept any offer we make, and may elect not to sell those assets or, following the completion of good faith negotiations with us and subject to certain exceptions, may choose to sell the assets to a third party. See "—Certain Relationships and Related Transactions—Right of First Offer."

Organizational Structure

Yieldco Inc. is a Delaware corporation formed on December 20, 2012 by NRG to own and operate a portfolio of power generation assets and thermal infrastructure assets that have historically been owned and/or operated by NRG and its subsidiaries.

Prior to the closing of this offering, NRG will contribute, or cause a subsidiary to contribute, the following assets to Yieldco LLC in exchange for Yieldco LLC Class A units and Yieldco LLC will contribute such assets to Yieldco Operating LLC (collectively, the "Asset Transfer"):

- 100% of NRG's interest in El Segundo, a "Conventional" asset as further described in the table set forth in "—Our Operations";
- 100% of NRG's interest in each of the following utility-scale solar generation facilities: (i) the 66 rated MW facility located in Los Angeles County, California ("Alpine"), (ii) the 25 rated MW Avra Valley Solar facility located in Pima County, Arizona ("Avra Valley"), (iii) the 21 rated MW Blythe Solar facility located in Riverside County, California ("Blythe"); (iv) the 26 rated MW Borrego Solar facility located in San Diego County, California ("Borrego"); and (v) the 20 rated MW Roadrunner Solar facility located in Dona Ana County, New Mexico ("Roadrunner");
- 99.9% of NRG's interest in the solar generation facilities comprising of Avenal, which constitutes a 50/50 joint venture partnership with Eurus Energy America ("Eurus") and which consists of Avenal Park (6 rated MW), Sun City (20 rated MW) and Sand Drag (19 rated MW) (collectively, "Avenal");
- 48.95% of NRG's interest in CVSR (and collectively with Alpine, Avra Valley, Blythe, Borrego, Roadrunner and Avenal, each a "Utility Scale Solar" facility as further described in the table set forth in "—Our Operations");
- 100% of NRG's interest in each of (i) the 5 rated MW solar generation systems for public entities in Arizona (the "AZ DG Solar Projects") and (ii) the 9 rated MW distributed solar generation assets which constitute a $^{51}/_{49}$ joint venture partnership with PsomasFMG, LLC in Orange County, California (the "PFMG DG Solar Projects"), each a "Distributed Solar" asset as further described in the table set forth in "—Our Operations";
- 100% of NRG's interest in the 101 rated MW South Trent Wind Farm located in Nolan and Taylor Counties in Sweetwater, Texas ("South Trent"); as further described as "Wind" assets in the table set forth in "—Our Operations";
- 100% of NRG's interest in the eight district energy businesses located in Minneapolis, MN, San Francisco, CA, Harrisburg, PA, Phoenix, AZ, Pittsburgh, PA, San Diego, CA, Dover, DE and Princeton, NJ as further described as "Thermal Energy" assets in the table set forth in "—Our Operations";
- 100% of NRG's interest in two businesses which provide services under operating and maintenance contracts for facilities in Minneapolis, MN and Smyrna, DE; and
- 100% of NRG's interest in the three thermal power generation facilities located in Harrisburg, PA, Dover, DE and Princeton, NJ, as further described as "Thermal Generation" assets in the table set forth in "—Our Operations."

After consummation of the Asset Transfer and prior to the closing of this offering:

- we will amend Yieldco Inc.'s certificate of incorporation to provide for both Class A common stock and Class B common stock of common stock, at which time NRG's interest in Yieldco Inc. will be converted into Class B common stock; and
- we will amend Yieldco LLC's operating agreement to provide for Class A units and Class B units and to make Yieldco Inc. the sole managing member of Yieldco LLC.

Concurrently with the closing of this offering, based on an initial public offering price of $ per share, the midpoint of the range set forth on the cover c this prospectus:

- we will issue shares of our Class A common stock to the purchasers in this offering (or shares if the underwriters exercise in full their option to purchase additional shares of Class A common stock) in exchange for net proceeds of approximately $ million (or approximately $ million if the underwriters exercise in full their option to purchase additional shares of Class A common stock);
- we will use approximately $ million of the net proceeds from this offering to purchase newly issued Class A units of Yieldco LLC, representing % of Yieldco LLC's outstanding membership units;
- Yieldco LLC will use such net proceeds for general corporate purposes and to fund approximately $40 million of our required capital contributions to pay for our portion of CVSR's construction costs;
- we will use approximately $ million (or approximately $ million if the underwriters exercise in full their option to purchase additional shares of Class A common stock) of the net proceeds of this offering to acquire Class A units of Yieldco LLC (which will be reclassified from Yieldco LLC Class B units in connection with such acquisition), representing approximately % (or approximately % if the underwriters exercise in full their option to purchase additional shares of Class A common stock) of Yieldco LLC's outstanding membership units, from NRG;
- Yieldco Operating LLC intends to enter into a new $ million revolving credit facility which will remain undrawn at the closing of this offering; and
- we will enter into the Management Services Agreement with NRG, pursuant to which, among other things, (i) NRG will provide certain operational services to us in support of our operations and various centralized corporate services; and (ii) the parties will agree to certain indemnification obligations.

NRG's existing membership units in Yieldco LLC will be reclassified as "Class B units" and will represent % (or approximately % if the underwriter exercise in full their option to purchase additional shares of Class A common stock) of Yieldco LLC's outstanding membership units immediately following this offering. In addition, we will issue to NRG a number of shares of our Class B common stock equal to the number of Class B units of Yieldco LLC held by NRG immediately following this offering in exchange for the payment by NRG of the aggregate par value of such shares. Each share of Class B common stock will entitle NRG to one vote on matters to be voted on by our stockholders generally. For more information regarding the terms of our common stock, see "Description of Capita Stock."

Immediately following the closing of this offering:

- Yieldco Inc. will be a holding company and our sole material asset will be the Class A units of Yieldco LLC;
- Yieldco Inc. will be appointed as the sole managing member of Yieldco LLC and will control the business and affairs of Yieldco LLC and its subsidiaries;
- Yieldco Inc. will hold Class A units of Yieldco LLC representing approximately % of Yieldco LLC's total outstanding membership units (or and %, respectively, if the underwriters exercise in full their option to purchase additional shares of Class A common stock);
- NRG will own Class B units of Yieldco LLC representing approximately % of Yieldco LLC's total outstanding membership units (or and %,

respectively, if the underwriters exercise in full their option to purchase additional shares of Class A common stock);

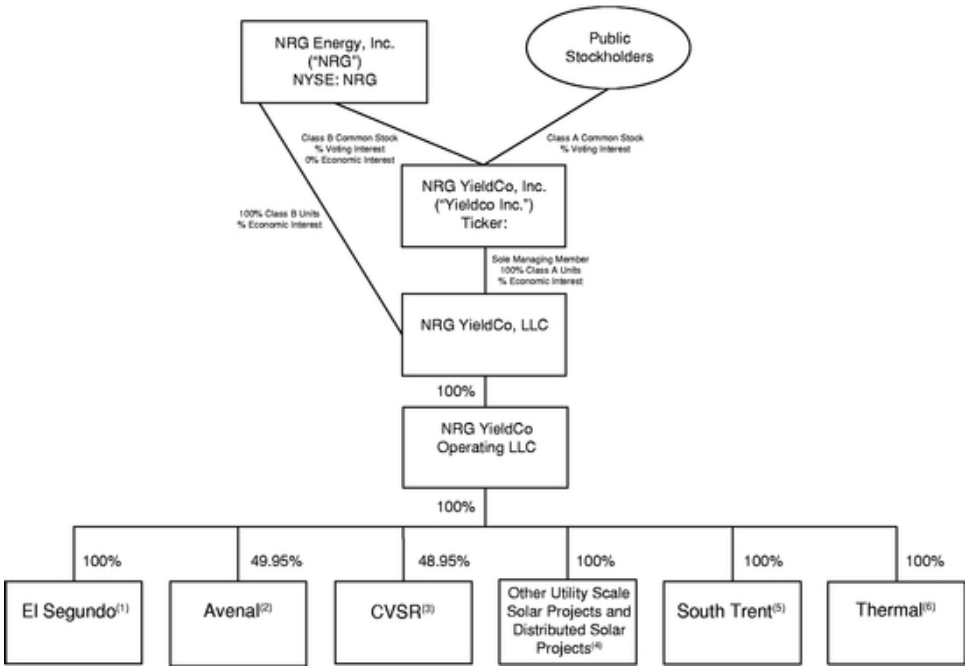
- NRG, through its ownership of our Class B common stock, will have % of the combined voting power of all of our common stock and, through its ownership of Class B units of Yieldco LLC, will hold approximately % of the economic interest in our business (or % of the combined voting power of our common stock and a % economic interest if the underwriters exercise in full their option to purchase additional shares of Class A common stock); and

- the purchasers in this offering will own shares of our Class A common stock, representing % of the combined voting power of all of our common stock and, through our ownership of Class A units of Yieldco LLC, approximately % of the economic interest in our business (or % of the combined voting power of our common stock and a % economic interest if the underwriters exercise in full their option to purchase additional shares of Class A common stock).

We collectively refer to the aforementioned transactions described in this "—Organizational Structure" section (including the Asset Transfer) as the "Organizational Structure."

NRG may exchange its Class B units in Yieldco LLC for shares of our Class A common stock on a one-for-one basis, subject to equitable adjustments for stock splits, stock dividends and reclassifications. When NRG exchanges a Class B unit of Yieldco LLC for a share of our Class A common stock: (i) we will issue NRG a share of our Class A common stock in exchange for the Class B units; (ii) the Class B unit so exchanged will convert into a Class A unit; and (iii) we will automatically redeem and cancel a corresponding share of our Class B common stock and the Class B unit will automatically convert into a Class A unit issued to us. See "Certain Relationships and Related Party Transactions—Amended and Restated Operating Agreement of Yieldco LLC—Exchange Agreement."

The following table sets forth our ownership structure after giving effect to this offering:



(1) Consists of 100% of the membership interests in Natural Gas Repowering LLC ("Natural Gas Repowering"). Natural Gas Repowering owns 100% of NRG West Holdings LLC's membership interests, which is the direct parent of El Segundo Energy Center LLC and NRG West Procurement Company LLC.

(2) NRG will retain the remaining 0.05% membership interest in Avenal Solar Holdings LLC ("Avenal Holdings"). The remaining 50% interest in the joint ventu will be retained by Eurus. Avenal Holdings owns Sun City Project LLC, Sand Drag LLC and Avenal Park LLC.

(3) Consists of a 48.95% membership interest in NRG Solar CVSR Holdings LLC ("CVSR Holdings"). NRG will retain the remaining 51.05% membership interest in CVSR Holdings, which constitutes an NRG ROFO Asset. CVSR Holdings is the direct parent of High Plains Ranch II, LLC.

(4) Consists of 100% membership interests in (i) NRG Solar Borrego I LLC, (ii) PESD Energy, LLC, (iii) Wildcat Energy LLC, (iv) Longhorn Energy LLC, (v) Vail Energy, LLC, (vi) SCWFD Energy, LLC, (vii) FUSD Energy, LLC, (viii) NRG Solar Blythe LLC, (ix) NRG Alta Vista LLC, (x) NRG Solar Avra Valley LLC, (xi) El Mirage Energy, LLC, (xii) Monster Energy, LLC, (xiii) Continental Energy LLC, (xiv) NRG Solar Roadrunner Holdings LLC, (xv) NRG Solar Alpine LLC and (xvi) NRG Solar Apple LLC, and their direct and indirect subsidiaries.

(5) Consists of 100% of the membership interests in NRG South Trent Holdings LLC, South Trent Wind LLC's direct parent company.

(6) Consists of 100% of the membership interests in (i) NRG Energy Center Princeton LLC, (ii) NRG Energy Center, San Diego LLC, (iii) NRG Energy Center Minneapolis LLC, (iv) NRG Energy Center Pittsburgh LLC, (v) NRG Energy Center Dover, LLC, (vi) NRG Energy Center San Francisco LLC, (vii) NRG Energy Center Smyrna LLC, (viii) NRG Energy Center Harrisburg LLC, (ix) NRG Harrisburg Cooling LLC, (x) NRG Energy Center Paxton LLC, (xi) NRG Energy Center HCEC, (xii) NRG Energy Center Phoenix LLC, (xiii) NRG Energy Center Tucson LLC and (xiv) NRG Thermal LLC.

Material Tax Considerations

If we make distributions from current or accumulated earnings and profits, as computed for federal income tax purposes, such distributions will generally be taxable to holders of our Class A common stock in the current period as ordinary income for federal income tax purposes. Under current law, such dividends would be eligible for the lower tax rates applicable to qualified dividend income of non-corporate taxpayers. If our distributions exceed our current and accumulated earnings and profits as computed for federal income tax purposes, such excess distributions will constitute a non-taxable return of capital to the extent of a holder's basis in our Class A common stock and will result in a reduction of such basis. To the extent such excess exceeds a stockholder's basis in our Class A common stock, such excess will be taxed as capital gain. A "return of capital" represents a return of a stockholder's original investment in our shares. Upon the sale of our Class A common stock, a holder of such common stock generally will recognize capital gain or loss measured by the difference between the sale proceeds received by the stockholder and the stockholder's federal income tax basis in our Class A common stock sold, as adjusted to reflect prior distributions that are treated as return of capital. See "Risk Factors—Tax Risks—Distributions to our holders of our Class A common stock may be taxable as dividends." Based on our current portfolio of assets that we expect will benefit from an accelerated depreciation schedule, we expect to generate net operating losses ("NOLs") and NOL carryforwards that we can utilize to offset future taxable income. As such, we do not expect to pay significant federal income taxes for a period of approximately ten years. While we expect that a portion of our distribution to holders of our Class A common stock may exceed our current and accumulated earnings and profits as computed for federal income tax purposes and therefore constitute a non-taxable return of capital distribution to the extent of a stockholder's basis in our Class A common stock, no assurance can be given that this will occur.

Risks Associated with our Business

We are subject to a number of risks, including risks that may prevent us from achieving our business objectives or may materially and adversely affect our business, financial condition, results of operations, cash flows and prospects. You should carefully consider these risks, including the risks discussed in the section entitled "Risk Factors," before investing in our Class A common stock. Risks related to our business include, among others:

- our ability to replace expiring offtake agreements with agreements on similar terms;
- our ability to meet our performance expectations for newly constructed power generation facilities;
- our significant level of indebtedness, including the possibility that related financial covenants may decrease our cash available for distribution;
- our ability to operate our plants efficiently and manage capital expenditures;
- our ability to address additional costs or delays in the construction and operation of new plants;
- our ability to respond to unexpected operational or mechanical failures;
- failures or delays in the operation of interconnection or transmission facilities; and
- our ability to maintain growth while distributing all or substantially all of our cash available for distribution.

Corporate Information

Our principal executive offices are located at NRG Yieldco, Inc., 211 Carnegie Center, Princeton, New Jersey. Our telephone number is . Our website will be located at http:www. . We intend to make our periodic reports and other information filed with or furnished to the Securities and Exchange Commission (the "SEC") pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), available, free of charge, through our website, as soon as reasonably practicable after those reports and other information are electronically filed with or furnished to the SEC. Information on our website or any other website is not incorporated by reference into this prospectus and does not constitute a part of this prospectus. The SEC maintains an internet site at http://www.sec.gov that contains reports and other information regarding issuers that file electronically with the SEC.

JOBS Act

As a company with less than $1.0 billion in revenue during our last fiscal year, we qualify as an "emerging growth company," as defined in the Jumpstart Our Business Startups Act (the "JOBS Act"). Section 107 of the JOBS Act provides that an emerging growth company can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act of 1933, as amended (the "Securities Act"), for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. However, we are choosing to "opt out" of such extended transition period, and as a result, we will comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies. Section 107 of the JOBS Act provides that our decision to opt out of the extended transition period for complying with new or revised accounting standards is irrevocable.

An emerging growth company may also take advantage of reduced reporting requirements that are otherwise applicable to public companies. These provisions include, but are not limited to:

- not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act of 2002, as amended ("Sarbanes-Oxley Act");
- reduced disclosure obligations regarding executive compensation in our periodic reports, proxy statements and registration statements; and
- exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved.

We may take advantage of these provisions until the last day of our fiscal year following the fifth anniversary of the date of the first sale of our common equity securities pursuant to an effective registration statement under the Securities Act, which such fifth anniversary will occur in 2018. However, if certain events occur prior to the end of such five-year period, including if we become a "large accelerated filer," our annual gross revenues exceed $1.0 billion or we issue more than $1.0 billion of non-convertible debt in any three-year period, we will cease to be an emerging growth company prior to the end of such five-year period.

We have elected to take advantage of certain of the reduced disclosure obligations regarding executive compensation in this prospectus and may elect to take advantage of other reduced burdens in future filings. As a result, the information that we provide to our stockholders may be different than you might receive from other public reporting companies in which you hold equity interests.

THE OFFERING

Shares of Class A common stock offered by us	shares of our Class A common stock.
Shares of Class A common stock outstanding after this offering	shares of our Class A common stock (or shares of Class A common stock if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
Shares of Class B common stock outstanding after this offering	shares of our Class B common stock (or shares of Class B common stock if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
Class A units and Class B units of Yieldco LLC outstanding after this offering	Class A units of Yieldco LLC and Class B units of Yieldco LLC (or Class A units and Class B units of Yieldco LLC if the underwriters exercise in full their option to purchase additional shares of Class A common stock).
Option to purchase additional shares of our Class A common stock	We have granted the underwriters an option to purchase up to an additional shares of our Class A common stock from us, at the public offering price, less the underwriting discount, within 30 days from the date of this prospectus.
Use of proceeds	We are offering the Class A common stock to be sold in this offering. Assuming no exercise of the underwriters' option to purchase additional shares of Class A common stock, we expect to receive approximately $ million of net proceeds from the sale of the Class A common stock offered based upon the assumed initial public offering price of $ per share (the midpoint of the price range set forth on the cover page of this prospectus), after deducting underwriting discounts and estimated offering expenses. Each $1.00 increase (decrease) in the public offering price would increase (decrease) our net proceeds by approximately $ million. We intend to use approximately $ million of the net proceeds from this offering to acquire newly issued Yieldco LLC Class A units, representing % of Yieldco LLC's outstanding membership units, from Yieldco LLC. Yieldco LLC will use such net proceeds for general corporate purposes and to fund approximately $40 million of our required capital contributions to pay for our portion of CVSR's construction costs.

	We intend to use approximately $ million (or approximately $ million if the underwriters exercise in fu their option to purchase additional shares of Class A common stock) of the net proceeds of this offering to acquire Yieldco LLC Class A units (which will be reclassified from Yieldco LLC Class B units in connection with such acquisition), representing approximately % (or approximately % if the underwriters exercise in full their option to purchase additional shares of Class A common stock) of Yieldco LLC's outstanding membership units, from NRG. See "Use of Proceeds."
Voting rights	Each share of our Class A common stock will entitle its holder to one vote on all matters to be voted on by shareholders generally. Each share of our Class B common stock will entitle its holder to one vote on all maters to be voted on by stockholders generally. Through its ownership of our Class B common stock, NRG will hold shares of our common stock having % (or % if the underwriters exercise in full their option to purchase additional shares of Class A common stock) of the combined voting power of all of our common stock outstanding. As a result, for the foreseeable future following this offering, NRG will be able to exercise control over matters requiring the approval of our shareholders, including the election of our directors and the approval of significant corporate transactions. Holders of our Class A common stock and Class B common stock will vote together as a single class on all matters presented to shareholders for their vote or approval, except as otherwise required by law. See "Description of Capital Stock."
Economic interest	Immediately following this offering, the purchasers in this offering will own in the aggregate a % economic interes in our business through our ownership of Class A units of Yieldco LLC and NRG will own in aggregate a % economic interest in our business through its ownership of Class B units of Yieldco LLC (or a % economic interest and a % economic interest, respectively, if the underwriters exercise in full their option to purchase additional shares of our Class A common stock).
Exchange and registration rights	Each Class B unit of Yieldco LLC will be exchangeable for a share of our Class A common stock, subject to equitable adjustments for stock splits, stock dividends and reclassifications. When NRG exchanges a Class B unit of Yieldco LLC for a share of our common stock, we will automatically redeem and cancel a corresponding share of our Class B common stock and the Class B unit will automatically convert into a Class A unit issued to us. See "Certain Relationships and Related Party Transactions—Amended and Restated Operating Agreement of Yieldco LLC—Exchange Agreement."

	Pursuant to a registration rights agreement that we will enter into with NRG, we will agree to file a registration statement for the sale of the shares of our Class A common stock that are issuable upon exchange of Class B units of Yieldco LLC upon request and cause that registration statement to be declared effective by the U.S. Securities and Exchange Commission ("SEC") as soon as practicable thereafter. See "Certain Relationships and Related Party Transactions—Registration Rights Agreement" for a description of the timing and manner limitations on resales of these shares of our Class A common stock.
Cash dividends	Upon completion of this offering, we intend to pay a regular quarterly dividend to holders of our Class A common stock. Our initial quarterly dividend will be set at $ per share of Class A common stock ($ per share or an annualized basis), which amoun may be changed in the future without advance notice. Our ability to pay the regular quarterly dividend is subject to various restrictions and other factors described in more detail under the caption "Cash Dividend Policy." We expect to pay a quarterly dividend on or about the 60th day following the expiration of each fiscal quarter to holders of our Class A common stock of record on the last day of such fiscal quarter. With respect to our first dividend payable on , 2013, we intend to pay a pro-rated dividend (calculated from the closing date of this offering through and including , 2013) of $ per share o Class A common stock. We believe, based on our financial forecast and related assumptions included in "Cash Dividend Policy—Estimated Cash Available for Distribution for the Twelve Months Ending March 31, 2014 and March 31, 2015," that we will generate sufficient cash available for distribution to support our initial quarterly dividend of $ per share of Class A common stock ($ per share an annualized basis). However, we do not have a legal obligation to declare or pay dividends at such initial quarterly dividend level or at all. See "Cash Dividend Policy."
Material federal income tax consequences to non-U.S. holders	For a discussion of the material federal income tax consequences that may be relevant to prospective investors who are non-U.S. holders, please read "Material U.S. Federal Income Tax Consequences to Non-U.S. Holders."
Exchange listing	We intend to apply for the listing of our Class A common stock on the NYSE under the symbol " ."

The number of shares of our Class A common stock to be outstanding after this offering is based on shares of our Class A common stock and shares of our Class B common stock to be outstanding immediately after this offering based on an initial public offering price of $ per share, the midpoint of the range set forth on the cover of this prospectus, and excludes (i) shares of our Class A common stock which may be issued upon the exercise of the underwriters' option to purchase additional shares of our Class A common stock and the corresponding number of Class A units of Yieldco LLC that we would purchase from Yieldco LLC with the net proceeds therefrom; (ii) shares of our Class A common stock reserved for issuance upon the subsequent exchange of Class B units of Yieldco LLC that will be outstanding immediately after this offering; and (iii) shares of our Class A common stock reserved for future issuance unde our equity-based compensation plans.

Except as otherwise indicated, all information in this prospectus also assumes:

- *we will file our amended and restated certificate of incorporation and adopt our amended and restated bylaws immediately prior to the closing of this offering;*
- *we will cause Yieldco LLC to amend and restate its operating agreement prior to the closing of this offering; and*
- *an initial public offering price of $ per share of Class A common stock, which is the midpoint of the range set forth on the cover page of this prospectus.*

SUMMARY HISTORICAL AND PRO FORMA FINANCIAL DATA

The following table shows summary historical and pro forma financial data at the dates and for the periods indicated. The summary historical financial data a of and for the years ended December 31, 2010 and 2011 have been derived from the audited combined financial statements of our accounting predecessor included elsewhere in this prospectus. The summary historical financial data as of and for the nine months ended September 30, 2011 and 2012 was derived from the unaudited combined financial statements of our accounting predecessor included elsewhere in this prospectus, which include all adjustments, consisting of normal recurring adjustments, which management considers necessary for a fair presentation of the financial position and the results of operations for such periods, and results for the interim periods are not necessarily indicative of the results for the full year. The historical financial statements as of and for the years ended December 31, 2010 and 2011 and as of and for the nine months ended September 30, 2011 and 2012 are intended to represent the financial results of NRG's contracted renewable energy and natural gas-fired electric generation assets and thermal infrastructure assets in the United States that will be contributed to Yieldco LLC as part of the Asset Transfer for those periods. The summary historical financial data is not necessarily indicative of results to be expected in future periods.

The summary unaudited pro forma financial data have been derived by the application of pro forma adjustments to the historical combined financial statements of our accounting predecessor included elsewhere in this prospectus. The summary unaudited pro forma statements of income data for the year ended December 31, 2011 and for the nine months ended September 30, 2012 give effect to the Organizational Structure (as described under "Summary—Organizational Structure") and the use of the estimated net proceeds from this offering as if they had occurred on January 1, 2011. The summary unaudited pro forma balance sheet data as of September 30, 2012 gives effect to the Organizational Structure and the use of the estimated net proceeds from this offering as if they had occurred on September 30, 2012. See "Unaudited Pro Forma Consolidated Financial Statements" for additional information. As described in "Summary—Organizational Structure," Yieldco Inc. will own approximately % of Yieldco LLC's outstanding membership interests after consummation of the Organizational Structure.

The following tables should be read together with, and is qualified in its entirety by reference to, the historical combined financial statements and the accompanying notes appearing elsewhere in this prospectus. Among other things, the historical combined financial statements include more detailed information regarding the basis of presentation for the information in the following table. The table should also be read together with "Management's Discussion and Analysis of Financial Condition and Results of Operations and "Certain Relationships and Related Party Transactions—Management Services Agreement." Our summary unaudited pro forma financial data is presented for informational purposes only. The pro forma adjustments are based upon available information and certain assumptions that we believe are reasonable. Our summary unaudited pro forma financial information does not purport to represent what our results of operations or financial position would have been if we operated as a public company during the periods presented and may not be indicative of our future performance.

The financial statements of Yieldco Inc. have not been presented in this prospectus as it is a newly incorporated entity, had no business transactions or activities to date and had no assets or liabilities during the periods presented in this section.

	Fiscal Year Ended December 31,		Pro Forma	Nine Months Ended September 30,		Pro Forma
	2010	2011	Year Ended December 31, 2011	2011	2012	Nine Months Ended September 30, 2012
			(in millions)			
Statement of Income Data:						
Operating Revenues:						
Total operating revenues	$ 143	$ 164	$	$ 126	$ 133	$
Operating Costs and Expenses						
Cost of operations	97	104		79	80	
Depreciation and amortization	16	22		16	18	
General and administrative(1)	10	12		9	10	
Total operating costs and expenses	123	138		104	108	
Operating Income	20	26		22	25	
Other Income/Expense						
Equity in earnings of unconsolidated affiliates(2)	(1)	1		2	4	
Other income	—	1		1	1	
Interest expense	(11)	(18)		(13)	(25)	
Total other expense	(12)	(16)		(10)	(20)	
(Loss)/Income Before Income Taxes	8	10		12	5	
Income tax expense	3	4		5	2	
Net income	$ 5	$ 6	$	$ 7	$ 3	$
Less net income attributable to non controlling interest						
Net income attributable to Yieldco. Inc.	$	$	$	$	$	$
Other Financial Data:						
Adjusted EBITDA(3)	35	54		42	54	
Capital expenditure	(65)	(372)		(214)	(422)	
Cash Flow Data:						
Net cash provided by (used in):						
Operating activities	$ 42	$ 28		$ 46	$ 26	
Investing activities	(184)	(464)		(255)	(415)	
Financing activities	156	428		232	395	
Balance Sheet Data (at period end):						
Cash and cash equivalents	$ 32	$ 24		$ 55	$ 30	
Property and equipment, net	526	863		772	1,342	
Total assets	659	1,107		967	1,596	
Total liabilities	530	668		551	907	
Total equity	129	439		416	689	

(1) Includes approximately $5 million and $6 million of allocated costs and expenses for items that would be paid to NRG as Manager under the Management Services Agreement after consummation of this offering for the fiscal years ended December 31, 2010 and 2011, respectively. Also includes approximately $5 million of such costs and expenses for each of the nine months ended September 30, 2011 and 2012. See "Certain Relationships and Related Party Transactions—Management Services Agreement—Reimbursement of Expenses and Certain Taxes" for a description of such costs and expenses.

(2) Our unconsolidated affiliates include CVSR and Avenal.

(3) Adjusted EBITDA is a non-GAAP financial measure. This measurement is not recognized in accordance with GAAP and should not be viewed as an alternative to GAAP measures of performance. The presentation of Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or non-recurring items.

We define Adjusted EBITDA as net income less equity in earnings of unconsolidated affiliates before net interest expense, income taxes and depreciation, amortization and accretion, as adjusted for contract amortization, pro-rata earnings before interest expense, depreciation, amortization and income taxes from our unconsolidated affiliates, mark-to-market gains or losses, asset write offs and impairments and factor that we do not consider indicative of future operating performance. We believe Adjusted EBITDA is useful to investors in evaluating our operating performance because:

- securities analysts and other interested parties use such calculations as a measure of financial performance and debt service capabilities; and
- it is used by our management for internal planning purposes, including aspects of our consolidated operating budget and capital expenditures.

Adjusted EBITDA has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our results as reported under GAAP. Some of these limitations include:

- it does not reflect our cash expenditures or future requirements for capital expenditures or contractual commitments;
- it does not reflect changes in, or cash requirements for, working capital;
- it does not reflect significant interest expense or the cash requirements necessary to service interest or principal payments on our outstanding debt;
- it does not reflect payments made or future requirements for income taxes;
- it adjusts for contract amortization, mark-to-market gains or losses, asset write offs, impairments and factors that we do not consider indicative of future performance;
- although it reflects adjustments for factors that we do not consider indicative of future performance, we may, in the future, incur expenses similar to the adjustments reflected in our calculation of Adjusted EBITDA in this prospectus; and
- although depreciation and amortization are non-cash charges, the assets being depreciated and amortized will often have to be replace in the future and Adjusted EBITDA does not reflect cash requirements for such replacements.

Investors are encouraged to evaluate each adjustment and the reasons we consider it appropriate for supplemental analysis.

The following table presents a reconciliation of Adjusted EBITDA to net income:

	Fiscal Year Ended December 31,		Nine Months Ended September 30,	
	2010	2011	2011	2012
	(in millions)			
Net income	$ 5	$ 6	$ 7	$ 3
Less equity in earnings of unconsolidated affiliates	1	(1)	(2)	(4)
Add:				
Depreciation, amortization and accretion	16	22	16	18
Interest expense	11	18	13	25
Income tax expense	3	4	5	2
Contract amortization	—	1	1	1
Pro-rata EBITDA from unconsolidated affiliates(a)	(1)	4	2	9
Adjusted EBITDA	$ 35	$ 54	$ 42	$ 54

(a) For a definition of Pro-rata EBITDA from unconsolidated affiliates, see "Cash Dividend Policy—Assumptions and Considerations—Pro-rata EBITDA from Unconsolidated Affiliates."

RISK FACTORS

This offering and an investment in our Class A common stock involve a high degree of risk. You should carefully consider the risks described below, together with the financial and other information contained in this prospectus, before you decide to purchase shares of our Class A common stock. If any of the following risks actually occurs, our business, financial condition, results of operations, cash flows and prospects could be materially and adversely affected. As a result, the trading price of our Class A common stock could decline and you could lose all or part of your investment in our Class A common stock.

Risks Related to our Business

Counterparties to our offtake agreements may not fulfill their obligations and, as our contracts expire, we may not be able to replace them with agreements on similar terms in light of increasing competition in the markets in which we operate.

A significant portion of the electric power we generate is sold under long-term offtake agreements with public utilities or industrial or commercial end-users, with a weighted average remaining duration of approximately 15 years (based on net capacity under contract). As of December 31, 2012, the largest customers of our power generation assets, including assets in which we have less than a 100% membership interest, were American Electric Power, PG&E and Tucson Electric Power which represented 39%, 33% and 10% respectively, of the net electric generation capacity of our facilities. Upon completion of our El Segundo and CVSR facilities, when all of our assets are online, the largest customers of our power generation facilities will be SCE, PG&E and American Electric Power, representing 59%, 22% and 11%, respectively, of the net electric generation capacity of our facilities.

If, for any reason, any of the purchasers of power under these agreements are unable or unwilling to fulfill their related contractual obligations or if they refuse to accept delivery of power delivered thereunder or if they otherwise terminate such agreements prior to the expiration thereof, our assets, liabilities, business, financial condition, results of operations and cash flow could be materially and adversely affected. Furthermore, to the extent any of our power purchasers are, or are controlled by, governmental entities, our facilities may be subject to legislative or other political action that may impair their contractual performance.

The power generation industry is characterized by intense competition and our electric generation assets encounter competition from utilities, industrial companies and other independent power producers, in particular with respect to uncontracted output. In recent years, there has been increasing competition among generators for offtake agreements and this has contributed to a reduction in electricity prices in certain markets characterized by excess supply above designated reserve margins. In light of these market conditions, we may not be able to replace an expiring or terminated agreement with an agreement on equivalent terms and conditions, including at prices that permit operation of the related facility on a profitable basis. In addition, we believe many of our competitors have well-established relationships with our current and potential suppliers, lenders, customers and have extensive knowledge of our target markets. As a result, these competitors may be able to respond more quickly to evolving industry standards and changing customer requirements than we will be able to. Adoption of technology more advanced than ours could reduce our competitors' power production costs resulting in their having a lower cost structure than is achievable with the technologies we currently employ and adversely affect our ability to compete for offtake agreement renewals. If we are unable to replace an expiring or terminated offtake agreement, the affected facility may temporarily or permanently cease operations. External events, such as a severe economic downturn, could also impair the ability of some counterparties to our offtake agreements and other customer agreements to pay for energy and/or other products and services received.

Finally, potential or existing Energy Center customers may opt for on-site systems in lieu of using our Energy Center, either due to corporate policies regarding the allocation of capital, unique situations where an on-site system might in fact prove more efficient, or because of previously committed capital in systems that are already on-site.

Our inability to enter into new or replacement offtake agreements or to compete successfully against current and future competitors in the markets in which we operate could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Certain of our facilities are newly constructed or are under construction and may not perform as we expect.

CVSR (including the portion of CVSR that constitutes an NRG ROFO Asset), El Segundo and the Dover conversion are under construction, and our expectations of the operating performance of these facilities are based on assumptions and estimates made without the benefit of operating history. Additionally, the Avra Valley solar facility reached COD in December 2012. All of our conventional and renewable assets are either in their late stages of construction or have achieved COD within the past 5 years. Thus, our projections with respect to these facilities, and related estimates and assumptions, are based on limited or no operating history. Projections contained in this prospectus regarding our ability to pay dividends to holders of our Class A common stock assume newly constructed facilities and facilities under construction perform to our expectation. However, the ability of these facilities to meet our performance expectations is subject to the risks inherent in newly constructed power generation facilities and the construction of such facilities, including, but not limited to, degradation of equipment in excess of our expectations, system failures, and outages. The failure of these facilities to perform as we expect, could have a material adverse effect on our business, financial condition, results of operations and cash flows and our ability to pay dividends to holders of our Class A common stock.

Pursuant to our cash dividend policy, we intend to distribute all or substantially all of our cash available for distribution to holders of our Class A common stock through a regular quarterly dividend, and our ability to grow and make acquisitions through cash on hand could be limited.

As discussed in "Cash Dividend Policy," our dividend policy is to distribute all or substantially all of our cash available for distribution each quarter and to rely primarily upon external financing sources, including the issuance of debt and equity securities and, if applicable, borrowings under our new revolving credit facility, to fund our acquisitions and growth capital expenditures. We may be precluded from pursuing otherwise attractive acquisitions if the projected short-term cash flow from the acquisition or investment is not adequate to service the capital raised to fund the acquisition or investment, after giving effect to our available cash reserves. See "Cash Dividend Policy—General—Our Ability to Grow our Business and Dividend."

We intend to cause Yieldco LLC to make regular quarterly cash distributions to its members in an amount equal to the cash available for distribution generated during a given quarter, less reserves for the prudent conduct of our business, and to use the amount distributed to us to pay regular quarterly dividends to holders of our Class A common stock. As such, our growth may not be as fast as that of businesses that reinvest their available cash to expand ongoing operations. To the extent we issue additional equity securities in connection with any acquisitions or growth capital expenditures, the payment of dividends on these additional equity securities may increase the risk that we will be unable to maintain or increase our per share dividend. There will be no limitations in our amended and restated certificate of incorporation on our ability to issue equity securities, including securities ranking senior to our common stock. The incurrence of bank borrowings or other debt by Yieldco Operating LLC or by our project-level subsidiaries to finance our growth strategy will result in increased interest expense and the imposition of additional or more restrictive covenants, which, in turn, may impact the cash distributions we receive to distribute to holders of our Class A common stock.

We may not be able to effectively identify or consummate any future acquisitions on favorable terms, or at all.

Our business strategy includes growth through the acquisitions of additional generation assets (including through corporate acquisitions). This strategy depends on our ability to successfully identify and evaluate acquisition opportunities and consummate acquisitions on favorable terms. However, the number of acquisition opportunities is limited. In addition, we will compete with other companies for these limited acquisition opportunities, which may increase our cost of making acquisitions or cause us to refrain from making acquisitions at all. Some of our competitors for acquisitions are much larger than us with substantially greater resources. These companies may be able to pay more for acquisitions and may be able to identify, evaluate, bid for and purchase a greater number of assets than our financial or human resources permit. If we are unable to identify and consummate future acquisitions, it will impede our ability to execute our growth strategy and limit our ability to increase the amount of dividends paid to holders of our Class A common stock.

Furthermore, our ability to acquire future renewable facilities may depend on the viability of renewable assets generally. These assets currently are largely contingent on public policy mechanisms including investment tax credits ("ITCs"), cash grants, loan guarantees, accelerated depreciation, RPS and carbon trading plans, as discussed in "Business—Government Incentives." These mechanisms have been implemented at the state and federal levels to support the development of renewable generation, demand-side and smart grid and other clean infrastructure technologies. The availability and continuation of public policy support mechanisms will drive a significant part of the economics and viability of our growth strategy and expansion into clean energy investments.

Our ability to effectively consummate future acquisitions will also depend on our ability to arrange the required or desired financing for acquisitions. We may not have sufficient availability under our credit facilities or have access to project-level financing on commercially reasonably terms when acquisition opportunities arise. An inability to obtain the required or desired financing could significantly limit our ability to consummate future acquisitions and effectuate our growth strategy. If financing is available, utilization of our credit facilities or project-level financing for all or a portion of the purchase price of an acquisition could significantly increase our interest expense, impose additional or more restrictive covenants and reduce cash available for distribution to pay dividends. Similarly, the issuance of additional equity securities as consideration for acquisitions could cause significant stockholder dilution and reduce our per share cash available for distribution if the acquisitions are not sufficiently accretive.

Finally, the acquisition of companies and assets are subject to substantial risks, including the failure to identify material problems during due diligence (for which we may not be indemnified post-closing), the risk of over-paying for assets (or not making acquisitions on an accretive basis) and the ability to retain customers. Further, the integration and consolidation of acquisitions requires substantial human, financial and other resources and, ultimately, our acquisitions may divert management's attention from our existing business concerns, disrupt our ongoing business or not be successfully integrated. There can be no assurances that any future acquisitions will perform as expected or that the returns from such acquisitions will support the financing utilized to acquire them or maintain them. As a result, the consummation of acquisitions may have a material adverse effect on our business, financial condition, results of operations and cash flows and ability to pay dividends to holders of our Class A common stock

Our indebtedness could adversely affect our ability to raise additional capital to fund our operations or pay dividends. It could also expose us to the risk of increased interest rates and limit our ability to react to changes in the economy or our industry as well as impact our cash available for distribution.

As of September 30, 2012, we had approximately $651 million of total indebtedness and $512 million of borrowing capacity available under various project-level financing arrangements. In

addition, our share of our unconsolidated affiliates' total indebtedness and letters of credit outstanding as of September 30, 2012 totaled approximately $332 million and $10 million, respectively (calculated as our unconsolidated affiliates' total indebtedness as of such date multiplied by our percentage membership interest in such assets). We also would have had, after giving effect to this offering, $ million available for future borrowings under our new revolving credit facility as of such date. In addition, we had $57 million of letters of credit outstanding as well as approximately $13 million in letters of credit posted by NRG on our behalf related to CVSR and Borrego as of September 30, 2012 to support contracted obligations at our project-level entities. Approximately $624 million of our existing indebtedness is incurred at the project level. Our substantial debt could have important negative consequences on our financial condition, including:

- increasing our vulnerability to general economic and industry conditions;
- requiring a substantial portion of our cash flow from operations to be dedicated to the payment of principal and interest on our indebtedness, therefore reducing our ability to pay dividends to holders of our Class A common stock or to use our cash flow to fund our operations, capital expenditures and future business opportunities;
- limiting our ability to enter into or receive payments under long-term power sales or fuel purchases which require credit support;
- limiting our ability to fund operations or future acquisitions;
- restricting our ability to make certain distributions with respect to our capital stock and the ability of our subsidiaries to make certain distributions to us, in light of restricted payment and other financial covenants in our credit facilities and other financing agreements;
- exposing us to the risk of increased interest rates because certain of our borrowings, which may include borrowings under our new revolving credit facility, are at variable rates of interest;
- limiting our ability to obtain additional financing for working capital including collateral postings, capital expenditures, debt service requirements, acquisitions and general corporate or other purposes; and
- limiting our ability to adjust to changing market conditions and placing us at a competitive disadvantage compared to our competitors who have less debt.

Our new revolving credit facility may contain financial and other restrictive covenants that limit our ability to return capital to stockholders or otherwise engage in activities that may be in our long-term best interests. Our inability to satisfy certain financial covenants could prevent our paying cash dividends, and our failure to comply with those and other covenants could result in an event of default which, if not cured or waived, may entitle the related lenders to demand repayment or enforce their security interests, which could have a material adverse effect on our business, financial condition, results of operations and cash flows. In addition, failure to comply with such covenants may entitle the related lenders to demand repayment and accelerate all such indebtedness.

The agreements governing our project-level financing contain financial and other restrictive covenants that limit our project subsidiaries' ability to make distributions to us or otherwise engage in activities that may be in our long-term best interests. The project-level financing agreements generally prohibit distributions from the project entities to us unless certain specific conditions are met, including the satisfaction of certain financial ratios. In addition, the project-level financing for our facilities under construction prohibits distributions until such facility reaches COD. Our inability to satisfy certain financial covenants may prevent cash distributions by the particular project(s) to us and, our failure to comply with those and other covenants could result in an event of default which, if not cured or waived may entitle the related lenders to demand repayment or enforce their security interests, which could

have a material adverse effect on our business, results of operations and financial condition. In addition, failure to comply with such covenants may entitle the related lenders to demand repayment and accelerate all such indebtedness. If we are unable to make distributions from our project-level subsidiaries, it would likely have a material adverse effect on our ability to pay dividends to holders of our Class A common stock.

Letter of credit facilities to support project-level contractual obligations generally need to be renewed after five to seven years, at which time we will need to satisfy applicable financial ratios and covenants. If we are unable to renew our letters of credit as expected or replace them with letters of credit under different facilities on favorable terms or at all, we may experience a material adverse effect on our business, financial condition or results of operations and cash flows. Furthermore, such inability may constitute a default under certain project-level financing arrangements, restrict the ability of the project-level subsidiary to make distributions to us and/or reduce the amount of cash available at such subsidiary to make distributions to us.

In addition, our ability to arrange financing, either at the corporate level or at a non-recourse project-level subsidiary, and the costs of such capital, are dependent on numerous factors, including:

- general economic and capital market conditions;
- credit availability from banks and other financial institutions;
- investor confidence in us, our partners, NRG, as our principal stockholder (on a combined voting basis) and manager under the Management Services Agreement, and the regional wholesale power markets;
- our financial performance and the financial performance of our subsidiaries;
- our level of indebtedness and compliance with covenants in debt agreements;
- maintenance of acceptable project credit ratings or credit quality;
- cash flow; and
- provisions of tax and securities laws that may impact raising capital.

We may not be successful in obtaining additional capital for these or other reasons. Furthermore, we may be unable to refinance or replace project-level financing arrangements or other credit facilities on favorable terms or at all upon the expiration or termination thereof. Our failure, or the failure of any of our projects, to obtain additional capital or enter into new or replacement financing arrangements when due may constitute a default under such existing indebtedness and may have a material adverse effect on our business, financial condition, results of operations and cash flows.

The generation of electric energy from solar and wind energy sources depends heavily on suitable meteorological conditions. If solar or wind conditions are unfavorable, our electricity generation, and therefore revenue from our renewable generation facilities using our systems, may be substantially below our expectations.

The electricity produced and revenues generated by a solar electric or wind energy generation facility is highly dependent on suitable solar or wind conditions, as applicable, and associated weather conditions, which are beyond our control. Furthermore, components of our system, such as solar panels and inverters, could be damaged by severe weather, such as hailstorms or tornadoes. In addition, replacement and spare parts for key components may be difficult or costly to acquire or may be unavailable. Unfavorable weather and atmospheric conditions could impair the effectiveness of our assets or reduce their output beneath their rated capacity or require shutdown of key equipment, impeding operation of our renewable assets and our ability to achieve forecasted revenues and cash flows.

We base our investment decisions with respect to each renewable generation facility on the findings of related wind and solar studies conducted on-site prior to construction or based on historical conditions at existing facilities. However, actual climatic conditions at a facility site, particularly wind conditions, may not conform to the findings of these studies and therefore, our solar and wind energy facilities may not meet anticipated production levels or the rated capacity of our generation assets, which could adversely affect our business, financial condition and results of operations and cash flows.

Operation of electric generation facilities involves significant risks and hazards customary to the power industry that could have a material adverse effect on our business, financial condition, results of operations and cash flows. We may not have adequate insurance to cover these risks and hazards.

The ongoing operation of our facilities involves risks that include the breakdown or failure of equipment or processes or performance below expected levels of output or efficiency due to wear and tear, latent defect, design error or operator error or force majeure events, among other things. Operation of our facilities also involves risks that we will be unable to transport our product to our customers in an efficient manner due to a lack of transmission capacity. Unplanned outages of generating units, including extensions of scheduled outages due to mechanical failures or other problems, occur from time to time and are an inherent risk of our business. Unplanned outages typically increase our operation and maintenance expenses and may reduce our revenues as a result of selling fewer MWh or require us to incur significant costs as a result of obtaining replacement power from third parties in the open market to satisfy our forward power sales obligations.

Our inability to operate our electric generation assets efficiently, manage capital expenditures and costs and generate earnings and cash flow from our asset-based businesses could have a material adverse effect on our business, financial condition, results of operations and cash flows. While we maintain insurance, obtain warranties from vendors and obligate contractors to meet certain performance levels, the proceeds of such insurance, warranties or performance guarantees may not cover our lost revenues, increased expenses or liquidated damages payments should we experience equipment breakdown or non-performance by contractors or vendors.

Power generation involves hazardous activities, including acquiring, transporting and unloading fuel, operating large pieces of rotating equipment and delivering electricity to transmission and distribution systems. In addition to natural risks such as earthquake, flood, lightning, hurricane and wind, other hazards, such as fire, explosion, structural collapse and machinery failure are inherent risks in our operations. These and other hazards can cause significant personal injury or loss of life, severe damage to and destruction of property, plant and equipment and contamination of, or damage to, the environment and suspension of operations. The occurrence of any one of these events may result in our being named as a defendant in lawsuits asserting claims for substantial damages, including for environmental cleanup costs, personal injury and property damage and fines and/or penalties. We maintain an amount of insurance protection that we consider adequate but we cannot provide any assurance that our insurance will be sufficient or effective under all circumstances and against all hazards or liabilities to which we may be subject. Furthermore, our insurance coverage is subject to deductibles, caps, exclusions and other limitations. A loss for which we are not fully insured (which may include a significant judgment against any facility or facility operator) could have a material adverse effect on our business, financial condition, results of operations or cash flows. Further, due to rising insurance costs and changes in the insurance markets, we cannot provide any assurance that our insurance coverage will continue to be available at all or at rates or on terms similar to those presently available. Any losses not covered by insurance could have a material adverse effect on our business, financial condition, results of operations and cash flows.

We may incur additional costs or delays in completing the construction of certain of our electric and thermal generation facilities, and may not be able to recover our investment in or complete such facilities.

As of the date of this prospectus, CVSR and El Segundo were under construction. In addition, we intend to complete a repowering of our Dover thermal facility. Our failure to complete these facilities in a timely manner, or at all, would have a material adverse effect on our business, financial condition, results of operations, cash flows and our ability to pay dividends. The construction and modification of power generation facilities involves many risks including:

- the inability to receive DOE loan guarantees, funding or cash grants;
- delays in obtaining, or the inability to obtain, necessary permits and licenses;
- delays and increased costs related to the interconnection of new generation facilities to the transmission system;
- the inability to acquire or maintain land use and access rights;
- the failure to receive contracted third-party services;
- interruptions to dispatch at our facilities;
- supply interruptions;
- work stoppages;
- labor disputes;
- weather interferences;
- unforeseen engineering, environmental and geological problems;
- unanticipated cost overruns in excess of budgeted contingencies; and
- failure of contracting parties to perform under contracts, including EPC contractors.

Any of these risks could cause our financial returns on these investments to be lower than expected or otherwise delay the timely completion of such facilities or distribution of cash to us, or could cause us to operate below expected capacity or availability levels, which could result in lost revenues, increased expenses, higher maintenance costs and penalties. Any such delay could also jeopardize our ability to pay our regular quarterly cash dividend. See "Cash Dividend Policy—Assumptions and Considerations—General Considerations."

In the event these facilities do not achieve commercial operation by their expected dates, they may be subject to increased construction costs associated with the continuing accrual of interest on their construction loans, which customarily mature at the start of commercial operations and converts to a term loan. A delay in the completion of construction of these facilities may trigger negative consequences under the related offtake agreements, including penalty provisions for a delay in achieving COD or in situations of extreme delay or termination. Insurance is maintained to protect against these risks, warranties are generally obtained for limited periods relating to the construction of each facility and its equipment in varying degrees, and contractors and equipment suppliers are obligated to meet certain performance levels. The insurance, warranties or performance guarantees, however, may not be adequate to cover increased expenses. As a result, these facilities may cost more than projected and may be unable to fund principal and interest payments under their construction financing obligations, if any. A default under such a financing obligation could result in losing our interest in the related power generation facility.

Furthermore, where we have a relationship with a third party to complete construction of these facilities, we are subject to the viability and performance of the third party. Our inability to find a replacement contracting party, where the original contracting party has failed to perform, could result in the abandonment of the construction of such facility, while we could remain obligated on other agreements associated with the facility, including offtake agreements.

If we are unable to complete the construction of these facilities, we may not be able to recover our related investment. Furthermore, if these construction projects are not completed according to specification, we may incur liabilities and suffer reduced plant efficiency, higher operating costs and reduced net income or cash flows.

Maintenance, expansion and refurbishment of electric generation facilities involve significant risks that could result in unplanned power outages or reduced output.

Our facilities may require periodic upgrading and improvement. Any unexpected operational or mechanical failure, including failure associated with breakdowns and forced outages, could reduce our facilities' generating capacity below expected levels, reducing our revenues and jeopardizing our ability to pay dividends to holders of our Class A common stock at forecasted levels or at all. Degradation of the performance of our solar facilities above levels provided for in the related offtake agreements may also reduce our revenues. Unanticipated capital expenditures associated with maintaining, upgrading or repairing our facilities may also reduce profitability.

If we make any major modifications to our conventional power generation facility, we may be required to install the best available control technology or to achieve the lowest achievable emission rates as such terms are defined under the new source review provisions of the federal Clean Air Act (the "CAA") in the future. Any such modifications could likely result in substantial additional capital expenditures. We may also choose to repower, refurbish or upgrade our facilities based on our assessment that such activity will provide adequate financial returns. Such facilities require time for development and capital expenditures before commencement of commercial operations, and key assumptions underpinning a decision to make such an investment may prove incorrect, including assumptions regarding construction costs, timing, available financing and future fuel and power prices. This could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Certain of our thermal generation assets operate, wholly or partially, without long-term power sale agreements.

Our Dover and Paxton thermal generation assets have 118 net MW of generation capacity that have been sold through May 2016 in the annual Base Residual Auction ("BRA") under the PJM-administered RPM. Capacity revenue beginning in June 2016 is not yet determined. These facilities do not have offtake agreements for energy sales and sell energy through NRG Power Marketing, an NRG affiliate, into the bid-based auction market for energy administered by PJM based on economic dispatch of their units. If we are unable to sell available capacity from those facilities beginning in June 2016 through the BRA or one of the other RPM capacity auctions or we are unable to enter into a offtake agreement or otherwise sell unallocated or unsold capacity at favorable terms, there may be a material adverse effect on our business, financial condition, results of operations and cash flows.

A portion of the steam and chilled water produced by our thermal assets is sold at regulated rates and the profitability of these assets is dependent on regulatory rate approval.

Approximately 395 net MWt of capacity from certain of our thermal assets is sold at rates approved by one or more federal or state regulatory commissions, including the Pennsylvania Public Utility Commission and the California Public Utility Commission. While such regulation is generally premised on the recovery of prudently incurred costs and a reasonable rate of return on invested capital, the rates that we may charge with respect to this capacity are subject to authorization of the applicable regulatory authorities. There can be no assurance that such regulatory authorities will consider all of our costs to have been prudently incurred or that the regulatory process by which rates are determined will always result in rates that achieve full recovery of our costs or an adequate return on our capital investments. While our rates are generally regulated based on an analysis of our costs

incurred in a base year, the rates we are allowed to charge may or may not match our costs at any given time. If our costs are not adequately recovered through rates, it could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Supplier concentration at certain of our facilities may expose us to significant financial credit or performance risks.

We often rely on a single contracted supplier or a small number of suppliers for the provision of fuel, transportation of fuel, equipment, technology and/or other services required for the operation of certain of our facilities. In addition, certain of our suppliers provide long-term warranties with respect to the performance of their products or services. If any of these suppliers cannot perform under their agreements with us, or satisfy their related warranty obligations, we will need to utilize the marketplace to provide or repair these products and services. There can be no assurance that the marketplace can provide these products and services as, when and where required. We may not be able to enter into replacement agreements on favorable terms or at all. If we are unable to enter into replacement agreements to provide for fuel, equipment, technology and other required services, we would seek to purchase the related goods or services at market prices, exposing us to market price volatility and the risk that fuel and transportation may not be available during certain periods at any price. We may also be required to make significant capital contributions to remove, replace or redesign equipment that cannot be supported or maintained by replacement suppliers, which could have a material adverse effect on our business, financial condition, results of operations, credit support terms and cash flows.

The failure of any supplier or customer to fulfill its contractual obligations to us could have a material adverse effect on our financial results. Consequently, the financial performance of our facilities is dependent on the credit quality of, and continued performance by, our suppliers and vendors.

We currently own, and in the future may acquire, certain assets in which we have limited control over management decisions and our interests in such assets may be subject to transfer or other related restrictions.

We have limited control over the operation of Avenal and CVSR because we beneficially own 49.95% and 48.95%, respectively, of the membership interests in such assets. We may seek to acquire additional assets in which we own less than a majority of the related membership interests in the future. In these investments, we will seek to exert a degree of influence with respect to the management and operation of assets in which we own less than a majority of the membership interests by negotiating to obtain positions on management committees or to receive certain limited governance rights, such as rights to veto significant actions. However, we may not always succeed in such negotiations. We may be dependent on our co-venturers to operate such assets. Our co-venturers may not have the level of experience, technical expertise, human resources management and other attributes necessary to operate these assets optimally. In addition, conflicts of interest may arise in the future between our company and our stockholders, on the one hand, and our co-venturers, on the other hand, where our co-venturers' business interests are inconsistent with our interests and those of our stockholders. Further, disagreements or disputes between us and our co-venturers could result in litigation, which could increase our expenses and potentially limit the time and effort our officers and directors are able to devote to our business.

The approval of co-venturers also may be required for us to receive distributions of funds from assets or to sell, pledge, transfer, assign or otherwise convey our interest in such assets, or for us to acquire NRG's interests in such co-ventures as an initial matter. Alternatively, our co-venturers may have rights of first refusal or rights of first offer in the event of a proposed sale or transfer of our interests in such assets. These restrictions may limit the price or interest level for our interests in such assets, in the event we want to sell such interests.

Furthermore, certain of our facilities, including Alpine, Avra Valley, Blythe and Roadrunner, are operated by third-party operators, such as First Solar. To the extent that third-party operators do not fulfill their obligations to manage operations of the facilities or are not effective in doing so, the amount of cash available for distribution to holders of our Class A common stock may be adversely affected.

Our assets are exposed to risks inherent in our use of interest rate swaps and forward fuel purchase contracts and we may be exposed to additional risks in the future if we utilize other derivative instruments.

We use interest rate swaps to manage interest rate risk. In addition, we use forward fuel purchase contracts to hedge our limited commodity exposure with respect to our district energy assets. If we elect to enter into such commodity hedges, the related asset could recognize financial losses on these arrangements as a result of volatility in the market values of the underlying commodities or if a counterparty fails to perform under a contract. If actively quoted market prices and pricing information from external sources are not available, the valuation of these contracts would involve judgment or the use of estimates. As a result, changes in the underlying assumptions or use of alternative valuation methods could affect the reported fair value of these contracts. If the values of these financial contracts change in a manner that we do not anticipate, or if a counterparty fails to perform under a contract, it could harm our business, financial condition, results of operations and cash flows.

Our business is subject to restrictions resulting from environmental, health and safety laws and regulations.

We are subject to various federal, state and local environmental and health and safety laws and regulations. In addition, we may be held primarily or jointly and severally liable for costs relating to the investigation and clean-up of any property where there has been a release or threatened release of a hazardous regulated material as well as other affected properties, regardless of whether we knew of or caused the release. In addition to these costs, which are typically not limited by law or regulation and could exceed an affected property's value, we could be liable for certain other costs, including governmental fines and injuries to persons, property or natural resources. Further, some environmental laws provide for the creation of a lien on a contaminated site in favor of the government as security for damages and any costs the government incurs in connection with such contamination and associated clean-up. Although we generally require our operators to undertake to indemnify us for environmental liabilities they cause, the amount of such liabilities could exceed the financial ability of the operator to indemnify us. The presence of contamination or the failure to remediate contamination may adversely affect our ability to operate our business.

We do not own all of the land on which our power generation or thermal assets are located, which could result in disruption to our operations.

We do not own all of the land on which our power generation or thermal assets are located and we are, therefore, subject to the possibility of less desirable terms and increased costs to retain necessary land use if we do not have valid leases or rights-of-way or if such rights-of-way lapse or terminate. Although we have obtained rights to construct and operate these assets pursuant to related lease arrangements, our rights to conduct those activities are subject to certain exceptions, including the term of the lease arrangement. Our loss of these rights, through our inability to renew right-of-way contracts or otherwise, may adversely affect our ability to operate our generation and thermal infrastructure assets.

Our electric generation business will be subject to substantial governmental regulation and may be adversely affected by changes in laws or regulations, as well as liability under, or any future inability to comply with, existing or future regulations or other legal requirements.

Our electric generation business will be subject to extensive U.S. federal, state and local laws and regulation. Compliance with the requirements under these various regulatory regimes may cause us to incur significant additional costs, and failure to comply with such requirements could result in the shutdown of the non-complying facility, the imposition of liens, fines, and/or civil or criminal liability.

Public utilities under the Federal Power Act (the "FPA") are required to obtain Federal Energy Regulatory Commission ("FERC") acceptance of their rate schedules for wholesale sales of electric energy, capacity and ancillary services. Except for generating facilities within the footprint of the Electric Reliability Council of Texas ("ERCOT"), which are regulated by the Public Utility Commission of Texas (the "PUCT"), all of the assets acquired in the Asset Transfer make wholesale sales of electric energy, capacity and ancillary services in interstate commerce and are public utilities for purposes of the FPA, unless otherwise exempt from such status (see below). The FERC's orders that grant such wholesale sellers market-based rate authority reserve the right to revoke or revise that authority if the FERC subsequently determines that the seller can exercise market power in transmission or generation, create barriers to entry, or engage in abusive affiliate transactions. In addition, public utilities are subject to FERC reporting requirements that impose administrative burdens and that, if violated, can expose the company to criminal and civil penalties or other risks.

Our market-based sales will be subject to certain market behavior rules, and if any of our generating companies are deemed to have violated those rules, we will be subject to potential disgorgement of profits associated with the violation, penalties, suspension or revocation of market-based rate authority. If such generating companies were to lose their market-based rate authority, such companies would be required to obtain the FERC's acceptance of a cost-of-service rate schedule and could become subject to the significant accounting, record-keeping, and reporting requirements that are imposed on utilities with cost- based rate schedules. This could have a material adverse effect on the rates we are able to charge for power from our facilities.

Most of our assets are operating as "Exempt Wholesale Generators," as defined under the Public Utility Holding Company Act of 2005 ("PUHCA"), or "Qualifying Facilities," as defined under the Public Utility Regulatory Policies Act of 1978, as amended, and therefore are exempt from certain regulation under PUHCA. If a facility fails to maintain its status as an Exempt Wholesale Generator or a Qualifying Facility or there are legislative or regulatory changes revoking or limiting the exemptions to PUHCA, then we may be subject to significant accounting, record-keeping, access to books and records and reporting requirements and failure to comply with such requirements could result in the imposition of penalties and additional compliance obligations.

Substantially all of our generation assets are also subject to the reliability standards of the North American Electric Reliability Corporation ("NERC"). If we fail to comply with the mandatory reliability standards, we could be subject to sanctions, including substantial monetary penalties and increased compliance obligations.

We will also be affected by legislative and regulatory changes, as well as changes to market design, market rules, tariffs, cost allocations, and bidding rules that occur in the existing regional markets operated by Regional Transmission Organizations ("RTOs") or Independent System Operators ("ISOs"), such as PJM. The RTOs/ISOs that oversee most of the wholesale power markets impose, and in the future may continue to impose, mitigation, including price limitations, offer caps, and other mechanisms to address some of the volatility and the potential exercise of market power in these markets. These types of price limitations and other regulatory mechanisms may have a material adverse effect on the profitability of our generation facilities acquired in the future that sell energy, capacity and ancillary products into the wholesale power markets.

The regulatory environment for electric generation has undergone significant changes in the last several years due to state and federal policies affecting wholesale competition and the creation of incentives for the addition of large amounts of new renewable generation and, in some cases, transmission assets. These changes are ongoing and we cannot predict the future design of the wholesale power markets or the ultimate effect that the changing regulatory environment will have on our business. In addition, in some of these markets, interested parties have proposed material market design changes, including the elimination of a single clearing price mechanism, as well as proposals to re-regulate the markets or require divestiture of electric generation assets by asset owners or operators to reduce their market share. Other proposals to re-regulate may be made and legislative or other attention to the electric power market restructuring process may delay or reverse the deregulation process. If competitive restructuring of the electric power markets is reversed, discontinued, or delayed, our business prospects and financial results could be negatively impacted.

We are subject to environmental laws and regulations that impose extensive and increasingly stringent requirements on our operations, as well as potentially substantial liabilities arising out of environmental contamination.

Our assets are subject to numerous and significant federal, state and local laws, including statutes, regulations, guidelines, policies, directives and other requirements governing or relating to, among other things: protection of wildlife, including threatened and endangered species; air emissions; discharges into water; water use; the storage, handling, use, transportation and distribution of dangerous goods and hazardous, residual and other regulated materials, such as chemicals; the prevention of releases of hazardous materials into the environment; the prevention, presence and remediation of hazardous materials in soil and groundwater, both on and offsite; land use and zoning matters; and workers' health and safety matters. Our facilities could experience incidents, malfunctions and other unplanned events that could result in spills or emissions in excess of permitted levels and result in personal injury, penalties and property damage. As such, the operation of our facilities carries an inherent risk of environmental, health and safety liabilities (including potential civil actions, compliance or remediation orders, fines and other penalties), and may result in the assets being involved from time to time in administrative and judicial proceedings relating to such matters. We have implemented environmental, health and safety management programs designed to continually improve environmental, health and safety performance.

Environmental laws and regulations have generally become more stringent over time, and we expect this trend to continue. Significant costs may be incurred for capital expenditures under environmental programs to keep the assets compliant with such environmental laws and regulations. If it is not economical to make those expenditures, it may be necessary to retire or mothball facilities or restrict or modify our operations to comply with more stringent standards. These environmental requirements and liabilities could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Risks that are beyond our control, including but not limited to acts of terrorism or related acts of war, natural disaster, hostile cyber intrusions or other catastrophic events, could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Our generation facilities that we acquired in the Asset Transfer or those that we otherwise acquire or construct and the facilities of third parties on which they rely may be targets of terrorist activities, as well as events occurring in response to or in connection with them, that could cause environmental repercussions and/or result in full or partial disruption of the facilities ability to generate, transmit, transport or distribute electricity or natural gas. Strategic targets, such as energy-related facilities, may be at greater risk of future terrorist activities than other domestic targets. Hostile cyber intrusions, including those targeting information systems as well as electronic control systems

used at the generating plants and for the related distribution systems, could severely disrupt business operations and result in loss of service to customers, as well as create significant expense to repair security breaches or system damage.

Furthermore, certain of our power generation thermal assets are located in active earthquake zones in California and Arizona, and certain of our project companies and suppliers conduct their operations in the same region or in other locations that are susceptible to natural disasters. In addition, California and some of the locations where certain of our suppliers are located, from time to time, have experienced shortages of water, electric power and natural gas. The occurrence of a natural disaster, such as an earthquake, drought, flood or localized extended outages of critical utilities or transportation systems, or any critical resource shortages, affecting us or our suppliers, could cause a significant interruption in our business, damage or destroy our facilities or those of our suppliers or the manufacturing equipment or inventory of our suppliers.

Any such terrorist acts, environmental repercussions or disruptions or natural disasters could result in a significant decrease in revenues or significant reconstruction or remediation costs, beyond what could be recovered through insurance policies, which could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Government regulations providing incentives for renewable generation could change at any time and such changes may negatively impact our growth strategy.

Our growth strategy depends in part on government policies that support renewable generation and enhance the economic viability of owning renewable electric generation assets. Renewable generation assets currently benefit from various federal, state and local governmental incentives such as ITCs, cash grants in lieu of ITCs, loan guarantees, RPS programs, modified accelerated cost-recovery system of depreciation and bonus depreciation. For example, the U.S. Internal Revenue Code of 1986, as amended (the "Code") provides an ITC of 30% of the cost-basis of an eligible resource, including solar energy facilities placed in service prior to the end of 2016, which percentage is currently scheduled to be reduced to 10% for solar energy systems placed in service after December 31, 2016.

Many states have adopted RPS programs mandating that a specified percentage of electricity sales come from eligible sources of renewable energy. However, the regulations that govern the RPS programs, including pricing incentives for renewable energy, or reasonableness guidelines for pricing that increase valuation compared to conventional power (such as a projected value for carbon reduction or consideration of avoided integration costs), may change. If the RPS requirements are reduced or eliminated, it could lead to fewer future power contracts or lead to lower prices for the sale of power in future power contracts, which could have a material adverse effect on our future growth prospects. Such material adverse effects may result from decreased revenues, reduced economic returns on certain project company investments, increased financing costs, and/or difficulty obtaining financing. Furthermore, the American Recovery and Reinvestment Act of 2009 ("ARRA") included over $80 billion in incentives to encourage investment in the renewable energy sector, such as cash grants in lieu of ITCs, bonus depreciation and expansion of the DOE loan guarantee program. Although the ARRA expanded the DOE loan guarantee program, this program faces challenges and may not continue past the projects already financed. In addition, the cash grant in lieu of ITCs program only applies to facilities that commenced construction prior to December 31, 2011, which commencement date may be determined in accordance with the "5% safe harbor" if more than 5% of the total cost of the eligible property was paid or incurred by December 31, 2011.

If we are unable to utilize various federal, state and local government incentives to acquire additional renewable assets in the future, or the terms of such incentives are revised in a manner that is less favorable to us, we may suffer a material adverse effect on our business, financial condition, results of operations and cash flows.

A significant reduction or elimination of government subsidies under the 1603 Cash Grant Program may have a material adverse effect on our existing operations and may reduce our cash available for distribution.

Certain of our solar facilities, including Avra Valley, Alpine, Borrego, CVSR and portions of the AZ DG Solar Projects, qualify for the ARRA section 1603 Cash Grant Program (the "1603 Cash Grant Program"), which provides a cash payment from the federal government in lieu of ITCs for eligible renewable generation sources for which construction commenced prior to December 31, 2011, which commencement date may be determined in accordance with the 5% safe harbor. We currently anticipate receiving grant proceeds under the 1603 Cash Grant Program after these facilities have reached COD (the "1603 Cash Grant Proceeds"). The amount of the 1603 Cash Grant Proceeds that we will receive will be based on applications that we will file with the U.S. Treasury after the facilities have reached COD. These applications will be reviewed by, and are subject to approval by, the U.S. Treasury. There is no guarantee that our applications will be accepted, in whole or in part, by the U.S. Treasury.

The Budget Control Act of 2011 provided for budget sequestration (a mechanism that, in general, provides for automatic across-the-board spending reductions) in the instance where the U.S. Congress is unable to meet identified deficit target reductions. These reductions were slated to go into effect in January 2013 but the effective date was delayed until March 27, 2013 pursuant to the American Taxpayer Relief Act of 2012 ("ATRA"). In September 2012, the Office of Management and Budget released an initial report on the sequestration and its expected impacts on hundreds of federal activities. Among the programs listed in the sequestration report were grants awarded by the 1603 Cash Grant Program. In addition, the U.S. Treasury has said that it may reduce the amount of an applicants' cash grant award in cases where project costs exceed certain per watt cost benchmarks or in cases where project costs exceed certain percentage thresholds. The amount of 1603 Cash Grant Proceeds that we actually receive may differ materially from the amount expected and/or may be received at a later time frame than expected. If sequestration takes effect on March 2013 as discussed above, the result, as estimated by the U.S. Office of Management and Budget, could be a 7.6% reduction in available 1603 Cash Grant funds, which may reduce the amount of 1603 Cash Grant funds that we would otherwise have received.

In addition, we have also secured a portion of our financing for Avra Valley and CVSR against expected future 1603 Cash Grant Proceeds at the project-level subsidiary. We will be required to use any 1603 Cash Grant Proceeds actually received for these facilities to repay the associated loans before making any distributions of cash from the applicable project-level subsidiaries to ourselves. If we do not receive the expected 1603 Cash Grant Proceeds for these facilities, the related financing will have to be repaid by other means before distributions from those project-level subsidiaries are available to be part of the quarterly dividend to holders of our Class A common stock. Furthermore, while CVSR received a DOE loan guarantee in 2011 to finance construction costs and provide long-term financing, we may be required to provide additional credit support for CVSR's financing facility in the event such guarantee is revoked or otherwise terminated.

Our forecast of cash available for distribution contained in this prospectus assumes, among other things, that we will receive expected 1603 Cash Grant Proceeds. As a result, our actual performance may not achieve our forecasted performance if we do not receive the expected 1603 Cash Grant Proceeds. Reductions in or eliminations or expirations of, the 1603 Cash Grant Program or the U.S. Treasury's rejection of our application for cash grants may have a material adverse effect on our business, financial condition, results of operations and cash and may reduce our cash available for distribution.

We rely on electric interconnection and transmission facilities that we do not own or control and that are subject to transmission constraints within a number of our regions. If these facilities fail to provide us with adequate transmission capacity, we may be restricted in our ability to deliver electric power to our customers and we may either incur additional costs or forego revenues.

We depend on electric interconnection and transmission facilities owned and operated by others to deliver the wholesale power we will sell from our electric generation assets to our customers. A failure or delay in the operation or development of these interconnection or transmission facilities or a significant increase in the cost of the development of such facilities could result in our losing revenues. Such failures or delays could limit the amount of power our operating facilities deliver or delay the completion of our construction projects. Additionally, such failures, delays or increased costs could have a material adverse effect on our business, financial condition and results of operations. If a region's power transmission infrastructure is inadequate, our recovery of wholesale costs and profits may be limited. If restrictive transmission price regulation is imposed, the transmission companies may not have a sufficient incentive to invest in expansion of transmission infrastructure. We cannot also predict whether interconnection and transmission facilities will be expanded in specific markets to accommodate competitive access to those markets. In addition, certain of our operating facilities' generation of electricity may be curtailed without compensation due to transmission limitations or limitations on the electricity grid's ability to accommodate intermittent electricity generating sources, reducing our revenues and impairing our ability to capitalize fully on a particular facility's generating potential. Such curtailments could have a material adverse effect on our business, financial condition, results of operations and cash flows. Furthermore, economic congestion on transmission networks in certain of the markets in which we operate may occur and we may be deemed responsible for congestion costs. If we were liable for such congestion costs, our financial results could be adversely affected.

Our costs, results of operations, financial condition and cash flows could be adversely impacted by the disruption of the fuel supplies necessary to generate power at our conventional and thermal power generation facilities.

Delivery of fossil fuels to fuel our conventional and thermal generation facilities is dependent upon the infrastructure (including natural gas pipelines) available to serve each such generation facility as well as upon the continuing financial viability of contractual counterparties. As a result, we are subject to the risks of disruptions or curtailments in the production of power at these generation facilities if a counterparty fails to perform or if there is a disruption in the fuel delivery infrastructure.

Risks Related to Our Relationship with NRG

NRG will be our controlling stockholder and will exercise substantial influence over Yieldco and we are highly dependent on NRG.

NRG will beneficially own all of our outstanding Class B common stock upon completion of this offering. Each share of our outstanding Class B common stock is entitled to votes per share. As a result of its ownership of our Class B common stock, NRG will possess approximately % (or approximately % if the underwriters exercise in full their option to purchase additional shares of Class A common stock) of the combined voting power of our Class A and Class B common stock. NRG has also expressed its intention to maintain a controlling interest in us. As a result of this ownership, NRG will continue to have a substantial influence on our affairs and its voting power will constitute a large percentage of any quorum of our stockholders voting on any matter requiring the approval of our stockholders. Such matters include the election of directors, the adoption of amendments to our certificate of incorporation and bylaws and approval of mergers or sale of all or substantially all of our assets. This concentration of ownership may also have the effect of delaying or preventing a change in control of our company or discouraging others from making tender offers for

our shares, which could prevent stockholders from receiving a premium for their shares. In addition, NRG will have the right to appoint all of our directors. NRG may cause corporate actions to be taken even if their interests conflict with the interests of our other stockholders (including holders of our Class A common stock). See "Certain Relationships and Related Party Transactions—Procedures for Review, Approval and Ratification of Related-Person Transactions."

Furthermore, we will depend on the management and administration services provided by or under the direction of NRG under the Management Services Agreement. NRG personnel and support staff that provide services to us under the Management Services Agreement are not required to, and we do not expect that they will, have as their primary responsibility the management and administration of Yieldco or to act exclusively for us and the Management Services Agreement does not require any specific individuals to be provided by NRG. Under the Management Services Agreement, NRG will have the discretion to determine which of its employees will perform assignments required to be provided to us under the Management Services Agreement. Any failure to effectively manage our operations or to implement our strategy could have a material adverse effect on our business, financial condition, results of operations and cash flows. The Management Services Agreement continues in perpetuity, until terminated in accordance with its terms.

We will also depend upon NRG for the provision of management and administration services at all of our facilities. Any failure by NRG to perform its requirements under these arrangements or the failure by us to identify and contract with replacement service providers, if required, could adversely affect the operation of our facilities and have a material adverse effect on our business, financial condition, results of operations and cash flows.

We may not be able to consummate future acquisitions from NRG.

Our ability to grow through acquisitions depends, in part, on NRG's ability to identify and present us with acquisition opportunities. NRG established Yieldco to hold and acquire a diversified suite of power generating assets in the United States. Although NRG has agreed to grant us a right of first offer with respect to certain power generation assets that NRG may elect to sell in the future (as described in "Certain Relationships and Related Party Transactions—Right of First Offer"), NRG is under no obligation to accept any related offer from us and such right of first offer is subject to certain exceptions. Furthermore, NRG has no obligation to source acquisition opportunities specifically for us. In addition, NRG has not agreed to commit to us any minimum level of dedicated resources for the pursuit of renewable power-related acquisitions. There are a number of factors which could materially and adversely impact the extent to which suitable acquisition opportunities are made available from NRG, including:

- the same professionals within NRG's organization that are involved in acquisitions that are suitable for us have responsibilities within NRG's broader asset management business, which may include sourcing acquisition opportunities for NRG. Limits on the availability of such individuals will likewise result in a limitation on the availability of acquisition opportunities for us; and

- in addition to structural limitations, the question of whether a particular asset is suitable is highly subjective and is dependent on a number of factors including an assessment by NRG relating to our liquidity position at the time, the risk profile of the opportunity and its fit with the balance of our then current operations and other factors. If NRG determines that an opportunity is not suitable for us, it may still pursue such opportunity on its own behalf, or on behalf of another NRG affiliate.

In making these determinations, NRG may be influenced by factors that result in a misalignment or conflict of interest. See "Risks Related to Our Business—We may not be able to effectively identify or consummate any future acquisitions on favorable terms, or at all" for a

description of risks associated with the identifying, evaluating and consummating acquisitions generally, including acquisitions of NRG ROFO Assets.

The departure of some or all of NRG's employees could prevent us from achieving our objectives.

We will depend on the diligence, skill and business contacts of NRG's professionals and the information and opportunities they generate during the normal course of their activities. Furthermore, approximately 24% of NRG's employees at our generation plants (on an as adjusted basis to give effect to the Organizational Structure and entry into the Management Services Agreement as if such transactions occurred on September 30, 2012) were covered by collective bargaining agreements.

Our future success will depend on the continued service of these individuals, who are not obligated to remain employed with NRG, or otherwise successfully renegotiate their collective bargaining agreements when such agreements expire or otherwise terminate. NRG has experienced departures of key professionals and personnel in the past and may do so in the future, and we cannot predict the impact that any such departures will have on our ability to achieve our objectives. The departure of a significant number of NRG's professionals or a material portion of the NRG employees who work at any of our facilities for any reason, or the failure to appoint qualified or effective successors in the event of such departures, could have a material adverse effect on our ability to achieve our objectives. The Management Services Agreement does not require NRG to maintain the employment of any of its professionals or to cause any particular professional to provide services to us or on our behalf.

Our organizational and ownership structure may create significant conflicts of interest that may be resolved in a manner that is not in the best interests of Yieldco or the best interests of holders of our Class A common stock and that may have a material adverse effect on our business, financial condition, results of operation and cash flows.

Our organizational and ownership structure involves a number of relationships that may give rise to certain conflicts of interest between Yieldco and holders of our Class A common stock, on the one hand, and NRG, on the other hand. Prior to the completion of this offering, we will enter into a Management Services Agreement with NRG. In accordance with the terms of this agreement, each of our executive officers will be a shared NRG executive and devote his or her time to both our company and NRG as needed to conduct the respective businesses. Although our directors and executive officers owe fiduciary duties to our stockholders, these shared NRG executives will have fiduciary and other duties to NRG, which duties may be inconsistent with the best interests of us and holders of our Class A common stock. In addition, NRG and its representatives, agents and affiliates will have access to our confidential information. Although some of these persons will be subject to confidentiality obligations pursuant to confidentiality agreements or implied duties of confidence, the Management Services Agreement does not contain general confidentiality provisions.

Additionally, certain of our executive officers will continue to have economic interests in NRG and, accordingly, the benefit to NRG from a transaction between us and NRG will proportionately inure to their benefit as holders of economic interests in NRG. Following the completion of this offering, NRG will be a related party under the applicable securities laws governing related party transactions and may have interests which differ from our interests or those of holders of our Class A common stock, including with respect to the types of acquisitions made, the timing and amount of dividends by Yieldco, the reinvestment of returns generated by our operations, the use of leverage when making acquisitions and the appointment of outside advisors and service providers. Any material transaction between us and NRG (including the proposed acquisition of any NRG ROFO Asset) will be subject to our related party transaction policy, which will require prior approval of such transaction by our Corporate Governance, Conflicts and Nominating Committee (as discussed in "Management—Committees of the Board of Directors—Corporate Governance, Conflicts and Nominating

Committee"). Those of our executive officers who will continue to have economic interests in NRG following the completion of this offering may be conflicted when advising our Corporate Governance, Conflicts and Nominating Committee or otherwise participating in the negotiation or approval of such transactions. These executive officers have significant project- and industry-specific expertise that could prove beneficial to our Corporate Governance, Conflicts and Nominating Committee's decision-making process and the absence of such strategic guidance could have a material adverse effect on the committee's ability evaluate any such transaction. Furthermore, the creation of our Corporate Governance, Conflicts and Nominating Committee and our related party transaction approval policy may not insulate us from derivative claims related to related party transactions and the conflicts of interest described in this risk factor. Regardless of the merits of such claims, we may be required to expend significant management time and financial resources in the defense thereof. Additionally, to the extent we fail to appropriately deal with any such conflicts, it could negatively impact our reputation and ability to raise additional funds and the willingness of counterparties to do business with us, all of which could have a material adverse effect on our business, financial condition, results of operations and cash flows.

We may be unable or unwilling to terminate the Management Services Agreement.

The Management Services Agreement provides that we may terminate the agreement upon 30 days prior written notice to NRG upon the occurrence of any of the following: (i) NRG defaults in the performance or observance of any material term, condition or covenant contained therein in a manner that results in material harm to us and the default continues unremedied for a period of 30 days after written notice thereof is given to NRG; (ii) NRG engages in any act of fraud, misappropriation of funds or embezzlement that results in material harm to us; (iii) NRG is grossly negligent in the performance of its duties under the agreement and such negligence results in material harm to us; or (iv) upon the happening of certain events relating to the bankruptcy or insolvency of NRG. Furthermore, if we request an amendment to the scope of services provided by NRG under the Management Services Agreement and we are not able to agree with NRG as to a change to the service fee resulting from a change in the scope of services within 180 days of the request, we may terminate the agreement upon 30 day prior notice to NRG.

We cannot terminate the agreement for any other reason, including if NRG experiences a change of control, and the agreement continues in perpetuity, until terminated in accordance with its terms. If NRG's performance does not meet the expectations of investors, and we are unable to terminate the Management Services Agreement, the market price of our Class A common stock could suffer.

If NRG terminates the Management Services Agreement or defaults in the performance of its obligations under the agreement we may be unable to contract with a substitute service provider on similar terms, or at all.

We rely on NRG to provide us with management services under the Management Services Agreement and have no independent executive or senior management personnel. The Management Services Agreement provides that NRG may terminate the agreement upon 180 days prior written notice of termination to us if we default in the performance or observance of any material term, condition or covenant contained in the agreement in a manner that results in material harm and the default continues unremedied for a period of 30 days after written notice of the breach is given to us. If NRG terminates the Management Services Agreement or defaults in the performance of its obligations under the agreement, we may be unable to contract with a substitute service provider on similar terms or at all, and the costs of substituting service providers may be substantial. In addition, in light of NRG's familiarity with our assets, a substitute service provider may not be able to provide the same level of service due to lack of pre-existing synergies. If we cannot locate a service provider that is

able to provide us with substantially similar services as NRG does under the Management Services Agreement on similar terms, it would likely have a material adverse effect on our business, financial condition, results of operation and cash flows.

The liability of NRG is limited under our arrangements with it and we have agreed to indemnify NRG against claims that it may face in connection with such arrangements, which may lead it to assume greater risks when making decisions relating to us than it otherwise would if acting solely for its own account.

Under the Management Services Agreement, NRG has not assumed any responsibility other than to provide or arrange for the provision of the services described in the Management Services Agreement in good faith. In addition, under the Management Services Agreement, the liability of NRG and its affiliates is limited to the fullest extent permitted by law to conduct involving bad faith, fraud or willful misconduct or, in the case of a criminal matter, action that was known to have been unlawful, in each case, except for liabilities arising from NRG's gross negligence. In addition, we have agreed to indemnify NRG to the fullest extent permitted by law from and against any claims, liabilities, losses, damages, costs or expenses incurred by an indemnified person or threatened in connection with our operations, investments and activities or in respect of or arising from the Management Services Agreement or the services provided by NRG, except to the extent that the claims, liabilities, losses, damages, costs or expenses are determined to have resulted from the conduct in respect of which such persons have liability as described above. These protections may result in NRG tolerating greater risks when making decisions than otherwise would be the case, including when determining whether to use leverage in connection with acquisitions. The indemnification arrangements to which NRG is a party may also give rise to legal claims for indemnification that are adverse to Yieldco and holders of our Class A common stock.

Risks Inherent in an Investment in Us

We may not be able to continue paying comparable or growing cash dividends to our holders of our Class A common stock in the future.

The amount of our cash available for distribution principally depends upon the amount of cash we generate from our operations, which will fluctuate from quarter to quarter based on, among other things:

- the level and timing of capital expenditures we make;
- the completion of our ongoing construction activities on time and on budget (which include El Segundo, CVSR, and the Dover conversion);
- the level of our operating and general and administrative expenses, including reimbursements to NRG for services provided to us in accordance with the Management Services Agreement;
- seasonal variations in revenues generated by the business;
- our debt service requirements and other liabilities;
- fluctuations in our working capital needs;
- our ability to borrow funds and access capital markets;
- restrictions contained in our debt agreements (including our project-level financing and, if applicable, our new revolving credit facility); and
- other business risks affecting our cash levels.

As a result of all these factors, we cannot guarantee that we will have sufficient cash generated from operations to pay a specific level of cash dividends to holders of our Class A common stock.

Furthermore, holders of our Class A common stock should be aware that the amount of cash available for distribution depends primarily on our cash flow, and is not solely a function of profitability, which is affected by non-cash items. We may incur other expenses or liabilities during a period that could significantly reduce or eliminate the cash available for distribution to holders of our Class A common stock during the period. Because we are a holding company, our ability to pay dividends on our Class A common stock is limited by restrictions on the ability of our subsidiaries to pay dividends or make other distributions to us, including restrictions under the terms of the agreements governing project-level financing. Our project-level financing agreements generally prohibit distributions from the project entities prior to COD and thereafter prohibit distributions to us unless certain specific conditions are met, including the satisfaction of financial ratios. Our new revolving credit facility may also restrict our ability to declare and pay dividends if an event of default has occurred and is continuing or if the payment of the dividend would result in an event of default.

While we do not expect Yieldco LLC's cash available for distribution to fluctuate from year to year, we do expect that such cash available will likely fluctuate from quarter to quarter, in some cases significantly, due to seasonality. See "Business—Seasonality." As result, we may cause Yieldco LLC to reduce the amount of cash it distributes to its members in a particular quarter to establish reserves to fund distributions to its members in future periods for which the cash distributions we would otherwise receive from Yieldco LLC would otherwise be insufficient to fund our quarterly dividend. If we fail to cause Yieldco LLC to establish sufficient reserves, we may not be able to maintain our quarterly dividend with a respect to a quarter adversely affected by seasonality.

Finally, dividends to holders of our Class A common stock will be paid at the discretion of our board of directors. Our board of directors may decrease the level of or entirely discontinue payment of dividends. For a description of additional restrictions and factors that may affect our ability to pay cash dividends, please read "Cash Dividend Policy."

The assumptions underlying the forecasts presented elsewhere in this prospectus are inherently uncertain and subject to significant business, economic, financial, regulatory and competitive risks that could cause our actual cash available for distribution to differ materially from our forecasts.

The forecasts presented elsewhere in this prospectus are based on our current portfolio of assets and were prepared using assumptions that our management believes are reasonable. See "Cash Dividend Policy—Assumptions and Considerations." These include assumptions regarding the future operating costs of our facilities, our facilities' future level of power generation, interest rates, administrative expenses, tax treatment of income, future capital expenditure requirements, the completion of El Segundo and CVSR on schedule and on budget and the absence of material adverse changes in economic conditions or government regulations. They also include assumptions about meteorological conditions and fuel supply (which are variable and difficult to predict) and availability of our facilities. The forecasts assume that no unexpected risks materialize during the forecast periods. Any one or more than one of these assumptions may prove to be incorrect, in which case our actual results of operations will be different from, and possibly materially worse than, those contemplated by the forecasts. There can be no assurance that the assumptions underlying the forecasts presented elsewhere in this prospectus will prove to be accurate. Actual results for the forecast periods will likely vary from the forecast results and those variations may be material. We make no representation that actual results achieved in the forecast periods will be the same, in whole or in part, as those forecasted herein.

We are a holding company and our only material asset after completion of this offering will be our interest in Yieldco LLC, and we are accordingly dependent upon distributions from NRG Yieldco LLC and its subsidiaries to pay dividends and taxes and other expenses.

Yieldco Inc. is a holding company and has no material assets other than its ownership of membership interests in Yieldco LLC, a holding company that will have no material assets other than its interest in Yieldco Operating LLC, whose sole material assets are the ones contributed to it by NRG in the Asset Transfer. Neither Yieldco Inc., nor Yieldco LLC nor Yieldco Operating LLC has any independent means of generating revenue. We intend to cause Yieldco Operating LLC's subsidiaries to make distributions to Yieldco Operating LLC and, in turn, make distributions to Yieldco LLC, and, in turn, to make distributions to Yieldco Inc. in an amount sufficient to cover all applicable taxes payable and dividends, if any, declared by us. To the extent that we need funds, for a quarterly cash dividend to holders of our Class A common stock or otherwise, and Yieldco Operating LLC or Yieldco LLC is restricted from making such distributions under applicable law or regulation or is otherwise unable to provide such funds (including as a result of Yieldco Operating LLC's operating subsidiaries being unable to make distributions), it could materially adversely affect our liquidity and financial condition and limit our ability to pay dividends to holders of our Class A common stock.

We have a limited operating history and as a result there is no assurance we can operate on a profitable basis.

We have a limited operating history on which to base an evaluation of our business and prospects. Our prospects must be considered in light of the risks, expenses and difficulties frequently encountered by companies in their early stages of operation. We cannot assure you that we will be successful in addressing the risks we may encounter, and our failure to do so could have a material adverse effect on our business, financial condition, results of operations and cash flows.

Market interest rates may have an effect on the value of our Class A common stock.

One of the factors that will influence the price of shares of our Class A common stock will be the effective dividend yield of such shares (i.e., the yield as a percentage of the then market price of our shares) relative to market interest rates. An increase in market interest rates, which are currently at low levels relative to historical rates, may lead prospective purchasers of shares of our Class A common stock to expect a higher dividend yield and, our inability to increase our dividend as a result of an increase in borrowing costs, insufficient cash available for distribution or otherwise, could result in selling pressure on, and a decrease in the market price of our Class A common stock as investors seek alternative investments with higher yield.

If you purchase shares of Class A common stock sold in this offering, you will incur immediate and substantial dilution.

If you purchase shares of Class A common stock in this offering, you will incur immediate and substantial dilution in the amount of $ per share, because the initial public offering price of $ is substantially higher than the as adjusted net tangible book value per share of our outstanding Class A common stock on an as adjusted basis to give effect to the Organizational Structure. The as adjusted net tangible book value of our Class A common stock is $ per share. For additional information, see "Dilution."

If we are deemed to be an investment company, we may be required to institute burdensome compliance requirements and our activities may be restricted, which may make it difficult for us to complete strategic acquisitions or effect combinations.

If we are deemed to be an investment company under the Investment Company Act of 1940 (the "Investment Company Act"), our business would be subject to applicable restrictions under the Investment Company Act, which could make it impracticable for us to continue our business as contemplated.

We believe our company is not an investment company under Section 3(b)(1) of the Investment Company Act because we are primarily engaged in a non-investment company business. We intend to conduct our operations so that we will not be deemed an investment company. However, if we were to be deemed an investment company, restrictions imposed by the Investment Company Act, including limitations on our capital structure and our ability to transact with affiliates, could make it impractical for us to continue our business as contemplated.

Market volatility may affect the price of our Class A common stock and the value of your investment.

Following the completion of this offering, the market price for our Class A common stock is likely to be volatile, in part because our shares have not been previously traded publicly. We cannot predict the extent to which a trading market will develop or how liquid that market may become. If you purchase shares of our Class A common stock in this offering, you will pay a price that was not established in the public trading markets. The initial public offering price will be determined by negotiations between the underwriters and us. You may not be able to resell your shares above the initial public offering price and may suffer a loss on your investment. In addition, the market price of our Class A common stock may fluctuate significantly in response to a number of factors, most of which we cannot predict or control, including general market and economic conditions, disruptions, downgrades, credit events and perceived problems in the credit markets; actual or anticipated variations in our quarterly operating results or dividends; changes in our investments or asset composition; write-downs or perceived credit or liquidity issues affecting our assets; market perception of NRG, our business and our assets; our level of indebtedness and/or adverse market reaction to any indebtedness we incur in the future; our ability to raise capital on favorable terms or at all; loss of any major funding source; the termination of the Management Services Agreement or additions or departures of NRG's key personnel; changes in market valuations of similar power generation companies; and speculation in the press or investment community regarding us or NRG.

Securities markets in general have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. Any broad market fluctuations may adversely affect the trading price of our Class A common stock.

We are a "controlled company," controlled by NRG, whose interest in our business may be different from ours or yours.

After consummation of this offering, NRG will control approximately % of our combined voting power and be able to elect all of our board of directors. As a result, we will be considered a "controlled company" for the purposes of the NYSE listing requirements. As a "controlled company," we will be permitted to, and we intend to, opt out of the NYSE listing requirements that would otherwise require a majority of the members of our board of directors to be independent and require that we either establish a compensation committee and a nominating and governance committee, each comprised entirely of independent directors, or otherwise ensure that the compensation of our executive officers and nominees for directors are determined or recommended to our board of directors by the independent members of our board of directors. The NYSE listing requirements are intended to ensure that directors who meet the independence standard are free of any conflicting

interest that could influence their actions as directors. As further described above in "—Risks Related to Our Relationship with NRG," it is possible that the interests of NRG may in some circumstances conflict with our interests and the interests of holders of our Class A common stock.

Provisions of our charter documents or Delaware law could delay or prevent an acquisition of us, even if the acquisition would be beneficial to holders of our Class A common stock, and could make it more difficult for you to change management.

Provisions of our amended and restated certificate of incorporation and bylaws may discourage, delay or prevent a merger, acquisition or other change in control that holders of our Class A common stock may consider favorable, including transactions in which such stockholders might otherwise receive a premium for their shares. This is because these provisions may prevent or frustrate attempts by stockholders to replace or remove members of our management. These provisions include:

- a prohibition on stockholder action through written consent;
- a requirement that special meetings of stockholders be called upon a resolution approved by a majority of our directors then in office;
- advance notice requirements for stockholder proposals and nominations; and
- the authority of the board of directors to issue preferred stock with such terms as the board of directors may determine.

Section 203 of the DGCL prohibits a publicly held Delaware corporation from engaging in a business combination with an interested stockholder, generally a person that together with its affiliates owns or within the last three years has owned 15% of voting stock, for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner. As a result of these provisions in our charter documents following the completion of the Organizational Structure and Delaware law, the price investors may be willing to pay in the future for shares of our Class A common stock may be limited. See "Description of Capital Stock—Antitakeover Effects of Delaware Law and Our Certificate of Incorporation and Bylaws."

You may experience dilution of your ownership interest due to the future issuance of additional shares of our Class A common stock.

We are in a capital intensive business, and may not have sufficient funds to finance the growth of our business, future acquisitions or to support our projected capital expenditures. As a result, we may require additional funds from further equity or debt financings, including tax equity financing transactions or sales of preferred shares or convertible debt to complete future acquisitions, expansions and capital expenditures and pay the general and administrative costs of our business. In the future, we may issue our previously authorized and unissued securities, resulting in the dilution of the ownership interests of purchasers of our Class A common stock offered hereby. Under our amended and restated certificate of incorporation and bylaws, we will be authorized to issue shares of Class A common stock, shares of Class B common stock and shares of preferred stock with preferences and rights as determined by our board of directors. The potential issuance of additional shares of common stock or preferred stock or convertible debt may create downward pressure on the trading price of our Class A common stock. We may also issue additional shares of our Class A common stock or other securities that are convertible into or exercisable for our Class A common stock in future public offerings or private placements for capital raising purposes or for other business purposes, potentially at an offering price, conversion price or exercise price that is below the offering price for our Class A common stock in this offering.

If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they change their recommendations regarding our Class A common stock adversely, the stock price and trading volume of our Class A common stock could decline.

The trading market for our Class A common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If any of the analysts who may cover us change their recommendation regarding our Class A common stock adversely, or provide more favorable relative recommendations about our competitors, the price of our Class A common stock would likely decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause the stock price or trading volume of our Class A common stock to decline.

Future sales of our common stock by NRG may cause the price of our Class A common stock to fall.

The market price of our Class A common stock could decline as a result of sales by NRG of such shares (issuable to NRG upon the exchange of some or all of its Class B Yieldco LLC units) in the market, or the perception that these sales could occur. The market price of our Class A common stock may also decline as a result of NRG disposing or transferring some or all of our outstanding Class B common stock, which disposals or transfers would reduce NRG's ownership interest in, and voting control over, us. These sales might also make it more difficult for us to sell equity securities at a time and price that we deem appropriate.

NRG and certain of its affiliates have certain demand and piggyback registration rights with respect to shares of our Class A common stock issuable upon the exchange of Yieldco LLC's Class B units. The presence of additional shares of our Class A common stock trading in the public market, as a result of the exercise of such registration rights may have a material adverse effect on the market price of our securities. See "Certain Relationships and Related Party Transactions—Registration Rights Agreement."

We will incur increased costs as a result of being a publicly traded company.

As a public company, we will incur additional legal, accounting and other expenses that we did not incur as a private company. In addition, rules implemented by the SEC and NYSE, have imposed various requirements on public companies, including establishment and maintenance of effective disclosure and financial controls and changes in corporate governance practices. Our management and other personnel will need to devote a substantial amount of time to these compliance initiatives. Moreover, these rules and regulations will increase our legal and financial compliance costs and will make some activities more time-consuming and costly. For example, we expect these rules and regulations to make it more difficult and more expensive for us to obtain director and officer liability insurance, and we may be required to accept reduced policy limits and coverage or incur substantially higher costs to obtain the same or similar coverage. As a result, it may be more difficult for us to attract and retain qualified people to serve on our board of directors, our board committees or as executive officers.

We are an "emerging growth company" and may elect to comply with reduced public company reporting requirements, which could make our Class A common stock less attractive to investors.

We are an "emerging growth company," as defined by the JOBS Act. For as long as we continue to be an emerging growth company, we may choose to take advantage of exemptions from various public company reporting requirements. These exemptions include, but are not limited to, (i) not being required to comply with the auditor attestation requirements of Section 404 of the Sarbanes-Oxley Act, (ii) reduced disclosure obligations regarding executive compensation in our

periodic reports, proxy statements and registration statements, and (iii) exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We could be an emerging growth company for up to five years after the first sale of our common equity securities pursuant to an effective registration statement under the Securities Act, which such fifth anniversary will occur in 2017. However, if certain events occur prior to the end of such five-year period, including if we become a "large accelerated filer," our annual gross revenues exceed $1.0 billion or we issue more than $1.0 billion of non-convertible debt in any three-year period, we would cease to be an emerging growth company prior to the end of such five-year period. We have taken advantage of certain of the reduced disclosure obligations regarding executive compensation in this prospectus and may elect to take advantage of other reduced burdens in future filings. As a result, the information that we provide to holders of our Class A common stock may be different than you might receive from other public reporting companies in which you hold equity interests. We cannot predict if investors will find our Class A common stock less attractive as a result of our reliance on these exemptions. If some investors find our Class A common stock less attractive as a result of any choice we make to reduce disclosure, there may be a less active trading market for our Class A common stock and the price for our Class A common stock may be more volatile.

Under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards until such time as those standards apply to private companies. However, we have irrevocably elected not to avail ourselves of this extended transition period for complying with new or revised accounting standards and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not emerging growth companies.

Risks Related to Taxation

In addition to reading the following risk factors, if you are a non-U.S. investor, please read "Material U.S. Federal Income Tax Consequences to Non-U.S. Holders" for a more complete discussion of the expected material federal income tax consequences of owning and disposing of shares of our Class A common stock.

Our future tax liability may be greater than expected if we do not generate NOLs sufficient to offset taxable income.

We expect to generate NOLs and NOL carryforwards that we can utilize to offset future taxable income. Based on our current portfolio of assets, which include renewable assets that benefit from an accelerated tax depreciation schedule, and subject to potential tax audits, which may result in income, sales, use or other tax obligations, we do not expect to pay significant federal income tax for a period of approximately ten years. While we expect these losses will be available to us as a future benefit, in the event that they are not generated as expected, successfully challenged by the IRS (in a tax audit or otherwise) or subject to future limitations as discussed below, our ability to realize these benefits may be limited. A reduction in our expected NOLs, a limitation on our ability to use such losses or future tax audits, may result in a material increase in our estimated future income tax liability and may negatively impact our liquidity and financial condition.

Our ability to use NOLs to offset future income may be limited.

Our ability to use NOLs generated in the future could be substantially limited if we were to experience an "ownership change" as defined under Section 382 of the Code. In general, an "ownership change" would occur if our "5-percent shareholders," as defined under Section 382 of the Code, collectively increased their ownership in us by more than 50 percentage points over a rolling three-year period. A corporation that experiences an ownership change will generally be subject to an annual limitation on the use of its pre-ownership change deferred tax assets equal to the equity value

of the corporation immediately before the ownership change, multiplied by the long-term tax-exempt rate for the month in which the ownership change occurs. The long-term tax-exempt rate for January 2013 is 2.84%. Future sales of our Class A common stock by NRG, as well as future issuances by us, could contribute to a potential ownership change.

A valuation allowance may be required for our deferred tax assets

Our expected NOLs will be reflected as a deferred tax asset as they are generated until utilized to offset income. Valuation allowances may need to be maintained for deferred tax assets that we estimate are more likely than not to be unrealizable, based on available evidence at the time the estimate is made. Valuation allowances related to deferred tax assets can be affected by changes to tax laws, statutory tax rates and future taxable income levels and based on input from our auditors, tax advisors or regulatory authorities. In the event that we were to determine that we would not be able to realize all or a portion of our net deferred tax assets in the future, we would reduce such amounts through a charge to income tax expense in the period in which that determination was made, which could have a material adverse impact on our financial condition and results of operations and our ability to maintain profitability.

Distributions to holders of our Class A common stock may be taxable as dividends.

It is difficult to predict whether we will generate earnings or profits as computed for federal income tax purposes in any given tax year. If we make distributions from current or accumulated earnings and profits as computed for federal income tax purposes, such distributions will generally be taxable to holders of our Class A common stock in the current period as ordinary dividend income for federal income tax purposes. Under current law, such dividends would be eligible for the lower tax rates applicable to qualified dividend income of non-corporate taxpayers. While we expect that a portion of our distributions to holders of our Class A common stock may exceed our current and accumulated earnings and profits as computed for federal income tax purposes and therefore constitute a non-taxable return of capital distribution to the extent of a stockholder's basis in our Class A common stock, no assurance can be given that this will occur.

USE OF PROCEEDS

We will receive net proceeds of approximately $ from our sale of shares of our Class A common stock in this offering, assuming an initial public offering price of $ per share (the midpoint of the price range set forth on the cover page of this prospectus) and after deducting estimated expenses and underwriting discounts of approximately $ million. If the underwriters exercise in full their option to purchase additional shares of Class A common stock, we estimate that the net proceeds to us will be approximately $ million.

We intend to use approximately $ million of net proceeds from this offering, to purchase newly-issued Yieldco LLC Class A units from Yieldco LLC and approximately $ million (or approximately $ million if the underwriters exercise in full their option to purchase additional shares of Class A common stock) of net proceeds from this offering to purchase Yieldco LLC Class A units (which will be reclassified from Yieldco LLC Class B units in connection with such acquisition) from NRG. Accordingly, we will not retain any net proceeds from this offering. See "Summary—Organizational Structure."

We intend to cause Yieldco LLC to use approximately $40 million of the net proceeds to fund required capital contributions to pay for our portion of CVSR's construction costs. Yieldco LLC intends to use the remaining net proceeds for general corporate purposes.

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) our net proceeds from this offering by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the underwriting discounts and commissions and estimated offering expenses payable by us.

CAPITALIZATION

The following table sets forth our predecessor's cash and cash equivalents and consolidated capitalization as of September 30, 2012 on (i) a historical basis and (ii) an as adjusted basis to give effect to (A) the issuance and sale of shares of Class A common stock in this offering at an assumed initial public offering price of $ per share (the midpoint of the range set forth on the cover of this prospectus), (B) our receipt of $ in related cash proceeds after deducting underwriting discounts and estimated offering expenses, and (C) the application of the net proceeds as described under "Use of Proceeds."

You should read the following table in conjunction with the sections entitled "Use of Proceeds," "Selected Historical Combined Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our combined financial statements and related notes thereto included elsewhere in this prospectus.

	September 30, 2012	
(in millions)	Actual	As Adjusted
Cash and restricted cash:		
Cash and cash equivalents	$ 30	$
Restricted cash	11	
Total cash and restricted cash	41	
Long-term debt:		
New revolving credit facility	$ —	$ —
Affiliated debt	27	
Project-level debt	624	
Total long-term debt	651	
Noncontrolling interest	—	
Equity	689	
Total equity	689	
Total capitalization	$ 1,381	$

DILUTION

Dilution is the amount by which the offering price paid by the purchasers of our Class A common stock sold in this offering will exceed the as adjusted net tangible book value per share of our Class A common stock after the offering. Net tangible book value per share of our Class A common stock as of a particular date represents the amount of our total tangible assets less our total liabilities divided by the number of shares of Class A common stock outstanding as of such date. As of September 30, 2012, after giving effect to the Asset Transfer, our net tangible book value would have been approximately $ billion, or $ per share of Class A common stock, assuming that NRG exchanged all of its Yieldco LLC Class B units for newly-issued shares of our Class A common stock on a one-for-one basis. Purchasers of our Class A common stock in this offering will experience substantial and immediate dilution in net tangible book value per share of our Class A common stock for financial accounting purposes, as illustrated in the following table.

Assumed initial public offering price per share		$
Net tangible book value per share as of September 30, 2012 after giving effect to the Asset Transfer	$	
Decrease in as adjusted net tangible book value per share attributable to purchasers in this offering		
Net tangible book value per share after giving effect to the Asset Transfer, the offering and the use of proceeds therefrom		
Immediate dilution in net tangible book value per share to purchasers in the offering		

Because NRG does not currently own any Class A common stock or other economic interest in us, we have presented dilution in net tangible book value per share of Class A common stock to investors in this offering assuming that NRG exchanged its Yieldco LLC Class B units for newly-issued shares of our Class A common stock on a one-for-one basis in order to more meaningfully present the dilutive impact on the purchasers in this offering.

If the underwriters exercise their option to purchase additional shares of our Class A common stock in full, the net tangible book value per share after giving effect to the offering would be $ per share. This represents an increase in net tangible book value of $ per share to our existing stockholder and dilution in net tangible book value of $ per share to purchasers in this offering.

If the initial public offering price were to increase or decrease by $1.00 per share of common stock, then dilution in net tangible book value per share of common stock would equal $ and $, respectively.

The following table sets forth, as of September 30, 2012, the differences among the number of shares of Class A common stock purchased, the total consideration paid or exchanged and the average price per share paid by NRG and by purchasers of our Class A common stock in this offering, assuming an initial public offering price of $ per share (the midpoint of the range set forth on the cover of this prospectus), that NRG exchanged all of its Yieldco LLC Class B units for shares of our Class A common stock on a one-for-one basis and no exercise of the underwriters' option to purchase additional shares of Class A common stock.

	Shares of Class A Common Stock		Total Consideration	
	Number	Percent	Amount	Percent
NRG and affiliates(1)		%	$	%
Purchasers in the offering		%	$	%

(1) The assets contributed by NRG in the Asset Transfer will be recorded at historical cost. The book value of the consideration to be provided by NRG in the Asset Transfer as of September 30, 2012 was approximately $689 million.

CASH DIVIDEND POLICY

You should read the following discussion of our cash dividend policy in conjunction with "—Assumptions and Considerations" below, which includes the factors and assumptions upon which we base our cash dividend policy. In addition, you should read "Forward-Looking Statements" and "Risk Factors" for information regarding statements that do not relate strictly to historical or current facts and certain risks inherent in our business.

This forecast of future operating results and cash available for distribution in future periods is based on the assumptions described below and other assumptions believed by us to be reasonable as of the date of this prospectus. However, we cannot assure you that any or all of these assumptions will be realized. These forward-looking statements are based upon estimates and assumptions about circumstances and events that have not yet occurred and are subject to all of the uncertainties inherent in making projections. This forecast should not be relied upon as fact or as an accurate representation of future results. Future results will be different from this forecast and the differences may be materially less favorable.

For additional information regarding our historical combined results of operations, you should refer to our audited historical combined financial statements as of December 31, 2010 and 2011 and for the fiscal years ended December 31, 2010 and 2011 and our unaudited historical combined financial statements as of September 30, 2012 and for the nine months ended September 30, 2011 and 2012 included elsewhere in this prospectus.

General

We intend to pay a regular quarterly dividend to holders of our Class A common stock. Our quarterly dividend will initially be set at $ per share of our Class A common stock, or $ per share on an annualized basis, and the amount may be changed in the future without advance notice. We expect to pay a quarterly dividend on or about the 60th day following the expiration of each fiscal quarter to holders of our Class A common stock of record on the last day of such fiscal quarter. With respect to our first dividend payable on , 2013 to holders of record on , 2013, assuming a closing date of , 2013, we intend to pay a pro-rated initial dividend of $ per share.

Rationale for Our Dividend

We have established our initial quarterly dividend level after considering the amount of cash we expect to receive from Yieldco LLC as a result of our membership interest in Yieldco LLC after this offering. In accordance with its operating agreement and our capacity as the sole managing member, we intend to cause Yieldco LLC to make regular quarterly cash distributions to its members in an amount equal to the cash available for distribution generated during a given quarter, less reserves for the prudent conduct of our business, and to use the amount distributed to us to pay regular quarterly dividends to holders of our Class A common stock.

Our cash dividend policy reflects a basic judgment that holders of our Class A common stock will be better served by distributing all of the cash distributions we receive from Yieldco LLC each quarter in the form of a quarterly dividend rather than retaining it. In addition, by having Yieldco LLC retain a portion of its cash generated from operations, we believe we will also provide better value to holders of our Class A common stock by maintaining the operating capacity of our assets and, in turn, dividend paying capacity.

Yieldco LLC's cash available for distribution is likely to fluctuate from quarter to quarter, in some cases significantly, as a result of the seasonality of our assets, maintenance and outage schedules among other factors. Accordingly, during quarters in which it generates cash available for distribution in excess of the amount necessary to distribute to us to pay our stated quarterly dividend, we may

cause it to reserve a portion of the excess to fund its cash distribution in future quarters. In quarters in which we do not generate sufficient cash available for distribution to fund our stated quarterly cash dividend, if our board of directors so determines, we may use sources of cash not included in our calculation of cash available for distribution, such as net cash provided by financings, receipt of 1603 Cash Grant Proceeds, all or any portion of the cash on hand or, if applicable, borrowings under our new revolving credit facility, to pay dividends to holders of our Class A common stock. Although these other sources of cash may be substantial and available to fund a dividend payment in a particular period, we exclude these items from our calculation of cash available for distribution because we consider them non-recurring or otherwise not representative of the operating cash flows we typically expect to generate.

Estimate of Future Cash Available for Distribution

We primarily considered forecasted cash available for distribution in assessing the amount of cash that we expect our assets will be able to generate for the purposes of our initial dividend. Accordingly, we believe that an understanding of cash available for distribution is useful to investors in evaluating our ability to pay dividends pursuant to our stated cash dividend policy. In general, we expect that "cash available for distribution" each quarter will equal Adjusted EBITDA generated during the period *plus* cash distributions received from unconsolidated affiliates, *less*:

- pro-rata EBITDA from unconsolidated affiliates;
- cash interest paid;
- income tax paid;
- maintenance capital expenditures;
- change in other assets;
- principal payments on indebtedness in accordance with the related loan amortization schedules; and
- reserves for future cash distributions by Yieldco LLC and, in turn, cash dividends to holders of our Class A common stock.

Limitations on Cash Dividends and Our Ability to Change Our Cash Dividend Policy

There is no guarantee that we will pay quarterly cash dividends to holders of our Class A common stock. We do not have a legal obligation to pay our initial quarterly dividend or any other dividend. Our cash dividend policy may be changed at any time and is subject to certain restrictions and uncertainties, including the following:

- The amount of Yieldco LLC's quarterly cash available for distribution could be impacted by restrictions on cash distributions contained in our project-level financing arrangements, which require that our project-level subsidiaries comply with certain financial tests and covenants in order to make such cash distributions. We expect that similar restrictions will be contained in our new revolving credit facility. Should we or any of our project-level subsidiaries be unable to satisfy these covenants or if any of us are otherwise in default under such facilities, we may be unable to receive sufficient cash distributions to pay our stated quarterly cash dividends notwithstanding our stated cash dividend policy. See the "Project-Level Financing" descriptions contained in the "Business—Our Operations" section of this prospectus for a description of such restrictions.
- As the sole managing member of Yieldco LLC, we and, accordingly, our board of directors will have the authority to establish, or cause Yieldco LLC to establish, cash reserves for the

prudent conduct of our business and for future cash dividends to holders of our Class A common stock, and the establishment of or increase in those reserves could result in a reduction in cash dividends from levels we currently anticipate pursuant to our stated cash dividend policy. These reserves may account for the fact that our project-level cash flows may vary from year to year based on, among other things, changes in prices under offtake agreements, fuel supply and transportation agreements and other project contracts, changes in regulated transmission rates, compliance with the terms of non-recourse project-level financing including debt repayment schedules, the transition to market or recontracted pricing following the expiration of offtake agreements, working capital requirements and the operating performance of the assets. Furthermore, our board of directors may increase, or cause Yieldco LLC to increase reserves to account for the seasonality that has historically existed in our assets cash flows and the variances in the pattern and frequency of distributions to us from our assets during the year.

- Prior to Yieldco LLC making any cash distributions to its members, Yieldco LLC will reimburse the Manager and its affiliates for all direct and indirect expenses they incur on our behalf pursuant to the Management Services Agreement. Yieldco LLC's amended and restated operating agreement will not limit the amount of expenses for which the Manager and its affiliates may be reimbursed. The Management Services Agreement provides that NRG will determine in good faith the expenses that are allocable to us. Accordingly, the reimbursement of expenses and payment of fees, if any, to the Manager and its affiliates will reduce the amount of Yieldco LLC's cash available for distribution.

- Section 170 of the DGCL allows our board of directors to declare and pay dividends on the shares of our Class A common stock either:

  - out of its surplus, as defined in and computed in accordance with the DGCL; or

  - in case there shall be no such surplus, out of its net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year.

- We may lack sufficient cash to pay dividends to holders of our Class A common stock due to cash flow shortfalls attributable to a number of operational, commercial or other factors, including low availability, as well as increases in our operating and/or general and administrative expenses, principal and interest payments on our outstanding debt, income tax expenses, working capital requirements or anticipated cash needs at our project-level subsidiaries.

- Yieldco LLC's cash distributions to us and, as a result, our ability to pay or grow our dividends is dependent upon the performance of our subsidiaries and their ability to distribute cash to us. The ability of our project-level subsidiaries to make cash distributions to Yieldco LLC may be restricted by, among other things, the provisions of existing and future indebtedness, applicable state corporation laws and other laws and regulations.

Our Ability to Grow our Business and Dividend

We intend to grow our business primarily through the acquisition of contracted power assets, which, we believe, will facilitate the growth of our cash available for distribution and enable us to increase our dividend per share over time. However, the determination of the amount of cash dividends to be paid to holders of our Class A common stock will be made by our board of directors and will depend upon our financial condition, results of operations, cash flow, long-term prospects and any other matters that our board of directors deem relevant.

We expect that we will rely primarily upon external financing sources, including commercial bank borrowings and issuances of debt and equity securities, to fund any future growth capital

expenditures. To the extent we are unable to finance growth externally; our cash dividend policy could significantly impair our ability to grow because we do not currently intend to reserve a substantial amount of cash generated from operations to fund growth opportunities. If external financing is not available to us on acceptable terms, our board of directors may decide to finance acquisitions with cash from operations, which would reduce or even eliminate the amount of cash available for distribution for the payment of our stated quarterly dividend. To the extent we issue additional shares of capital stock to fund growth capital expenditures, the payment of dividends on those additional shares may increase the risk that we will be unable to maintain or increase our per share dividend level. There are no limitations in our bylaws, and we do not expect that there will be any limitations under our new revolving credit facility, on our ability to issue additional shares of capital stock, including preferred stock that would have priority over our Class A common stock with respect to the payment of dividends. Additionally, the incurrence of additional commercial bank borrowings or other debt to finance our growth would result in increased interest expense, which in turn may impact the cash available for distribution that we have to distribute to holders of our Class A common stock.

Unaudited Cash Available for Distribution for the Year Ended December 31, 2011 and the Twelve Months Ended September 30, 2012

If we had completed the transactions contemplated in this prospectus on January 1, 2011, our unaudited cash available for distribution for the year ended December 31, 2011 would have been approximately $6 million, of which $ million would have been distributed to Yieldco Inc. If we had completed the transactions contemplated in this prospectus on October 1, 2011, our unaudited cash available for distribution for the twelve months ended September 30, 2012 would have been approximately $14 million, of which $ million would have been distributed to Yieldco Inc. In addition, our cash available for distribution after investing and funding activities was approximately $2 million and $7 million for the twelve months ended December 31, 2012 and September 30, 2012, respectively. While our financial results reflect debt borrowed and capital contributed to fund growth capital expenditures and equity investments in our unconsolidated affiliates, we exclude these items from our calculation of cash available for distribution because we consider them non-recurring or otherwise not representative of the cash flows we typically expect to generate. These amounts would have been insufficient to pay the full quarterly cash dividend on all of our Class A common stock to be outstanding immediately after consummation of this offering based on our initial quarterly dividend of $ per share of our Class A common stock per quarter (or $ per share on an annualized basis).

Our calculation of unaudited cash available for distribution does not include incremental external general and administrative expenses that we expect to incur as a result of being a publicly traded company, including costs associated with SEC reporting requirements, independent auditor fees, investor relations activities, stock exchange listing, registrar and transfer agent fees, incremental director and officer liability insurance and director compensation. We estimate that these incremental external general and administrative expenses initially will be approximately $3 million per year. Such expenses are not reflected in our unaudited combined financial statements included elsewhere in this prospectus.

Our unaudited combined financial statements, from which our unaudited cash available for distribution was derived, do not purport to present our results of operations had the transactions contemplated in this prospectus actually been completed as of the dates indicated. Furthermore, cash available for distribution is a cash accounting concept, while our predecessor's historical financial statements were prepared on an accrual basis. We derived the amounts of unaudited cash available for distribution stated above in the manner shown in the table below. As a result, the amount of unaudited cash available should only be viewed as a general indicator of the amount of cash available for distribution that we might have generated had we been formed and completed the transactions contemplated in this prospectus in earlier periods.

The footnote to the table below provides additional information about the adjustments and should be read along with the table.

(in millions)	Twelve Months Ended December 31, 2011	Twelve Months Ended September 30, 2012
Operating Revenues:		
Total operating Revenues	$ 164	$ 171
Operating Costs and Expenses		
Cost of operations	104	105
Depreciation and amortization	22	24
General and administration	12	13
Total operating costs and expenses	138	142
Operating Income	26	29
Other income/(expense)		
Equity in earnings of unconsolidated affiliates	1	3
Other income	1	1
Interest expense	(18)	(30)
Total other expense	(16)	(26)
Income before income taxes	10	3
Income tax expense	4	1
Net Income	6	2
Less equity in earnings of unconsolidated affiliates	(1)	(3)
Add:		
Depreciation and amortization	22	24
Interest expense	18	30
Income tax expense	4	1
Contract amortization	1	1
Pro-rata EBITDA from unconsolidated affiliates	4	11
Adjusted EBITDA	54	66
Less:		
Pro-rata EBITDA from unconsolidated affiliates	(4)	(11)
Cash interest paid	(17)	(18)
Income tax paid	—	—
Maintenance capital expenditures	(7)	(5)
Principal amortization of indebtedness	(20)	(18)
Add:		
Cash distribution from unconsolidated affiliates, net	—	—
Estimated cash available for distribution	6	14
Less:		
Growth capital expenditures	(357)	(555)
Equity investment in unconsolidated affiliates	(88)	(79)
Add:		
Capital contributed to fund growth capital expenditures	244	291
Net debt borrowed to fund growth capital expenditures(1)	197	336
Estimated cash available for distribution after investing and funding activities (Yieldco LLC)	$ 2	$ 7
Estimated cash available for distribution (Yieldco Inc. as % of Yieldco LLC)	$	$
Initial annual dividend per share (based on initial quarterly dividend rate of $ per share of our Class A common stock)		
Annual dividends to holders of our Class A common stock		
Excess (shortfall) of cash available for distribution over aggregated annualized quarterly distributions, calculated at the initial quarterly distribution of $ per unit		

(1) Includes affiliates debt and net of debt issuance costs

The following table provides a reconciliation of net income to Adjusted EBITDA by our wholly-owned conventional, renewable and thermal assets and our assets that we account for using the equity method for the twelve months ended December 31, 2011 and September 30, 2012 (in millions):

	Twelve Months Ended December 31, 2011					
	Wholly-owned					
	Conventional	Renewable	Thermal	Equity Method(1)	MSA/Tax	Total
Net income	$ (1)	$ 3	$ 9	$ 1	$ (6)	$ 6
Less equity in earnings of unconsolidated affiliates	—	—	—	(1)	—	(1)
Add:						
Contract amortization	—	—	1	—	—	1
Pro-rata EBITDA from unconsolidated affiliates	—	—	—	4	—	4
Depreciation and amortization	—	8	14	—	—	22
Interest expense	—	9	9	—	—	18
Tax	—	—	—	—	4	4
Adjusted EBITDA	$ (1)	$ 20	$ 33	$ 4	$ (2)	$ 54

	Twelve Months Ended September 30, 2012					
	Wholly-owned					
	Conventional	Renewable	Thermal	Equity Method(1)	MSA/Tax	Total
Net income	$ (2)	$ (6)	$ 10	$ 3	$ (3)	$ 2
Less equity in earnings of unconsolidated affiliates	—	—	—	(3)	—	(3)
Add:						
Contract amortization	—	—	1	—	—	1
Pro-rata EBITDA from unconsolidated affiliates	—	—	—	11	—	11
Depreciation and amortization	—	9	15	—	—	24
Interest expense	1	21	8	—	—	30
Tax	—	—	—	—	1	1
Adjusted EBITDA	$ (1)	$ 24	$ 34	$ 11	$ (2)	$ 66

(1) Includes CVSR and Avenal.

Estimated Cash Available for Distribution for the Twelve Months Ending March 31, 2014 and March 31, 2015

We forecast that our cash available for distribution during the twelve months ending March 31, 2014 and 2015 will be approximately $45 million and $83 million, respectively, of which we forecast $ million and $ million, respectively, will be distributed to Yieldco Inc. This amount would be sufficient to pay our initial quarterly dividend of $ per share on all outstanding shares of our Class A common stock immediately after consummation of this offering for each quarter in the twelve months ending March 31, 2014 and the twelve months ending March 31, 2015.

We are providing this forecast to supplement our predecessor's combined historical financial statements in support of our belief that we will have sufficient cash available for distribution to pay a regular quarterly dividend on all of our outstanding Class A common stock immediately after consummation of this offering for each quarter in the twelve months ending September 30, 2013, at our

initial quarterly dividend of $ per share (or $ per share on an annualized basis). Please read "—Significant Forecast Assumptions" for further information as to the assumptions we have made for the forecast. Please read "Management's Discussion and Analysis of Financial Condition and Results of Operations—Significant Accounting Policies and Estimates" for information regarding the accounting policies we have followed for the forecast.

Our forecast is a forward-looking statement and reflects our judgment as of the date of this prospectus of the conditions we expect to exist and the course of action we expect to take during the twelve months ending March 31, 2014 and the twelve months ending March 31, 2015. It should be read together with the historical combined financial statements and the accompanying notes thereto included elsewhere in this prospectus and "Management's Discussion and Analysis of Financial Condition and Results of Operations." We believe that we have a reasonable basis for these assumptions and that our actual results of operations will approximate those reflected in our forecast, but we can give no assurance that our forecasted results will be achieved. The assumptions and estimates underlying the forecast, as described below under "—Assumptions and Considerations," are inherently uncertain and, although we consider them reasonable as of the date of this prospectus, they are subject to a wide variety of significant business, economic, and competitive risks and uncertainties that could cause actual results to differ materially from forecasted results, including, among others, the risks and uncertainties described in "Risk Factors." Any of the risks discussed in this prospectus, to the extent they occur, could cause actual results of operations to vary significantly from those that would enable us to generate sufficient cash available for distribution to pay the aggregate annualized regular quarterly dividend on all outstanding shares of our Class A common stock for the twelve months ending March 31, 2014 and 2015, calculated at the initial quarterly dividend rate of $ per share per quarter (or $ per share on an annualized basis). Accordingly, there can be no assurance that the forecast will be indicative of our future performance or that actual results will not differ materially from those presented in the forecast. If our forecasted results are not achieved, we may not be able to pay a regular quarterly dividend to holders of our Class A common stock at our initial quarterly dividend level or at all. Inclusion of the forecast in this prospectus should not be regarded as a representation by us, the underwriters or any other person that the results contained in the forecast will be achieved.

The accompanying forecast was not prepared with a view toward complying with the guidelines established by the American Institute of Certified Public Accountants with respect to prospective financial information. Neither our independent auditors, nor any other independent accountants, have compiled, examined or performed any procedures with respect to our forecast, nor have they expressed any opinion or any other form of assurance on our forecast or its achievability, and our independent auditors assume no responsibility for, and disclaim any association with, our forecast.

We do not undertake any obligation to release publicly any revisions or updates that we may make to the forecast or the assumptions used to prepare the forecast to reflect events or circumstances after the date of this prospectus. In light of this, the statement that we believe that we will have sufficient cash available for distribution to allow us to pay the full regular quarterly dividend on all of our Class A common stock outstanding immediately after the consummation of this offering for each quarter in the twelve months ending March 31, 2014 and 2015 (based on our initial quarterly dividend rate of $ per share per quarter (or $ per share on an annualized basis)) should not be regarded as a representation by us, the underwriters or any other person that we will pay such dividends. Therefore, you are cautioned not to place undue reliance on this information.

NRG Yieldco, Inc.
Estimated Cash Available for Distribution

(in millions)	Twelve Months Ending March 31, 2014	Twelve Months Ending March 31, 2015
Operating Revenues:		
Total operating Revenues	$ 324	$ 374
Operating Costs and Expenses		
Cost of operations	135	151
Depreciation and amortization	74	84
General and administration	14	14
Total operating costs and expenses	223	249
Operating Income	101	125
Other income		
Equity in earnings of unconsolidated affiliates	14	9
Other income	1	1
Interest expense	(52)	(61)
Total other expense	(37)	(51)
Income before income taxes	64	74
Income tax expense	26	30
Net Income	38	44
Less equity in earnings of unconsolidated affiliates	(14)	(9)
Add:		
Depreciation and amortization	74	84
Interest expense	52	61
Income tax expense	26	30
Contract amortization	1	1
Pro-rata EBITDA from unconsolidated affiliates	33	47
Adjusted EBITDA	210	258
Less:		
Pro-rata EBITDA from unconsolidated affiliates	(33)	(47)
Cash interest paid	(52)	(61)
Income tax paid	—	—
Maintenance capital expenditures	(11)	(16)
Change in other assets	(21)	(14)
Principal amortization of indebtedness	(49)	(61)
Add:		
Cash distribution from unconsolidated affiliates	1	24
Estimated cash available for distribution	45	83
Less:		
Growth capital expenditures	(112)	—
Equity investment in unconsolidated affiliates	(40)	—
Add:		
Capital contributed to fund growth capital expenditures, net	9	—
Net debt borrowed and offering proceeds retained by us to fund growth capital expenditures and equity investments in unconsolidated affiliates	143	—
Estimated cash available for distribution after investing and funding activities (Yieldco LLC)	$ 45	$ 83
Estimated cash available for distribution (Yieldco Inc. as % of Yieldco LLC)	$	$
Initial annual dividend per share (based on initial quarterly dividend rate of $ per share of our Class A common stock)		
Annual dividends to holders of our Class A common stock		
Excess (shortfall) of cash available for distribution over aggregated annualized quarterly distributions, calculated at an initial quarterly distribution of $ per unit		

The following table provides a reconciliation of net income to Adjusted EBITDA by our wholly-owned conventional, renewable and thermal assets and our assets that we account for using the equity method for the twelve months ending March 31, 2014 and 2015 (in millions):

	Twelve Months Ending March 31, 2014					
	Wholly-owned			Equity		
	Conventional	Renewable	Thermal	Method(1)	MSA	Total
Net income	$ 25	$ 8	$ 24	$ 14	$ (33)	$ 38
Less equity in earnings of unconsolidated affiliates	—	—	—	(14)	—	(14)
Add:						
Contract amortization	—	—	1	—	—	1
Pro-rata EBITDA from unconsolidated affiliates	—	—	—	33	—	33
Depreciation and amortization	28	31	15	—	—	74
Interest expense	17	27	8	—	—	52
Tax	—	—	—	—	26	26
Adjusted EBITDA	$ 70	$ 66	$ 48	$ 33	$ (7)	$ 210

	Twelve Months Ending March 31, 2015					
	Wholly-owned			Equity		
	Conventional	Renewable	Thermal	Method(1)	MSA	Total
Net income	$ 39	$ 9	$ 24	$ 9	$ (37)	$ 44
Less equity in earnings of unconsolidated affiliates	—	—	—	(9)	—	(9)
Add:						
Contract amortization	—	—	1	—	—	1
Pro-rata EBITDA from unconsolidated affiliates	—	—	—	47	—	47
Depreciation and amortization	37	32	15	—	—	84
Interest expense	27	26	8	—	—	61
Tax	—	—	—	—	30	30
Adjusted EBITDA	$ 103	$ 67	$ 48	$ 47	$ (7)	$ 258

(1) Includes CVSR and Avenal.

Assumptions and Considerations

Set forth below are the material assumptions that we have made to demonstrate our ability to generate our estimated Adjusted EBITDA and estimated cash available for distribution for the twelve months ending March 31, 2014 and March 31, 2015. The forecast has been prepared by and is the responsibility of our management. Our forecast reflects our judgment of the conditions we expect to exist and the course of action we expect to take during the forecast period. While the assumptions disclosed in this prospectus are not all inclusive, such assumptions are those that we believe are material to our forecasted results of operations. We believe we have a reasonable basis for these assumptions. We believe that our historical results of operations will approximate those reflected in our forecast. However, we can give no assurance that our forecasted results will be achieved. There will likely be differences between our forecasted and our historical results, and those differences may be material. If our forecast is not achieved, we may not be able to pay cash dividends on our Class A common stock at the initial quarterly dividend level or at all.

The following table presents the forecasted Adjusted EBITDA and cash available for distribution for the twelve months ending March 31, 2014 and March 31, 2015 (in millions):

	Twelve Months Ending			
	March 31, 2014		March 31, 2015	
	Adjusted EBITDA	Estimated Cash Available for Distribution	Adjusted EBITDA	Estimated Cash Available for Distribution
Conventional	$ 70	$ 10	$ 103	$ 26
Renewables	66	18	67	19
Thermal	48	23	48	21
Equity Method Assets	33	1	47	24
Less: Management Services Agreement	(7)	(7)	(7)	(7)
Total	$ 210	$ 45	$ 258	$ 83

General Considerations

- The forecast assumes that on , 2013, we will raise net proceeds of $ million in this offering through the issuance of of our shares of our Class A common stock at a price of $ per share (these proceeds and share amounts are based on the midpoint of the range set forth on the cover of this prospectus). We have also assumed that immediately following the consummation of this offering, Yieldco LLC will have Class A units and Class B units outstanding and that of such Class A units will be held by Yieldco Inc. The forecast also assumes that the proceeds of this offering will be used as described in "Use of Proceeds" elsewhere in this prospectus and that in connection with the completion of this offering, the other transactions contemplated upon under the heading "Summary—Organizational Structure" will have been consummated (other than the exercise by the underwriters of their option to purchase additional shares).

- The historical period for the twelve months ended September 30, 2012 includes the results for our renewable assets, Avenal, Blythe, Roadrunner, AZ DG Solar Projects and South Trent, and our thermal infrastructure assets. All of these assets were operational for the full twelve months ended September 30, 2012, except for our Princeton Energy Center, which achieved COD in the first quarter of 2012. These results also do not include the expansion of our Phoenix thermal facility. Please see "Business—Our Operations—Thermal" for additional information regarding our thermal operations.

- We account for CVSR and Avenal under the equity method for both the historical and forecasted periods, as applicable. Equity in earnings of unconsolidated affiliates reflects our share of the pre-tax income based on our proportional membership interest in these assets. All other assets are consolidated in our financial results.

- The CODs for assets included in our forecasted results that are not included in our financial results for the period ended September 30, 2012 are as follows:

  - Avra Valley: December 2012;
  - Certain of our PFMG DG Solar Projects: October 2012 through December 2012;
  - Alpine: January 2013;
  - Borrego: February 2013;

- El Segundo: August 2013; and
- CVSR: October 2013 (final phase's COD).

- Asset assumptions:
  - *Conventional Asset.* Revenues and expenses reflect the terms specified in the fixed price tolling agreement with SCE for 100% of the facility whereby substantially all variable costs, including fuel and other variable operations and maintenance costs, are recovered through an energy payment from SCE. Energy production, or the capacity factor of the facility, does not impact our results. Our forecast assumes an average Adjusted EBITDA margin of approximately $16 per kilowatt-month. See "Business—Our Operations—Conventional—El Segundo" for additional information.
  - *Renewable Assets.* Revenues and expenses reflect the terms specified in the fixed-priced offtake agreements for 100% of energy production. Our forecast assumes production based on solar and wind resource assessments of a 1-year P-50 output probability for each asset prepared by independent solar and wind resource consultants. Production based on a 1-year P-50 output probability is defined as the output level that has a more than 50% probability of being exceeded in any given year. Our forecast for the solar facilities assumes an Adjusted EBITDA margin of approximately $116 per MWh and an average capacity factor of approximately 27% for the twelve months ending March 31, 2014. Our forecast for our wind facility assumes an Adjusted EBITDA margin of approximately $35 per MWh and an average capacity factor of approximately 39% for the twelve months ending March 31, 2014.
  - *Thermal Assets*:
    - **Thermal Energy:** Revenues and expenses for heating and cooling services, including the production of steam, hot water and/or chilled water and, in some instances, electricity, reflect fixed price offtake agreements with negotiated and/or regulated rates. Our forecast assumes a historical run rate Adjusted EBITDA of approximately $30 million. As described further below, we are investing growth capital expenditures in our Phoenix Energy Center and expect this expansion to contribute additional Adjusted EBITDA of approximately $3 million annually.
    - **Thermal Generation:** Revenues for our thermal generation assets are primarily attributed to payments for capacity sold through the RPM administered by PJM and reflect the April 2010, 2011 and 2012 capacity auctions. Based on the results of these capacity auctions, our thermal generation assets will receive capacity payments of $225.75/MW-day and $154.26/MW-day for the twelve months ending March 31, 2014 and March 31, 2015, respectively. Our forecast assumes a gross margin of approximately $3 million from the sale of excess energy production from our thermal generation assets into the local power grid.

Total Operating Revenue

We estimate that we will generate total operating revenue of $324 million for the twelve months ending March 31, 2014 and $374 million for the twelve months ending March 31, 2015, compared to $171 million for the twelve months ended September 30, 2012. This increase in our forecasted periods from the historical period is primarily attributed to El Segundo, Alpine, Avra Valley, Borrego and PFMG DG Solar Projects achieving COD and accounting for a full twelve months of

operations of the Princeton Energy Center. The increase in the forecast period for the twelve months ending March 31, 2015 over the twelve months ending March 31, 2014 is primarily attributed to accounting for a full twelve months of operations of El Segundo.

Cost of Operations

We estimate that we will incur a cost of operations expense of $135 million for the twelve months ending March 31, 2014 and $151 million for the twelve months ending March 31, 2015, compared to $105 million for the twelve months ended September 30, 2012. This increase in our forecasted periods from the historical period is primarily attributed to El Segundo, Alpine, Avra Valley, Borrego and PFMG DG Solar Projects achieving commercial operations and accounting for a full twelve months of operations of the Princeton Energy Center. The increase in the forecast period for the twelve months ending March 31, 2015 over the twelve months ending March 31, 2014 is primarily attributed to accounting for a full twelve months of operations of El Segundo.

Depreciation and Amortization

We estimate that we will incur depreciation and amortization expense of $74 million for the twelve months ending March 31, 2014 and $84 million for the twelve months ending March 31, 2015 compared to $24 million for the twelve months ended September 30, 2012. This increase in our forecasted periods from the historical period is primarily attributed to El Segundo, Alpine, Avra Valley, Borrego and PFMG DG Solar Projects achieving commercial operations and accounting for a full twelve months of operations of the Princeton Energy Center. The increase in our forecasted periods is primarily attributed to accounting for a full year of operations of El Segundo. Forecasted depreciation and amortization expense reflects management's estimates, which are based on consistent average depreciable asset lives and depreciation methodologies under U.S. GAAP. We have assumed that the average depreciable asset lives are 40 years for buildings and 22 years for equipment.

General and Administration ("G&A")

We estimate that we will incur G&A expenses of $14 million for the twelve months ending March 31, 2014 and for the twelve months ending March 31, 2015, compared to $13 million for the twelve months ended September 30, 2012. G&A expenses include certain shared services and administrative expenses attributed to such assets for their operations, our management services payment to NRG under the Management Services Agreement and specifically for the forecasts, together with the aforementioned expenses, certain costs associated with being a public company.

Equity in Earnings of Unconsolidated Affiliates

We estimate that we will generate total equity in earnings of unconsolidated affiliates of $14 million for the twelve months ending March 31, 2014 and $9 million for the twelve months ending March 31, 2015, compared to $3 million for the twelve months ended September 30, 2012. The increase in our forecasted period for the twelve months ending March 31, 2014, compared to the twelve months ended September 30, 2012, is primarily attributed to (i) accounting for a full twelve months of operations of three phases of CVSR and (ii) the final phase achieving COD in October 2013 and operating for the last five months during the forecasted period. Until the COD ofthe final phase, we assume that we capitalize CVSR's growth capital expenditures including interest expenses associated with the project-level financing. The decrease in our forecasted period for the twelve months ending March 31, 2015, as compared to the forecasted period for the twelve months ending March 31, 2014, is primarily attributable to accounting for a full twelve months of depreciation and amortization expense and interest expense during the forecasted period for the twelve months ending March 31, 2015, which more than offsets the higher revenues during the same forecasted period accounting for a full twelve months of operations of all four phases of CVSR.

Pro-rata EBITDA from Unconsolidated Affiliates

Pro-rata EBITDA represents EBITDA from our unconsolidated affiliates during a period multiplied by our then applicable membership interest in an unconsolidated affiliate. We estimate that we will generate total pro-rata EBITDA from unconsolidated affiliates of approximately $33 million for the twelve months ending March 31, 2014 and $47 million for the twelve months ending March 31, 2015, compared to $11 million for the twelve months ended September 30, 2012. The increase in our pro-rata EBITDA from our unconsolidated affiliates for the twelve months ending March 31, 2014 over the twelve months ended September 30, 2012 is primarily attributable to the phases of CVSR achieving COD, while the increase in our forecasted periods for the twelve months ending March 31, 2015 over the twelve months ending March 31, 2014 is attributed to accounting for a full twelve months of operations of all four phases of CVSR.

Capital Expenditures

We estimate that we will have maintenance capital expenditures of $11 million for the twelve months ending March 31, 2014 and $16 million for the twelve months ending March 31, 2015, compared to $5 million for the twelve months ended September 30, 2012. This increase is primarily attributed to the operations of our Phoenix and Princeton Energy Centers. In addition, we forecast approximately $3 million per year in maintenance capital expenditures for our conventional asset and less than $1 million in maintenance capital expenditures for our renewable generation assets, as our renewable generation assets are subject to fixed price O&M and project-level management administration agreements with annual escalators, such costs are included in our cost of operations. See "Business-Our Operations" and "Certain Relationships and Related Party Transactions-Project-Level Management and Administration Agreements." Maintenance capital expenditures are cash expenditures for the addition or improvement to, or the replacement of, our capital assets made to maintain our long-term operating income or operating capacity. Examples of maintenance capital expenditures are expenditures for the repair, refurbishment and replacement of steam boilers and boiler tube leaks.

We estimate growth capital expenditures of $112 million for the twelve months ending March 31, 2014 and zero for the twelve months ending March 31, 2015, compared to $555 million for the twelve months ended September 30, 2012. The decrease is primarily attributed to completion of the construction of El Segundo, Alpine, Avra Valley, Borrego, Dover, PFMG DG Solar Projects and the Princeton Energy Center. For the twelve months ending March 31, 2014, our growth capital expenditures include $103 million for the construction of El Segundo, and $9 million for the expansion of the Phoenix Energy Center.

Change in Other Assets

We estimate that change in other assets will be $21 million for the twelve months ending March 31, 2014 and $14 million for the twelve months ending March 31, 2015. For the twelve months ended September 30, 2012, El Segundo was still under construction and as a result there was no change in other assets. The increase from the historical period is attributed to El Segundo achieving COD. The tolling agreement is classified as an operating lease with El Segundo, as lessor, and accordingly, revenues under such agreement are recognized on a straight-line basis over its 10-year term. The contractual payments received by El Segundo under such agreement vary from a straight-line basis over the term, escalating each year of the term and differing each month based on a pre-determined schedule reflecting expected higher demand for capacity in summer months. Any difference between revenues and contractual payments are recorded on El Segundo's balance sheet.

Cash Distribution from Unconsolidated Affiliates

We estimate that we will generate cash distribution from unconsolidated affiliates of $1 million for the twelve months ending March 31, 2014 and $24 million for the twelve months ending March 31, 2015, compared to no cash distributions for the twelve months ended September 30, 2012. The increase in our cash distribution from unconsolidated affiliates for the twelve months ending March 31, 2015 is attributable to CVSR achieving COD on all four phases.

Financing and Other

We estimate that interest expense will be $52 million for the twelve months ending March 31, 2014 and $61 million for the twelve months ending March 31, 2015, compared to $30 million for the twelve months ended September 30, 2012. The increase is primarily attributed to additional indebtedness borrowed to fund the construction of El Segundo, Alpine, Avra Valley and Borrego as well as increases in letters of credit posted upon COD of these facilities. Forecasted interest expense is based on the following assumptions:

- We estimate that our debt level will be approximately $1 billion as of March 31, 2013 and grow to $1.1 billion by September 30, 2013 as a result of draws on our El Segundo construction financing facilities.

- Borrowing costs average 4.92% and 5.78% for the twelve months ending March 31, 2014 and March 31, 2015, respectively.

We estimate that principal amortization of indebtedness will be $49 million for the twelve months ending March 31, 2014 and $61 million for the twelve months ending March 31, 2015, compared to $18 million for the twelve months ended September 30, 2012. The increase is primarily attributed to additional amortization following COD for our El Segundo, Alpine, Avra Valley and Borrego assets, offset in part by a reduction in amortization of $19 million related to a repayment of a cash grant bridge loan with respect to Roadrunner in the first quarter of 2012 as compared to the twelve months ended September 30, 2012.

Following the COD of Avra Valley, Alpine, Borrego and each phase of CVSR, NRG will apply on our behalf to the U.S. Treasury for 1603 Cash Grant Proceeds within 60 days thereafter, as applicable. We expect to receive our portion of the 1603 Cash Grant Proceeds for each application within 60 to 90 days of filing subject to exceptions.

Avra Valley. In February 2013, NRG expects to apply for approximately $27 million of 1603 Cash Grant Proceeds. In connection with the construction financing for Avra Valley, there is a $8 million cash grant bridge loan available. As of September 30, 2012, no amount was outstanding thereon. Upon receipt of the 1603 Cash Grant Proceeds, we estimate that approximately $6 million of such proceeds will be used to pay off the amount outstanding under the cash grant bridge loan and approximately $21 million will remain with us.

Alpine. In the second quarter of 2013, NRG expects to apply for approximately $73 million of 1603 Cash Grant Proceeds. In connection with the construction financing for Alpine, there is a $68 million cash grant bridge loan available. As of September 30, 2012, no amount was outstanding thereon. Alpine does not expect to draw any amounts under the cash grant bridge loan. Upon receipt of the 1603 Cash Grant Proceeds, we estimate that approximately $73 million of such proceeds will remain with us.

Borrego. In the second quarter of 2013, NRG expects to apply for approximately $38 million of 1603 Cash Grant Proceeds. Borrego does not have a cash grant bridge loan available. Upon receipt of the 1603 Cash Grant Proceeds, we estimate that approximately $38 million of such proceeds will remain with us.

CVSR. NRG expects to receive 1603 Cash Grant Proceeds as follows: (i) approximately $199 million by the end of second quarter of 2013 and (ii) approximately $222 million within 60 to 90 days of achieving COD on the final phase of CVSR. In connection with the construction financing for CVSR, there is a $380 million cash grant bridge loan available. As of September 30, 2012, $373 million was outstanding thereon. Upon receipt of the 1603 Cash Grant Proceeds specified in (i) above, we estimate that all such proceeds will be used to pay down the amount outstanding under the cash grant bridge loan. Upon receipt of the 1603 Cash Grant Proceeds specified in (ii) above, we estimate that a portion of such proceeds will be used to pay off the remaining amount outstanding under the cash grant bridge loan. The remaining amount of the 1603 Cash Grant Proceeds will be shared between NRG and us, based on our then respective ownership interests in CVSR, which we estimate will result in our receiving $22 million.

As we attribute 1603 Cash Grant Proceeds as one-time items, we have excluded the excess proceeds distributable to us from our forecasted cash available for distribution from these assets. In addition, we intend to retain such excess proceeds and use them consistent with our prudent conduct of our business.

Regulatory, Industry and Economic Factors

Our estimated results of operations for the forecasted period are based on the following assumptions related to regulatory, industry and economic factors:

- no material nonperformance or credit-related defaults by customers, suppliers, NRG or any of our commercial customers;
- no new or material amendments to federal, state or local laws or regulation, or interpretation or application of existing laws or regulation, of the portions of the motor fuels industry in which we operate that in either case will be materially adverse to our business or our suppliers', NRG's or any of our commercial customers' businesses;
- no material adverse effects to our business, industry or our suppliers', NRG's or any of our commercial customers' businesses on account of natural disasters;
- no material adverse change resulting from supply disruptions or reduced demand for electricity; and
- no material adverse changes in market, regulatory and overall economic conditions.

UNAUDITED PRO FORMA CONSOLIDATED FINANCIAL STATEMENTS

The unaudited pro forma consolidated financial statements are presented to show how we might have looked if the Organizational Structure described under "Summary—Organizational Structure," and the use of the estimated net proceeds from this offering as described under "Use of Proceeds" had occurred on the dates and for the periods indicated below. We derived the following unaudited pro forma consolidated financial statements by applying pro forma adjustments to the historical combined financial statements of our accounting predecessor included elsewhere in this prospectus. The historical financial statements as of and for the years ended December 31, 2010 and 2011 and as of and for the nine months ended September 30, 2011 and 2012 appearing elsewhere in this prospectus are intended to represent the financial results of NRG's contracted renewable energy and natural gas-fired electric generation assets and thermal infrastructure assets in the United States that will be contributed to Yieldco LLC as part of the Asset Transfer for those periods.

The unaudited pro forma combined statements of operations for the year ended December 31, 2011 and the nine months ended September 30, 2012 have been derived from our accounting predecessor's financial data (as derived from the combined financial statements appearing elsewhere in this prospectus) and giving pro forma effect to the Organizational Structure and the use of the estimated net proceeds from this offering as if they had occurred on January 1, 2011. The unaudited pro forma combined balance sheet as of September 30, 2012 gives effect to the Organizational Structure and the use of the estimated net proceeds from this offering as if they had occurred on September 30, 2012.

The unaudited pro forma combined financial information and supplemental unaudited pro forma consolidated financial information is presented for informational purposes only. The unaudited pro forma consolidated financial information and supplemental unaudited pro forma consolidated financial information does not purport to represent what our results of operations or financial condition would have been had the transactions to which the pro forma adjustments relate actually occurred on the dates indicated, and they do not purport to project our results of operations or financial condition for any future period or as of any future date.

The unaudited pro forma combined balance sheet and statements of operations and unaudited consolidated balance sheet and statements of operations should be read in conjunction with the sections entitled "Summary—Organizational Structure," "Use of Proceeds," "Capitalization," "Selected Historical Combined Financial Data," "Management's Discussion and Analysis of Financial Condition and Results of Operations," our historical consolidated financial statements and related notes thereto included elsewhere in this prospectus.

Unaudited Pro Forma Consolidated Statement of Operations
For the Nine Months Ended September 30, 2012

	Actual	Pro Forma Adjustments	NRG Yieldco, Inc. Pro Forma
		(in millions)	
Statement of Income Data:			
Operating Revenues:			
Total operating revenues	$ 133		
Operating Costs and Expenses			
Cost of operations	80		
Depreciation and amortization	18		
General and administrative(1)	10		
Total operating costs and expenses	108		
Operating Income	25		
Other Income/Expense			
Equity in earnings of unconsolidated affiliates	4		
Other income/(expense), net	1		
Interest expense	(25)		
Total other expense	(20)		
Income Before Income Taxes	5		
Income tax expense	2		
Net income	$ 3		
Less net income attributable to non-controlling interest(2)			
Net income Attributable to Yieldco, Inc.			

Unaudited Pro Forma Consolidated Statement of Operations
For the Year Ended December 31, 2011

	Actual	Pro Forma Adjustments	NRG Yieldco, Inc. Pro Forma
		(in millions)	
Statement of Income Data:			
Operating Revenues:			
Total operating revenues	$ 164		
Operating Costs and Expenses			
Cost of operations	104		
Depreciation and amortization	22		
General and administrative(1)	12		
Total operating costs and expenses	138		
Operating Income	26		
Other Income/Expense			
Equity in earnings of unconsolidated affiliates	1		
Other income/(expense), net	1		
Interest expense	(18)		
Total other expense	(16)		
Income Before Income Taxes	10		
Income tax expense	4		
Net income	$ 6		
Less net income attributable to non-controlling interest(2)			
Net income Attributable to Yieldco, Inc.			

Notes to the Unaudited Pro Forma Consolidated Statements of Operations

(1) General and administrative expenses include certain historical costs incurred by NRG and allocated to our accounting predecessor. These costs are not necessarily indicative of costs which would have been incurred had Yieldco LLC been a standalone entity nor are these costs necessarily indicative of what our general and administrative expenses will be in the future.

(2) Yieldco Inc. will become the sole managing member of Yieldco LLC subsequent to consummation of the Asset Transfer. After consummation of the other Organizational Structure, Yieldco Inc. will own less than 100% of the economic interests in Yieldco LLC but will have 100% of the voting power and control the management of Yieldco LLC. Immediately following this offering, the noncontrolling interest will be %. Net income attributable to the noncontrolling interest represents % of income for the nine months ended September 30, 2012 and % of income for the year ended December 31, 2011. The noncontrolling interest will represent the income attributable to the noncontrolling member, NRG.

Unaudited Pro Forma Consolidated Balance Sheet
As of September 30, 2012

	Actual	Pro Forma Adjustments	NRG Yieldco, Inc. Pro Forma
		(in millions)	
Current Assets:			
Cash and cash equivalents(3)	$ 30	$	$
Restricted cash	11		
Accounts receivable—trade	20		
Inventory	5		
Deferred tax assets—current(4)	1		
Prepayments and other current assets	9		
Total current assets	76		
Property, Plant and Equipment			
In service	553		
Under construction	899		
Total property, plant & equipment	1,452		
Less accumulated depreciation	(110)		
Net property, plant and equipment	1,342		
Other Assets			
Equity investments in affiliates	71		
Notes receivable	30		
Intangible assets, net of accumulated amortization of $1	37		
Other non-current assets	40		
Total other assets	178		
Total Assets	1,596		
LIABILITIES AND STOCKHOLDERS' EQUITY			
Current Liabilities			
Current portion of long-term debt—external	24		
Accounts payable	178		
Derivative instruments	15		
Accrued expenses and other current liabilities	11		
Total current liabilities	228		
Other Liabilities			
Long-term debt—external	600		
Long-term debt—affiliate	27		
Deferred income taxes(5)	—		
Derivative instruments	45		
Other non-current liabilities	7		
Total non-current liabilities	679		
Total Liabilities	907		
Members' Equity/Stockholders' Equity(6)			
Class A common stock			
Class B common stock			
Additional paid-in capital	700		
Retained earnings	30		
Accumulated other comprehensive loss	(41)		
Member's equity/stockholders' equity attributable to Yieldco, Inc.	689		
Noncontrolling interest	—		
Total Liabilities and Equity	1,596		

Notes to the Unaudited Pro Forma Consolidated Balance Sheet

(3) Reflects the net effect on cash and cash equivalents of the receipt of offering proceeds of $ million and net uses of proceeds as described in "Use of Proceeds."

(4) Reflects adjustments to deferred tax assets for estimated income tax effects of the increase in the tax basis of purchased interests, based on an effective income tax rate of %, which includes a provision for U.S. federal, state and local income taxes.

(5) Reflects adjustments to deferred tax liabilities reflecting the expected future tax consequences of the differences between the carrying amounts of existing assets and liabilities and their respective tax bases. The deferred tax liabilities arise from taxable temporary differences primarily related to depreciation on property, plant and equipment.

(6) Represents adjustments to stockholders' equity reflecting (i) par value for Class A and Class B common stock to be outstanding following this offering, (ii) an increase of $ million of additional paid-in capital as a result of net proceeds from this offering, (iii) an increase of $ million of additional paid-in capital, which allocates a portion of Yieldco LLC's equity to the noncontrolling interest, (iv) the elimination of the Yieldco LLC Class B common units upon consolidation, and (v) a decrease of $ million in retained earnings to allocate a portion of Yieldco LLC's equity to noncontrolling interest.

SELECTED HISTORICAL COMBINED FINANCIAL DATA

The following table shows summary historical and pro forma financial data at the dates and for the periods indicated. The summary historical financial data as of and for the years ended December 31, 2010 and 2011 have been derived from the audited combined financial statements of our accounting predecessor included elsewhere in this prospectus. The summary historical financial data as of and for the nine months ended September 30, 2011 and 2012 was derived from the unaudited combined financial statements of our accounting predecessor included elsewhere in this prospectus, which include all adjustments, consisting of normal recurring adjustments, which management considers necessary for a fair presentation of the financial position and the results of operations for such periods, and results for the interim periods are not necessarily indicative of the results for the full year. The historical financial statements as of and for the years ended December 31, 2010 and 2011 and as of and for the nine months ended September 30, 2011 and 2012 are intended to represent the financial results of NRG's contracted renewable energy and natural gas-fired electric generation assets and thermal infrastructure assets in the United States that will be contributed to Yieldco LLC as part of the Asset Transfer for those periods. The summary historical financial data is not necessarily indicative of results to be expected in future periods.

The following tables should be read together with, and is qualified in its entirety by reference to, the historical combined financial statements and the accompanying notes appearing elsewhere in this prospectus. Among other things, the historical combined financial statements include more detailed information regarding the basis of presentation for the information in the following table. The table should also be read together with "Management's Discussion and Analysis of Financial Condition and Results of Operations and "Certain Relationships and Related Party Transactions—Management Services Agreement." Our summary unaudited pro forma financial data is presented for informational purposes only. The pro forma adjustments are based upon available information and certain assumptions that we believe are reasonable. Our summary unaudited pro forma financial information does not purport to represent what our results of operations or financial position would have been if we operated as a public company during the periods presented and may not be indicative of our future performance.

The financial statements of Yieldco Inc. have not been presented in this prospectus as it is a newly incorporated entity, had no business transactions or activities to date and had no assets or liabilities during the periods presented in this section.

	Fiscal Year Ended December 31,		Nine Months Ended September 30,	
	2010	2011	2011	2012
	(in millions)			
Statement of Income Data:				
Operating Revenues:				
Total operating revenues	$ 143	$ 164	$ 126	$ 133
Operating Costs and Expenses				
Cost of operations	97	104	79	80
Depreciation and amortization	16	22	16	18
General and administrative(1)	10	12	9	10
Total operating costs and expenses	123	138	104	108
Operating Income	20	26	22	25
Other Income/Expense				
Equity in earnings of unconsolidated affiliates(2)	(1)	1	2	4
Other income/(expense), net	—	1	1	1
Interest expense	(11)	(18)	(13)	(25)
Total other expense	(12)	(16)	(10)	(20)
Income Before Income Taxes	8	10	12	5
Income tax expense	3	4	5	2
Net income	$ 5	$ 6	$ 7	$ 3
Other Financial Data:				
Adjusted EBITDA(3)	$ 35	$ 54	$ 42	$ 54
Capital expenditure	(65)	(372)	(214)	(422)
Cash Flow Data:				
Net cash provided by (used in):				
Operating activities	$ 42	$ 28	$ 46	$ 26
Investing activities	(184)	(464)	(255)	(415)
Financing activities	156	428	232	375
Balance Sheet Data (at period end):				
Cash and cash equivalents	$ 32	$ 24	$ 55	$ 30
Property and equipment, net	526	863	772	1,342
Total assets	659	1,107	967	1,596
Total liabilities	530	668	551	907
Total equity	129	439	416	689

(1) Includes approximately $5 million and $6 million of allocated costs and expenses for items that would be paid to NRG as Manager under the Management Services Agreement after consummation of this offering for the fiscal years ended December 31, 2010 and 2011, respectively. Also includes approximately $5 million of such costs and expenses for each of the nine months ended September 30, 2011 and 2012. See "Certain Relationships and Related Party Transactions—Management Services Agreement—Reimbursement of Expenses and Certain Taxes" for a description of such costs and expenses.

(2) Our unconsolidated affiliates include CVSR and Avenal.

(3) For a definition of Adjusted EBITDA and a reconciliation of Adjusted EBITDA to net income, see note (3) to "Summary Historical and Pro Forma Financial Data."

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion analyzes the historical financial condition and results of operations of our accounting predecessor. The historical combined financial statements as of and for the years ended December 31, 2010 and 2011 and as of and for the nine months ended September 30, 2011 and 2012 appearing elsewhere in this prospectus were prepared on a "carve-out" basis from NRG and are intended to represent the financial results of NRG's contracted renewable energy and natural gas-fired electric generation assets and thermal infrastructure assets in the United States that will be contributed to Yieldco LLC as part of the Asset Transfer for those periods.

You should read the following discussion of the historical financial condition and results of operations of our predecessor in conjunction with the historical combined financial statements and accompanying notes of our predecessor included elsewhere in this prospectus. This discussion includes forward-looking statements that are subject to risk and uncertainties that may result in actual results differing from statements we make. Please read "Forward-Looking Statements" Factors that could cause actual results to differ include those risks and uncertainties that are discussed in "Risk Factors." Subsequent to the consummation of the Organizational Structure, we will own % of Yieldco LLC's outstanding membership interests.

The discussion and analysis below has been organized as follows:

- Executive Summary, including a description of our business and significant events that are important to understanding the results of operations and financial condition for the 2011 and 2010 annual periods and the nine month periods ended September 30, 2012 and 2011;
- Results of operations, including an explanation of significant differences between the periods in the specific line items of the combined statement of operations;
- Financial condition addressing liquidity position, sources and uses of cash, capital resources and requirements, commitments, and off-balance sheet arrangements; and
- Critical accounting policies which are most important to both the portrayal of our financial condition and results of operations, and which require management's most difficult, subjective or complex judgment.

As you read this discussion and analysis, refer to the combined statements of operations to this prospectus, which presents the results of operations for the years ended December 31, 2011 and 2010, and the nine month periods ended September 30, 2012 and 2011, and also refer to the "Business" section of this prospectus for a more detailed discussion about our business, including a description of our industry and our business strengths.

Overview

Company Description

We are a dividend growth-oriented company formed to serve as the primary vehicle through which NRG Energy, Inc. (NYSE: NRG) will own, operate and acquire contracted renewable and conventional generation and thermal infrastructure assets. We believe we are well positioned to be a premier company for investors seeking stable and growing dividend income from a diversified portfolio of lower-risk high-quality assets. We intend to take advantage of favorable trends in the power generation industry including the growing construction of contracted generation that can replace aging or uneconomic facilities in competitive markets and the demand by utilities for renewable generation to meet their state's RPS.

We own a diversified portfolio of contracted renewable and conventional generation and thermal infrastructure assets in the United States. Our contracted generation portfolio includes one natural gas-fired facility, eight utility-scale solar and wind generation facilities and two portfolios of distributed solar facilities that collectively represent 964 net MW. Each of these assets sells substantially all of its output pursuant to long-term, fixed price offtake agreements to credit-worthy counterparties. The average remaining contract life, weighted by MWs, of these offtake agreements was approximately 15 years as of December 31, 2012. Two of these facilities, El Segundo and CVSR, are in the final stages of construction with expected COD dates of August and October 2013, respectively. We also own thermal infrastructure assets with an aggregate steam and chilled water capacity of 1,098 net MWt and electric generation capacity of 123 net MW. These thermal infrastructure assets provide steam, hot water and/or chilled water, and in some instances electricity, to commercial businesses, universities, hospitals and governmental units in ten locations, principally through long-term contracts or pursuant to rates regulated by state utility commissions.

Substantially all of our thermal assets and the Blythe solar generation assets were operating during the full years ended December 31, 2011 and 2010.

Significant events during the year ended December 31, 2011

In late 2011, Roadrunner reached commercial operations and entered into a financing arrangement. Construction of El Segundo continued in 2011 and construction began on Alpine, Avra Valley and Borrego. On September 30, 2011, CVSR was acquired by NRG.

Significant events during the year ended December 31, 2010

In 2010, South Trent and the Phoenix Energy Center, a subsidiary of NRG Thermal, were acquired. In addition, construction began on El Segundo and Roadrunner. South Trent, Blythe and NRG Thermal all entered into financing arrangements as further described in Note 9, *Long-Term Debt* to our audited combined financial statements included elsewhere in this prospectus.

Significant events during the nine months ended September 30, 2012

During the nine months ended September 30, 2012, Alpine and Avra Valley entered into financing arrangements.

Significant events during the nine months ended September 30, 2011

During the nine months ended September 30, 2011, Roadrunner reached commercial operations and entered into a financing arrangement. On September 30, 2011, CVSR was acquired by NRG.

Combined Results of Operations of Our Predecessor

(In millions, except per share amounts)	For the Year Ended 2011	For the Year Ended 2010	For the Nine Months Ended 2012	For the Nine Months Ended 2011
Operating Revenues				
Total Operating revenues	$ 164	$ 143	$ 133	$ 126
Operating Costs and Expenses				
Cost of operations	104	97	80	79
Depreciation and amortization	22	16	18	16
General and administrative	12	10	10	9
Total operating costs and expenses	138	123	108	104
Operating Income	26	20	25	22
Other Income/(Expense)				
Equity in earnings of unconsolidated affiliates	1	(1)	4	2
Other income, net	1	—	1	1
Interest expense	(18)	(11)	(25)	(13)
Total other expense	(16)	(12)	(20)	(10)
Income Before Income Taxes	10	8	5	12
Income tax expense	4	3	2	5
Net Income	$ 6	$ 5	$ 3	$ 7

Nine Months Ended September 30, 2012 Compared to Nine Months Ended September 30, 2011

Operating Revenues

Operating revenues increased by $7 million, during the nine months ended September 30, 2012, compared to the same period in 2011, as provided in the table below:

	Conventional Generation	Renewables	Thermal	Total
		(In millions)		
Nine Months Ended September 30, 2012	$ —	$ 25	$ 108	$ 133
Nine Months Ended September 30, 2011	$ —	$ 19	$ 107	$ 126

The increase in operating revenues is due primarily to additional revenue from Roadrunner, which reached commercial operations in late 2011, and additional revenues from two distributed solar portfolios.

Operating Costs

Operating expense increased by $2 million, during the nine months ended September 30, 2012, compared to the same period in 2011, primarily due to an increase in operations and maintenance expense related to Roadrunner reaching commercial operations in 2011, as well as increased general and administrative expense relating to costs incurred in preparing for this offering.

Depreciation and Amortization

Depreciation and amortization increased by $2 million during the nine months ended September 30, 2012 compared to the same period in 2011, due primarily to additional depreciation for solar facilities that reached commercial operations in late 2011.

Equity in Earnings of Unconsolidated Affiliates

Equity in earnings of unconsolidated affiliates increased by $2 million during the nine months ended September 30, 2012 compared to the same period in 2011 as a result of our investment in Avenal, which began commercial operations in mid-2011.

Interest Expense

Interest expense increased by $12 million during the nine months ended September 30, 2012 compared to the same period in 2011, due primarily to the recognition of the ineffective portion of the unrealized loss on the Alpine interest rate swap of $11 million.

Income Tax Expense

Income tax expense decreased by $3 million during the nine months ended September 30, 2012 compared to the same period in 2011, due primarily to the decrease in pre-tax income.

Year Ended December 31, 2011 Compared to Year Ended December 31, 2010

Operating Revenues

Operating revenues increased by $21 million, during the year ended December 31, 2011, compared to the same period in 2010, as provided in the table below:

	Conventional Generation	Renewables	Thermal	Total
	(In Millions)			
Year Ended December 31, 2011	$ —	$ 26	$ 138	$ 164
Year Ended December 31, 2010	$ —	$ 14	$ 129	$ 143

Increase in Thermal revenues, due to a full year of results for the Phoenix Energy Center acquired in June 2010	$ 9
Increase in South Trent revenues, due to a full year of operating revenues in 2011	8
Increase in solar revenues, primarily from the Roadrunner facility which began commercial operations in late 2011	4
	$ 21

Operating Costs

Operating expense increased by $9 million, during the year ended December 31, 2011, compared to the same period in 2010, as provided in the table below:

	Conventional Generation	Renewables	Thermal	Corporate	Total
	(In millions)				
Year Ended December 31, 2011	$ 1	$ 7	$ 106	$ 2	$ 116
Year Ended December 31, 2010	$ —	$ 4	$ 101	$ 2	$ 107

Increase in Thermal costs of operations due to a full year of results for the Phoenix Energy Center acquired in June 2010	$ 5
Increase in Renewables operations and maintenance expense related primarily to Roadrunner beginning commercial operations in 2011 and a full year of South Trent operating costs in 2011	2
Increase in general and administrative costs due to an increase in operating assets	2
	$ 9

Depreciation and Amortization

Depreciation and amortization increased by $6 million during the year ended December 31, 2011 compared to the same period in 2010, due primarily to a full year of depreciation for the South Trent and the Phoenix Energy Center assets, both acquired in 2010.

Equity in Earnings of Unconsolidated Affiliates

Equity in earnings of unconsolidated affiliates increased by $2 million during the year ended December 31, 2011 compared to the same period in 2010 as Avenal began commercial operations in mid-2011.

Interest Expense

Interest expense increased by $7 million during the year ended December 31, 2011 compared to the same period in 2010, due primarily to a full year of interest expense in 2011 for borrowings for Blythe, South Trent and Thermal all of which were issued in June of 2010.

Income Tax Expense

Income tax expense increased by $1 million during the year ended December 31, 2011 compared to the same period in 2010, due primarily to the increase in pre-tax income.

Liquidity and Capital Resources

Our principal liquidity requirements are to finance current operations, fund capital expenditures, including acquisitions from time to time, and to service our debt. Historically, our predecessor operations were financed as part of NRG's integrated operations and largely relied on internally generated cash flows as well as corporate and/or project-level borrowings to satisfy their capital expenditure requirements. As a normal part of our business, depending on market conditions, we will from time to time consider opportunities to repay, redeem, repurchase or refinance our indebtedness. Changes in our operating plans, lower than anticipated sales, increased expenses, acquisitions or other events may cause us to seek additional debt or equity financing in future periods. There can be no guarantee that financing will be available on acceptable terms or at all. Debt financing, if available, could impose additional cash payment obligations and additional covenants and operating restrictions. In addition, any of the items discussed in detail under "Risk Factors" in this prospectus may also significantly impact our liquidity.

Liquidity Position

As of September 30, 2012, our liquidity was approximately $41 million comprised of cash and restricted cash. In addition, we had approximately $512 million of borrowing capacity under our various financing arrangements, as discussed in Note 5, *Long-Term Debt*, to our unaudited combined financial statements included elsewhere in this prospectus.

As of December 31, 2011, and 2010, our liquidity was approximately $32 million and $36 million, respectively, comprised of cash and restricted cash. In addition, we had approximately $381 million of borrowing capacity under our various financing arrangements as discussed in Note 9, *Long-Term Debt*, to our audited combined financial statements included elsewhere in this prospectus.

Management believes that our liquidity position and cash flows from operations will be adequate to finance growth, operating and maintenance capital expenditures, to fund dividends to holders of our Class A common stock and other liquidity commitments. Management continues to regularly monitor our ability to finance the needs of our operating, financing and investing activity within the dictates of prudent balance sheet management.

Sources of Liquidity

Following the closing of this offering, we expect our ongoing sources of liquidity to include cash on hand, cash generated from operations, borrowings under new and existing financing arrangements and the issuance of additional equity securities as appropriate given market conditions. We expect that these sources of funds will be adequate to provide for our short-term and long-term liquidity needs. Our ability to meet our debt service obligations and other capital requirements, including capital expenditures, as well as make acquisitions, will depend on our future operating performance which, in turn, will be subject to general economic, financial, business, competitive, legislative, regulatory and other conditions, many of which are beyond our control. As described in Note 9, *Long-Term Debt,* to our audited combined financial statements, our financing arrangements consist mainly of project-related financings for our various assets. We also intend to enter into a new revolving credit facility in connection with the consummation of this offering.

Uses of Liquidity

Our requirements for liquidity and capital resources, other than for operating our facilities, can generally be categorized by the following: (i) debt service obligations, as described more fully in Note 9, *Long-Term Debt,* to our audited combined financial statements; (ii) capital expenditures; and (iii) cash dividends to investors.

Debt Service Obligations

Principal payments on debt as of December 31, 2011, are due in the following periods:

Description	2012	2013	2014	2015	2016	Thereafter	Total
				(In millions)			
NRG West Holdings LLC, term loan, due 2023	$ —	$ —	$ 32	$ 37	$ 41	$ 49	$ 159
NRG Energy Center Minneapolis LLC, senior secured notes, due 2013, 2017 and 2025	13	10	6	12	13	96	150
South Trent Wind LLC, due 2020	3	4	4	4	4	57	76
NRG Roadrunner LLC, due 2031	15	2	2	2	2	38	61
South Trent Wind LLC, due to NRG	—	—	—	—	—	32	32
NRG Solar Blythe LLC, due 2028	2	2	1	2	1	19	27
	$ 33	$ 18	$ 45	$ 57	$ 61	$ 291	$ 505

Capital Expenditures

Our capital spending program is focused on completing the construction of assets where construction is in process and maintaining the assets currently operating. We develop annual capital spending plans based on projected requirements for maintenance capital and completion of facilities under construction. For the nine months ended September 30, 2012, and the years ended December 31, 2011 and 2010, we used $422 million, $372 million and $65 million in cash, respectively, to fund capital expenditures, primarily related to the construction of our solar generating assets and El Segundo. We estimate we incurred additional capital expenditures of approximately $150 million for the last quarter of 2012.

Cash Dividends

We intend to distribute to our unit holders in the form of a quarterly dividend all of the cash available for distribution that is generated each quarter, less reserves for the prudent conduct of our business, including among others, maintenance capital expenditures to maintain the operating capacity of the assets. The cash available for distribution is likely to fluctuate from quarter to quarter, in some cases significantly, as a result of seasonality, maintenance and outage schedules and other factors. See "Cash Dividend Policy—Assumptions and Considerations."

Nine Months Ended September 30, 2012 Compared to Nine Months Ended September 30, 2011

The following table reflects the changes in cash flows for the comparative periods:

(In millions) Nine months ended September 30,	2012	2011	Change
Net cash provided by operating activities	$ 26	$ 46	$ (20)
Net cash used by investing activities	(415)	(255)	(160)
Net cash provided by financing activities	395	232	163

Net Cash Provided By Operating Activities

The decrease in net cash provided by operating activities was driven by the timing of cash received by Thermal to fund operating activities.

Net Cash Used By Investing Activities

Changes to net cash used by investing activities were driven by:

Increase in capital expenditures, primarily for construction activities at El Segundo, Alpine, Avra Valley and Borrego	$ (208)
Increase in notes receivable, primarily for reimbursable network upgrades for El Segundo	(15)
Proceeds from renewable energy grants	27
Decrease in restricted cash	20
Decrease in investment in unconsolidated affiliates	8
Other	8
	$ (160)

Net Cash Provided By Financing Activities

Changes in net cash provided by financing activities were driven by:

Net increase in cash received for proceeds from issuance of debt, net of payments	$ 122
Increase in capital contributions from NRG, net of returns of capital	40
Decrease in cash paid for debt issuance costs	1
	$ 163

Year Ended December 31, 2011 Compared to Year Ended December 31, 2010

The following table reflects the changes in cash flows for the comparative periods:

(In millions) Year ended December 31,	2011	2010	Change
Net cash provided by operating activities	$ 28	$ 42	$ (14)
Net cash used by investing activities	(464)	(184)	(280)
Net cash provided by financing activities	428	156	272

Net Cash Provided By Operating Activities

The increase in net cash provided by operating activities was primarily driven by the timing of cash received by Thermal to fund operations.

Net Cash Used By Investing Activities

Changes to net cash used by investing activities were driven by:

Increase in capital expenditures, primarily for construction activities at El Segundo and Roadrunner	$ (307)
Increase in investments in unconsolidated affiliates, primarily for the investment in CVSR	(86)
Decrease in acquisitions of businesses as the Phoenix Energy Center and South Trent were acquired in 2010	132
Decrease in proceeds from renewable energy grants	(18)
Other	(1)
	$ (280)

Net Cash Provided By Financing Activities

Changes in net cash provided by financing activities were driven by:

Increase in capital contributions from NRG	$ 275
Increase in cash paid for debt issuance costs	(18)
Net increase in cash received for proceeds for issuance of long-term debt, net of payments	86
Net increase in cash received for proceeds of affiliate debt, net of payments	(71)
	$ 272

Off-Balance Sheet Arrangements

Obligations under Certain Guarantee Contracts

We enter into guarantee arrangements in the normal course of our business to facilitate commercial transactions with third parties.

Retained or Contingent Interests

We do not have any material retained or contingent interests in assets transferred to an unconsolidated entity.

Obligations Arising Out of a Variable Interest in an Unconsolidated Entity

Variable interest in Equity investments—As of December 31, 2011, we had several investments with an ownership interest percentage of 50% or less in energy and energy-related entities that are accounted for under the equity method, none of which was considered a variable interest entity.

Our pro-rata share of non-recourse debt held by unconsolidated affiliates was approximately $63 million as of December 31, 2011. This indebtedness may restrict the ability of these subsidiaries to issue dividends or distributions to Yieldco. See also Note 5, *Investments Accounted for by the Equity Method,* to our audited combined Financial Statements included elsewhere in this prospectus for additional discussion.

Contractual Obligations and Commercial Commitments

We have a variety of contractual obligations and other commercial commitments that represent prospective cash requirements in addition to our capital expenditure programs. The following tables summarize our contractual obligations and contingent obligations for guarantee. See also Note 9, *Long Term Debt* and Note 13, *Commitments and Contingencies*, to our audited combined financial statements for additional discussion.

	By Remaining Maturity at December 31, 2011					
Contractual Cash Obligations	Under 1 Year	1-3 Years	3-5 Years	Over 5 Years	Total	2010 Total
	(In millions)					
Long-term debt (including estimated interest)	$ 61	$ 122	$ 166	$ 367	$ 716	$ 556
Operating leases	3	6	6	41	56	18
Fuel purchase and transportation obligations	18	4	—	—	22	20
Other obligations	1	2	2	3	8	4
Total	$ 83	$ 134	$ 174	$ 411	$ 802	$ 598

Fair Value of Derivative Instruments

We may enter into long-term fuel purchase contracts and other energy-related financial instruments to mitigate variability in earnings due to fluctuations in spot market prices and to hedge fuel requirements at certain generation facilities. In addition, in order to mitigate interest rate risk associated with our issuance of variable rate and fixed rate debt, we enter into interest rate swap agreements.

The tables below disclose the activities that include both exchange and non-exchange traded contracts accounted for at fair value in accordance with ASC 820, *Fair Value Measurements and Disclosures* ("ASC 820"). Specifically, these tables disaggregate realized and unrealized changes in fair value; disaggregate estimated fair values at December 31, 2011, based on their level within the fair value hierarchy defined in ASC 820; and indicate the maturities of contracts at December 31, 2011. For a full discussion of our valuation methodology of our contracts, see *Derivative Fair Value Measurements*

in Note 6, *Fair Value of Financial Instruments*, to our audited combined financial statements included elsewhere in this prospectus.

Derivative Activity Gains/(Losses)	(In millions)
Fair value of contracts as of December 31, 2010	$ (4)
Contracts realized or otherwise settled during the period	—
Changes in fair value	(31)
Fair value of contracts as of December 31, 2011	$ (35)

	Fair Value of Contracts as of December 31, 2011				
Fair value hierarchy Gains/(Losses)	Maturity Less Than 1 Year	Maturity 1-3 Years	Maturity 4-5 Years	Maturity in Excess 4-5 Years	Total Fair Value
			(In millions)		
Level 2	$ (12)	$ (17)	$ (7)	$ 1	$ (35)
Total	$ (12)	$ (17)	$ (7)	$ 1	$ (35)

We have elected to disclose derivative assets and liabilities on a trade-by-trade basis and do not offset amounts at the counterparty master agreement level. As discussed below in "—Qualitative and Quantitative Disclosures About Market Risk—Commodity Price Risk," we measure the sensitivity of our portfolio to potential changes in market prices using Value at Risk ("VaR"), a statistical model which attempts to predict risk of loss based on market price and volatility. NRG's risk management policy places a limit on one-day holding period VaR, which limits our net open position.

Based on a sensitivity analysis using simplified assumptions, the impact of a $1 per MMBtu increase or decrease in natural gas prices across the term of the derivative contracts would cause a $3 million change in the net value of derivatives as of December 31, 2011.

Critical Accounting Policies and Estimates

Our discussion and analysis of the financial condition and results of operations are based upon the combined financial statements, which have been prepared in accordance with GAAP. The preparation of these financial statements and related disclosures in compliance with GAAP requires the application of appropriate technical accounting rules and guidance as well as the use of estimates and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. The application of these policies necessarily involves judgments regarding future events, including the likelihood of success of particular projects, legal and regulatory challenges, and the fair value of certain assets and liabilities. These judgments, in and of themselves, could materially affect the financial statements and disclosures based on varying assumptions, which may be appropriate to use. In addition, the financial and operating environment may also have a significant effect, not only on the operation of the business, but on the results reported through the application of accounting measures used in preparing the financial statements and related disclosures, even if the nature of the accounting policies have not changed.

On an ongoing basis, we evaluate these estimates, utilizing historic experience, consultation with experts and other methods it considers reasonable. In any event, actual results may differ substantially from estimates. Any effects on our business, financial position or results of operations resulting from revisions to these estimates are recorded in the period in which the information that gives rise to the revision becomes known.

Our significant accounting policies are summarized in Note 2, *Summary of Significant Accounting Policies*, to our audited combined financial statements included elsewhere in this prospectus. We identify our most critical accounting policies as those that are the most pervasive and important to

the portrayal of our financial position and results of operations, and that require the most difficult, subjective and/or complex judgments by management regarding estimates about matters that are inherently uncertain.

Accounting Policy	Judgments/Uncertainties Affecting Application
Derivative Instruments	Assumptions used in valuation techniques Assumptions used in forecasting generation Market maturity and economic conditions Contract interpretation Market conditions in the energy industry, especially the effects of price volatility on contractual commitments
Impairment of Long Lived Assets	Recoverability of investment through future operations Regulatory and political environments and requirements Estimated useful lives of assets Environmental obligations and operational limitations Estimates of future cash flows Estimates of fair value Judgment about triggering events
Contingencies	Estimated financial impact of event(s) Judgment about likelihood of event(s) occurring Regulatory and political environments and requirements

Derivative Instruments

We follow the guidance of ASC 815 to account for derivative instruments. ASC 815 requires us to mark-to-market all derivative instruments on our balance sheet, and recognize changes in the fair value of non-hedge derivative instruments immediately in earnings. In certain cases, we may apply hedge accounting to derivative instruments. The criteria used to determine if hedge accounting treatment is appropriate are: (i) the designation of the hedge to an underlying exposure; (ii) whether the overall risk is being reduced; and (iii) if there is a correlation between the changes in fair value of the derivative instrument and the underlying hedged item. Changes in the fair value of derivative instruments accounted for as hedges are either recognized in earnings as an offset to the changes in the fair value of the related hedged item, or deferred and recorded as a component of Other Comprehensive Income ("OCI"), and subsequently recognized in earnings when the hedged transactions occur.

For purposes of measuring the fair value of derivative instruments, we use quoted exchange prices and broker quotes. When external prices are not available, we use internal models to determine the fair value. These internal models include assumptions of the future prices of energy commodities based on the specific market in which the energy commodity is being purchased or sold, using externally available forward market pricing curves for all periods possible under the pricing model. In order to qualify derivative instruments for hedged transactions, we estimate the forecasted generation and forecasted borrowings, for interest rate swaps, occurring within a specified time period. Judgments related to the probability of forecasted generation occurring are based on available capacity, internal forecasts of sales and generation, and historical physical delivery on similar contracts. Judgments related to the probability of forecasted borrowings are based on the estimated timing of project construction, which can vary based on various factors. The probability that hedged forecasted generation and forecasted borrowings will occur by the end of a specified time period could change the results of operations by requiring amounts currently classified in OCI to be reclassified into earnings, creating increased variability in the Company's earnings. These estimations are considered to be critical accounting estimates.

Evaluation of Assets for Impairment and Other Than Temporary Decline in Value

In accordance with ASC 360, *Property, Plant, and Equipment* ("ASC 360"), property, plant and equipment and certain intangible assets are evaluated for impairment whenever indicators of impairment exist. Examples of such indicators or events are:

- Significant decrease in the market price of a long-lived asset;
- Significant adverse change in the manner an asset is being used or its physical condition;
- Adverse business climate;
- Accumulation of costs significantly in excess of the amount originally expected for the construction or acquisition of an asset;
- Current-period loss combined with a history of losses or the projection of future losses; and
- Change in the Company's intent about an asset from an intent to hold to a greater than 50% likelihood that an asset will be sold or disposed of before the end of its previously estimated useful life.

Recoverability of assets to be held and used is measured by a comparison of the carrying amount of the assets to the future net cash flows expected to be generated by the asset, through considering project specific assumptions for long-term power pool prices, escalated future project operating costs and expected plant operations. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets by factoring in the probability weighting of different courses of action available to us. Generally, fair value will be determined using valuation techniques such as the present value of expected future cash flows. We use our best estimates in making these evaluations and consider various factors, including forward price curves for energy, fuel costs and operating costs. However, actual future market prices and project costs could vary from the assumptions used in our estimates, and the impact of such variations could be material.

We are also required to evaluate our equity-method investments to determine whether or not they are impaired. ASC 323, *Investments—Equity Method and Joint Ventures* ("ASC 323"), provides the accounting requirements for these investments. The standard for determining whether an impairment must be recorded under ASC 323 is whether the value is considered an "other than a temporary" decline in value. The evaluation and measurement of impairments under ASC 323 involves the same uncertainties as described for long-lived assets that we own directly and account for in accordance with ASC 360. Similarly, the estimates that we make with respect to our equity method investments are subjective, and the impact of variations in these estimates could be material. Additionally, if the projects in which we hold these investments recognize an impairment under the provisions of ASC 360, we would record our proportionate share of that impairment loss and would evaluate our investment for an other than temporary decline in value under ASC 323.

Recent Accounting Developments

See Note 2, *Summary of Significant Accounting Policies,* to our audited combined financial statements included elsewhere in this prospectus for a discussion of recent accounting developments.

Quantitative and Qualitative Disclosures About Market Risk

We are exposed to several market risks in our normal business activities. Market risk is the potential loss that may result from market changes associated with our power generation or with an existing or forecasted financial or commodity transaction. The types of market risks we are exposed to are commodity price risk, interest rate risk, liquidity risk, and credit risk.

Commodity Price Risk

Commodity price risks result from exposures to changes in spot prices, forward prices, volatilities, and correlations between various commodities, such as natural gas, coal and emissions credits. We manage the commodity price risk of our merchant generation operations by entering into derivative or non-derivative instruments to hedge the variability in future cash flows from forecasted purchases of fuel. The portion of forecasted transactions hedged may vary based upon management's assessment of market, weather, operation and other factors.

While some of the contracts we use to manage risk represent commodities or instruments for which prices are available from external sources, other commodities and certain contracts are not actively traded and are valued using other pricing sources and modeling techniques to determine expected future market prices, contract quantities, or both. We use our best estimates to determine the fair value of those derivative contracts. However, it is likely that future market prices could vary from those used in recording mark-to-market derivative instrument valuation, and such variations could be material.

Interest Rate Risk

We are exposed to fluctuations in interest rates through our issuance of variable rate debt. Exposures to interest rate fluctuations may be mitigated by entering into derivative instruments known as interest rate swaps, caps, collars and put or call options. These contracts reduce exposure to interest rate volatility and result in primarily fixed rate debt obligations when taking into account the combination of the variable rate debt and the interest rate derivative instrument. Our risk management policies allow us to reduce interest rate exposure from variable rate debt obligations.

Most of our project subsidiaries have entered into interest rate swaps, intended to hedge the risks associated with interest rates on non-recourse project-level debt. See Note 9, *Long-Term Debt,* to our audited combined financial statements included elsewhere in this prospectus, for more information about interest rate swaps of our project subsidiaries.

If all of the above swaps had been discontinued on December 31, 2011, we would have owed the counterparties $31 million. Based on the investment grade rating of the counterparties, we believe our exposure to credit risk due to nonperformance by counterparties to its hedge contracts to be insignificant.

We have long-term debt instruments that subject us to the risk of loss associated with movements in market interest rates. As of December 31, 2011, a 1% change in interest rates would result in less than a $1 million change in interest expense on a rolling twelve month basis.

As of December 31, 2011, the fair value of our debt was equal to its carrying value of $505 million. We estimate that a 1% decrease in market interest rates would have increased the fair value of our long-term debt by $12 million.

Liquidity Risk

Liquidity risk arises from the general funding needs of our activities and in the management of our assets and liabilities. We are currently exposed to additional equity funding contributions in excess of existing contingencies set aside for the construction of El Segundo as well as the natural gas conversion project at Dover.

Counterparty Credit Risk

Credit risk relates to the risk of loss resulting from non-performance or non-payment by counterparties pursuant to the terms of their contractual obligations. We monitor and manage credit risk through credit policies that include: (i) an established credit approval process, and (ii) the use of credit mitigation measures such as prepayment arrangements or volumetric limits. Risks surrounding counterparty performance and credit could ultimately impact the amount and timing of expected cash flows. We seek to mitigate counterparty risk by having a diversified portfolio of counterparties.

INDUSTRY

The U.S. Electric Power Industry

The electric power industry is one of the largest industries in the United States, with an estimated end-user market of approximately $373 billion in electricity sales in 2011 based on information published by the EEI.

The following table displays new capacity online in the U.S. power industry by fuel type between 2007 and 2011:

	2007	2008	2009	2010	2011	% in 2011
Coal	2,091	1,390	3,566	6,695	1,909	8.7%
Natural Gas	7,506	9,105	10,627	7,072	10,299	47.2%
Nuclear	1,199	454	245	154	353	1.6%
Wind	5,022	9,206	9,451	5,126	7,464	34.2%
Solar	—	70	288	229	942	4.3%
Other	989	528	1,115	777	866	4.0%
Total	**16,807**	**20,753**	**25,292**	**20,053**	**21,833**	**100.0%**

Source: EEI 2011 Financial Review.

Note: 2011 is an estimated amount.

Growth of Natural Gas and Renewable Generation Resources

Recently, industry participants in the United States have increasingly transitioned to building natural gas-fired and renewable generation resources in response to more stringent environmental regulations, expectations for the continued relative abundance of low cost natural gas and supportive federal and state incentives and policy initiatives. EEI estimates that 21.8 gigawatts of new generation capacity was added in the United States in 2011. Natural gas-fired and renewables generation assets were the two largest contributors of the capacity growth within the U.S. power generation industry, contributing 47.2% and 38.5%, respectively. According to EEI, solar generation represented the fastest growing segment with respect to capacity additions within the U.S. power generation industry from 2007 to 2011. In 2006, capacity additions of solar generation accounted for approximately 1 MW. In 2011, such additions accounted for approximately 942 MW. In its "Annual Energy Outlook 2012", the EIA forecasts in its reference case that 60% and 29% of all new electric generation capacity constructed in the U.S. between 2011 and 2035 will be comprised of natural gas-fired generation and renewable generation capacity, respectively.

We believe that over time continued growth in renewable and natural gas-fired generation in the United States will be driven by the following factors:

Natural gas-fired and renewable generation resources are increasingly becoming the generation sources of choice. Over the last five years, natural gas production and estimates for natural gas reserves have increased substantially in the U.S., fueled by new drilling technologies that have provided producers access to shale deposits on a cost effective basis. Recently, the American Gas Association reported that at current rates of production the assessed volume of proven reserves and estimated undiscovered resources point to approximately 100 years of U.S. natural gas supplies. Such abundance of low-cost natural gas in North America presents a unique opportunity to replace aging electric generation facilities using a domestic fuel source that is cost effective and has a low environmental impact. According to the EIA, the decrease in delivered natural gas prices, coupled with highly efficient combined-cycle natural gas-fired generation facilities, have already resulted in coal-to-gas fuel switching.

In addition, advancements in renewable generation technologies over the last decade continue to enhance renewable generation's competitiveness, as a complement to natural gas-fired generation, and provide a cost competitive solution to generate electricity while satisfying more stringent environmental standards. According to McKinsey & Company, the cost of solar photovoltaic modules has decreased from more than $4 per watt-peak in 2008 to just under $1 per watt-peak by January 2012. In addition, according to the DOE, wind turbine prices have decreased as much as 33% or more since late 2008. These price reductions have enhanced the cost competitiveness of renewable generation as an increasingly cost-competitive source of electricity production. In addition, technological advancements such as advanced trackers, taller towers and thinner blades have improved the capacity factors and the output efficiency of these generation resources.

Aging power plants face economic and regulatory challenges. The average age of the coal fleet in the United States is over 35 years, weighted by MW. Many smaller, older, and less efficient coal-fired plants are increasingly facing regulatory pressures to undertake significant capital expenditures to comply with environmental regulations. These regulatory pressures, coupled with low natural gas prices, are accelerating the retirement of coal-fired generation plants as they become less competitive as compared to other types of generation, including natural gas and renewables. According to the Brattle Group, as of July 2012, approximately 30 GW of coal-fired generation capacity, which represents roughly 10% of the existing coal-fired generation capacity in the U.S., had announced plans to retire by 2016. Additionally, a number of nuclear facilities in the United States face difficult license renewals, or are planned for decommissioning.

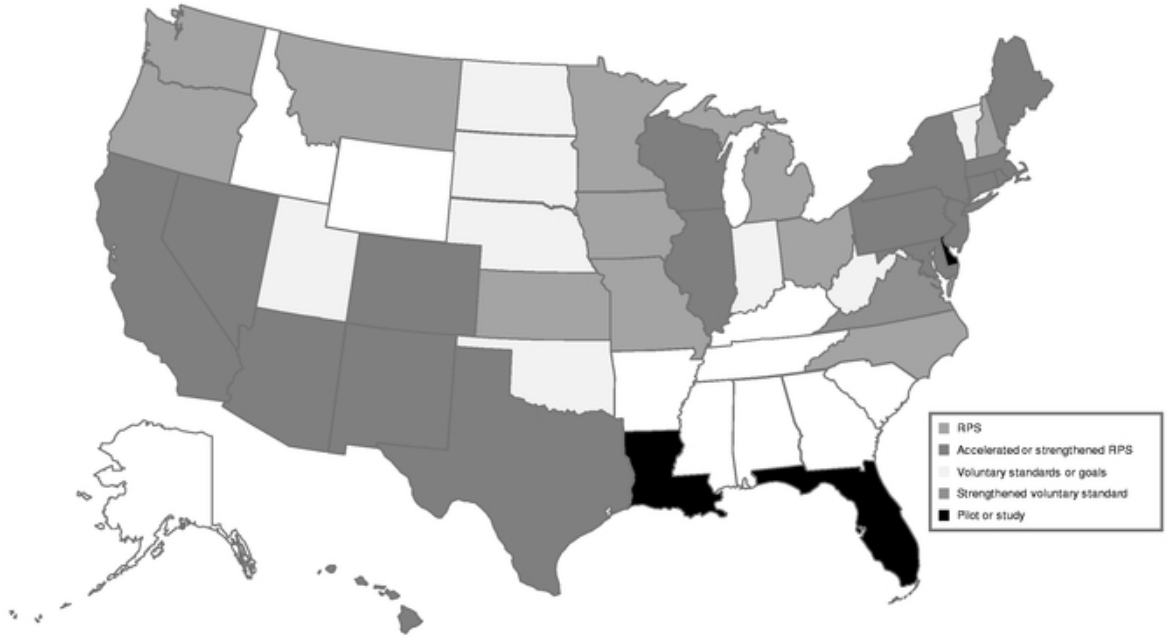
New nuclear projects delayed or halted. Following the recent Fukushima Dai-ichi nuclear disaster in Japan and in light of on-going uncertainties over waste disposal, public concern over new nuclear construction has increased. In addition, we believe tightening safety criteria and procedures will increase costs to build and operate nuclear facilities. These issues, coupled with the current low natural gas price environment, have delayed or halted most new nuclear development activities in the United States. According to the Nuclear Energy Institute, future additions will remain modest for the next decade and will most likely come from life extensions of existing nuclear plants, uprates of existing nuclear reactors and a small number of new builds. As of September 2012, there were only three nuclear generation facilities under construction in the United States, all of which involve the construction of additional units on existing nuclear-fired generation sites.

We believe that the retirement of these types of facilities and the delays of new nuclear projects combined with the increasingly cost-competitive alternatives of natural gas-fired and renewable generation assets will create opportunities to grow our portfolio of contracted generation assets in the future.

Government incentives for renewables. U.S. federal, state and local governments have established various incentives and financial mechanisms to reduce the cost and to accelerate the adoption of renewable generation facilities. These incentives include accelerated tax depreciation and 50% bonus depreciation for eligible renewable generation facilities, as well as tax credits, cash grants and rebate programs. These incentives help catalyze private sector investments in renewable generation and efficiency measures, including the installation and operation of both solar and wind energy generation facilities. The federal government provides a Federal ITC that allows a taxpayer to claim a credit of 30% of qualified expenditures for a solar power facility that is placed in service on or before December 31, 2016. This credit is scheduled to be reduced to 10% effective January 1, 2017. Many state governments, investor-owned utilities, municipal utilities and co-operative utilities offer a rebate or other cash incentives for the installation and operation of a solar generation facility or energy efficiency measures. Twenty-nine states have adopted an RPS that requires regulated retail electric utilities to procure a specified percentage of total electricity delivered to retail customers in the state from eligible renewable generation resources, such as solar generation facilities, by a specified date. We

have and expect to continue to avail ourselves of these government incentives which we believe improve and enhance our cash returns.

29 States and D.C. have Renewable Energy Portfolio Standards (RPS)



AK: 50% by 2025
AZ: 15% by 2025
CA: 33% by 2020
CO: 30% by 2020
10% –co-ops, munis
CT: 23% by 2020
DC: 20% by 2020
DE: 25% by 2025
FL: Solar Pilot 2010-2014
HI: 40% by 2030
IA: 105 MW; 1 GW wind goal by 2010
IL: 25% by 2025; wind 75% of RPS
IN: 10% by 2025
KS: 20% by 2020
LA: 350 MW by 2012-13
MA: 15% new by 2020, then 1% annually; 2 GW wind goal by 2020
MD: 20% by 2022
ME: 30% by 2010; 10% new by 2017; 8 GW wind goal by 2030
MI: 10% MWh and 1,100 MW by 2015
MN: 25% by 2025; 30% by 2020–Xcel
MO: 15% by 2021
MT: 15% by 2015
NC: 12.5% by 2021 –IOUs 10% by 2018 –co-ops, munis
ND: 10% by 2010
NE: Public Power Districts:10% by 2020
NH: 23.8% by 2025
NJ: 22.5% by 2020
NM: 20% by 2020 –IOUs 10%–co-ops
NV: 25% by 2025
NY: 30% by 2015
OH: 12.5% by 2025
OK: 15% by 2015
OR: 25% by 2025
5-10% –smaller utilities
PA: 18% by 2020
RI: 16% by end 2020
SD: 10% by 2015
TVA: 50% by 2020
TX: 5,880 MW by 2015; 500MW non-wind goal
UT: 20% by 2025
VA: 15% by 2025; goal with production incentives
VT: 20% by 2017; all growth to 2012 from Renewables and Energy Efficiency
WA: 15% by 2020
WI: 10% by 2015
WV: 25% by 2025

Source: EEI 2011 Financial Review.

Continued Acquisition Opportunities for Natural Gas and Renewable Generation Assets

We believe there will continue to be acquisition opportunities for natural gas-fired generation and renewable energy in the United States. According to EIA's Electric Power Annual 2010 report, there were approximately 1,139 gigawatts of nameplate capacity in the United States. Also, according to SNL Financial LC, from 2007 to 2011, unregulated generation assets representing approximately 116

gigawatts of generation capacity have been bought or sold on terms that are publicly disclosed, of which approximately 25 gigawatts were contracted, generating assets. Many of these transactions involved financial sponsors as acquirers and/or contracted assets under development or construction that have been sold by independent project developers during the same period. A significant number of these contracted assets possess characteristics that are attractive to us, such as long-term offtake contracts with credit-worthy counterparties, natural gas-fired and renewable energy generation capabilities and favorable tax profiles. We expect assets with similar attributes to be available in the future as potential acquisition targets to us as most financial sponsors have investment funds with relatively short lives and independent project developers, in particular smaller developers, seek sources of capital to construct their project or monetize their existing investment given their lack of expertise in operating electric generation assets.

The U.S. Thermal Power Industry

District energy systems produce steam, hot water and/or chilled water at a central plant and then pipe that thermal energy out through an underground dedicated piping network to heat or cool buildings in a given area. District energy systems can reduce energy costs and greenhouse gas emissions, while freeing up valuable space in customer buildings by centralizing production equipment and, through economies of scale and equipment management, optimizing the use of fuels, power and resources.

In North America, district energy systems are typically located in dense urban settings in the central business districts of larger cities, on university or college campuses, on hospital or research campuses and on military bases and airports. District energy systems typically serve "clusters" of buildings, which are sometimes commonly owned, as in the case of a private or public university campus or hospital. The number of customer buildings served by a typical district energy system may range from as few as three or four in the early stages of new system development to over 1,000 buildings in the largest district energy systems.

The district energy space is tracked by the growth of new customer buildings and the square footage from reporting systems on an annual basis. Based on information provided by IDEA members, since 1990 over 518 million square feet of new customer space have been committed or connected to district energy systems, averaging approximately 24.7 million square feet per year.

The following tables summarizes the number of operating systems by system type in the United States based on 2009 System Data profile from IDEA:

System Type	Number of Systems
Colleges & Universities	400
Community Utilities	119
Healthcare Installations	251
Military/Government Installations	41
Airports	10
Industrial	13
Other	3
Total:	837

BUSINESS

About Yieldco Inc.

We are a dividend growth-oriented company formed to serve as the primary vehicle through which NRG Energy, Inc. (NYSE: NRG) will own, operate and acquire contracted renewable and conventional generation and thermal infrastructure assets. We believe we are well positioned to be a premier company for investors seeking stable and growing dividend income from a diversified portfolio of lower-risk high-quality assets. We intend to take advantage of favorable trends in the power generation industry including the growing construction of contracted generation that can replace aging or uneconomic facilities in competitive markets and the demand by utilities for renewable generation to meet their state's RPS. To that end, we believe that Yieldco's cash flow profile, coupled with its scale, diversity and low cost business model, will offer us a lower cost of capital than that of a traditional independent power producer and provide us with a significant competitive advantage to execute our growth strategy.

With this business model, our objective is to pay a consistent and growing cash dividend to holders of our Class A common stock that is sustainable on a long-term basis. We expect to target a payout ratio of 100% of the cash distributions received from our membership interest in our subsidiaries and increase such cash dividends over time as we acquire assets with characteristics similar to assets in our current portfolio. We will focus on high-quality, newly constructed and long-life facilities with credit-worthy counterparties that we expect will produce stable long term cash flows. Based on the completion of our two projects under construction, El Segundo and CVSR, and significant acquisition opportunities available to us, including the NRG ROFO Assets, we expect to grow our dividend each year over the next five years. See "Risk Factors—Risks Related to our Business—We may incur additional costs or delays in completing the construction of certain of our electric and thermal generation facilities, and may not be able to recover our investment in or complete such facilities."

Under our cash dividend policy, each quarter our board of directors will make a determination of the amount of cash available for distribution to holders of our Class A common stock. Our initial quarterly dividend will be set at $ per share of Class A common stock, or $ per share on an annualized basis. Our cash dividend policy reflects our judgment that holders of our Class A common stock will be better served by distributing our cash available for distribution rather than retaining it. See "Cash Dividend Policy."

Upon the consummation of this offering, (i) holders of our Class A common stock will collectively own 100% of the economic interests in us and hold % of the voting power in us; (ii) we will become the sole managing member of Yieldco LLC and will hold approximately % of Yieldco LLC's outstanding membership units and be entitled to % of the cash distributions from Yieldco LLC; and (iii) Yieldco LLC will be obligated to distribute to its unit holders all of the cash available for distribution that is generated each quarter, less reserves for the prudent conduct of our business. NRG will hold % of Yieldco LLC's outstanding membership units and be entitled to % of the cash distributions from Yieldco LLC and hold % of the voting power in us.

Purpose of Yieldco

Through this offering, NRG and Yieldco intend to create enhanced value for holders of our Class A common stock by seeking to achieve the following objectives:

- Highlight the value inherent in our contracted conventional and renewable generation and thermal infrastructure assets by separating them from other NRG non-contracted assets.

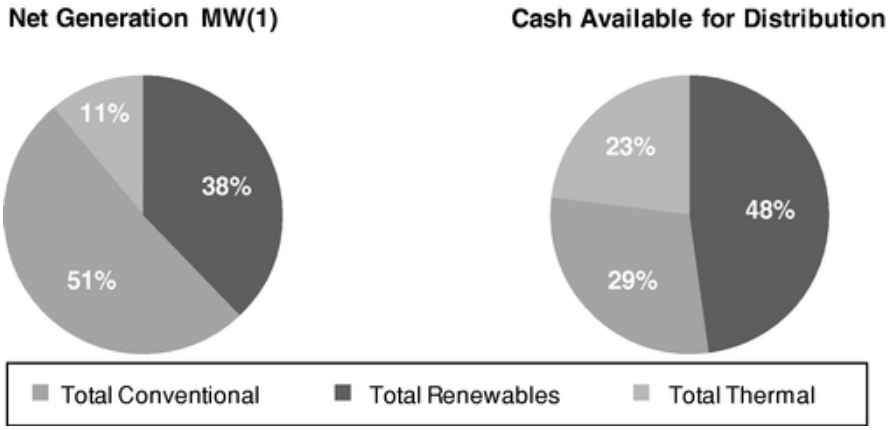
- Create a pure-play public issuer with superior operating, financial and tax characteristics that will appeal to dividend growth-oriented investors seeking exposure to the contracted power sector.

- Gain access to an alternative investor base with a more competitive source of equity capital that would help accelerate our long-term growth and acquisition strategy and optimize our capital structure.

Current Operations

We own a diversified portfolio of contracted renewable and conventional generation and thermal infrastructure assets in the United States. Our contracted generation portfolio includes one natural gas-fired facility, eight utility-scale solar and wind generation facilities and two portfolios of distributed solar facilities that collectively represent 964 net MW. Each of these assets sells substantially all of its output pursuant to long-term, fixed price offtake agreements to credit-worthy counterparties. The average remaining contract life, weighted by MWs, of these offtake agreements was approximately 15 years as of December 31, 2012. Two of these facilities, El Segundo and CVSR, are in the final stages of construction with expected COD dates of August and October 2013, respectively. We also own thermal infrastructure assets with an aggregate steam and chilled water capacity of 1,098 net MWt and electric generation capacity of 123 net MW. These thermal infrastructure assets provide steam, hot water and/or chilled water, and in some instances electricity, to commercial businesses, universities, hospitals and governmental units in ten locations, principally through long-term contracts or pursuant to rates regulated by state utility commissions.

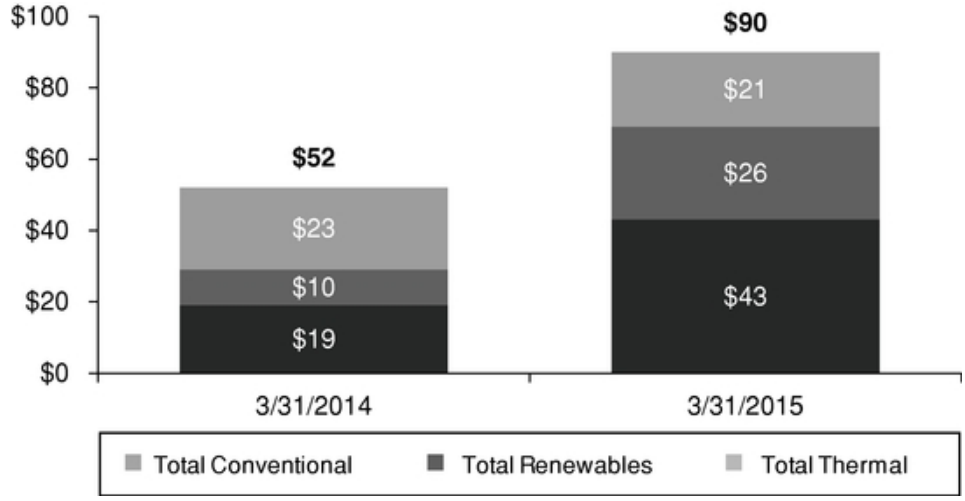
Our forecasted net MW and cash available for distribution for the twelve months ending March 31, 2015, which reflects the first full twelve months of operation of our portfolio including the two electric generation facilities currently under construction, are as follows:



(1) Excludes the 1,098 net MWt of steam and chilled water generating capacity.

Our annual forecasted cash available for distribution for the twelve months ending March 31, 2013 through the twelve months ending March 31, 2015 based on our current assets are as follows:

Cash Available for Distribution(1)



(1) Excludes approximately $7 million in management services payment to NRG under the MSA.

(2) Includes six months of actual and six months of forecasted results.

See "Cash Dividend Policy" for additional information regarding our forecasted net MW and cash available for distribution through the twelve months ending March 31, 2014 and 2015, and the related forecast assumptions and risks.

Our Growth Strategy

We intend to utilize the significant experience of our management team to take advantage of what we believe are favorable industry and market dynamics as we execute our growth strategy. In addition to the opportunities to increase our cash available for distribution upon the COD of the El Segundo and CVSR facilities, we expect to have the opportunity to increase our cash available for distribution and dividend per share by acquiring additional assets from NRG, including those available to us under the ROFO Agreement, and to pursue additional acquisition opportunities that are complementary to our business from persons other than NRG. This ROFO Agreement will provide us with the right of first offer to acquire the NRG ROFO Assets, as set forth in the following table, should NRG seek to sell any of these assets.

ROFO Assets	Fuel Type	Net Capacity (MW)(1)	Expected COD	Term/Offtaker
Remaining NRG CVSR Interest	Solar	128	2013	25 year/PG&E
NRG's Ivanpah Solar Interest (49.95%)(2)	Solar	193	2013	20-25 year/PG&E and SCE
Marsh Landing	Natural Gas	760	2013	10 year/PG&E
NRG Agua Caliente Interest (51%)(3)	Solar	148	2014	25 year/PG&E
Total		1,229		

(1) Represents the maximum, or rated, electricity generating capacity of the facility in MW multiplied by NRG's percentage ownership interest in the facility as of the date of this prospectus.

(2) Remaining 50.05% of Ivanpah is owned by NRG, Google Inc. and BrightSource Energy, Inc.

(3) Remaining 49% of Agua Caliente is owned by MidAmerican Energy Holdings Inc.

NRG will not, however, be required to accept any offer we make to acquire any ROFO Asset, and may elect not to sell these assets or, following the completion of good faith negotiations with us and subject to certain exceptions, may choose to sell such assets to a third party.

NRG has informed us of its intention for Yieldco Inc. to serve as its primary vehicle for owning, operating and acquiring contracted renewable and conventional generation and thermal infrastructure assets. NRG will assist us in the pursuit of such acquisitions by presenting us with such opportunities and allocating resources as defined in the Management Services Agreement. In general, we do not expect to acquire assets that are in development or early stages of construction, and expect NRG to continue to pursue these opportunities for its own account. Under the Management Services Agreement, NRG is not prohibited from acquiring operating renewable and conventional generation and thermal infrastructure assets that are contracted. See "Risk Factor—Risks Related to Our Relationship with NRG".

NRG has also informed us that it intends to continue to pursue the development and construction of its currently-owned brownfield sites, where applicable, into electric generation assets and once completed it may decide to offer them for sale to us.

Our Business Strategy

Our primary business strategy is to increase the cash dividends that we intend to pay to holders of our Class A common stock over time while ensuring the ongoing stability of our business. Our plan for executing this strategy includes the following key components:

Focus on contracted renewable energy and conventional generation and thermal infrastructure assets. We intend to focus on owning and operating renewable energy and natural gas-fired generation, thermal and other infrastructure assets with proven technologies, low operating risks and stable cash flows consistent with the characteristics of our current portfolio. We believe by focusing on this core asset class and leveraging our industry knowledge, we will maximize our strategic opportunities, be a leader in operational efficiency and maximize our overall financial performance.

Capitalizing on embedded growth opportunities associated with our existing assets. We are completing construction of El Segundo, a 550 net MW combined cycle natural gas-fired generation facility located in the center of Los Angeles' load pocket that is subject to a 10-year tolling agreement with SCE, and CVSR, our 122 net MW utility-scale photovoltaic solar generation facility located in San Luis Obispo County, California, that is subject to two 25-year PPAs with PG&E. As of December 31, 2012, El Segundo's construction was approximately 84% complete and is on schedule to reach COD in August 2013. As of December 30, 2012, three phases of CVSR totaling 127 rated MW had been completed and were generating electricity, with the final phase, representing an additional 123 rated MW, on schedule to reach COD in October 2013. Upon completion, we expect El Segundo and CVSR to substantially increase the cash available for distribution to our stockholders. See "Risk Factors—Risks Related to our Business—We may incur additional costs or delays in completing the construction of certain of our electric and thermal generation facilities, and may not be able to recover our investment in or complete such facilities."

Growing our business through acquisitions. We believe that our base of operations and relationship with NRG provide a platform in the power generation and thermal sectors for strategic growth through cash accretive and tax advantaged acquisitions complementary to our existing portfolio. NRG has granted us a right of first offer to acquire the NRG ROFO Assets that it may elect to sell within the five years following the completion of this offering. In addition, we expect to have significant opportunities to acquire other generation assets developed and constructed by NRG in the future as well as generation and thermal infrastructure assets from third parties where we believe our knowledge of the market, operating expertise and access to capital provides us with a competitive advantage.

Focus on the United States. We intend to focus our investments in the United States. We believe that industry fundamentals in the United States present us with significant opportunity to acquire renewable, natural gas-fired generation and thermal infrastructure assets, without creating exposure to currency and sovereign risk. By focusing our efforts in the United States, we believe we will best leverage our regional knowledge of power markets, industry relationships and skill sets to maximize value for our stockholders.

Maintain sound financial practices to grow our dividend. We intend to maintain our commitment to disciplined financial analysis and a balanced capital structure, to enable us to increase our dividend over time and serve the long-term interests of our stockholders. Our financial practices will include our risk and credit policy focused on transacting with credit-worthy counterparties; our financing policy focused on financing existing assets and future acquisitions with the appropriate mix of equity and long-term debt to minimize interest rate and refinancing risks, ensure stable long-term dividends and maximize value; and our dividend policy, which is based on distributing all or substantially all of our cash available for distribution each quarter. See "Cash Dividend Policy."

Our Competitive Strengths

We believe that we are well positioned to execute our business strategies because of the following competitive strengths:

Stable, high quality cash flows with attractive tax profile. Our facilities have a highly stable, predictable cash flow profile consisting of predominantly long-life electric generation assets that sell electricity under long-term fixed priced contracts or pursuant to regulated rates with credit-worthy counterparties. Additionally, our facilities have minimal fuel risk. For our conventional asset, fuel is provided by the toll counterparty. Renewable facilities have no fuel costs, and most of our thermal infrastructure assets have contractual or regulatory tariff mechanisms for fuel cost recovery. The offtake agreements for our conventional and renewable generation facilities have a weighted-average remaining duration of approximately 15 years based on net capacity under contract, providing long-term cash flow stability. Our generation offtake agreements for rated counterparties for whom credit ratings are available have a weighted-average Moody's rating of A3 based on rated capacity under contract. Based on our current portfolio of assets, we do not expect to pay significant federal income tax for a period of approximately ten years. All of our assets are in the United States and accordingly we have no currency or repatriation risks. See "Risk Factors—Tax Risks—Our future tax liability may be greater than expected if we do not generate NOLs sufficient to offset taxable income" and "Risk Factors—Tax Risks—Our ability to use NOLs to offset future income may be limited."

High quality, long-lived assets with low operating and capital requirements. We benefit from a portfolio of relatively newly constructed assets, with all of our conventional and renewable assets either having achieved COD within the past four years or in the late stages of construction. Our assets are comprised of proven and reliable technologies, provided by leading original equipment manufacturers ("OEMs") such as Siemens AG, SunPower Corporation ("SunPower") and First Solar Inc. ("First Solar"). Given the modern nature of our portfolio, which includes a substantial number of relatively low operating and maintenance cost solar generation assets, we expect to achieve high fleet availability and expend modest maintenance-related capital expenditures. Additionally, with the support of services provided by NRG, we expect to continue to implement the same rigorous preventative operating and management practices that NRG uses across its fleet of assets. In 2011, NRG achieved top decile plant operating performance for its entire fleet, based on applicable Occupational Safety and Health Administration ("OSHA") standards. We estimate our solar portfolio has a weighted average remaining expected life (based on rated MW) of approximately 29 years.

Significant scale and diversity. We are the owner and operator of a large and diverse portfolio of contracted electric generation and thermal infrastructure assets. Our 964 net MW contracted generation portfolio, consisting of nine assets (two of which are in advanced stages of construction) and

two distributed solar generation portfolios, benefits from significant diversification in terms of technology, fuel type, counterparty and geography. Our thermal business consists of eight Energy Centers and has over 550 steam and chilled water customers. We expect that our conventional and, renewable generation and thermal infrastructure assets will contribute 29%, 48% and 23%, respectively, of cash available for distribution for the twelve month period ending March 31, 2015. We believe our scale and access to best practices across our fleet improves our business development opportunities through enhanced industry relationships, reputation and understanding of regional power market dynamics. Furthermore, our diversification reduces our operating risk profile and our reliance on any single market.

Our Relationship with NRG. We believe our relationship with NRG, including NRG's expressed intention to maintain a controlling interest in us, provides us with significant benefits, including management and operational expertise, and future growth opportunities. Our executive officers have considerable experience in owning and operating, as well as developing, acquiring and integrating, generation and thermal infrastructure assets, with on average over 15 years in the energy sector:

- *NRG Management and Operational Expertise.* We have access to the significant resources of NRG, the largest competitive power generator in the United States, to support the operational, finance, legal, regulatory and environmental aspects, and growth strategy of our business. As such, we believe we avail ourselves of best-in-class resources, including management and operational expertise.

- *NRG Asset Development and Acquisition Track Record.* Over the last five years, excluding assets acquired in the GenOn Merger, NRG has constructed, is constructing or has acquired eight conventional assets totaling 2,420 MW, nine utility scale solar assets totaling 1,113 MW, four wind assets totaling 451 MW and 40 MW of distributed solar facilities (some of which are nearing the final stages of construction as described in this prospectus). In addition, NRG acquired the 134 MWt Phoenix Energy Center and recently constructed the 38 MWt Princeton Energy Center. NRG's growth is supported by considerable development and strategic teams, including over 71 professionals focused on the development and acquisition of renewable generation assets, as well as approximately 6,000 MW of conventional and other renewable projects under development as of December 31, 2012.

As discussed below in "—Our Agreements with NRG—ROFO Agreement," we have entered into an agreement with NRG that provides us with the right of first offer on four assets that if acquired would add approximately 1,229 MW of net capacity to our portfolio and significantly grow our cash available for distribution. We also expect to have the opportunity to acquire additional assets NRG develops or acquires in the future.

Environmentally well-positioned portfolio of assets. On a net capacity basis, our portfolio of electric generation assets consists of 414 net MW of renewable generation capacity that are non-emitting sources of power generation. Our conventional asset consists of the El Segundo combined cycle natural gas-fired generation facility. We do not anticipate having to expend any significant capital expenditures in the foreseeable future to comply with current environmental regulations applicable to our generation assets. Taken as a whole, we believe our strategy will be a net beneficiary of current and potential environmental legislation and regulatory requirements that may serve as a catalyst for capacity retirements and improve market opportunities for environmentally well-positioned assets like ours once our current offtake agreements expire.

Thermal infrastructure business has high entry costs. Significant capital has been invested to construct our thermal infrastructure assets, serving as a barrier to entry in the markets in which such assets operate. As of September 30, 2012, our thermal gross property plant and equipment was approximately $330 million. Our district energy centers are located in urban city areas, with our chilled

water and steam delivery systems located underground. Constructing underground delivery systems in urban areas requires long lead times for permitting, rights of way and inspections and is costly. By contrast our incremental cost to add new customers in existing markets is relatively low.

Once we have established an Energy Center, we believe we have the ability to retain customers over long periods of time and to compete effectively for additional business against stand-alone on-site heating and cooling generation facilities. Installation of stand-alone equipment can require significant modification to a building as well as significant space for equipment and funding for capital expenditures. Our system technologies often provide economies of scale in terms of fuel procurement, ability to switch between multiple types of fuel to generate thermal energy, and fuel conversion efficiency. Our top ten thermal customers, which make up over 20% of our estimated revenue for the twelve months ended December 31, 2012, have had a relationship with us for on average over 20 years. We believe that the significant capital investment, long lead times for construction and expertise required to operate thermal assets constitute significant costs for new competitors. As a result of these high entry costs, in most of the urban areas in which we operate, we are the only third party provider of thermal energy.

Our Operations

Conventional

The following sets forth our conventional asset:

Asset Name	Location	Rated MW	Ownership	Net MW	Fuel	COD	PPA Terms	
							Counterparty	Expiration
El Segundo	El Segundo, CA	550	100.0%	550	Natural gas	August 2013	SCE	2023

El Segundo

Overview. El Segundo is a 550 net MW natural gas-fired combined-cycle turbine ("CCGT") located in Los Angeles County, California, which is situated on a brownfield site leased by and subject to an easement with NRG and adjacent to an existing natural gas-fired facility owned by NRG. We own a 100% membership interest in the facility, which is expected to achieve commercial operations in August 2013. The facility will be interconnected to the California Independent System Operator ("CAISO") controlled transmission grid at SCE's El Segundo Substation.

As of December 31, 2012, the plant's engineering and procurement was nearly complete and construction was approximately 84% complete. We expect El Segundo will achieve substantial completion in June 2013, at which time it will have successfully met performance and emissions test criteria and be able to generate electricity. As of September 30, 2012, project costs of approximately $473 million had been incurred. The remaining costs will be funded with draws under El Segundo's construction loan facility. We do not expect to be required to make any equity contributions to fund El Segundo's construction costs. The construction budget incorporates pre-determined contingency costs in the event the construction incurs previously unidentified project costs. As of December 31, 2012, the construction of El Segundo had not deviated from the budgeted project costs, which include contingency costs, in any material respect. In addition, El Segundo's construction and services agreement with ARB, Inc. ("ARB") provides for a performance bond in the event of certain construction delays.

With El Segundo's efficient CCGT technology, fast-start capability and proximity to the Los Angeles load center, we expect the facility to operate as a low-intermediate capacity factor generator, to be called upon by SCE to generate during peak periods and during intermittent periods when in-state renewable generation resources are not able to generate at full capacity.

El Segundo consists of two Flex 10™ Plant power blocks, each of which consists of 1x1x1 Siemens SGT6-5000FD3 combustion turbines, a Siemens SST-800 back-pressure steam turbine generator and an air-cooled heat exchanger. The Flex 10™ is designed to provide a rapid response to dispatch requests and be online in ten minutes. NEM Group, acquired by Siemens in 2011, has been contracted to design and supply the DrumPlus Heat Recovery Steam Generator to be coupled to each power block.

Tolling Agreement. All energy, capacity and ancillary products and services produced by El Segundo are sold to SCE pursuant to a 10-year tolling agreement that expires in July 2023. Under this agreement, El Segundo will receive fixed capacity payments (adjusted annually by a 3% escalator), as well as variable payments (adjusted annually by CPI) tied to its dispatch.

El Segundo's expected COD under the PPA is August 1, 2013, which may be extended for up to 180 days for force majeure or certain interconnection delays arising solely from SCE's actions subject to daily delay damages of $250 per MW-day from June 1 to September 30 and $100 per MW-day for the other periods. However, the tolling agreement allows for up to 365 days of delay (or until August 1, 2014) before it may be terminated. In connection with the Tolling Agreement, El Segundo has delivered credit support for the facility's obligations thereunder in the form of a letter of credit of approximately $30 million as of December 31, 2012.

Engineering, Procurement and Construction Agreements. El Segundo has entered into a fixed-price construction and services agreements for the engineering, design, construction and testing of the plant. Siemens Energy Inc. is responsible for supplying the power islands with a standard industry warranty pursuant to the equipment supply agreement. In addition, under a services agreement, Siemens is responsible for coordinating the engineering, design, commissioning and performance testing of the plant. Siemens Corporation has provided a parent guaranty to support its obligations to the facility.

Construction of the plant is to be completed by ARB pursuant to a Construction Agreement, whereby ARB will construct the plant, supply utilities and provide heavy haul services. ARB has posted for the facility's benefit a $153 million performance bond until the mechanical completion date, after which date the bond would be reduced to $15 million for the 18-month warranty period after the mechanical completion date.

El Segundo and NRG Construction Services LLC, an affiliate of NRG, have entered into a Construction Management Agreement whereby NRG Construction Services acts as construction manager to coordinate the engineering and construction of the facility.

Operations & Maintenance. See "Certain Relationships and Related Party Transactions—Project-Level Management and Administration Agreements—Conventional—El Segundo" for a description of the El Segundo O&M agreement.

Fuel and Transmission Interconnection Arrangements. Natural gas for the facility is to be supplied via the existing Southern California Gas Company ("SoCal Gas") pipeline that currently provides natural gas to the property. During the term of the tolling agreement, SCE is responsible for purchasing, nominating, scheduling and transporting all natural gas deliveries. El Segundo has entered into a natural gas transportation agreement with SoCal Gas for a quantity that will be capable of servicing the contract capacity under the tolling agreement for on-peak periods during May through October or other transportation quantities as approved by SCE. The natural gas transportation agreement provides for the transportation of natural gas from the gas delivery point to the plant and SCE will in turn typically reimburse the facility for transportation costs incurred.

The facility is interconnected to the CAISO controlled transmission grid pursuant to a Standard Large Generator Interconnection Agreement ("LGIA") with SCE and the CAISO. Under the LGIA, El Segundo is responsible for upgrades to enable the interconnection of El Segundo, such network upgrade costs are to be refunded over a five-year period once the facility achieves commercial operations. The LGIA has an initial 30-year term with automatic renewal provisions for succesive one-year terms.

Project-Level Financing. The facility is financed by a project-level $540 million construction loan and a $148 million letters of credit and working capital facility. The construction loans consist of a $480 million Tranche A facility (the "Tranche A Facility") and a $60 million Tranche B facility (the "Tranche B Facility") on a non-recourse basis with a syndicated group of financial institutions that closed in August 2011. The construction loans convert into two tranche term loans at COD and mature in August 2023. The Tranche A Facility converts into a fully amortizing term loan and accrues at an interest rate based on LIBOR plus 225 basis points (with periodic step-ups over time). The Tranche B Facility converts into a partially amortizing term loan and accrues at an interest rate based on LIBOR plus 275 basis points (with periodic step-ups over time). Debt service is paid semi-annually. El Segundo entered into LIBOR-to-fixed interest rate swaps with multiple counterparties to hedge the interest rate risk. These swaps require quarterly payments over the tenor of the term loans.

The El Segundo financing includes letters of credit and working capital lines to support the project's liquidity needs. El Segundo has a $90 million letter of credit facility to support its tolling agreement, of which $30 million had been issued as of September 30, 2012, a $48 million debt service reserve letter of credit facility (which will be issued at COD) and a $10 million working capital facility, of which $6 million in letters of credit had been issued as of September 30, 2012. The letter of credit facilities and working capital facility mature in August 2018.

As of September 30, 2012, approximately $294 million in the aggregate has been borrowed under the construction loan. Pursuant to a credit agreement, El Segundo will be subject to a dividend payment test after it achieves commercial operations, whereby El Segundo will be permitted to pay semi-annual dividends if the debt service coverage ratio for the last twelve months is at least 1.2x.

Utility Scale Solar

The following sets forth our utility scale solar assets:

Asset Name	Location	Rated MW	Ownership	Net MW	Fuel	COD	PPA Terms	
							Counterparty	Expiration
Utility Scale Solar								
Blythe	Blythe, CA	21	100.0%	21	Solar	December 2009	SCE	2029
Roadrunner	Dona Ana County, NM	20	100.0%	20	Solar	August 2011	El Paso Electric	2031
Avenal	Avenal, CA	45	49.95%	23	Solar	August 2011	PG&E	2031
Avra Valley	Pima County, AZ	25	100.0%	25	Solar	December 2012	Tucson Electric Power	2032
Alpine	Lancaster, CA	66	100.0%	66	Solar	January 2013	PG&E	2033
Borrego	Borrego Springs, CA	26	100.0%	26	Solar	February 2013	SDG&E	2038
CVSR(1)	San Luis Obispo, CA	250	100.0%	122	Solar	October 2013	PG&E	2038

(1) At the time of the consummation of this offering, Yieldco Inc. will have a 48.95% equity interest in CVSR, with NRG retaining 51.05% interest in such asset.

Blythe

Overview. Blythe is a 21 MW solar generation facility located in Riverside County, California, which commenced operations in December 2009. We own 100% of the membership interest in Blythe, which is situated on a 200 acre site owned by NRG. The facility is interconnected to SCE's Chanslor 33kV distribution line and has access to the CAISO controlled transmission grid at SCE's Blythe Substation through transmission service provided by SCE over the Chanslor 33kV distribution line.

Power Purchase Agreement. All energy, capacity, green attributes and ancillary products and services from the facility are sold to SCE pursuant to a PPA that expires in December 2029. Revenues consist of a fixed payment based on production, which is adjusted by TOD factors. These TOD factors result in higher payments during peak hours.

Engineering, Procurement and Construction Agreement. Blythe was designed, engineered, constructed and commissioned pursuant to an EPC agreement with First Solar. The facility utilizes thin-film PV modules manufactured by First Solar and inverters manufactured by Siemens. The module

equipment is subject to a 25-year limited power output warranty. Such warranty provides protections associated with equipment non-performance, requiring First Solar to repair or replace the applicable module or provide a supplemental module at its own expense. The modules are also subject to a five-year defect warranty with First Solar.

Operations & Maintenance. First Solar provides day-to-day operations and maintenance services under a ten-year O&M agreement, which term may be extended for an additional 10-year period upon the mutual agreement of First Solar and Blythe. Pursuant to the terms of such agreement, First Solar is paid a fixed quarterly payment adjusted annually for changes in the CPI. In addition, under the agreement, First Solar has agreed to provide the facility an availability guarantee, which requires First Solar to pay liquidated damages to Blythe representing its lost revenues if the facility's effective availability falls below 98.25%. First Solar's liquidated damages liability is capped at 125% of the aggregate fees payable by Blythe over the term of the agreement. Additionally, the facility has agreed to pay to First Solar a bonus payment representing a percentage of the incremental revenues earned by the facility should its effective availability exceed 98.25%.

Transmission Interconnection Agreements. In September 2009, Blythe entered into a LGIA, a Tie-Line Facilities Agreement and a Wholesale Distribution Agreement with SCE which provides for the facility's interconnection to SCE's distribution line and the transmission of the facility's power to the CAISO controlled transmission grid at at SCE's Blythe Substation over the Chanslor 33kV distribution line. Under these agreements, Blythe is responsible for all reasonable expenses associated with its interconnection facilities and those of SCE. Each of these agreements has an initial 30-year term.

Project-Level Financing. The facility was financed with a $30 million non-recourse project-level term loan with a bank that closed in June 2010. The term loan matures in June 2028 and, accrues interest at a rate of LIBOR plus 250 basis points (that escalates by 25 basis points every three years) and is subject to an amortization schedule. Interest and principal amortization amounts are paid quarterly. As of September 30, 2012, $26 million of the term loan was outstanding. Blythe's project financing includes a letter of credit facility for its obligations under the PPA in the form of two letters of credit of approximately $6 million. The credit support matures in June 2015. Pursuant to a term loan agreement, Blythe is subject to a dividend payment test whereby the facility is permitted to pay quarterly dividends if the debt service coverage ratio for the last four fiscal quarters and for the next twelve months are at least 1.2x. As of September 30, 2012, the facility had met all of its debt service coverage ratios to date.

Roadrunner

Overview. Roadrunner is a 20 MW solar generation facility located in Doña Ana County, New Mexico, which commenced operations in August 2011. We own a 100% membership interest in Roadrunner. In May 2011, Doña Ana County issued Industrial Revenue Bonds as part of the construction of Roadrunner. In connection with the issuance of these Repayments, the project company, an NRG affiliate entity, entered into a sale-leaseback arrangement with Doña Ana County whereby such project company transferred title of the real property (which consists of 210 acres) to the county and in turn leases the real property. As a result of such transaction, Roadrunner benefits from certain property tax savings (in the form of payment in lieu of taxes) and other tax deductions. The facility is interconnected via a radial 24kV distribution line to El Paso Electric's 115kV Santa Teresa substation.

Power Purchase Agreement. All energy, capacity, green attributes and ancillary products and services from Roadrunner are sold to El Paso Electric ("EPE") pursuant to a PPA that expires in August 2031. Revenues consist of a fixed payment based on actual energy production up to 115% of the expected annual production, and a reduced, fixed payment on any additional energy delivered. Energy payment terms do not include a provision for escalation.

Engineering, Procurement and Construction Agreement. Roadrunner was designed, engineered, constructed and commissioned pursuant to an EPC agreement with First Solar. The facility utilizes thin-film PV modules manufactured by First Solar, inverters manufactured by SMA Solar and DuraTrack HZ single-axis trackers manufactured by Array Technologies. The modules are subject to a 25-year limited power output warranty, which provides protections associated with equipment non-performance, requiring First Solar to repair or replace the applicable module or provide a supplemental module at its own expense. The modules are also subject to a 5-year defect warranty with First Solar.

Operations & Maintenance. First Solar provides day-to-day operations and maintenance services under a twenty-year O&M Agreement. Pursuant to the terms of such agreement, First Solar is paid a fixed quarterly payment (adjusted annually for changes in the CPI) and reimbursed for certain costs incurred. In addition, under the agreement, First Solar has agreed to provide the facility an availability guarantee, which requires First Solar to pay liquidated damages to the facility representing its lost revenues if the facility's effective availability falls below 98%. First Solar's liquidated damages liability is capped at 125% of the aggregate fees payable by Roadrunner over the term of the agreement. Additionally, the facility has agreed to pay to First Solar a bonus payment representing a percentage of the incremental revenues earned by the facility should its effective availability exceed 98%.

Transmission Interconnection Agreements. In September 2010, the facility entered into an interconnection agreement with EPE which provides for the facility's interconnection to EPE's distribution system. The agreement has an initial term of 20 years and may be amended to extend the term to 30 years. Both EPE and Roadrunner are responsible for their share of reasonable costs associated with operating, maintaining, repairing and replacing their distribution or interconnection facilities.

Project-Level Financing. Roadrunner's construction was financed with a non-recourse $47 million construction loan, a $21 million cash grant bridge loan and a $5 million letter of credit facility that closed in May 2011. The construction loan converted into a 20-year amortizing term loan upon achievement of commercial operations of Roadrunner in January 2012. The term loan accrues interest at a rate based on LIBOR plus 201 basis points (with periodic step-ups over time) and matures in September 2031. Roadrunner has entered into LIBOR-to-fixed interest rate swaps to hedge the interest rate risk. These swaps require quarterly payments over the tenor of the term loan. Roadrunner has posted two letters of credit, one for $2 million required under the PPA and another for $3 million for debt service reserve, under the letter of credit facility maturing in January 2019. The cash grant bridge loan was fully repaid with 1603 Cash Grant Proceeds.

As of September 30, 2012, approximately $46 million was outstanding under the term loan and approximately $5 million outstanding under the letter of credit facility.

Pursuant to a credit agreement, Roadrunner is subject to a dividend payment test whereby quarterly dividends are permitted if the debt service coverage ratio for the last twelve months is equal to or exceeds 1.2x. As of September 30, 2012, Roadrunner had met all of its debt service coverage ratios to date.

Avenal

Overview. Avenal is a 50/50 joint venture between NRG and Eurus Energy America affiliates, which owns three solar generation facilities located in Kings County, California. Avenal consists of Avenal Park (6 MW), Sun City (20 MW) and Sand Drag (19 MW). We own a 49.95% membership interest in Avenal and NRG has retained a 0.05% interest. The three facilities are located on sites that total over 500 acres, which are leased by Avenal under 30-year lease arrangements. Avenal achieved commercial operations in August 2011 and is interconnected to the CAISO transmission system at PG&E's 70kV Avenal Tap line.

Power Purchase Agreement. All energy, capacity, green attributes and ancillary products and services from the facilities are sold to PG&E pursuant to PPAs that expire in August 2031. Revenues consist of a fixed payment based on production, which is adjusted by TOD factors. These TOD factors result in higher payments during peak hours.

Engineering, Procurement and Construction Agreement. Avenal was designed, engineered, constructed and commissioned pursuant to an EPC agreement with The Ryan Company, a wholly owned subsidiary of Quanta Services Inc. The facilities utilize amorphous silicon thin-film PV modules manufactured by Sharp Electronics USA and inverters manufactured by Emerson Solar Solutions. The associated EPC and module supply agreements incorporated warranty terms, pursuant to which such warranties provide protections against costs associated with equipment non-performance. Under the EPC agreement, the module and inverter equipment are subject to limited warranties that are applicable for 25 years and 15 years, respectively. The modules are also subject to a five-year mechanical and serial defect warranties with Sharp Electronics Corporation.

Operations & Maintenance. See "Certain Relationships and Related Party Transactions—Project-level Management and Administration Agreements—Utility Scale Solar—Avenal" for a description of the Avenal O&M agreement.

Project Administration Agreement. An affiliate of Eurus Energy America serves as the administrator for Avenal and performs certain management services pursuant to the project administration agreement. The agreement's term ends 10 years after COD, unless earlier terminated. Avenal pays an annual fixed fee (adjusted annually by CPI).

Transmission Interconnection Agreements. Sun City and Sand Drag are connected to PG&E's transmission system through individual small generator interconnection agreements ("SGIA") with PGE, dated April 2010 (for Sun City and San Drag) and January 2011 (for Avenal Park). Under the SGIAs, PG&E will reimburse Avenal for the cost of constructing the interconnection and necessary network upgrades over a five-year period that commenced at COD. The SGIAs have an initial 22-year term with automatic renewal provisions for successive one-year terms.

Project-Level Financing. Avenal's construction was financed with a non-recourse $132 million construction loan and $54 million cash grant bridge loan that closed in September 2010. The bridge loan was fully repaid shortly after Avenal achieved COD with 1603 Cash Grant Proceeds. The construction loan converted into a 15-year amortizing term loan upon achievement of commercial operations of Avenal. The term loan accrues interest at a rate based on LIBOR plus 225 basis points (with periodic step-ups over time) and matures in June 2026. Avenal has entered into LIBOR-to-fixed interest rate swaps with multiple counterparties to hedge the interest rate risk. These swaps require semi-annual payments in June and December over the tenor of the term loan. As part of the project financing, Avenal posted letters of credit in support of the PPA and in support of a debt service reserve of approximately $20 million in the aggregate. The letter of credit facility expires in September 2018.

As of September 30, 2012, approximately $125 million was outstanding under the term loan with approximately $20 million available under the letter of credit.

Pursuant to a credit agreement, Avenal is subject to a dividend payment test whereby quarterly dividends are permitted if the debt service coverage ratio for the last twelve months is equal to or exceeds 1.2x. As of September 30, 2012, Avenal had met all of its debt service coverage ratios to date.

Avra Valley

Overview. Avra Valley is a 25 MW solar generation facility located outside northwest Tucson, Arizona, which commenced operations in December 2012. We own 100% of the membership interest in Avra Valley, which is situated on a 320 acre site leased from the City of Tucson under a 20-year lease agreement. The facility is interconnected to the Tucson Electric Power's ("TEP") 46kV line.

Power Purchase Agreement. All energy, capacity, green attributes and ancillary products and services from the facility are sold to TEP pursuant to a PPA that expires in December 2032. Revenues consist of a fixed payment based on production.

Engineering, Procurement and Construction Agreement. Avra Valley was designed, engineered, constructed and commissioned pursuant to an EPC agreement with First Solar. The facility utilizes thin-film PV modules manufactured by First Solar and inverters manufactured by Converteam. The module and inverter equipments are subject to limited warranties that are applicable for 25 years and five years, respectively. Such warranties provide protections against costs associated with equipment non-performance. The limited power output warranty on the modules requires First Solar to repair or replace the applicable module or issue a refund to us at the then current market price. The modules are also subject to a five-year defect warranty with First Solar.

Operations & Maintenance; Asset Management. First Solar provides day-to-day operations and maintenance services under a twenty-year agreement. Pursuant to the terms of an O&M agreement, First Solar is paid a fixed quarterly payment (increased in year 11 and adjusted annually for changes in CPI) and reimbursed for certain costs incurred. In addition, under the agreement, First Solar has agreed to provide the facility an availability guarantee of 98% in years one through ten, and 97% thereafter, whereby First Solar would pay liquidated damages to the facility representing its lost revenues if the facility does not meet a minimum availability. First Solar's liquidated damages liability is capped at 125% of the aggregate fees payable by Avra Valley over the term of the agreement. Additionally, the facility has agreed to pay to First Solar a bonus payment representing a percentage of the incremental revenues earned by the facility should its effective availability exceed 98% in years one through ten, and 97% thereafter.

See "Certain Relationships and Related Party Transactions—Project-level Management and Administration Agreements—Utility Scale Solar—Avra Valley" for a description of Avra Valley's asset management agreement with NRG Solar Asset Management LLC.

Transmission Interconnection Agreements. Avra Valley is connected to TEP's transmission system through a 30-year interconnection agreement dated October 2008. TEP will reimburse Avenal for the cost of constructing the interconnection and necessary network upgrades under the provisions of the related PPA through an adjustment to the base energy rate.

Project-Level Financing. Avra Valley's construction was financed with a non-recourse $66 million construction loan, an $8 million cash grant bridge loan and a $4 million letter of credit facility that closed in August 2012. The construction loan converted into an 18-year amortizing term loan in January 2013. The term loan accrues interest at a rate based on LIBOR plus 225 basis points (with periodic step-ups over time) and matures in January 2031. Avra Valley has entered into LIBOR-to-fixed interest rate swaps to hedge the interest rate risk. These swaps require quarterly payments over the tenor of the term loan. Upon term conversion, Avra Valley will post a $4 million letter of credit in support of its future debt service obligations. The letter of credit facility matures in August 2019.

Any outstanding balance under the cash grant bridge loan is expected to be fully repaid with 1603 Cash Grant Proceeds for which a preliminary application for qualification was filed in September 2012. We anticipate that approximately $1 million will have been drawn on the cash grant bridge loan as of December 31, 2012.

As of September 30, 2012, approximately $40 million was outstanding under the construction loan and no amount was outstanding on the cash grant bridge loan. In addition, as of September 30, 2012, there were no letters of credit outstanding.

Pursuant to a credit agreement, Avra Valley will be subject to a dividend payment test after commercial operations has been achieved, whereby quarterly dividends are permitted if the debt service

coverage ratio for the last twelve months is equal to or exceeds 1.2x. As of September 30, 2012, Avra Valley was not subject to this dividend test.

Alpine

Overview. Alpine is a 66 MW solar generation facility located in Lancaster, Los Angeles County, California. We own a 100% membership interest in the facility, which is situated on 600 acres owned by NRG Solar LLC, an affiliate of NRG. The facility began construction in October 2011 and achieved commercial operations in January 2013. It is interconnected to the CAISO controlled transmission grid at SCE's Neenach 66kV Substation. As of September 30, 2012, total project costs of approximately $164 million had been incurred.

Power Purchase Agreement. All energy, capacity, green attributes and ancillary products and services are sold to PG&E pursuant to a PPA, which term expires 20 years after the facility's COD. Revenues from such sale consist of a fixed payment based on production, which is adjusted by time of day ("TOD") factors. These TOD factors result in higher payments during peak hours.

In connection with the PPA, Alpine has delivered credit support for its obligations thereunder in the form of a letter of credit of approximately $2 million as of December 31, 2012. This letter of credit obligation will be increased to and remain during the PPA tenor at approximately $20 million upon achieving commercial operations.

Engineering, Procurement and Construction Agreement. Alpine is under a fixed-price contract with First Solar for the design, engineering, construction and commissioning. The facility utilizes thin-film PV modules manufactured by First Solar and inverters manufactured by SMA Solar Technology AG. The module equipment is subject to a 25-year limited power output warranty, which covers 90% of nominal capacity through year 10 and 80% of nominal capacity through year 25. Such warranties provide protections against costs associated with equipment non-performance. The modules are also subject to a ten-year defect warranty.

In addition, the EPC Agreement provides for a minimum performance guarantee of 63.4 MW of capacity and a target performance guarantee of 66.7 MW. If First Solar fails to deliver this capacity, First Solar is required to perform all additional work necessary to achieve a minimum capacity of 63.4 MW. To the extent First Solar achieves the minimum performance guarantee capacity, but not the target performance guarantee capacity, it must pay performance liquidated damages of up to approximately $11 million.

Operations & Maintenance; Asset Management. First Solar provides day-to-day operations and maintenance services under a twenty-year agreement. Pursuant to the terms of the O&M agreement, First Solar is paid a fixed quarterly payment (adjusted annually for changes in the CPI) and reimbursed for certain costs incurred. In addition, under the agreement, First Solar has agreed to provide the facility an availability guarantee, which requires First Solar to pay liquidated damages to the facility representing its lost revenues if the facility's effective availability falls below 98%. First Solar's liquidated damages liability is capped at 125% of the aggregate fees payable by Alpine over the term of the agreement. Additionally, Alpine has agreed to pay to First Solar a bonus payment representing 50% of the incremental revenues earned by the facility should its effective availability exceed 98%.

See "Certain Relationships and Related Party Transactions—Project-Level Management and Administration Agreements—Utility Scale Solar—Alpine" for a description of Alpine's asset management agreement with NRG Solar Asset Management LLC.

Transmission Interconnection Agreements. In June 2011, the facility entered into a 30-year LGIA with SCE and the CAISO which provides for the facility's interconnection to the CAISO controlled transmission grid at SCE's Neenach 66kV substation. Both SCE and Alpine are responsible for their share of reasonable costs associated with operating, maintaining and replacing their

distribution or interconnection facilities. The LGIA has an initial 30-year term with automatic renewal provisions for successive one-year terms.

Project-Level Financing. The facility is financed by a $166 million project-level construction loan and a $68 million cash grant bridge loan on a non-recourse basis with a syndicate of financial institutions that closed in March 2012. The construction loan converts into a term loan at or shortly after COD and matures ten years from the date of such conversion. As of December 31, 2012, the construction loan had not converted into a term loan. The term loan will accrue interest at a rate of LIBOR plus 250 basis points (with a one-time escalation in the fifth year) and will be subject to scheduled amortization. Debt service will be paid quarterly. Alpine has entered into LIBOR-to-fixed interest rate swaps with multiple counterparties to hedge the interest rate risk. These swaps will require quarterly payments over the tenor of the term loans. As part of the financing, Alpine has a letter of credit facility maturing in March 2019 for up to $37 million.

As of September 30, 2012, $10 million had been drawn under the letter of credit facility. As of September 30, 2012, $2 million was outstanding under the construction loan and no amount was outstanding under the cash grant bridge loan. Alpine does not expect to draw any amounts under the cash grant bridge loan. Upon receipt of the 1603 Cash Grant proceeds, we expect all such proceeds to remain with us.

Pursuant to a credit agreement, Alpine will be subject to a dividend payment test after commercial operations has been achieved, whereby quarterly dividends are permitted if the debt service coverage ratio for the last twelve months is equal to or exceeds 1.2x. As of September 30, 2012, Alpine was not yet subject to this dividend test.

Borrego

Overview. Borrego is a 26 MW solar generation facility located in San Diego County, California. We own a 100% membership interest in the facility, which is situated on a 300 acre lot owned by NRG Solar LLC. The facility began construction in December 2011 and achieved commercial operations in February 2013. The facility is interconnected to the CAISO controlled transmission grid at the SDG&E Borrego Substation. As of September 30, 2012, total project costs of approximately $119 million had been incurred.

Power Purchase Agreement. All energy, capacity, green attributes and ancillary products and services from the facility are sold to SDG&E pursuant to a PPA, which term expires 25 years after Borrego's COD. Revenues from such sale consist of a fixed payment based on production, which is adjusted by TOD factors. These TOD factors result in higher payments during peak hours.

Engineering, Procurement and Construction Agreement. Borrego is under a fixed-price contract with Sunora, an affiliate of NRG, for the design, engineering, construction and commissioning. Construction on the facility commenced in December 2011. The facility will utilize thin-film PV modules manufactured by SunPower (and arranged in a single-axis tracker array) and inverters manufactured by SMA Solar Technology AG ("SMA Solar"). The module equipment is subject to a 25-year limited power output warranty. Such warranties provide protections against costs associated with equipment non-performance. The modules and inverters are also subject to a ten- and five-year defect warranty, respectively. In addition, under a solar equipment supply agreement, SunPower will be required to pay liquidated damages to Borrego if the equipment does not meet the guaranteed capacity and Borrego will make bonus payments to SunPower for capacity in excess of 101% of guaranteed capacity.

Operations & Maintenance. See "Certain Relationships and Related Party Transactions—Project-Level Management and Administration Agreements—Utility Scale Solar—Borrego" for a description of the Borrego O&M agreement.

Transmission Interconnection Agreements. In September 2011, Borrego entered into a LGIA with SDG&E and CAISO that provides for the facility's interconnection to the 69kV bus in the SDG&E Borrego Substation and the ultimate transmission of the facility's products to the CAISO grid. Under this agreement, Borrego is responsible for the operation and maintenance of facilities and equipment that it owns, controls or operates from the facility to the point at which it no longer owns the related facilities or equipment. The LGIA has an initial 25-year term with automatic renewal provisions for successive one-year terms.

Project-Level Financing. As of December 31, 2012, Borrego did not have any project-level debt financing. As of such date, the facility's construction costs had been paid with equity contributions from NRG. We intend to finance a portion of the project costs with project-level non-recourse debt and letter of credit facilities to replace letters of credit currently issued under NRG's corporate letter of credit facility to support Borrego's collateral obligations under the PPA and the LGIA. As of September 30, 2012, NRG had issued approximately $8 million under its corporate letter of credit facility in support of Borrego's collateral obligations under the PPA. Proceeds of the contemplated project-level non-recourse debt financing will be used to reimburse NRG in part for its equity investment and pay fees associated with such financing. Borrego does not expect to have outstanding a cash grant bridge loan, thus upon receipt of the 1603 Cash Grant Proceeds, we expect all such proceeds will remain with us.

CVSR

Overview. CVSR is a 250 MW solar generation facility located in San Luis Obispo County, California. We own a 48.95% membership interest in CVSR, representing 122 MW. NRG owns the remaining 51.05% membership interest in the facility, which is situated on a property under a 30-year lease agreement. CVSR began construction in four phases in September 2011. As of December 31, 2012, three phases totaling 127 MW had achieved COD and were generating electricity under CVSR's two separate 25-year PPAs with PG&E. Its final phase is expected to achieve COD by October 2013. The plant is interconnected to the CAISO controlled transmission grid through the Midway-Morro No. 1 230 kV line near the 230 kV Caliente Switching Station.

CVSR's total project cost is expected to be approximately $1.57 billion, of which approximately $540 million had yet to be expended as of December 31, 2012. Of this remaining amount, approximately $404 million will be funded via draws under CVSR's loan facility with the Federal Financing Bank ("FFB") and approximately $136 million will be funded by equity contributions. Following the offering, we expect to fund approximately $40 million in equity contributions from proceeds raised in the offering. CVSR has approximately $41 million in contingency available, of which 79% can be drawn from CVSR's loan facility and 21% of which must come from collateralized equity contributions. As of December 31, 2012, the construction of CVSR had not deviated from the budgeted project cost in any material respect. CVSR's EPC agreement with SunPower provides for liquidated damages in the event of certain construction delays.

In September 2011, NRG acquired CVSR from SunPower. CVSR was comprised of a 210 MW solar generation facility and a 40 MW solar generation facility, both of which had separate PPAs with PG&E and at the time of acquisition were in the early stages of construction.

Power Purchase Agreements. All energy, capacity, green attributes and ancillary products and services are sold to PG&E pursuant to PPAs. Revenues from such sale consist of a fixed payment based on production, which is adjusted by TOD factors. These TOD factors result in higher payments during peak hours.

Under the PPA for the 210 MW generation facility ("CVSR PPA I") and the PPA for the 40 MW generation facility ("CVSR PPA II"), the guaranteed CODs are designated as December 2013 and December 2012, respectively, and the related PPAs expire in October 2038 and December 2037, respectively. As of December 31, 2012, all 40 rated MW under CVSR PPA II had reached commercial

operations thereby satisfying the obligations thereunder. Until October 2013, portions of the facility under CVSR PPA I that achieve commercial operations may sell their energy, capacity, green attributes and ancillary products to PG&E for a reduced fixed payment. As of December 31, 2012, 87 MW under CVSR PPA I had reached commercial operations and is selling its energy, capacity, green attributes and ancillary products to PG&E for a reduced fixed payment. Under CVSR PPA I, the guaranteed COD may be extended for 720 days for delays and force majeure. Failure of CVSR PPA I to achieve commercial operations by December 31, 2013 may obligate CVSR to pay liquidated damages in an amount not to exceed $7.5 million; additional liquidated damages would be incurred thereafter, provided, that such delay liquidated damage payment would be reimbursable by SunPower under the EPC agreement, as further described below. In the event that such COD is not met (subject to any applicable extension periods), PG&E will have the option to declare an event of default under the applicable PPA, which may lead to a termination of such PPA.

Engineering, Procurement and Construction Agreement. CVSR is under a fixed-price contract with SunPower, with Bechtel Corporation as the primary subcontractor, for the design, engineering, construction and commissioning. The facility utilizes PV modules manufactured by and integrated with a single-axis tracking system developed by SunPower and inverters manufactured by SMA Solar. Because CVSR integrates an innovative tracking system, the facility qualified under the Section 1703 DOE Loan Guarantee Program for innovative renewable technologies.

The module and inverter equipment are subject to long-term limited warranties. The module equipment is subject to a 12-year limited power warranty where the power output is less than 90% of its minimum peak power capability and a 25-year limited power warranty where the power output is less than 80% of its minimum peak power capability. Such warranties provide protections associated with equipment non-performance by requiring Sunpower to either provide additional modules or by providing monetary compensation equivalent to the cost of additional modules required to make up for the loss in power or by repairing or replacing the defective modules. The modules are also subject to a ten-year defect warranty with SunPower. The inverters are covered by 24-month defect and design warranties under the EPC agreement.

Operations & Maintenance. See "Certain Relationships and Related Party Transactions—Project-Level Management and Administration Agreements—Utility Scale Solar—CVSR" for a description of the CVSR O&M agreement.

Transmission Interconnection Agreements. In February 2011, CVSR entered into a LGIA with PG&E and the CAISO that provides for the facility's interconnection to the CAISO controlled transmission grid. Under the LGIA, PG&E will reimburse CVSR for the cost of constructing the interconnection and necessary network upgrades over a five-year period that commences at COD. CVSR is also responsible for all reasonable costs associated with operating, maintaining, repairing and replacing the distribution or interconnection facilities. The LGIA has an initial 30-year term with automatic renewal provisions for successive one-year terms.

Project-Level Financing. The facility is financed by a project-level $380 million cash grant bridge loan and $856 million term loan on a non-recourse basis with the Federal Financing Bank that closed in September 2011. The term loan matures in February 2037, accrues interest at a fixed rate based on U.S. Treasury rates plus 37.5 basis points and is subject to an amortization schedule. Principal debt amortization amounts will be paid semi-annually. CVSR has also entered into a series of LIBOR-based swaption agreements with certain counterparties with a notional value of $686 million to hedge the interest rate risk. These swaptions mature over a series of scheduled settlement dates through October 2013. The swaption interest rates range from 2.4% to 3.05%. As of September 30, 2012, five settlement dates were remaining.

CVSR is eligible to apply for the 1603 Cash Grant Proceeds and intends to use such proceeds received to repay the cash grant bridge loan. In connection with the DOE loan financing, there is credit support from NRG and SunPower to support the repayment of the cash grant bridge loan. We

will benefit from such credit support pursuant to a contractual arrangement with NRG entered into in connection with this offering, pursuant to which NRG has guaranteed our obligations to the DOE to the extent they arise under the DOE loan financing. As of September 30, 2012, $372 million of the cash grant bridge loan and $176 million of the term loan were outstanding. The CVSR project expects to receive 1603 Cash Grant Proceeds of approximately $199 million by the end of the second quarter of 2013 and approximately $222 million within 60 to 90 days of achieving COD on the final phase of the project. Upon receipt of such 1603 Cash Grant Proceeds, we estimate that all such proceeds will be used to pay down any outstanding cash grant bridge loan, with any remaining proceeds distributed to the owners of the project. The CVSR project financing does not include a liquidity facility. As of September 30, 2012, NRG had posted $9 million in letters of credit in support of CVSR's obligations under the PPA. As discussed in "Use of Proceeds," we currently intend to use proceeds from this offering to collateralize our remaining equity funding obligations for CVSR. As of December 31, 2012, the remaining equity funding obligation was $136 million. Pursuant to the DOE loan agreement, upon achieving commercial operations of all phases, CVSR will be subject to a dividend payment test whereby the project will be permitted to pay semi-annual dividends if the debt service coverage ratio for the last twelve months and the next twelve months is at least 1.2x.

Distributed Solar

The following sets forth our distributed solar assets:

Asset Name	Location	Rated MW	Ownership	Net MW	Fuel	COD	PPA Terms	
							Counterparty	Expiration
AZ DG Solar Projects	AZ	5	100.0%	5	Solar	December 2010–January 2013	Various public entities	2025–2033
PFMG DG Solar Projects	CA	9	51.0%	5	Solar	October 2012–December 2012	Various public entities	2032

AZ DG Solar Projects

Overview. The AZ DG Solar Projects are a 5 MW portfolio of distributed solar facilities located in Arizona. The portfolio consists of 20 solar PV canopy and ground-mounted generating systems at school districts, community center and fire district sites. Fourteen of the sites have achieved commercial operations ranging from December 2010 to November 2011 and four reached commercial operations in January of 2013. We own a 100% membership interest in the portfolio.

Power Purchase Agreements and Cash Incentives. The AZ DG Solar Projects sells all of their energy under nine separate 15 to 20 year PPAs as set forth in the table below. Revenues consist of fixed payments based on production and escalate annually.

The following sets forth the locations of our AZ DG Solar Projects:

Location	Rating	COD or Expected COD	Rated MW	# of Sites	PPA Term at COD
Arlington Elementary School District	No public rating	June 2011	0.2	1	20
City of El Mirage	A+/A1	October 2011	0.2	2	20
Continental School District No. 39	A	December 2010	0.3	1	15
Gila Bend School District No. 24	No public rating	December 2010	0.6	1	20
Payson Unified School District No. 10	Aa3	December 2010	1.2	3	15
Phoenix Elementary School District	AA-	September 2011	1.1	4	15
Vail Unified School District	A-	November 2011	0.5	2	20
Flagstaff Unified School District	AA-/AA2	December 2012	0.3	2	20
Sun City West Fire District	No public rating	January 2013	0.2	4	20
Total			4.7	20	

In addition, the portfolio receives cash incentive payments via 15 to 20 year REC purchase agreements with Arizona Public Service, Trico Electric Cooperative and TEP.

Engineering, Procurement and Construction Agreement. The AZ DG Solar Projects were constructed and commissioned by CORE Construction with the exception of Payson Unified School District that was constructed by Kinney Construction LLC. The portfolio utilizes modules manufactured by Yingli Solar and Kyocera Solar, Inc. and inverters manufactured by Advanced Energy Industries, Inc. The module and inverter equipment are subject to limited warranties that are applicable ranging from 10 to 25 years and 10 to 20 years, respectively.

Operations & Maintenance. Clean Energy Constructors provides day-to-day O&M services pursuant to purchase orders that include a fixed price for preventive maintenance and time and materials for reactive repairs. The AZ DG Solar Projects are currently negotiating a five-year O&M services agreement with Clean Energy Constructors which they anticipate executing by the second quarter of 2013.

Project-Level Financing. The AZ DG Solar Projects have no project-level financing and have not been pledged to any third party.

PFMG DG Solar Projects

Overview. The PFMG DG Solar Projects are a 9 MW portfolio of distributed solar facilities located in Southern California. The portfolio consists of 21 solar PV canopy and ground-mounted generating systems at various schools and municipal sites. The systems commenced commercial operations during October 2012 through December 2012. We own a 51% membership interest in PFMG 2011 Finance Holdco, LLC, the portfolio's holding company. PsomasFMG, LLC, an unaffiliated third party ("PsomasFMG"), owns the remaining membership interests in the PFMG DG Solar Projects. While we hold a 51% membership interest, we will initially receive 100% of the portfolio cash flows until we achieve an agreed threshold return, with cash flows shared equally with PsomasFMG thereafter. The PFMG DG Solar Projects are eligible to receive California Solar Initiative Performance Based Incentives administered by SCE, which is forecasted to exceed approximately $7.5 million over the first five years of commercial operation.

Power Purchase Agreements. The PFMG DG Solar Projects sell all of their energy under five separate 20-year PPAs, the largest of which are with the Hart School District (5.5 MW) and the County of Orange (2.8 MW), both located in California. Revenues consist of a fixed payment based on production, with average annual escalation rate of 4.2%.

The following sets forth the locations of our PFMG DG Solar Projects:

Location	Rating	COD	Rated MW	# of Sites	PPA Term at COD
Hart Union School District	A+/A1	October 2012	5.5	9	20
County of Orange	AA-/Aa1	December 2012	2.8	8	20
Wilsona School District	No public rating	October 2012	0.4	2	20
Mesa Union (Palmdale) School District	AA-/Aa3	October 2012	0.3	1	20
Hughes Elizabeth School District	No public rating	October 2012	0.1	1	20
Sub Total			9.1	21	

Engineering, Procurement and Construction Agreement. The PFMG DG Solar Projects were designed, engineered, constructed and commissioned pursuant to an EPC agreement with Rosendin Electric, Inc. The portfolio utilizes modules manufactured by Trina Solar and inverters manufactured by Power One, Inc. The module and inverter equipment are subject to limited warranties that are applicable for 25 years and 10 years, respectively. Such warranties provide protections against costs associated with equipment non-performance. In addition, Rosendin Electric has provided a 10-year workmanship and design warranty for the portfolio as part of the EPC agreement.

Operations & Maintenance. True South Renewables provides day-to-day O&M services under a ten-year agreement with each project company, which term may be extended for an additional 5-year period upon the mutual agreement of True South Renewables and the applicable project company. Pursuant to the terms of such agreements, True South Renewables is paid a fixed annual fee which escalates 2.5% each year. The annual fee is payable 10% on the effective date with the balance payable quarterly. Up to 50% of the annual fee may be reduced based on system size for any systems taken off-line or terminated. In addition, under each such agreements, True South Renewables has agreed to provide a performance and availability guarantee, which requires True South Renewables to pay liquidated damages to the applicable project company representing its lost revenues if its effective availability falls below 99%.

Project-Level Financing. The construction of the portfolio was financed by NRG Solar LLC, an NRG affiliate, and subsequently refinanced pursuant to a single-investor sale-leaseback transaction. The lease commenced on December 19, 2012. The base lease term is 18 years followed by fair market value renewal periods. Under the sale-leaseback structure, the PFMG DG Solar Projects holding company, PFMG 2011 Finance Holdco, LLC, owns 100% of PFMG Apple I, LLC, as lessee, and the lessee owns 100% of five project-level subsidiary lessees, which represents the school districts and County of Orange. Each lessee has its own lease payment schedule payable to the lessor and each such lessee must separately maintain a required rent coverage level of 1.0x to avoid a default and 1.2x to permit distributions. As of September 30, 2012, PFMG DG Solar Projects were not yet subject to rent coverage ratio tests. All lessees have early fair market value buyout options at year nine.

Wind

The following sets forth our sole wind generation asset:

							PPA Terms	
Asset Name	Location	Rated MW	Ownership	Net MW	Fuel	COD	Counterparty	Expiration
South Trent	Sweetwater, TX	101	100.0%	101	Wind	January 2009	AEP Energy Partners	2029

South Trent

Overview. South Trent is a 101 net MW wind generation facility located in Nolan and Taylor counties near the town of Sweetwater, Texas, which commenced operations in January 2009. We own a 100% membership interest in South Trent, which is situated on over 9,000 acres leased by NRG. The facility is interconnected to the ERCOT system at the Eskota substation. In June 2010, NRG acquired South Trent as an operating facility.

Power Purchase Agreement. All energy, capacity and green attributes are sold to AEP Energy Partners pursuant to a PPA that expires in January 2029. Revenues consist of a fixed payment based on electricity production. The PPA offtaker's obligations are guaranteed by American Electric Power Company, Inc.

Equipment. South Trent is composed of 44 turbines manufactured by Siemens, each capable of producing 2.3 MW of power. Each turbine has a 93-meter rotor diameter and a step up transformer that converts the facility's voltage of 34.5 kV to the grid voltage of 138 kV. Electricity from each turbine is carried through a 6.6 mile overhead line to the Eskota substation where the line interconnects with ERCOT's interconnection system.

Operations & Maintenance. See "Certain Relationships and Related Party Transactions—Project-Level Management and Administration Agreements—Wind—South Trent" for a description of the South Trent project administration agreement.

Project-Level Financing. As part of its acquisition of South Trent, NRG assumed the facility's financing arrangements, which included a $79 million non-recourse project-level term loan and $8 million in a letter of credit facility entered into with a syndicate of financial institutions that closed in June 2010. The term loan and letter of credit facility mature in June 2020 and accrue interest at a rate of LIBOR plus 250 basis points (subject to biennial step-ups as stipulated in the term loan agreement). The term loan is also subject to an amortization schedule. Principal debt amortization amounts are paid quarterly. As of September 30, 2012, approximately $73 million of the term loan was outstanding and approximately $1 million was outstanding under the letter of credit facility. South Trent's project financing also included credit support for the plant's obligations under the PPA in the form of a $10 million additional letter of credit facility (maturing in June 2020), of which $10 million was outstanding as of September 30, 2012. In addition, in June 2010 South Trent Holdings LLC issued a $34 million promissory note to its parent, NRG Repowering Holdings LLC, proceeds of which were used to fund its equity investment. The promissory note matures in June 2020 and accrues interest at LIBOR plus 200 basis points. As of September 30, 2012, $27 million was outstanding under the note. NRG intends to convert this promissory note to equity prior to consummation of this offering.

Pursuant to the term loan agreement, South Trent is subject to a dividend payment test whereby dividends are permitted to be paid on a quarterly basis if the debt service coverage ratio for the prior twelve months and for the next twelve months are equal to or exceed 1.2x. As of September 30, 2012, South Trent has satisfied its debt service coverage ratios, as tested each quarter since June 30, 2010.

Thermal

Overview. Based on our management's industry knowledge and expertise, we believe NRG Thermal LLC, an NRG affiliate ("NRG Thermal"), is among the largest owners and operators of thermal heating and cooling systems in terms of MWt in the United States with eight systems in eight metropolitan areas. In addition, NRG Thermal also operates five power generation and/or thermal facilities on behalf of customers under long-term operating agreements. NRG Thermal has over 550 steam and chilled water customers and electricity produced by its 123 net MW of thermal generation assets is either sold customers under fixed price contracts or to the local power grid. We own a 100% membership interest in NRG Thermal.

All subsidiaries of NRG Thermal produce steam and hot water and/or chilled water and certain subsidiaries produce electricity. The steam or water is piped through an underground distribution networks to individual buildings for heating, cooling or industrial use. Revenues are derived primarily from retail customers (primarily commercial and industrial) with rates determined either through negotiated long-term contracts or by regulated public utility tariffs. The contracts or tariffs typically contain capacity or demand elements, mechanisms for fuel cost recovery or the recovery of operating expenses. NRG Thermal's San Francisco, Pittsburgh and Harrisburg subsidiaries are regulated by their respective state's public utility commissions. NRG Thermal files periodic tariff applications with these commissions for tariff-related adjustments, which apply until a new application is filed and agreed upon between NRG Thermal and the applicable public utility commission. NRG Thermal's Minneapolis, Phoenix, and San Diego subsidiaries have long-term bilateral customer contracts ranging from 10 to 30 years. The Princeton subsidiary has bilateral customer contracts for initial 13-year terms. The Dover subsidiary has bilateral customer contracts for initial 3 to 5 year terms. All such bilateral contracts reflect negotiated rates for the delivery of steam and hot water and/or chilled water and electricity production, as applicable. The rates charged by NRG Thermal's Pittsburgh subsidiary for delivery of steam and chilled water production reflect the then applicable tariffs agreed upon between NRG Thermal and the state's public utility commission. NRG Thermal's Dover, Paxton and Princeton subsidiaries also provide electricity, with Princeton's electricity output contracted to its offtaker. Dover's

and Paxton's generation capacity is bid in the PJM-administered RPM auctions and through an arrangement with NRG Power Marketing their energy is sold into the PJM energy market.

The following table summarizes NRG Thermal's eight systems as of September 30, 2012:

Name and Location of Facility	% Owned	Offtaker	Rated Megawatt Thermal Equivalent Capacity (MWt)	Generating Capacity
NRG Energy Center Minneapolis, MN	100.0	Approx. 100 steam and 50 chilled water customers	334 141	Steam: 1,140 MMBtu/hr. Chilled Water: 40,200 tons
NRG Energy Center San Diego, CA	100.0	Approx 20 chilled water customers	26	Chilled water: 7,425 tons
NRG Energy Center San Francisco, CA	100.0	Approx 175 steam customers	133	Steam: 454 MMBtu/Hr.
NRG Energy Center Pittsburgh, PA	100.0	Approx 25 steam and 25 chilled water customers	87 46	Steam: 296 MMBtu/hr. Chilled water: 12,920 tons
NRG Energy Center Dover, DE	100.0	Kraft Foods Inc. and Proctor & Gamble Company	22	Steam: 75 MMBtu/hr.
NRG Energy Center Harrisburg, PA	100.0	Approx 140 steam and 3 chilled water customers	129 8	Steam: 440 MMBtu/hr. Chilled water: 2,400 tons
NRG Energy Center Phoenix, AZ	100.0	Approx 30 chilled water customers	134	Chilled water: 38,100 tons
NRG Energy Center Princeton, NJ	100.0	Princeton Healthcare System	21 17	Steam: 72 MMBtu/hr. Chilled Water: 4,700 tons
		Total:	1,098	

The following table summarizes the three systems that have thermal power generation capability as of September 30, 2012:

Name and Location of Facility	Power Market/ Zone	% Owned	Net Capacity (MW)	Primary Fuel Type
NRG Energy Center Paxton, PA	PJM	100.0	12	Natural gas
NRG Energy Center Princeton, NJ	PJM	100.0	5	Natural gas
NRG Energy Center Dover, DE	PJM	100.0	106	Natural gas Coal(1)
		Total:	123	

(1) In the process of converting the coal-fired generating unit into a natural gas-fired generating unit. This conversion is expected to be completed by June 2013.

Operations & Maintenance. Each subsidiary's labor force is provided by an NRG affiliate. Such staff performs all operations, customer service and marketing functions. In addition, such staff either performs required maintenance or engages third-party contractors to perform certain work.

Fuel Supply Arrangements. NRG Thermal's heating systems are equipped with boilers that are typically fueled by natural gas or oil. NRG Thermal's subsidiaries typically have the ability to recover fuel costs from their customers either through contractual or regulatory adjustment mechanisms. However, to the extent such adjustment mechanisms are not available, NRG Thermal may enter into forward commodity contracts to manage commodity risk exposure.

Dover Repowering. The Dover system consists of two dual-fueled combustion turbines with a net capacity of 88 MW and a coal-fired steam turbine with a net capacity of 18 MW. The repowering project currently in process will reconfigure the coal-fired steam turbine by equipping one of the

existing combustion turbines with a heat recovery steam generator, selective catalytic reduction emissions controls and duct burners to supply steam to the existing steam turbine in combined cycle mode and produce excess steam. Upon completion in June 2013, Dover's total net electricity capacity will be 106 net MW. Dover's total repowering costs is expected to be approximately $26 million and as of September 30, 2012, approximately $12 million had been incurred.

Project-Level Financing. As of September 30, 2012, NRG Thermal had consolidated non-recourse fully amortizing loans outstanding of $143 million, which accrue at fixed interest rates ranging from 5.95% to 7.31% and have maturities ranging from 2013 to 2025.

Pursuant to the note purchase agreements, NRG Thermal is subject to a dividend payment test whereby quarterly dividends are permitted if the debt service coverage ratio is at least 1.70x. As of September 2012, NRG Thermal had met all of its debt service coverage ratio tests to date.

Government Incentives

U.S. federal, state and local governments have established various incentives and financial mechanisms to reduce the cost of renewable energy and to accelerate the adoption of renewable energy. These incentives include accelerated depreciation and bonus depreciation for eligible renewable projects, as well as tax credits, cash grants and rebate programs. These incentives help catalyze private sector investments in renewable energy and efficiency measures, including the installation and operation of both solar and wind generation assets.

The federal government provides the Federal ITC, which allows a taxpayer to claim a credit of 30% of qualified expenditures for a solar generation facility that is placed in service on or before December 31, 2016. This credit is scheduled to be reduced to 10% effective January 1, 2017, subject to applicable safe harbor relief. Solar power facilities that began construction prior to the end of 2011 are eligible to receive a 30% federal cash grant paid by the U.S. Treasury under section 1603 of the ARRA. The federal government also allows for a PTC, which is a per-kilowatt-hour tax credit for electricity generated by qualified energy resources. The duration of the credit is generally 10 years after the date the facility is placed in service. Qualified wind projects with respect to which construction has not begun before January 1, 2014 are not eligible for the PTC unless such credit is extended. We have and expect to continue to use some of these government incentives with respect to the financing of our renewable generation facilities.

Many state governments, investor-owned utilities, municipal utilities and co-operative utilities offer a rebate or other cash incentives for the installation and operation of a solar generation facility or energy efficiency measures. Capital costs or "up-front" rebates provide funds to solar customers based on the cost, size or expected production of a customer's solar generation facility. Performance-based incentives provide cash payments to a system owner based on the energy generated by their solar generation facility during a pre-determined period, and they are paid over that time period. We have and expect to continue to take advantage of state incentive programs with respect to the operation of our solar power facilities.

Many states have also adopted procurement requirements for renewable generation. Twenty-nine states have adopted an RPS that requires regulated utilities to procure a specified percentage of total electricity delivered to customers in the state from eligible renewable generation resources, such as wind and solar generation facilities, by a specified date. To prove compliance with such mandates, utilities must surrender renewable energy certificates ("RECs"). Renewable energy facility owners often are able to sell RECs to utilities directly or in REC markets. In several of the states in which our renewable energy facilities operate, we sell RECs directly to the utilities.

Regulatory Matters

As owners and operators of electric generation and thermal facilities and participants in wholesale energy markets, certain Yieldco entities will be subject to regulation by various federal and state government agencies. These include the Commodities Futures Trading Commission ("CFTC"), FERC and the PUCT, as well as other public utility commissions in certain states where NRG's generating, thermal, or distributed generation assets are located. In addition, Yieldco will be subject to the market rules, procedures and protocols of the various RTO and ISO markets in which it will participate.

Our initial operations within the ERCOT footprint will not be subject to rate regulation by the FERC, as they are deemed to operate solely within the ERCOT market and not in interstate commerce. As discussed below, these operations are subject to regulation by PUCT.

CFTC

The CFTC, among other things, has regulatory oversight authority over the trading of electricity and natural gas commodities, including financial products and derivatives, under the Commodity Exchange Act ("CEA"). On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), which, among other things, aims to improve transparency and accountability in derivative markets. The Dodd-Frank Act increases the CFTC's regulatory authority on matters related to over-the-counter derivatives, market clearing, position reporting, and capital requirements. Yieldco expects that in 2013 the CFTC will clarify the scope of the Dodd-Frank Act and issue final rules concerning a central clearing and execution exemption for derivative end-users, margin requirements for transactions, the definition of a "swap" and other issues that will affect NRG's over-the-counter derivatives trading. Because there are many details that remain to be addressed in CFTC rulemaking proceedings, at this time we cannot measure the expected impact to Yieldco on its current operations or collateral requirements.

FERC

The FERC, among other things, regulates the transmission and the wholesale sale of electricity in interstate commerce under the authority of the Federal Power Act ("FPA"). The transmission of electric energy occurring wholly within ERCOT is not subject to the FERC's jurisdiction under Sections 203 or 205 of the Federal Power Act. Under existing regulations, the FERC determines whether an entity owning a generation facility is an EWG, as defined in the Public Utility Holding Company Act of 2005 ("PUHCA of 2005"). The FERC also determines whether a generation facility meets the ownership and technical criteria of a Qualifying Facility ("QF"), under Public Utility Regulatory Policies Act of 1978 ("PURPA"). Each of NRG's non-ERCOT U.S. generating facilities which Yieldco will acquire in the Asset Transfer qualifies as a QF, or the related subsidiary owning such facility (which Yieldco will acquire in the Asset Transfer) qualifies as an EWG.

Federal Power Act—The FPA gives the FERC exclusive rate-making jurisdiction over the wholesale sale of electricity and transmission of electricity in interstate commerce of public utilities (as defined by the FPA). Under the FPA, the FERC, with certain exceptions, regulates the owners of facilities used for the wholesale sale of electricity or transmission in interstate commerce as public utilities, and establishes market rules that are just and reasonable.

Public utilities are required to obtain the FERC's acceptance, pursuant to Section 205 of the FPA, of their rate schedules for the wholesale sale of electricity. All of NRG's non-QF generating entities located outside of ERCOT which Yieldco will acquire in the Asset Transfer make sales of electricity pursuant to market-based rates, as opposed to traditional cost-of-service regulated rates. Every three years FERC will conduct a review of Yieldco's market based rates and potential market

power on a regional basis, consistent with FERC's prior reviews of NRG's market based rates and potential market power.

The FPA also gives the FERC jurisdiction to review certain transactions and numerous other activities of public utilities. Section 203 of the FPA requires the FERC's prior approval for the transfer of control of assets subject to the FERC's jurisdiction. The FERC must consent to the transfer of NRG's generating assets that are subject to the FERC's jurisdiction in the Asset Transfer, prior to the transfer of such assets. Section 204 of the FPA gives the FERC jurisdiction over a public utility's issuance of securities or assumption of liabilities. However, the FERC typically grants blanket approval for future securities issuances and the assumption of liabilities to entities with market-based rate authority.

In accordance with the Energy Policy Act of 2005, the FERC has approved the NERC as the national Energy Reliability Organization ("ERO"). As the ERO, NERC is responsible for the development and enforcement of mandatory reliability standards for the wholesale electric power system. In addition to complying with NERC requirements, each NRG entity must comply with the requirements of the regional reliability entity for the region in which it is located.

Public Utility Holding Company Act of 2005—PUHCA of 2005 provides the FERC with certain authority over and access to books and records of public utility holding companies not otherwise exempt by virtue of their ownership of EWGs, QFs, and Foreign Utility Companies. Yieldco will be a public utility holding company after consummation of the Asset Transfer, but because all of the generating facilities to be acquired by Yieldco in the Asset Transfer have QF status or are owned through EWGs, Yieldco will be exempt from many of the accounting, record retention, and reporting requirements of the PUHCA of 2005.

Public Utility Regulatory Policies Act—PURPA was passed in 1978 in large part to promote increased energy efficiency and development of independent power producers. PURPA created QFs to further both goals, and the FERC is primarily charged with administering PURPA as it applies to QFs. Certain QFs are exempt from regulation, either in whole or in part, under the FPA as public utilities.

Regulatory Developments

In New England, New York, the Mid-Atlantic region, the Midwest and California, FERC has approved RTOs and/or ISOs. Most of these entities administer wholesale centralized bid-based spot markets for electric energy in their regions pursuant to tariffs approved by FERC and associated RTO/ISO market rules, and some also administer bid-based auction markets for capacity. These tariffs/market rules dictate how the capacity and energy markets operate, how market participants may make bilateral sales with one another, and how entities with market-based rates are compensated within those markets. The RTO/ISOs in these regions also control access to and the operation of the transmission grid within their regions. In Texas, pursuant to a 1999 restructuring statute, the PUCT granted similar responsibilities to ERCOT. NRG is affected by rule/tariff changes that occur in the RTO/ISO regions. While our cash flows are not typically directly tied to energy markets, we are still subject to many of the rules governing the transmission and delivery of energy in these RTOs and ISOs. Additionally, several of our thermal facilities are directly affected by fluctuations in energy and capacity prices in the PJM market.

Seasonality

Our quarterly operating results and cash flows can be significantly affected by weather. We expect to derive a majority of our annual revenues in the months of May through September, when demand for electricity is generally at its highest in our core markets and when some of our offtake arrangements provide for higher payments to us. Further, power demand is generally higher in the summer months, which we expect to be our most important season. We expect that the winter months

of December through March, when energy demand is sustained as a result of cold weather, will be our second most important season.

Competition

Power generation is a capital-intensive, commodity-driven business with numerous industry participants. We compete on the basis of the location of our plants and ownership of portfolios of plants in various regions, which increases the stability and reliability of our energy supply. Power generation is a regional business that is currently highly fragmented and diverse in terms of industry structure. As such, there is a wide variation in terms of the capabilities, resources, nature and identity of the companies with whom we compete with depending on the market. Competitors include regulated utilities, other independent power producers and power marketers or trading companies, including those owned by financial institutions, municipalities and cooperatives.

Our thermal business has certain cost efficiencies that may form barriers to entry. Generally, there is only one district energy system in a given territory, for which the only competition comes from on-site systems. While the district energy system can usually make an effective case for the efficiency of its services, some building owners nonetheless may opt for on-site systems, either due to corporate policies regarding allocation of capital, unique situations where an on-site system might in fact prove more efficient, or because of previously committed capital in systems that are already on-site. Growth in existing district energy system generally comes from new building construction or existing building conversions within the service territory of the district energy provider.

Environmental Matters

We will be subject to a wide range of environmental regulations across a broad number of jurisdictions in the development, ownership, construction and operation of domestic projects after consummation of the Asset Transfer. These laws and regulations generally require that governmental permits and approvals be obtained before construction and during operation of power plants. Environmental laws have become increasingly stringent and we expect this trend to continue. The electric generation industry will face new requirements to address protection of wildlife, including threatened and endangered species, air emissions, climate change, combustion byproducts and water use. In general, future laws and regulations are expected to require the addition of emission controls or other environmental quality equipment or the imposition of certain restrictions on the operations of our facilities. We expect that future liability under, or compliance with, environmental requirements could have a material effect on its operations or competitive position.

Federal Environmental Initiatives

Environmental Regulatory Landscape—A number of federal and state regulations with the potential for impact are in development or under review including National Ambient Air Quality Standards ("NAAQS") revisions, the California Environmental Quality Act and National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers ("ICI NESHAPS") and water use. While most of these regulations have been considered for some time, the outcomes and any resulting impact on Yieldco cannot be fully predicted until the rules are finalized.

Overview of Notable Environmental Regulations

The relative economics of various fuel generation assets are greatly impacted by state, regional and federal environmental laws and regulations. Over the past several years the United States Environmental Protection Agency ("EPA") has promulgated notable environmental regulations that will increase the cost advantages of, and reliance upon, renewable resources and efficient natural gas facilities. These regulations include legislation commonly referred to as CAIR and MATS.

Clean Air Interstate Rule (CAIR)

CAIR applies to twenty-eight states and the District of Columbia to reduce annual sulfur dioxide ("SO2") emissions, annual nitrogen oxides ("NOx") emissions and/or ozone seasonal NOx emissions through cap-and-trade programs. The rule was found to be flawed by the court in 2009 and was remanded to the EPA while remaining in place. On July 6, 2011, the EPA finalized the Cross State Air Pollution Rule ("CSAPR") which was subsequently challenged and vacated in 2012. CAIR remains in place while the EPA prepares a replacement to address cross state contribution to meeting ozone and particulate matter.

Mercury and Air Toxics Standards (MATS)

On December 16, 2011, the EPA finalized MATS, a rule specifically aimed at reducing the emissions of mercury and other toxic air pollutants from new and existing electric generating facilities. MATS establishes numerical emissions limits for mercury, particulate matter (a proxy for toxic non-mercury metals) and hydrochloric acid (a proxy for all toxic acid gases). The rule applies to all electric generating units larger than 25MW that are fueled by either coal or oil. At the time of introducing the rule, the EPA estimated that approximately 40% of U.S. coal-fired generating units did not use advanced air pollutant controls and therefore could be impacted by this legislation.

Climate Change

In the United States, a number of regulatory initiatives are underway to limit greenhouse gas or ("GHG") emissions. The U.S. Supreme Court determined that GHG emissions fall within the Clean Air Act ("CAA") definition of an "air pollutant," and in response the EPA promulgated an endangerment finding paving the way for regulation of GHG emissions. In 2010, the EPA issued a final rule, known as the "Tailoring Rule," that makes certain fossil fuel fired power plants and modifications to such plants subject to permitting requirements for GHGs. In April 2012, the EPA proposed a rule under the New Source Performance Standard, or NSPS, section of the Clean Air Act, or CAA, to limit the carbon dioxide ("CO_2") emissions from new fossil-fuel-fired electric generating units. The proposed limit is 1000 pounds of CO_2 per MWh, about the emission rate of a combined cycle gas turbine and cannot be achieved by coal-fired units without carbon capture and storage technology. The proposed standard is in effect until the final rule is published. We expect the EPA to issue another rule that will require states to develop CO_2 standards that would be applicable to existing fossil-fueled generating facilities. However, the EPA has not yet proposed any such standard, and would need to provide time to states to implement it, such that existing source CO_2 standards likely will not be implemented until 2018 or later. Moreover, the content of such standards is currently unknown, and they could be substantially less stringent than the new source standards.

In advance of federal legislation, states in the northeast and California have adopted regional and state legislation, respectively, to reduce greenhouse gas emissions through cap-and-trade programs.

Because regulation of GHG emissions is relatively new, further regulatory, legislative and judicial developments are likely to occur. Such developments may affect how these GHG initiatives will impact us. Legislation or regulations that may be adopted to address climate change could also affect the markets for our products by making our products more or less desirable than competing sources of energy. To the extent that our products are competing with higher GHG emitting energy sources, our products would become more desirable in the market with more stringent limitations on GHG emissions. We cannot predict with any certainty at this time how these developments may affect our operations; however, given that our assets are primarily renewable, combined heat and power, or natural gas-fired, increased GHG regulation is likely to benefit us relative to our competitors.

Site Remediation Matters

Under certain federal, state and local environmental laws and regulations, a current or previous owner or operator of any facility, including an electric generating facility, may be required to investigate and remediate releases or threatened releases of hazardous or toxic substances or petroleum products at the facility. Yieldco may also be held liable to a governmental entity or to third parties for property damage, personal injury and investigation and remediation costs incurred by a party in connection with hazardous material releases or threatened releases. These laws, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986, impose liability without regard to whether the owner knew of or caused the presence of the hazardous substances, and the courts have interpreted liability under such laws to be strict (without fault) and joint and several.

Capital Investment

Information concerning our capital expenditures is presented in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources—Capital Expenditures."

Employees

We do not employ any of the individuals who manage our operations. The personnel that carry out these activities are employees of NRG, and their services are provided to us or for our benefit under the Management Services Agreement. For a discussion of the individuals from NRG's management team that are expected to be involved in our business, see "Management" and "Executive Officer Compensation."

Properties

See "—Our Operations—Conventional," "—Our Operations—Utility Scale Solar, "Our Operations—Distributed Solar," "—Our Operations—Wind" and "—Our Operations—Thermal" for a description of our principal properties as of September 30, 2012.

Intellectual Property

Yieldco Inc., as licensee, has entered into a licensing agreement with NRG pursuant to which NRG has granted us a non-exclusive, royalty-free license to use the name "NRG" and the NRG logo in connection with marketing activities. Other than under this limited license, we do not have a legal right to the "NRG" name or the NRG logo. NRG may terminate the licensing agreement immediately upon termination of the Management Services Agreement and it may be terminated in the circumstances described under "Certain Relationships and Related Party Transactions—Licensing Agreement."

Legal Proceedings

We are not a party to any legal proceeding other than legal proceedings arising in the ordinary course of our business. We are a party to various administrative and regulatory proceedings that have arisen in the ordinary course of our business. Please read "—Regulatory Matters" and "—Environmental Matters."

MANAGEMENT

Executive Officers and Directors

Below is a list of names, ages and a brief account of the business experience of our persons to be appointed to serve as our executive officers and directors prior to the consummation of this offering, each as of January 1, 2013.

Name	Age	Position
David W. Crane	53	President and Chief Executive Officer
Kirkland B. Andrews	44	Executive Vice President and Chief Financial Officer
Mauricio Gutierrez	41	Executive Vice President and Chief Operating Officer
David R. Hill	49	Executive Vice President and General Counsel
		Director
		Director
		Director

David Crane, President and Chief Executive Officer

Mr. Crane has served as the President, Chief Executive Officer of NRG and a director of NRG since December 2003. Prior to joining NRG, Mr. Crane served as Chief Executive Officer of International Power plc, a UK-domiciled wholesale power generation company, from January 2003 to November 2003, and as Chief Operating Officer from March 2000 through December 2002. Mr. Crane was Senior Vice President—Global Power New York at Lehman Brothers Inc., an investment banking firm, from January 1999 to February 2000, and was Senior Vice President—Global Power Group, Asia (Hong Kong) at Lehman Brothers from June 1996 to January 1999. Mr. Crane is also a director of El Paso Corporation.

Kirkland B. Andrews, Executive Vice President and Chief Financial Officer

Mr. Andrews has served as Executive Vice President and Chief Financial Officer of NRG Energy since September 2011. Prior to joining NRG, he served as Managing Director and Co-Head Investment Banking, Power and Utilities—Americas at Deutsche Bank Securities from June 2009 to September 2011. Prior to this, he served in several capacities at Citigroup Global Markets Inc., including Managing Director, Group Head, North American Power from November 2007 to June 2009, and Head of Power M&A, Mergers and Acquisitions from July 2005 to November 2007. In his banking career, Mr. Andrews led multiple large and innovative strategic, debt, equity and commodities transactions.

Mauricio Gutierrez, Executive Vice President, Chief Operating Officer

Mr. Gutierrez has served as Executive Vice President and Chief Operating Officer of NRG since July 2010. In this capacity, Mr. Gutierrez oversees NRG's Plant Operations, Commercial Operations, Environmental Compliance, as well as the Engineering, Procurement and Construction division. He previously served as Executive Vice President, Commercial Operations, from January 2009 to July 2010 and Senior Vice President, Commercial Operations, from March 2008 to January 2009. In this capacity, he was responsible for the optimization of NRG's asset portfolio and fuel requirements. Prior to this, Mr. Gutierrez served as Vice President Commercial Operations Trading from May 2006 to March 2008. Prior to joining NRG in August 2004, Mr. Gutierrez held various positions within Dynegy, Inc., including Managing Director, Trading—Southeast and Texas, Senior Trader East Power and Asset Manager. Prior to Dynegy, Mr. Gutierrez served as senior consultant and project manager at DTP involved in various energy and infrastructure projects in Mexico.

David R. Hill, Executive Vice President and General Counsel

Mr. Hill has served as Executive Vice President and General Counsel of NRG since September 2012. Prior to joining NRG, Mr. Hill was a partner and co-head of Sidley Austin LLP's global energy practice group. Prior to joining Sidley Austin, Mr. Hill served as General Counsel of the U.S. Department of Energy from August 2005 to January 2009 and, for the three years prior to that, as Deputy General Counsel for Energy Policy of the DOE. Prior to his federal government services, Mr. Hill was a partner at major law firms in Washington D.C. and Kansas City, Missouri, and handled a variety of regulatory, litigation and corporate matters. He received his law degree from Northwestern University School of Law in Chicago.

Controlled Company

For purposes of the NYSE rules, we expect to be a "controlled company." Controlled companies under those rules are companies of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company. We expect that NRG will continue to control more than 50% of the combined voting power of our common stock upon completion of this offering and will continue to have the right to designate a majority of the members of our board of directors for nomination for election and the voting power to elect such directors following this offering. Accordingly, we expect to be eligible to, and we intend to, take advantage of certain exemptions from corporate governance requirements provided in the NYSE rules. Specifically, as a controlled company, we would not be required to have (i) a majority of independent directors, (ii) a Nominating/Corporate Governance Committee composed entirely of independent directors, (iii) a Compensation Committee composed entirely of independent directors or (iv) an annual performance evaluation of the Nominating/Corporate Governance and Compensation Committees. Therefore, following this offering if we are able to rely on the "controlled company" exemption, we will not have a majority of independent directors, our Nominating and Corporate Governance and Compensation Committees will not consist entirely of independent directors and such committees will not be subject to annual performance evaluations; accordingly, you will not have the same protections afforded to stockholders of companies that are subject to all of the applicable NYSE rules. The controlled company exemption does not modify the independence requirements for the audit committee, and we intend to comply with the requirements of the Sarbanes-Oxley Act and the NYSE rules, which require that our audit committee be composed of at least three members, one of whom will be independent upon the listing of our Class A common stock on the NYSE, a majority of whom will be independent within 90 days of the date of this prospectus, and each of whom will be independent within one year of the date of this prospectus.

Board Composition

Upon completion of this offering our board of directors will consist of seven members.

Our board of directors will be responsible for, among other things, overseeing the conduct of our business, reviewing and, where appropriate, approving our long-term strategic, financial and organizational goals and plans, and reviewing the performance of our chief executive officer and other members of senior management. Following the end of each year, our board of directors will conduct an annual self-evaluation, which includes a review of any areas in which the board of directors or management believes the board of directors can make a better contribution to our corporate governance, as well as a review of the committee structure and an assessment of the board of directors' compliance with corporate governance principles. In fulfilling the board of directors' responsibilities, directors have full access to our management and independent advisors.

Our board of directors, as a whole and through its committees, will have responsibility for the oversight of risk management. Our senior management is responsible for assessing and managing our

risks on a day-to-day basis. Our audit committee will oversee and review with management our policies with respect to risk assessment and risk management and our significant financial risk exposures and the actions management has taken to limit, monitor or control such exposures, and our compensation committee oversees risk related to compensation policies. Both our audit and compensation committees will report to the full board of directors with respect to these matters, among others.

Committees of the Board of Directors

We expect that, immediately following this offering, the standing committees of our board of directors will consist of an Audit Committee, a Compensation Committee and a Corporate Governance, Conflicts and Nominating Committee. Each of the committees will report to the board of directors as they deem appropriate and as the board may request. The expected composition, duties and responsibilities of these committees are set forth below.

Audit Committee

The Audit Committee will be responsible for, among other matters: (1) appointing, retaining and evaluating our independent registered public accounting firm and approving all services to be performed by them; (2) overseeing our independent registered public accounting firm's qualifications, independence and performance; (3) overseeing the financial reporting process and discussing with management and our independent registered public accounting firm the interim and annual financial statements that we file with the SEC; (4) reviewing and monitoring our accounting principles, accounting policies, financial and accounting controls and compliance with legal and regulatory requirements; (5) establishing procedures for the confidential anonymous submission of concerns regarding questionable accounting, internal controls or auditing matters; and (6) reviewing and approving related person transactions.

Immediately following this offering, our Audit Committee will consist of Messrs. and . We believe that Messrs. qualify as independent directors according to the rules and regulations of the SEC with respect to audit committee membership. We expect to add additional independent directors to our audit committee within one year of the effective date of the registration statement in order to comply with applicable rules and regulations of our stock exchange. We also believe that Mr. qualifies as our "audit committee financial expert," as such term is defined in Item 401(h) of Regulation S-K. Our board of directors will adopt an amended written charter for the Audit Committee in connection with this offering, which will be available on our corporate website upon the completion of this offering. The information on our website is not part of this prospectus.

Corporate Governance, Conflicts and Nominating Committee

Our Corporate Governance, Conflicts and Nominating Committee will be responsible for, among other matters: (1) identifying individuals qualified to become members of our board of directors, consistent with criteria approved by our board of directors; (2) overseeing the organization of our board of directors to discharge the board's duties and responsibilities properly and efficiently; (3) identifying best practices and recommending corporate governance principles; (4) developing and recommending to our board of directors a set of corporate governance guidelines and principles applicable to us; and (5) reviewing and approving proposed conflicted transactions between us and an affiliated party (including with respect to any proposed purchase and sale of the NRG ROFO Assets).

Immediately following this offering, our Corporate Governance, Conflicts and Nominating Committee will consist of Messrs. and . Our board of directors will adopt a written charter for the Corporate Governance, Conflicts and Nominating Committee in connection with this offering, which will be available on our corporate website at upon the completion of this offering. The information on our website is not part of this prospectus.

Other Committees

Our board of directors may establish other committees as it deems necessary or appropriate from time to time.

Family Relationships

There are no family relationships among any of our executive officers.

Code of Ethics

Prior to completion of this offering, our board of directors will adopt a Code of Ethics that applies to all of our employees, including our chief executive officer, chief financial officer and principal accounting officer. Our Code of Ethics is available on our website. If we amend or grant a waiver of one or more of the provisions of our Code of Ethics, we intend to satisfy the requirements under Item 5.05 of Item 8-K regarding the disclosure of amendments to or waivers from provisions of our Code of Ethics that apply to our principal executive officer, financial and accounting officers by posting the required information on our website. Our website is not part of this prospectus.

EXECUTIVE OFFICER COMPENSATION

Compensation of Our Executive Officers

We are a newly formed subsidiary of NRG consisting of portions of various parts of NRG's business that are being contributed to us in connection with this offering. We have not incurred any cost or liability with respect to compensation of our executive officers prior to our formation. We do not and will not directly employ any of the persons responsible for managing our business and we currently do not have a compensation committee.

Our officers will manage the day-to-day affairs of our business. All of our officers are also executive officers of NRG, will have responsibilities to both us and NRG and will devote part of their business time to our business and part of their business time to NRG's business. Compensation of our executive officers will be determined and paid by NRG. We will not be required to reimburse NRG for any portion of that compensation. Our officers, as well as the employees of NRG who provide services to us, may participate in employee benefit plans and arrangements sponsored by NRG, including plans that may be established in the future. Certain of our officers and certain employees of NRG who provide services to us currently hold grants under NRG's equity incentive plans and will retain these grants after the completion of this offering.

Our officers will be employed and compensated by NRG or a subsidiary of NRG. Each person serving as one of our executive officers is also a named executive officer of NRG, who will allocate their time between managing our business and managing the business of NRG. The responsibility and authority for compensation-related decisions for our executive officers will reside with the NRG compensation committee. NRG has the ultimate decision-making authority with respect to the total compensation of the executive officers that are employed by NRG. Any such compensation decisions will not be subject to any approvals by our board of directors or any committees thereof. Additionally, we do not expect to have any long-term incentive or equity compensation plan in which or our executive officers may participate. We expect that future compensation for our executive officers will be determined and structured in a manner similar to that then currently used by NRG to compensate its named executive officers. We will not reimburse NRG for compensation related expenses attributable to the executive's time dedicated to providing services to us. See "Certain Relationships and Related Party Transactions—Management Services Agreement—Reimbursement of Expenses and Certain Taxes."

Compensation of Our Directors

The officers of NRG who also serve as our directors will not receive additional compensation for their service as one of our directors. Our directors who are not officers or employees of NRG will receive compensation as "non-employee directors" as set by our board of directors.

Effective as of the closing of this offering, each non-employee director who is not also an officer of NRG will receive a compensation package that will consist of an annual retainer of $. In addition, our directors will be reimbursed for out-of-pocket expenses in connection with attending meetings of the board of directors or its committees. At the closing of this offering, each non-employee director who is not also an officer of NRG will receive a grant of . One-third of the granted at the closing of this offering will vest on each of the first three anniversaries of the date of grant. Furthermore, Messrs. and , as two of our three independent directors, will resign from the NRG board of directors contemporaneously with the closing of this offering and will surrender their NRG stock in exchange for the shares of our Class A common stock. As a general matter, we expect that in the future each non-employee director who is not also an officer of NRG will receive grants of equity-based awards upon appointment to our board of directors and from time to time thereafter for so long as he or she serves as a director.

Each member of our board of directors will be indemnified for his actions associated with being a director to the fullest extent permitted under Delaware law.

SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth the beneficial ownership of our Class A common stock that will be issued and outstanding upon the consummation of this offering and the related transactions and held by:

- beneficial owners of 5% or more of our common stock;
- each of our directors, director nominees and named executive officers; and
- all of our directors and executive officers, as a group.

The number of shares of our Class A common stock and percentage of beneficial ownership before and after consummation of this offering is presented after giving effect to the Organizational Structure. The number of shares of our Class A common stock and percentage of beneficial ownership after this offering set forth below are based on the shares of our Class A common stock and Yieldco LLC Class B units outstanding immediately after this offering.

Beneficial ownership for the purposes of the following table is determined in accordance with the rules and regulations of the SEC. These rules generally provide that a person is the beneficial owner of securities if such person has or shares the power to vote or direct the voting thereof, or to dispose or direct the disposition thereof, or has the right to acquire such powers within 60 days. Common stock subject to options that are currently exercisable or exercisable within 60 days of the date of this prospectus and restricted stock units that vest within 60 days of the date of this prospectus are deemed to be outstanding and beneficially owned by the person holding the options and restricted stock units for the purposes of computing the percentage ownership of that person and any group of which that person is a member. These shares, however, are not deemed outstanding for the purposes of computing the percentage ownership of any other person. Percentage of beneficial ownership is based on shares of common stock outstanding for stockholders other than our executive officers and directors. Percentage of beneficial ownership of our executive officers and directors is based on shares of common stock outstanding plus options exercisable within 60 days and restricted stock units that vest within 60 days of the date of this prospectus by any executive officer or director included in the group for which percentage ownership has been calculated. Except as disclosed in the footnotes to this table and subject to applicable community property laws, we believe that each stockholder identified in the table possesses sole voting and investment power over all shares of common stock shown as beneficially owned by the stockholder. Unless otherwise indicated in the table or footnotes below, the address for each beneficial owner is c/o NRG Energy, Inc., 211 Carnegie

Center, Princeton, New Jersey 08540. For further information regarding material transactions between us and certain of our stockholders, see "Certain Relationships and Related Party Transactions."

	Class A Common Stock(1)			Combined Voting Power		
	No. of Shares Before Offering	No. of Shares After Offering	No. of Shares After Offering Assuming Exercise of Option to Purchase Additional Shares of Class A Common Stock	% of Combined Voting Power Before Offering	% of Combined Voting Power After Offering(2)	% of Combined Voting Power After Offering Assuming Exercise of Option to Purchase Additional Shares of Class A Common Stock(2)
5% Stockholders						
NRG(1)	—	—	—	100%		
Named Executive Officers and Directors						
David W. Crane						
Kirkland B. Andrews	—	—	—	—	—	—
Mauricio Gutierrez	—	—	—	—	—	—
David R. Hill	—	—	—	—	—	—
All Executive Officers and Directors as a Group (Persons)						

(1) NRG will not own any shares of Class A common stock immediately following this offering. However, NRG will own Class B common units of Yieldco LLC which are exchangeable for shares of our Class A common stock at any time following this offering. As a result, NRG may be deemed to beneficially own the shares of Class A common stock for which such Class B units are exchangeable. If NRG exchanged all of its Class B common units for shares of our Class A common stock, it would own none of our shares of Class B common stock, it would own shares, or %, of our Class A common stock and it would hold % of our combined voting power.

(2) Each share of our Class B common stock is entitled to votes per share, for as long as the number of shares of our Class B common stock outstanding constitutes at least % of the total number of shares of our common stock outstanding.

CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

Project-Level Management and Administration Agreements

While projects are under construction and after they reach COD, affiliates of NRG will provide management support to certain of our project-level entities in accordance with the terms of related O&M agreements, as described below.

Conventional

El Segundo El Segundo entered into an Operation and Maintenance Management Agreement, dated as of March 31, 2011, with NRG El Segundo Operations Inc. (the "El Segundo O&M Agreement"). NRG El Segundo Operations Inc. (the "El Segundo Operator") is an indirect wholly-owned subsidiary of NRG.

- *Term.* The El Segundo O&M Agreement expires on the tenth anniversary of the effective date, but may be renewed automatically on the same terms and conditions for an additional 5-year period if El Segundo delivers written notice of its intention to renew the agreement at least 120 days prior to the scheduled expiration; provided, the El Segundo Operator accepts such renewal election by delivering written acceptance within 30 days of receipt of the renewal notice.

- *Services.* The El Segundo Operator provides day-to-day O&M services, including but not limited to: managing, supervising, operating and maintaining the facility; managing and coordinating with the equipment suppliers on all scheduled and unscheduled maintenance; managing, operating and maintaining the substations and all transmission facilities and electrical lines; providing individuals as employees, who remain under the exclusive control of the El Segundo Operator; scheduling in coordination with customers under the PPA, all power outages and maintenance shutdowns; and consulting with El Segundo on the development of an operating plan and operating and capital budget and the procurement of fuel if so requested by El Segundo.

- *Compensation.* In consideration for its services, the El Segundo Operator shall receive an annual fixed fee. This fixed fee does not include compensation for services and additional services which are payable as reimbursable expenses. The fixed fee shall be increased (but not decreased) annual for each calendar year after the effective date by a factor of 100% of the percentage change in the Gross Domestic Product Implicit Price Deflator, as published by the Department of Commerce during such calendar year.

- *Termination.* All parties may terminate the El Segundo O&M Agreement if there is an event of default not cured during the applicable cure period. In addition, El Segundo may terminate by written notice if the El Segundo Operator, or an affiliate of the El Segundo Operator, ceases to own directly or indirectly at least 40% of the membership units of NRG West Holdings LLC. Consummation of the Organizational Structure does not constitute such a termination event. The El Segundo Operator may terminate the El Segundo O&M Agreement if changes in applicable laws have a material adverse effect on its ability to realize the anticipated economic benefits originally contemplated by the El Segundo Operator; provided, however, that prior to exercising any such right to terminate, the parties shall undertake good faith negotiations to modify the El Segundo O&M Agreement to avoid or minimize the adverse impact of applicable laws on the El Segundo Operator.

- *Project Administration Services Agreement.* In addition to the El Segundo O&M Agreement, El Segundo entered into a project administration services agreement, dated as of March 31, 2011, with NRG West Coast LLC (the "El Segundo Administrator") for the provisions of certain administrative duties on behalf of the plant (the "El Segundo Project Administrative Services Agreement"). The El Segundo Administrator shall provide such records and other

information requested by El Segundo in connection with (i) filing its tax returns, (ii) the maintenance and retention of its books and records, (iii) any financial reporting or other disclosures that may be required, and (iv) any audit, litigation or other proceeding by any governmental authority. The El Segundo Administrator shall also prepare the annual budget for El Segundo. The term and compensation structure are the same for the El Segundo Project Administrative Services Agreement as for the El Segundo O&M Agreement. Either party may terminate the El Segundo Project Administrative Services Agreement for an event of default not cured within the applicable cure period, a change in ownership of the facility or if the other party terminates its company existence.

Utility Scale Solar

Avenal. Avenal entered into an Operation and Maintenance Agreement, dated as of January 31, 2011, with NRG Energy Services LLC (the "Avenal O&M Agreement"). NRG Energy Services LLC (the "Avenal Operator") is an indirect wholly-owned subsidiary of NRG.

- *Term.* The Avenal O&M Agreement will expire on the fifth anniversary of the commencement date, but will be automatically extended in one year increments unless either party delivers written notice of termination to the other party no later than 180 days prior to the expiration of the initial term.

- *Services.* The Avenal Operator provides day-to-day O&M services, including but not limited to: the management, direction and control of plant personnel, the provision of site reporting and maintenance in connection with the Interconnection Agreement and PPA; operation and maintenance of the plan in a manner consistent with applicable laws taking into account personnel safety, environmental compliance and equipment protection; scheduled routine maintenance and unscheduled corrective maintenance; maintenance of the records of operation of the plant; and the use of commercially reasonable efforts to secure and enforce all warranties for the materials, equipment an components purchased for the plant.

- *Compensation.* In consideration for its services, the Avenal Operator shall receive an annual fee, paid in equal monthly installments, based on an initial annual fee. On January 1st of each year, beginning with January 1, 2012 (each, an "Avenal Adjustment Date"), the compensation shall be adjusted to equal the product of (x) the amount of the compensation prior to such Avenal Adjustment Date and (y) the greater of (i) 1.0 and (ii) the fraction formed by using the CPI of the last month in which the CPI was published as the numerator and the CPI for such month in the prior year as the denominator.

- *Termination.* Either party may terminate the Avenal O&M Agreement upon 30 days prior written notice in the event of the destruction, condemnation or other loss of all or substantially all of the plant or upon the occurrence and continuation of an event of default by the other party. In addition, Avenal may terminate the Avenal O&M Agreement for its convenience with three months prior written notice and the Avenal Operator may terminate for its convenience with one year prior written notice.

Avra Valley. Avra Valley entered into an Asset Management Agreement, dated as of August 30, 2012, with NRG Solar Asset Management LLC (the "Avra Valley Asset Management Agreement"). NRG Solar Asset Management LLC (the "Avra Valley Operator") is an indirect wholly-owned subsidiary of NRG.

- *Term.* The Avra Valley Asset Management Agreement will remain in full force and effect following the commencement date until and including the earlier of (a) the sale to a third party of the facility or the sale of all of the membership interests in NRG Solar Avra Valley LLC and, in each case, the completion of all administrative duties necessary or desirable in connection with winding up affairs and (b) a date that is 10 years after the final

commercial operation date. Upon the expiration of the initial term, the Avra Valley Asset Management Agreement will be automatically extended in one year increments unless the administrator delivers written notice of termination to the other party no later than 180 days prior to the expiration of the initial term.

- *Services.* The Avra Valley Operator provides general administrative services, including but not limited to: maintaining bank accounts; maintaining complete and accurate financial books and records in accordance with GAAP; performing all reporting, notice and other administrative responsibilities; providing copies of monthly financial statements, unaudited quarterly financial statements and audited annual financial statements within 120 days after the end of each fiscal year; preparing and filing all federal, state and local tax returns; and procuring and maintaining all commercially available insurance required to be maintained in accordance with the financing documents.

- *Compensation.* In consideration for its services, the Avra Valley Operator shall be paid an annual management fee. On January 1st of each year beginning with January 1, 2013 (each, an "Avra Valley Adjustment Date"), the management fee shall be increased by an amount to equal the product of (x) the amount of the management fee prior to such Avra Valley Adjustment Date and (y) 2.5%. The Avra Valley Operator shall be reimbursed for all reasonably expenses incurred in connection with performance of its obligations (not including internal general and administrative overhead expenses, or the salaries of or benefits provided to any of the Avra Valley Operator's employees).

- *Termination.* The Avra Valley Asset Management Agreement can be terminated by mutual agreement of the parties.

Alpine. NRG Solar Alpine LLC entered into an Asset Management Agreement, dated as of March 15, 2012, with NRG Solar Asset Management LLC (the "Alpine Asset Management Agreement"). NRG Solar Asset Management LLC (the "Alpine Operator") is an indirect wholly-owned subsidiary of NRG.

- *Term.* The Alpine Asset Management Agreement will remain in full force and effect following the commencement date until and including the earlier of (a) the sale to a third party of the facility or the sale of all of the membership interests in Alpine and, in each case, the completion of all administrative duties necessary or desirable in connection with winding up affairs and (b) the date falling 10 years after the final commercial operation date. Upon the expiration of the initial term, the Alpine Asset Management Agreement will be automatically extended in one year increments unless the administrator delivers written notice of termination to the other party no later than 180 days prior to the expiration of the initial term.

- *Services.* The Alpine Operator provides general administrative services, including but not limited to: maintaining bank accounts; maintaining complete and accurate financial books and records in accordance with GAAP; performing all reporting, notice and other administrative responsibilities in connection with facility's documents; providing copies of monthly financial statements, unaudited quarterly financial statements and audited annual financial statements within 120 days after the end of each fiscal year; preparing and filing all federal, state and local tax returns; and procuring and maintaining all commercially available insurance required to be maintained in accordance with the financing documents.

- *Compensation.* In consideration for its services, the Alpine Operator shall be paid an annual management fee. On January 1st of each year beginning with January 1, 2013 (each, an "Alpine Adjustment Date"), the management fee shall be increased by an amount to equal

the product of (x) the amount of the management fee prior to such Alpine Adjustment Date and (y) 2.5%.

- *Termination.* The Alpine Asset Management Agreement can be terminated by mutual agreement of the parties. In addition, Alpine may terminate the agreement with 60 days prior written notice if it is no longer an affiliate of the Alpine Operator; provided, that no such termination shall occur in connection with consummation of the Organizational Structure.

Borrego. Borrego entered into an Operation and Maintenance Agreement, dated as of August 1, 2012, with NRG Energy Services LLC (the "Borrego O&M Agreement"). NRG Energy Services LLC (the "Borrego Operator") is an indirect wholly-owned subsidiary of NRG.

- *Term.* The Borrego O&M Agreement will expire on the fifth anniversary of the commencement date, but will be automatically extended in one year increments unless either party delivers written notice of termination to the other party no later than 180 days prior to the expiration of the initial term.

- *Services.* The Borrego Operator provides day-to-day O&M services, including but not limited to: the supervision and management of plan personnel; providing training to plant personnel so that they main obtain and develop necessary skills; the repair and maintenance of the plant, including all scheduled and unscheduled maintenance; providing all engineering and technical services; providing environmental services; operating and maintaining the plant in accordance with applicable laws; and using commercially reasonable efforts to secure and enforce all warranties (including any availability or other performance guarantees).

- *Compensation.* In consideration for its services, the Borrego Operator shall receive a monthly fee which is the sum of (a) the direct operating expenses for such month, (b) the capital improvement expenses incurred for such month and (c) the basic corporate overhead expense for such month, subject to limits in the applicable Annual Maintenance Plan (including the Annual O&M Budget). This annual profit fee shall be subject to (x) an annual increase for inflation (but not decreases for deflation) based on the change in the CPI from the prior year with the first such annual increase occurring at the end of the first operating year and (y) increase or decrease through an adjustment payment.

- *Termination.* Either party may terminate the Borrego O&M Agreement upon 30 days' prior written notice upon the occurrence and continuation of an event of default by the other party. In addition, NRG Solar Borrego I LLC may terminate the Borrego O&M Agreement for its convenience with 180 days prior written notice. The Borrego Operator may terminate the Borrego O&M Agreement if it ceases to be an affiliate of Borrego with 180 prior written notice; provided, that no such termination shall occur in connection with consummation of the Organizational Structure.

CVSR. CVSR entered into an Operation and Maintenance Agreement, dated as of September 30, 2011 with NRG Energy Services LLC (the "CVSR O&M Agreement"). NRG Energy Services LLC (the "CVSR Operator") is an indirect wholly-owned subsidiary of NRG.

- *Term.* The CVSR O&M Agreement will expire on the fifth anniversary of the commencement date, but will be automatically extended in five year increments unless either party delivers written notice of termination to the other party no later than 180 days prior to the expiration of the initial term.

- *Services.* The CVSR Operator provides day-to-day O&M services, including but not limited to: the supervision and management of plant personnel; providing training to plant personnel so that they main obtain and develop necessary skills; the repair and maintenance of the plant, including all scheduled and unscheduled maintenance; providing all engineering and

technical services; providing environmental services; operating and maintaining the plant in accordance with applicable laws; and using commercially reasonable efforts to secure and enforce all warranties (including any availability or other performance guarantees).

- *Compensation.* In consideration for its services, the CVSR Operator shall receive a monthly fee which is the sum of (a) the direct operating expenses for such month, (b) the capital improvement expenses incurred for such month and (c) the basic corporate overhead expense for such month, subject to limits in the applicable Annual Maintenance Plan (included in the annual O&M budget. In addition, the CVSR Operator will receive an annual profit fee in an amount that increases with time. This annual profit fee shall be subject to (x) an annual increase for inflation (but not decreases for deflation) based on the change in the CPI from the prior year with the first such annual increase occurring at the end of the first operating year and (y) increase or decrease through an adjustment payment.

- *Termination.* Either party may terminate the CVSR O&M Agreement upon 30 days' prior written notice upon the occurrence and continuation of an event of default by the other party. In addition, CVSR may terminate the CVSR O&M Agreement for its convenience with one year's prior written notice. The CVSR Operator may terminate the CVSR O&M Agreement if it ceases to be an affiliate of CVSR with one year's prior written notice and prior written consent from the DOE to such termination and a replacement operator; provided, that no such termination shall occur in connection with consummation of the Organizational Structure.

Wind

South Trent. South Trent entered into a Project Administration Agreement, dated as of August 16, 2010, with NRG Texas Power LLC (the "South Trent Project Administration Agreement"). NRG Texas Power LLC (the "South Trent Administrator") is an indirect wholly-owned subsidiary of NRG.

- *Term.* The South Trent Project Administration Agreement will expire on the earlier of (i) the sale by South Trent of the wind farm and the completion of all administrative duties necessary or desirable in connection with the winding up of South Trent's affairs and (ii) the 25th anniversary of the effective date. The parties may agree to renew the agreement for additional terms that are to be agreed upon in a written agreement executed by all parties.

- *Services.* The South Trent Administrator provides day-to-day O&M services, including but not limited to: maintaining bank accounts consistent with the financing agreement; collecting all payments due to South Trent; purchasing or leasing any materials, supplies and equipment necessary for the performance of services; maintaining complete and accurate financial books and records in accordance with prudent business practices and GAAP; preparing and filing all federal, state and local tax returns; preparing a proposed budget and operating plan; and perform such other administrative tasks as South Trent may reasonably request.

- *Compensation.* In consideration for its services, the South Trent Administrator shall receive an annual fee payable in monthly increments and adjusted annually to reflect changes in the GDP Implicit Price Deflator plus all reimbursable expenses.

- *Termination.* Either party may terminate the South Trent Project Administration Agreement upon the occurrence and continuation of an event of default. In addition, South Trent may terminate the agreement for convenience at any time upon 60 days' written notice to the South Trent Administrator.

Management Services Agreement

We have entered into the Management Services Agreement pursuant to which NRG and certain of its affiliates who are party thereto have agreed to provide or arrange for other service providers to provide management and administration services to us. The operating entities are not a party to the Management Services Agreement.

The following is a summary of certain provisions of our Management Services Agreement and is qualified in its entirety by reference to all of the provisions of such agreement. Because this description is only a summary of the Management Services Agreement, it does not necessarily contain all of the information that you may find useful. We therefore urge you to review the Management Services Agreement in its entirety. Copies of the Management Services Agreement will be filed as an exhibit to the registration statement of which this prospectus is a part, and will be available electronically on the website of the Securities and Exchange Commission at www.sec.gov as "Additional Information".

Services Rendered

Under the Management Services Agreement, NRG or certain of its affiliates will provide or arrange for the provision by an appropriate service provider of the following services:

- causing or supervising the carrying out of all day-to-day management, secretarial, accounting, banking, treasury, administrative, liaison, representative, regulatory and reporting functions and obligations;
- establishing and maintaining or supervising the establishment and maintenance of books and records;
- identifying, evaluating and recommending to us acquisitions or dispositions from time-to-time and, where requested to do so, assisting in negotiating the terms of such acquisitions or dispositions;
- recommending and, where requested to do so, assisting in the raising of funds whether by way of debt, equity or otherwise, including the preparation, review or distribution of any prospectus or offering memorandum in respect thereof and assisting with communications support in connection therewith;
- recommending to us suitable candidates to serve on the boards of directors or their equivalents of the operating entities;
- making recommendations with respect to the exercise of any voting rights to which we are entitled in respect of the operating entities;
- making recommendations with respect to the payment of dividends by us or any other distributions by us, including distributions to holders of our Class A common stock;
- monitoring and/or oversight of the applicable accountants, legal counsel and other accounting, financial or legal advisors and technical, commercial, marketing and other independent experts, and managing litigation in which we are sued or commencing litigation after consulting with, and subject to the approval of, the relevant board of directors or its equivalent;
- attending to all matters necessary for any reorganization, bankruptcy proceedings, dissolution or winding up of us, subject to approval by the relevant board of directors or its equivalent;
- supervising the timely calculation and payment of taxes payable, and the filing of all tax returns due;

- causing our annual combined financial statements and quarterly interim financial statements to be: (i) prepared in accordance with generally accepted accounting principles or other applicable accounting principles for review and audit at least to such extent and with such frequency as may be required by law or regulation; and (ii) submitted to the relevant board of directors or its equivalent for its prior approval;

- making recommendations in relation to and effecting the entry into insurance policies covering our assets, together with other insurances against other risks, including directors and officers insurance as the relevant service provider and the relevant board of directors or its equivalent may from time to time agree;

- arranging for individuals to carry out the functions of principal executive, accounting and financial officers for purposes of applicable securities laws;

- providing individuals to act as senior officers as agreed from time-to-time, subject to the approval of the relevant board of directors or its equivalent;

- advising us regarding the maintenance of compliance with applicable laws and other obligations; and

- providing all such other services as may from time-to-time be agreed with us that are reasonably related to our day-to-day operations.

These activities will be subject to the supervision of our board of directors and the board of directors of each of our subsidiaries or their equivalent, as applicable.

Management Fee

Pursuant to the Management Services Agreement, on a quarterly basis, we will pay a base management fee of approximately $1 million (which amount shall be adjusted for inflation annually beginning on January 1, 2014 at an inflation factor based on year-over-year CPI). The base management fee shall also be increased in connection with our completion of future acquisitions (including any NRG ROFO Assets), by an amount equal to 0.05% of the enterprise value of the acquired assets as of the acquisition closing date. We may amend the scope of the services to be provided by NRG under the Management Services Agreement by providing 180 days' prior written notice to NRG; provided that the services to be provided by NRG under the Management Services Agreement cannot be increased without NRG's prior written consent. Furthermore, we and NRG must consent to any related change in the base management fee resulting from a change in the scope of services. If the parties are unable to agree on a revised base management fee, we may terminate the agreement after the end of such 180-day period by providing 30 days prior written notice to NRG; provided, that any decision by us to terminate the Management Services Agreement in such an event must be approved by a majority of our independent directors.

Reimbursement of Expenses and Certain Taxes

We will also reimburse NRG for any out-of-pocket fees, costs and expenses incurred in the provision of the management and administration services. However, we will not be required to reimburse NRG for the salaries and other remuneration of its management, personnel or support staff who carry out any services or functions for us or overhead for such persons.

We will be required to pay NRG all other out-of-pocket fees, costs and expenses incurred in connection with the provision of the services including those of any third party and to reimburse NRG for any such fees, costs and expenses. Such out-of-pocket fees, costs and expenses are expected to include, among other things, (i) fees, costs and expenses relating to any debt or equity financing; (ii) out-of-pocket fees, costs and expenses incurred in connection with the general administration; (iii) taxes, licenses and other statutory fees or penalties levied against or in respect of us; (iv) amounts

owed under indemnification, contribution or similar arrangements; (v) fees, costs and expenses relating to our financial reporting, regulatory filings and investor relations and the fees, costs and expenses of agents, advisors and other persons who provide services to or on behalf of us; and (vi) any other fees, costs and expenses incurred by NRG that are reasonably necessary for the performance by NRG of its duties and functions under the Management Services Agreement.

In addition, we will be required to pay all fees, expenses and costs incurred in connection with the investigation, acquisition, holding or disposal of any acquisition that is made or that is proposed to be made by us. Where the acquisition or proposed acquisition involves a joint acquisition that is made alongside one or more other persons, NRG will be required to allocate such fees, costs and expenses in proportion to the notional amount of the acquisition made (or that would have been made in the case of an unconsummated acquisition) among all joint investors. Such additional fees, expenses and costs represent out-of-pocket costs associated with investment activities that will be undertaken pursuant to the Management Services Agreement.

We will also be required to pay or reimburse NRG for all sales, use, value added, withholding or other taxes or customs duties or other governmental charges levied or imposed by reason of the Management Services Agreement or any agreement it contemplates, other than income taxes, corporation taxes, capital gains taxes or other similar taxes payable by NRG, which are personal to NRG.

Amendment

Any amendment, supplement to or waiver of the Management Services Agreement (including any proposed change to the scope of services to be provided by NRG thereunder and any related change in NRG's management fee) must be approved by a majority of our independent directors.

Termination

The Management Services Agreement has no fixed term. However, we may terminate the Management Services Agreement upon 30 days' prior written notice of termination from us to NRG if any of the following occurs:

- NRG defaults in the performance or observance of any material term, condition or covenant contained in the agreement in a manner that results in material harm to us and the default continues unremedied for a period of 30 days after written notice of the breach is given to NRG;
- NRG engages in any act of fraud, misappropriation of funds or embezzlement against us that results in material harm to us;
- NRG is grossly negligent in the performance of its duties under the agreement and such negligence results in material harm to us; or
- certain events relating to the bankruptcy or insolvency of NRG.

Except as set forth above in "—Management Services Agreement—Management Fee," we have no right to terminate for any other reason, including if NRG experiences a change of control. We may only terminate the Management Services Agreement with the prior unanimous approval of our independent directors.

Our Management Services Agreement expressly provides that the agreement may not be terminated by us due solely to the poor performance or the underperformance of any of our operations.

NRG may terminate the Management Services Agreement upon 180 days' prior written notice of termination to us if we default in the performance or observance of any material term, condition or covenant contained in the agreement in a manner that results in material harm and the default

continues unremedied for a period of 30 days after written notice of the breach is given to us. NRG may also terminate the Management Services Agreement upon the occurrence of certain events relating to our bankruptcy or insolvency, and as set forth above in "—Management Services Agreement—Management Fee."

Indemnification and Limitations on Liability

Under the Management Services Agreement, NRG has not assumed and will not assume any responsibility other than to provide or arrange for the provision of the services called for thereunder in good faith and will not be responsible for any action that we take in following or declining to follow the advice or recommendations of NRG. The maximum amount of the aggregate liability of NRG or any of its affiliates, or of any director, officer, employee, contractor, agent, advisor or other representative of NRG or any of its affiliates, will be equal to the base management fee previously paid by us in the two most recent calendar years pursuant to the Management Services Agreement. We have also agreed to indemnify each of NRG and its affiliates, directors, officers, agents, members, partners, stockholders and employees to the fullest extent permitted by law from and against any claims, liabilities, losses, damages, costs or expenses (including legal fees) incurred by an indemnified person or threatened in connection with our respective businesses, investments and activities or in respect of or arising from the Management Services Agreement or the services provided by NRG, except to the extent that the claims, liabilities, losses, damages, costs or expenses are determined to have resulted from the indemnified person's bad faith, fraud or willful misconduct, or in the case of a criminal matter, action that the indemnified person knew to have been unlawful. In addition, under the Management Services Agreement, the indemnified persons will not be liable to us to the fullest extent permitted by law, except for conduct that involved bad faith, fraud, willful misconduct, gross negligence or in the case of a criminal matter, action that the indemnified person knew to have been unlawful.

Outside Activities

The Management Services Agreement does not prohibit NRG or its affiliates from pursuing other business activities or providing services to third parties that compete directly or indirectly with us.

Right of First Offer

Pursuant to that right of first offer and right of first look agreement among NRG, Yieldco Inc. and their affiliates, NRG will grant Yieldco Inc. and its affiliates a right of first offer on any proposed sale, transfer or other disposition of any of the NRG ROFO Assets for a period of five years from the completion of this offering. The NRG ROFO Assets consist of the following: (i) NRG's 51% interest in Agua Caliente, (ii) NRG's remaining 51.05% interest in CVSR, (iii) 97.94% of NRG's interest in Ivanpah and (iv) 100% of NRG's interest in Marsh Landing. This right of first offer will not apply to a merger with or into, or sale of substantially all of NRG's assets to, an unaffiliated third-party.

Prior to engaging in any negotiation regarding any disposition, sale or other transfer of any NRG ROFO Asset, NRG has agreed to deliver a written notice to us setting forth the material terms and conditions of the proposed transaction. During the 30-day period after the delivery of such notice, we and NRG will negotiate in good faith to reach an agreement on the transaction. If we do not reach an agreement within such 30-day period, NRG will be able within the next 180 calendar days to sell, transfer, dispose or recontract such NRG ROFO Asset to a third party (or to agree in writing to undertake such transaction with a third party) on terms generally no less favorable to NRG than those offered pursuant to the written notice.

Amended and Restated Operating Agreement of Yieldco LLC

In connection with the closing of this offering, the operating agreement of Yieldco LLC will be amended and restated to authorize two classes of units, the Class A units and the Class B units, and to

appoint Yieldco Inc. as the sole managing member of Yieldco LLC. The following is a description of the material terms of Yieldco LLC's amended and restated operating agreement.

Governance

Yieldco Inc. will serve as the sole managing member of Yieldco LLC. As such, Yieldco Inc., and effectively our board of directors, will control the business and affairs of Yieldco LLC and be responsible for the management of its business. No other member of Yieldco LLC, in its capacity as such, will have any authority or right to control the management of Yieldco LLC or to bind it in connection with any matter. Any amendment, supplement or waiver of the Yieldco LLC operating agreement must be approved by a majority of our independent directors.

Voting and Economic Rights of Members

Yieldco LLC will issue Class A units, which may only be issued to Yieldco Inc., as the sole managing member, and Class B units, which may only be issued to NRG and held by NRG or its permitted transferees. The Class A units and Class B units will have equivalent economic and other rights, except that upon issuance, each holder of a Class B unit will also be issued a share of our Class B common stock. Each Class B unit will be exchangeable for a share of our Class A common stock. When NRG or its permitted transferee exchanges a Class B unit of Yieldco LLC for a share of our Class A common stock, we will automatically redeem and cancel a corresponding share of our Class B common stock and the Class B unit will automatically convert into a Class A unit issued to us. The Class A units and Class B units will not have any voting rights.

Net profits and net losses and distributions by Yieldco LLC will be allocated and made to holders of units in accordance with the respective number of membership units of Yieldco LLC held. Yieldco LLC will agree to make distributions to us and NRG for the purpose of funding tax obligations in respect of income of Yieldco LLC that is allocated to the members of Yieldco LLC. However, Yieldco LLC may not make any distributions to its members if doing so would violate any agreement to which it is then a party or any law then applicable to it, have the effect of rendering it insolvent or result in it having net capital lower than that required by applicable law. Additionally, because all of our operations are conducted through Yieldco Operating LLC and Yieldco Operating LLC's revolving bank credit facility may restrict the ability of Yieldco Operating LLC to make distributions to Yieldco LLC, Yieldco LLC may not have any funds available to make distributions to us and NRG (including with respect to tax obligations).

Coordination of Yieldco Inc. and Yieldco LLC

At any time Yieldco Inc. issues a share of its Class A common stock for cash, the net proceeds therefrom will promptly be transferred to Yieldco LLC and Yieldco LLC will either:

- transfer a newly issued Class A unit of Yieldco LLC to Yieldco Inc.; or
- use such net proceeds to purchase a Class B unit of Yieldco LLC from NRG, which Class B unit will automatically convert into a Class A unit of Yieldco LLC when transferred to Yieldco Inc.

In the event Yieldco LLC purchases a Class B unit of Yieldco LLC from NRG, Yieldco Inc. will concurrently redeem and cancel the corresponding Class B share of its common stock.

If Yieldco Inc. issues other classes or series of equity securities, Yieldco LLC will issue, and Yieldco Inc. will use the net proceeds therefrom to purchase, an equal amount of units with designations, preferences and other rights and terms that are substantially the same as Yieldco Inc.'s newly-issued equity securities. Conversely, if Yieldco Inc. elects to redeem any shares of its Class A common stock (or its equity securities of other classes or series) for cash, Yieldco LLC will, immediately prior to such redemption, redeem an equal number of Class A units (or its units of the

corresponding classes or series) held by Yieldco Inc., upon the same terms and for the same price, as the shares of Class A common stock (or equity securities of such other classes or series) so redeemed.

Issuances and Transfer of Units

Class A units may only be issued to Yieldco Inc., as the sole managing member of Yieldco LLC, and are non-transferable except upon redemption by Yieldco LLC. Class B units may only be issued to NRG. Class B units may not be transferred without our consent, subject to such conditions as we may specify, except NRG may transfer Class B units to a permitted transferee (including an affiliate) without our consent. NRG may not transfer any Class B units to any person unless NRG transfers an equal number of shares of our Class B common stock to the same transferee.

Exchange Agreement

We have entered into an exchange agreement pursuant to which NRG (and certain permitted assignees and permitted transferees who acquire Class B Yieldco LLC units) may from time to time cause Yieldco LLC to exchange its Class B Yieldco LLC units for shares of our Class A common stock on a one-for-one basis, subject to adjustments for stock splits, stock dividends and reclassifications. The exchange agreement also provides that, subject to certain exceptions, holders will not have the right to cause Yieldco LLC to exchange Class B Yieldco LLC units if Yieldco LLC determines that such exchange would be prohibited by law or regulation or would violate other agreements to which Yieldco Inc. may be subject, and Yieldco Inc. may impose additional restrictions on exchange that it determines necessary or advisable so that Yieldco LLC is not treated as a "publicly traded partnership" for U.S. federal income tax purposes.

When NRG or its permitted transferee exchanges a Class B unit of Yieldco LLC for a share of our Class A common stock, we will automatically redeem and cancel a corresponding share of our Class B common stock and the Class B unit will automatically convert into a Class A unit when issued to Yieldco Inc. As result, when a holder exchanges its Class B units for shares of our Class A common stock, our interest in Yieldco LLC will be correspondingly increased. We have reserved for issuance shares of our Class A common stock, which is the aggregate number of shares of Class A common stock expected to be issued over time upon the exchange of all Class B units of Yieldco LLC outstanding immediately after this offering.

Indemnification and Exculpation

To the extent permitted by applicable law, Yieldco LLC will indemnify its managing member, our authorized officers and our other employees and agents from and against any losses, liabilities, damages, costs, expenses, fees or penalties incurred in connection with serving in such capacities, provided that the acts or omissions of these indemnified persons are not the result of fraud, intentional misconduct or a violation of the implied contractual duty of good faith and fair dealing, or any lesser standard of conduct permitted under applicable law.

Such authorized officers and other employees and agents will not be liable to Yieldco LLC, its members or their affiliates for damages incurred as a result of any acts or omissions of these persons, provided that the acts or omissions of these exculpated persons are not the result of fraud, intentional misconduct or a violation of the implied contractual duty of good faith and fair dealing, or any lesser standard of conduct permitted under applicable law.

Registration Rights Agreement

We plan to enter into a registration rights agreement with NRG pursuant to which NRG and its affiliates will be entitled to demand registration rights, including the right to demand that a shelf registration statement be filed, and "piggyback" registration rights, for shares of our Class A common stock that are issuable upon exchange of Class B units of Yieldco LLC that it owns. The right to sell

shares of our Class A common stock pursuant to this registration rights agreement will be made subject to a lock-up agreement between NRG and the underwriters in this offering which, unless waived, will prevent NRG from exercising this right until 180 days after the date of this prospectus.

Tax Sharing Agreement

Yieldco will be included in certain unitary and combined returns with NRG for state income tax purposes. As a result, NRG and Yieldco and their respective affiliates will enter into a tax sharing agreement that will set forth each party's respective rights and obligations with respect to tax matters in the applicable states.

Licensing Agreement

Yieldco Inc. and NRG have entered into a Licensing Agreement pursuant to which NRG has granted to Yieldco a non-exclusive, royalty-free license to use the name "NRG" and the NRG logo. Other than under this limited license, we do not have a legal right to the "NRG" name and the NRG logo in the United States and Canada.

We will be permitted to terminate the Licensing Agreement upon 30 days' prior written notice if NRG defaults in the performance of any material term, condition or agreement contained in the agreement and the default continues for a period of 30 days after written notice of termination of the breach is given to NRG. NRG may terminate the Licensing Agreement effective immediately upon termination of the Management Services Agreement or with respect to any licensee upon 30 days' prior written notice of termination if any of the following occurs:

- the licensee defaults in the performance of any material term, condition or agreement contained in the agreement and the default continues uncured for a period of 30 days after written notice of termination of the breach is given to the licensee;
- the licensee assigns, sublicenses, pledges, mortgages or otherwise encumbers the intellectual property rights granted to it pursuant to the Licensing Agreement without NRG's prior written consent;
- certain events relating to a bankruptcy or insolvency of the licensee; or
- the licensee ceases to be an affiliate of NRG.

Procedures for Review, Approval and Ratification of Related-Person Transactions

Our board of directors will adopt a code of business conduct and ethics in connection with the closing of this offering that will provide that our board of directors or its authorized committee will periodically review all related-person transactions that are required to be disclosed under SEC rules and, when appropriate, initially authorize or ratify all such transactions. In the event that our board of directors or its authorized committee considers ratification of a related-person transaction and determines not to so ratify, the code of business conduct and ethics will provide that our management will make all reasonable efforts to cancel or annul the transaction.

The code of business conduct and ethics will provide that, in determining whether to recommend the initial approval or ratification of a related-person transaction, our board of directors or its authorized committee should consider all of the relevant facts and circumstances available, including (if applicable) but not limited to: (i) whether there is an appropriate business justification for the transaction; (ii) the benefits that accrue to us as a result of the transaction; (iii) the terms available to unrelated third parties entering into similar transactions; (iv) the impact of the transaction on director independence (in the event the related person is a director, an immediate family member of a director or an entity in which a director or an immediate family member of a director is a partner, stockholder, member or executive officer); (v) the availability of other sources for comparable products or services;

(vi) whether it is a single transaction or a series of ongoing, related transactions; and (vii) whether entering into the transaction would be consistent with the code of business conduct and ethics.

Our organizational and ownership structure and strategy involve a number of relationships that may give rise to conflicts of interest between us and our stockholders on the one hand, and NRG, on the other hand. In particular, conflicts of interest could arise, among other reasons, because:

- in originating and recommending acquisition opportunities (except with respect to NRG ROFO Assets), NRG has significant discretion to determine the suitability of opportunities for us and to allocate such opportunities to us or to itself or third parties;
- there may be circumstances where NRG will determine that an acquisition opportunity is not suitable for us because of the fit with our acquisition strategy or limits arising due to regulatory or tax considerations or limits on our financial capacity or because NRG is entitled to pursue the acquisition on its own behalf rather than offering us the opportunity to make the acquisition;
- where NRG has made an acquisition, it may transfer the asset to us at a later date after such asset has been developed or we have obtained sufficient financing;
- our relationship with NRG involves a number of arrangements pursuant to which NRG provides various services, access to financing arrangements and originates acquisition opportunities, and circumstances may arise in which these arrangements will need to be amended or new arrangements will need to be entered into;
- subject to the right of first offer described in "—Right of First Offer," NRG is permitted to pursue other business activities and provide services to third parties that compete directly with our business and activities without providing us with an opportunity to participate, which could result in the allocation of NRG's resources, personnel and acquisition opportunities to others who compete with us;
- NRG does not owe Yieldco Inc. or our stockholders any fiduciary duties, which may limit our recourse against it;
- the liability of NRG is limited under our arrangements with them, and we have agreed to indemnify NRG against claims, liabilities, losses, damages, costs or expenses which they may face in connection with those arrangements, which may lead them to assume greater risks when making decisions than they otherwise would if such decisions were being made solely for their own account, or may give rise to legal claims for indemnification that are adverse to the interests of our stockholders;
- NRG or a NRG sponsored consortium may want to acquire or dispose of the same asset as us;
- we may be, directly or indirectly, purchasing an asset from, or selling an asset to, NRG;
- there may be circumstances where we are acquiring different assets as part of the same transaction with NRG; and
- other conflicting transactions involving us and NRG.

The code of business conduct and ethics described above will be adopted in connection with the closing of this offering, and as a result the transactions described above (including the Organizational Structure) were not reviewed under such policy.

DESCRIPTION OF CAPITAL STOCK

The following is a description of the material terms of our amended and restated certificate of incorporation and bylaws, as each will be in effect upon completion of the offering. The following description may not contain all of the information that is important to you. To understand them fully, you should read our amended and restated certificate of incorporation and bylaws, copies of which have been or will be filed with the SEC as exhibits to our registration statement of which this prospectus is a part.

Authorized Capitalization

Upon completion of this offering, our authorized capital stock will consist of shares of Class A common stock, par value $0.01 per share, of which shares will be issued and outstanding, shares of Class B common stock, par value $0.01 per share, of which shares will be issued and outstanding, and shares of preferred stock, par value $0.01 per share, none of which will be issued and outstanding. In addition, upon completion of this offering, (i) an aggregate of shares of our Class A common stock will be reserved for issuance to our non-employee directors, as described in "Executive Officer Compensation—Compensation of Our Directors," and (ii) an aggregate of shares of our Class A common stock will be reserved for issuance upon the exercise of Class B Yieldco LLC units. Unless our board of directors determines otherwise, we will issue all shares of our capital stock in uncertificated form.

Class A Common Stock

Voting Rights

Each share of Class A common stock entitles the holder to one vote with respect to each matter presented to our stockholders on which the holders of Class A common stock are entitled to vote. Holders of shares of our Class A common stock and Class B common stock vote together as a single class on all matters presented to our stockholders for their vote or approval, except as otherwise required by applicable law. Holders of our Class A common stock will not have cumulative voting rights. Except in respect of matters relating to the election and removal of directors on our board of directors and as otherwise provided in our amended and restated certificate of incorporation or required by law, all matters to be voted on by holders of our Class A common stock and Class B common stock must be approved by a majority, on a combined basis, of such shares present in person or by proxy at the meeting and entitled to vote on the subject matter. In the case of election of directors, all matters to be voted on by our stockholders must be approved by a plurality of the votes entitled to be cast by all shares of our common stock on a combined basis.

Dividend Rights

Subject to preferences that may be applicable to any then outstanding preferred stock, the holders of our outstanding shares of Class A common stock are entitled to receive dividends, if any, as may be declared from time to time by our board of directors out of legally available funds. Dividends upon our Class A common stock may be declared by our board of directors at any regular or special meeting, and may be paid in cash, in property or in shares of capital stock. Before payment of any dividend, there may be set aside out of any of our funds available for dividends, such sums as the Board of Directors deems proper as reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any of our property or for any proper purpose, and the Board of Directors may modify or abolish any such reserve. Furthermore because we are a holding company, our ability to pay dividends on our common stock is limited by restrictions on the ability of our subsidiaries to pay dividends or make other distributions to us, including restrictions under the terms of the agreements

governing our indebtedness. See "Description of Certain Indebtedness." See also "Cash Dividend Policy."

Liquidation Rights

In the event of any voluntary or involuntary liquidation, dissolution or winding up of our affairs, holders of our Class A common stock would be entitled to share ratably in our assets that are legally available for dividend to stockholders after payment of our debts and other liabilities and the liquidation preference of any of our outstanding shares of preferred stock, subject only to the right of the holders of shares of our Class B common stock to receive payment for the par value of their shares in connection with our liquidation.

Other Rights

Holders of our Class A common stock have no preemptive, conversion or other rights to subscribe for additional shares. All outstanding shares are, and all shares offered by this prospectus will be, when sold, validly issued, fully paid and nonassessable. The rights, preferences and privileges of the holders of our Class A common stock are subject to, and may be adversely affected by, the rights of the holders of shares of any series of our preferred stock that we may designate and issue in the future.

Listing

Our Class A common stock will be listed on the New York Stock Exchange under the symbol " ."

Transfer Agent and Registrar

The transfer agent and registrar for our Class A common stock is .

Class B Common Stock

Voting Rights

Each share of Class B common stock entitles the holder to one vote with respect to each matter presented to our stockholders on which the holders of Class B common stock are entitled to vote. Holders of shares of our Class A common stock and Class B common stock vote together as a single class on all matters presented to our stockholders for their vote or approval, except as otherwise required by applicable law. Holders of our Class B common stock will not have cumulative voting rights. Except in respect of matters relating to the election and removal of directors on our board of directors and as otherwise provided in our amended and restated certificate of incorporation or required by law, all matters to be voted on by holders of our Class A common stock and Class B common stock must be approved by a majority, on a combined basis, of such shares present in person or by proxy at the meeting and entitled to vote on the subject matter. In the case of election of directors, all matters to be voted on by our stockholders must be approved by a plurality of the votes entitled to be cast by all shares of our common stock on a combined basis.

Dividend and Liquidation Rights

Holders of our Class B common stock do not have any right to receive dividends or to receive a distribution upon our liquidation or winding up except for their right to receive payment for the par value of their shares of Class B common stock in connection with our liquidation.

Mandatory Redemption

Shares of Class B common stock are subject to redemption at a price per share equal to per share par value upon the conversion of Class B units of Yieldco LLC. Shares of Class B common stock so redeemed are automatically cancelled and are not available to be reissued.

Authorized but Unissued Capital Stock

Delaware law does not require stockholder approval for any issuance of authorized shares. However, the listing requirements of the NYSE, which would apply so long as the shares of Class A common stock remain listed on the NYSE, require stockholder approval of certain issuances equal to or exceeding 20% of the then outstanding voting power or the then outstanding number of shares of Class A common stock. These additional shares may be used for a variety of corporate purposes, including future public offerings, to raise additional capital or to facilitate acquisitions.

One of the effects of the existence of unissued and unreserved common stock or preferred stock may be to enable our board of directors to issue shares to persons friendly to current management, which issuance could render more difficult or discourage an attempt to obtain control of our company by means of a merger, tender offer, proxy contest or otherwise, and thereby protect the continuity of our management and possibly deprive the stockholders of opportunities to sell their shares at prices higher than prevailing market prices.

Preferred Stock

Our amended and restated certificate of incorporation will authorize our board of directors to provide for the issuance of shares of preferred stock in one or more series and to fix the preferences, powers and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including the dividend rate, conversion rights, voting rights, redemption rights and liquidation preference and to fix the number of shares to be included in any such series without any further vote or action by our stockholders. Any preferred stock so issued may rank senior to our common stock with respect to the payment of dividends or amounts upon liquidation, dissolution or winding up, or both. The issuance of preferred stock may have the effect of delaying, deferring or preventing a change in control of our company without further action by the stockholders and may adversely affect the voting and other rights of the holders of common stock. The issuance of preferred stock with voting and conversion rights may adversely affect the voting power of the holders of common stock, including the loss of voting control to others. At present, we have no plans to issue any preferred stock.

Corporate Opportunity

As permitted under the DGCL, in our amended and restated certificate of incorporation, we will renounce any interest or expectancy in, or any offer of an opportunity to participate in, specified business opportunities that are presented to us or one or more of our officers, directors or stockholders. In recognition that directors, officers and/or employees of NRG may serve as our directors and/or officers, and NRG and its affiliates, not including us (the "NRG Entities") may engage in similar activities or lines of business that we do, our amended and restated certificate of incorporation will provide for the allocation of certain corporate opportunities between us and the NRG Entities. Specifically, none of the NRG Entities will have any duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business that we do. In the event that a director or officer of any NRG Entity who also as one of our directors or officers acquires knowledge of a potential transaction or matter which may be a corporate opportunity for any of the NRG Entities and us, we will not have any expectancy in such corporate opportunity, and the director or officer will not have any duty to present such corporate opportunity to us and may pursue or acquire

such corporate opportunity for himself/herself or direct such opportunity to another person. A corporate opportunity that an officer or director of ours who is also a director or officer of any of the NRG Entities acquires knowledge of will not belong to us unless the corporate opportunity at issue is expressly offered in writing to such person solely in his or her capacity as a director or officer of ours. In addition, even if a business opportunity is presented to an officer or director of any of the NRG Entities, the following corporate opportunities will not belong to us: (1) those we are not financially able, contractually permitted or legally able to undertake; (2) those not in our line of business; (3) those of no practical advantage to us; and (4) those in which we have no interest or reasonable expectancy. Except with respect to our directors and/or officers who are also directors and/or officers of any of the NRG Entities, the corporate opportunity doctrine applies as construed pursuant to applicable Delaware laws, without limitation.

Antitakeover Effects of Delaware Law and Our Certificate of Incorporation and Bylaws

In addition to the disproportionate voting rights that NRG will have following this offering as a result of its ownership of our Class B common stock, some provisions of Delaware law contain, and our amended and restated certificate of incorporation and our bylaws described below will contain, a number of provisions which may have the effect of encouraging persons considering unsolicited tender offers or other unilateral takeover proposals to negotiate with our board of directors rather than pursue non-negotiated takeover attempts, which we believe may result in an improvement of the terms of any such acquisition in favor of our stockholders. However, they will also give our board of directors the power to discourage acquisitions that some stockholders may favor.

Undesignated Preferred Stock

The ability to authorize undesignated preferred stock will make it possible for our board of directors to issue preferred stock with super voting, special approval, dividend or other rights or preferences on a discriminatory basis that could impede the success of any attempt to acquire us. These and other provisions may have the effect of deferring, delaying or discouraging hostile takeovers, or changes in control or management of our company.

Meetings and Elections of Directors

Special Meetings of Stockholders. Our amended and restated certificate of incorporation will provide that a special meeting of stockholders may be called only by our board of directors by a resolution adopted by the affirmative vote of a majority of the total number of directors then in office.

Elimination of Stockholder Action by Written Consent. Our amended and restated certificate of incorporation and bylaws will provide that holders of our common stock cannot act by written consent in lieu of a meeting.

Vacancies. Any vacancy occurring on our board of directors and any newly created directorship may be filled only by a majority of the directors remaining in office (even if less than a quorum), subject to the rights of holders of any series of preferred stock.

Amendments

Amendments of Certificate of Incorporation. The provisions described above under "—Special Meetings of Stockholders," and "—Elimination of Stockholder Action by Written Consent" may be amended only by the affirmative vote of holders of at least two-thirds ($^2/_3$) of the combined voting power of outstanding shares of our capital stock entitled to vote in the election of directors, voting together as a single class.

Amendment of Bylaws. Our board of directors will have the power to make, alter, amend, change or repeal our bylaws or adopt new bylaws by the affirmative vote of a majority of the total number of directors then in office. This right is subject to repeal or change by the affirmative vote of a majority of the combined voting power of our then outstanding capital stock entitled to vote on any amendment or repeal of the bylaws.

Notice Provisions Relating to Stockholder Proposals and Nominees

Our amended and restated bylaws will also impose some procedural requirements on stockholders who wish to make nominations in the election of directors or propose any other business to be brought before an annual or special meeting of stockholders.

Specifically, a stockholder may (i) bring a proposal before an annual meeting of stockholders, (ii) nominate a candidate for election to our board of directors at an annual meeting of stockholders, or (iii) nominate a candidate for election to our board of directors at a special meeting of stockholders that has been called for the purpose of electing directors, only if such stockholder delivers timely notice to our corporate secretary. The notice must be in writing and must include certain information and comply with the delivery requirements as set forth in the bylaws.

To be timely, a stockholder's notice must be received at our principal executive offices:

- in the case of a nomination or other business in connection with an annual meeting of stockholders, not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the previous year's annual meeting of stockholders; provided, however, that if the date of the annual meeting is advanced more than 30 days before or delayed more than 70 days after the first anniversary of the preceding year's annual meeting, notice by the stockholder must be delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by us;

- in the case of a nomination in connection with a special meeting of stockholders, not earlier than the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day before such special meeting or the 10th day following the day on which public announcement of the date of such meeting is first made by us.

With respect to special meetings of stockholders, our amended and restated bylaws will provide that only such business shall be conducted as shall have been stated in the notice of the meeting.

Delaware Antitakeover Law

We are subject to Section 203 of the DGCL. Section 203 provides that, subject to certain exceptions specified in the law, a Delaware corporation shall not engage in certain "business combinations: with any "interested stockholder" for a three-year period following the time that the stockholder became an interested stockholder unless:

- prior to such time, our board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;

- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock outstanding at the time the transaction commenced, excluding certain shares; or

- at or subsequent to that time, the business combination is approved by our board of directors and by the affirmative vote of holders of at least $66^2/_3\%$ of the outstanding voting stock that is not owned by the interested stockholder.

Generally, a "business combination" includes a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested stockholder. Subject to certain exceptions, an "interested stockholder" is a person who, together with that person's affiliates and associates, owns, or within the previous three years did own, 15% or more of our voting stock.

Under certain circumstances, Section 203 makes it more difficult for a person who would be an "interested stockholder" to effect various business combinations with a corporation for a three-year period. The provisions of Section 203 may encourage companies interested in acquiring us to negotiate in advance with our board of directors because the stockholder approval requirement would be avoided if our board of directors approves either the business combination or the transaction that results in the stockholder becoming an interested stockholder. These provisions also may make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

Amendments

Any amendments to our amended and restated certificate of incorporation, subject to the rights of holders of our preferred stock, or to our amended and restated bylaws regarding the provisions thereof summarized under "Corporate Opportunity," "Antitakeover Effects of Delaware Law and Our Certificate of Incorporation and Bylaws" or "Amendments" will require the affirmative vote of at least $66^2/_3\%$ of the voting power of all shares of our common stock then outstanding.

SHARES ELIGIBLE FOR FUTURE SALE

Future sales of substantial amounts of our Class A common stock in the public market, or the perception that such sales may occur, could adversely affect the prevailing market price of our Class A common stock. No prediction can be made as to the effect, if any, future sales of shares, or the availability of shares for future sales, will have on the market price of our Class A common stock prevailing from time to time. The number of shares available for future sale in the public market is subject to legal and contractual restrictions, some of which are described below. The expiration of these restrictions will permit sales of substantial amounts of our Class A common stock in the public market, or could create the perception that these sales may occur, which could adversely affect the prevailing market price of our Class A common stock. These factors could also make it more difficult for us to raise funds through future offerings of our Class A common stock.

Sale of Restricted Shares

Prior to this offering, there has been no public market for our Class A common stock. Future sales of our Class A common stock in the public market, or the availability of such shares for sale in the public market, could adversely affect market prices prevailing from time to time. As described below, only a limited number of shares, other than shares sold in this offering, will be available for sale shortly after this offering due to contractual and legal restrictions on resale. Nevertheless, sales of a substantial number of shares of our Class A common stock in the public market after such restrictions lapse, or the perception that those sales may occur, could adversely affect the prevailing market price at such time and our ability to raise equity-related capital at a time and price we deem appropriate.

Upon the closing of this offering, we will have issued and outstanding an aggregate of shares of Class A common stock (or shares of Class A common stock if the underwriters exercise in full their option to purchase additional shares of Class A common stock). All of the shares of Class A common stock to be sold in this offering will be freely tradable without restriction or further registration under the Securities Act, except for any such shares which may be held or acquired by an "affiliate" of ours, as that term is defined in Rule 144 promulgated under the Securities Act ("Rule 144"), which shares will be subject to the volume limitations and other restrictions of Rule 144 described below. The remaining shares of our Class A common stock that will be outstanding upon completion of this offering will be "restricted securities," as that phrase is defined in Rule 144, and may be resold only after registration under the Securities Act or pursuant to an exemption from such registration, including, among others, the exemptions provided by Rule 144 under the Securities Act, which rules are summarized below. These remaining shares of our Class A common stock that will be outstanding upon completion of this offering will be available for sale in the public market after the expiration of the lock-up agreements described in "Underwriting," taking into account the provisions of Rule 144 under the Securities Act.

Following this offering, NRG may exchange Class B units of Yieldco LLC for shares of our Class A common stock on a one-for-one basis, subject to adjustments for stock splits, stock dividends and reclassifications. Upon consummation of this offering, NRG will hold Class B units of Yieldco LLC (or Class B units if the underwriters exercise in full their option to purchase additional shares of Class A common stock), all of which will be exchangeable for shares of our Class A common stock. See "Certain Relationships and Related Party Transactions—Amended and Restated Operating Agreement of Yieldco LLC—Exchange Rights." The shares of Class A common stock we issue upon such exchanges would be "restricted securities" as defined in Rule 144 described below. However, upon the closing of this offering, we intend to enter into a registration rights agreement with NRG that will require us to register under the Securities Act shares of our Class A common stock issued in such an exchange. See "—Registration Rights."

Rule 144

The shares of our Class A common stock being sold in this offering will generally be freely tradable without restriction or further registration under the Securities Act, except that any shares of our Class A common stock held by an "affiliate" of ours may not be resold publicly except in compliance with the registration requirements of the Securities Act or under an exemption under Rule 144 or otherwise. Rule 144 permits our common stock that has been acquired by a person who is an affiliate of ours, or has been an affiliate of ours within the past three months, to be sold into the market in an amount that does not exceed, during any three-month period, the greater of:

- 1% of the total number of shares of our Class A common stock outstanding which will equal approximately shares after this offering; or
- the average weekly reported trading volume of our Class A common stock on the NYSE for the four calendar weeks prior to the sale.

Such sales are also subject to specific manner-of-sale provisions, a six-month holding period requirement for restricted securities, notice requirements and the availability of current public information about us.

Rule 144 also provides that a person who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has for at least six months beneficially owned shares of our common stock that are restricted securities, will be entitled to freely sell such shares of our Class A common stock subject only to the availability of current public information about us. A person who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has for at least one year beneficially owned shares of our Class A common stock that are restricted securities, will be entitled to freely sell such shares of Class A common stock under Rule 144 without regard to the public information requirements of Rule 144.

Lock-Up Agreements

We and each of our officers and directors have agreed with the underwriters, subject to certain exceptions, not to dispose of or hedge any of the shares of our Class A common stock or securities (including Yieldco LLC units) convertible into or exchangeable for, or that represent the right to receive, shares of our Class A common stock during the period from the date of this prospectus continuing through the date that is 180 days after the date of this prospectus, except in connection with this offering or with the prior written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated, as representative of the underwriters in this offering. See "Underwriting."

Registration Rights

Upon completion of this offering, NRG and certain of its affiliates will be entitled to various rights with respect to the registration of shares under the Securities Act. Registration of these shares under the Securities Act would result in these shares becoming fully tradable under the Securities Act immediately upon the effectiveness of the registration, except for shares held by affiliates. See "Certain Relationships and Related Party Transactions—Registration Rights." Shares covered by a registration statement will be eligible for sales in the public market upon the expiration or release from the terms of the lock-up agreement referred to above.

DESCRIPTION OF CERTAIN INDEBTEDNESS

Revolving Credit Facility

Prior to the consummation of this offering, Yieldco Operating LLC intends to enter into a new revolving credit facility. The terms of any such facility (including limitations on the ability of Yieldco Operating LLC to make dividends to Yieldco LLC) are being negotiated.

Project-Level Financing Arrangements

See "Business—Our Operations" for a description of the project-level financing arrangements in place at certain of our project subsidiaries.

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following is a summary of the material United States federal income and estate tax consequences to non-U.S. holders, defined below, of the purchase, ownership and disposition of shares of our Class A common stock as of the date of this prospectus. Except where noted, this summary deals only with shares of our Class A common stock purchased in this offering that are held as capital assets by a non-U.S. holder.

Except as modified for estate tax purposes, a "non-U.S. holder" means a beneficial owner of shares of our Class A common stock that is not for United States federal income tax purposes any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation (or any other entity treated as a corporation for United States federal income tax purposes) created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- any entity or arrangement treated as a partnership for United States federal income tax purposes;
- an estate the income of which is subject to United States federal income taxation regardless of its source; or
- a trust if it (1) is subject to the primary supervision of a court within the United States and one or more United States persons have the authority to control all substantial decisions of the trust or (2) has a valid election in effect under applicable United States Treasury regulations to be treated as a United States person.

This summary is based upon provisions of the Code, applicable United States Treasury regulations, rulings and judicial decisions, all as of the date of the prospectus. Those authorities are subject to different interpretations and may be changed, perhaps retroactively, so as to result in United States federal income and estate tax consequences different from those summarized below. This summary does not address all aspects of United States federal income and estate taxes and does not deal with foreign, state, local, alternative minimum or other tax considerations that may be relevant to non-U.S. holders in light of their particular circumstances. In addition, this summary does not represent a detailed description of the United States federal income and estate tax consequences applicable to you if you are subject to special treatment under the United States federal income tax laws (including if you are a United States expatriate, financial institution, insurance company, tax-exempt organization, dealer in securities, broker, "controlled foreign corporation," "passive foreign investment company," a partnership or other pass-through entity for United States federal income tax purposes (or an investor in such a pass-through entity), a person who acquired shares of our Class A common stock as compensation or otherwise in connection with the performance of services, or a person who has acquired shares of our common stock as part of a straddle, hedge, conversion transaction or other integrated investment). We cannot assure you that a change in law will not alter significantly the tax considerations that we describe in this summary.

We have not and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance that the IRS will not take positions concerning the tax consequences of the purchase, ownership or disposition of shares of our Class A common stock that are different from those discussed below.

If any entity or arrangement treated as a partnership for United States federal income tax purposes holds shares of our Class A common stock, the tax treatment of a partner will generally depend upon the status of the partner and the activities of the partnership. If you are a partner of a partnership holding shares of our common stock, you should consult your tax advisors.

If you are considering the purchase of shares of our Class A common stock, you should consult your own tax advisors concerning the particular United States federal income, estate and gift tax consequences to you of the ownership and disposition of the shares of our common stock, as well as the consequences to you arising under the laws of any other applicable taxing jurisdiction in light of your particular circumstances.

Dividends

We intend to pay any cash distributions on shares of our Class A common stock for the foreseeable future. See "Cash Dividend Policy." Distributions on our Class A common stock will constitute dividends for U.S. tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. To the extent those distributions exceed both our current and our accumulated earnings and profits, they will constitute a return of capital and will first reduce your basis in our Class A common stock (determined on a share by share basis), but not below zero, and then will be treated as gain from the sale of stock.

The gross amount of dividends paid to a non-U.S. holder generally will be subject to withholding of United States federal income tax at a 30% rate, or such lower rate as may be specified by an applicable income tax treaty. However, dividends that are effectively connected with the conduct of a trade or business by the non-U.S. holder within the United States generally are not subject to the withholding tax, provided certain certification and disclosure requirements are satisfied. Instead, such dividends are generally subject to United States federal income tax on a net income basis in the same manner as if the non-U.S. holder were a United States person as defined under the Code (unless an applicable income tax treaty provides otherwise). To obtain the exemption from withholding on effectively connected income, a non-U.S. holder must provide us, our paying agent or other applicable withholding agent with a properly executed IRS Form W-8ECI (or successor form) prior to the payment of the dividend. A corporate non-U.S. holder may be subject to an additional "branch profits tax" at a 30% rate (or such lower rate as may be specified by an applicable income tax treaty) on its effectively connected earnings and profits attributable to such dividends.

A non-U.S. holder of shares of our Class A common stock who wishes to claim the benefit of an applicable treaty rate and avoid backup withholding, as discussed below, for dividends will be required (a) to complete IRS Form W-8BEN (or other applicable form) and certify under penalty of perjury that such holder is not a United States person as defined under the Code and is eligible for treaty benefits or (b) if shares of our common stock are held through certain foreign intermediaries, satisfy the relevant certification requirements of applicable United States Treasury regulations. A non-U.S. holder who provides us, our paying agent or other applicable withholding agent with an IRS Form W-8BEN, Form W-8ECI or other form must update the form or submit a new form, as applicable, if there is a change in circumstances that makes any information on such form incorrect. Special certification and other requirements apply to certain non-U.S. holders that are pass-through entities rather than corporations or individuals.

It is possible that a distribution made to a non-U.S. holder may be subject to over-withholding because, for example, at the time of the distribution we or the relevant withholding agent may not be able to determine how much of the distribution constitutes dividends or the proper documentation establishing the benefits of any applicable treaty has not been properly supplied. If there is any over-withholding on distributions made to a non-U.S. holder, such non-U.S. holder may obtain a refund of the over-withheld amount by timely filing an appropriate claim for refund with the IRS. Non-U.S. holders should consult their tax advisors regarding the applicable withholding tax rules and the possibility of obtaining a refund of any over-withheld amounts.

Gain on Disposition of Shares of Our Class A Common Stock

Any gain realized by a non-U.S. holder on the disposition of shares of our Class A common stock generally will not be subject to United States federal income tax unless:

- the gain is effectively connected with a trade or business of the non-U.S. holder in the United States;
- the non-U.S. holder is an individual who is present in the United States for 183 days or more in the taxable year of that disposition and certain other conditions are met; or
- our Class A common stock constitutes a U.S. real property interest by reason of our status as a "United States real property holding corporation" (a "USRPHC") for United States federal income tax purposes at any time during the shorter of the five-year period ending on the date of the disposition or the period that the non-U.S. holder held shares of our Class A common stock.

In the case of a non-U.S. holder described in the first bullet point above, any gain will be subject to United States federal income tax on a net income basis generally in the same manner as if the non-U.S. holder were a United States person as defined under the Code (unless an applicable income tax treaty provides otherwise), and a non-U.S. holder that is a foreign corporation may be subject to the branch profits tax equal to 30% of its effectively connected earnings and profits attributable to such gain (or at such lower rate as may be specified by an applicable income tax treaty). In the case of a non-U.S. holder described in the second bullet point above, except as otherwise provided by an applicable income tax treaty, any gain, which may be offset by certain United States source capital losses, will be subject to a 30% tax even though the individual is not considered a resident of the United States under the Code.

We believe that we are not currently and will not become a USRPHC. However, because the determination of whether we are a USRPHC depends on the fair market value of our U.S. real property relative to the fair market value of our other business assets and because the definition of U.S. real property is not entirely clear, there can be no assurance that we are not a USRPHC now or will not become one in the future. Even if we become a USRPHC, however, as long as our Class A common stock is regularly traded on an established securities market, as to which there can be no assurance, such common stock will be treated as a U.S. real property interest only if you actually or constructively hold more than five percent of such regularly traded common stock at any time during the applicable period described above.

Information Reporting and Backup Withholding

We must report annually to the IRS and to you the amount of dividends paid to you and the amount of tax, if any, withheld with respect to such dividends. The IRS may make this information available to the tax authorities in the country in which you are resident.

In addition, you may be subject to information reporting requirements and backup withholding tax with respect to dividends paid on, and the proceeds of disposition of, shares of our Class A common stock, unless, generally, you certify under penalties of perjury (usually on IRS Form W-8BEN) that you are not a U.S. person or you otherwise establish an exemption. Additional rules relating to information reporting requirements and backup withholding tax with respect to payments of the proceeds from the disposition of shares of our Class A common stock are as follows:

- If the proceeds are paid to or through the U.S. office of a broker, the proceeds generally will be subject to backup withholding tax and information reporting, unless you certify under penalties of perjury (usually on IRS Form W-8BEN) that you are not a U.S. person or you otherwise establish an exemption.

- If the proceeds are paid to or through a non-U.S. office of a broker that is not a U.S. person and is not a foreign person with certain specified U.S. connections (a "U.S.-related person"), information reporting and backup withholding tax generally will not apply.

- If the proceeds are paid to or through a non-U.S. office of a broker that is a U.S. person or a U.S.-related person, the proceeds generally will be subject to information reporting (but not to backup withholding tax), unless you certify under penalties of perjury (usually on IRS Form W-8BEN) that you are not a U.S. person or you otherwise establish an exemption.

Any amounts withheld under the backup withholding tax rules may be allowed as a refund or a credit against your U.S. federal income tax liability, provided the required information is timely furnished by you to the IRS.

Legislation Affecting Taxation of Class A Common Stock Held By or Through Foreign Entities

Legislation enacted March 18, 2010 generally will impose a withholding tax of 30 percent on dividend income from our Class A common stock and the gross proceeds of a disposition of our Class A common stock paid to a foreign financial institution, unless such institution enters into an agreement with the United States government to collect and provide to the United States tax authorities substantial information regarding United States account holders of such institution (which would include certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with United States owners). Absent any applicable exception, this legislation also generally will impose a withholding tax of 30 percent on dividend income from our Class A common stock and the gross proceeds of a disposition of our Class A common stock paid to a foreign entity that is not a foreign financial institution unless such entity provides the withholding agent with a certification identifying the substantial United States owners of the entity, which generally includes any United States person who directly or indirectly owns more than 10 percent of the entity. Under certain circumstances, a non-United States holder of our Class A common stock might be eligible for refunds or credits of such taxes, and a non-United States holder might be required to file a United States federal income tax return to claim such refunds or credits. This legislation generally is effective for dividend payments made after December 31, 2013, and for payments made in respect of gross proceeds from sales or other dispositions after December 31, 2016. Investors are encouraged to consult with their own tax advisors regarding the implications of this legislation on their investment in our Class A common stock.

Federal Estate Tax

Shares of our Class A common stock that are owned (or treated as owned) by an individual who is not a citizen or resident of the United States (as specially defined for United States federal estate tax purposes) at the time of death will be included in such individual's gross estate for United States federal estate tax purposes, unless an applicable estate or other tax treaty provides otherwise, and, therefore, may be subject to United States federal estate tax.

UNDERWRITING

Merrill Lynch, Pierce, Fenner & Smith Incorporated is acting as representative of each of the underwriters named below. Subject to the terms and conditions set forth in an underwriting agreement among us and the underwriters, each of the underwriters has agreed, severally and not jointly, to purchase the number of shares of our Class A common stock set forth opposite its name below.

Underwriters	Number of Shares
Merrill Lynch, Pierce, Fenner & Smith Incorporated	
Goldman, Sachs & Co.	
Citigroup Global Markets Inc.	
Total	

Subject to the terms and conditions set forth in the underwriting agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares sold under the underwriting agreement if any of these shares are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated.

We have agreed to indemnify the several underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

Commissions and Discounts

The representative has advised us that the underwriters propose initially to offer the shares to the public at the public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of $ per share. Among the factors to be considered in determining the initial public offering price of the shares, in addition to prevailing market conditions, will be our as adjusted historical performance, estimates of our business potential and earnings prospects, an assessment of our management and the consideration of the above factors in relation to market valuation of companies in related businesses. After the initial offering, the public offering price, concession or any other term of the offering may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their option to purchase additional shares.

	Per Share	Without Option	With Option
Public offering price	$	$	$
Underwriting discount	$	$	$
Proceeds	$	$	$

The expenses of the offering, not including the underwriting discount, are estimated at $ and are payable by NRG.

It is expected that delivery of the shares will be made against payment therefor on or about , 2013, which is the third business day following the date of pricing of the shares (this settlement cycle being referred to as "T+3"). Under Rule 15c6-1 of the U.S. Securities and Exchange Commission under the Exchange Act, trades in the secondary market generally are required to settle in three business days, unless the parties to any such trade expressly agree otherwise. Accordingly, purchasers who wish to trade the shares on the date of pricing will be required, by virtue of the fact that the shares initially will settle in T+3, to specify an alternative settlement cycle at the time of any such trade to prevent a failed settlement. Purchasers of the shares who wish to trade the shares on the date of pricing should consult their own advisor.

Option to Purchase Additional Shares

We have granted an option to the underwriters, exercisable for 30 days after the date of this prospectus, to purchase up to additional shares of our Class A common stock at the public offering price, less the underwriting discount. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the underwriting agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

No Sales of Similar Securities

We, our executive officers and directors and our other existing security holders have agreed, subject to certain exceptions, not to sell or transfer any shares of our Class A common stock or securities (including Yieldco LLC units) convertible into, exchangeable for, exercisable for, or repayable with shares of our Class A common stock, for 180 days after the date of this prospectus without first obtaining the written consent of Merrill Lynch, Pierce, Fenner & Smith Incorporated. Specifically, we and these other persons have agreed, with certain limited exceptions, not to directly or indirectly

- offer, pledge, sell or contract to sell any shares of our Class A common stock,
- sell any option or contract to purchase any shares of our Class A common stock,
- purchase any option or contract to sell any shares of our Class A common stock,
- grant any option, right or warrant for the sale of any shares of our Class A common stock,
- make any short sale of any shares of our Class A common stock,
- lend or otherwise dispose of or transfer any shares of our Class A common stock,
- file, request or demand that we file a registration statement related to the shares of our Class A common stock, or
- enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any common stock, whether any such swap or transaction is to be settled by delivery of shares or other securities, in cash or otherwise.

This lock-up provision applies to shares of our Class A common stock and to securities convertible into or exchangeable or exercisable for or repayable with common stock (including Yieldco LLC units). It also applies to shares of our Class A common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement has or later acquires the power of disposition. In the event that either (1) during the last 17 days of the lock-up period referred to above, we issue an earnings release or announce material news or a material event relating to us occurs or (2) prior to the expiration of the lock-up period, we announce that we will release earnings results or become aware that we will make a material news announcement or a material event relating to us will occur during the 16-day period beginning on the last day of the lock-up period, the restrictions described above shall continue to apply until the expiration of the

18-day period beginning on the issuance of the earnings release or the occurrence of the material news announcement or the material event, unless Merrill Lynch, Pierce, Fenner & Smith Incorporated waives, in writing, such extension.

New York Stock Exchange

We expect the shares of Class A common stock to be approved for listing on the New York Stock Exchange under the symbol " ". In order to meet the requirements for listing on that exchange, the underwriters have undertaken to sell a minimum number of shares to a minimum number of beneficial owners as required by that exchange.

Before this offering, there has been no public market for our Class A common stock. The initial public offering price will be determined through negotiations between us and the representative. In addition to prevailing market conditions, the factors to be considered in determining the initial public offering price are:

- the valuation multiples of publicly traded companies that the representative believes to be comparable to us,
- our financial information,
- the history of, and the prospects for, our company and the industry in which we compete,
- an assessment of our management, its past and present operations, and the prospects for, and timing of, our future revenues,
- the present state of our development,
- the recent market prices of, and demand for, publicly traded equity securities of generally comparable companies; and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price.

The underwriters do not expect to sell more than 5% of the shares in the aggregate to accounts over which they exercise discretionary authority

Price Stabilization, Short Positions and Penalty Bids

Until the distribution of the shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our Class A common stock. However, the representative may engage in transactions that stabilize the price of our Class A common stock, such as bids or purchases to peg, fix or maintain that price.

In connection with the offering, the underwriters may purchase and sell our Class A common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. "Covered" short sales are sales made in an amount not greater than the underwriters' option to purchase additional shares described above. The underwriters may close out any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the option to purchase additional

shares granted to them. "Naked" short sales are sales in excess of such option to purchase additional shares. The underwriters must close out any naked short position by purchasing shares in the open market. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of our Class A common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares of Class A common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representatives have repurchased Class A common stock sold by or for the account of such underwriter in stabilizing or short covering transactions.

Similar to other purchase transactions, the underwriters' purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our Class A common stock or preventing or retarding a decline in the market price of our Class A common stock. As a result, the price of our Class A common stock may be higher than the price that might otherwise exist in the open market. The underwriters may conduct these transactions on the NYSE, in the over-the-counter market or otherwise.

Neither we nor any of the underwriters make any representation or prediction as to the direction or magnitude of any effect that the transactions described above may have on the price of our Class A common stock. In addition, neither we nor any of the underwriters make any representation that the representative will engage in these transactions or that these transactions, once commenced, will not be discontinued without notice.

Electronic Distribution

In connection with the offering, certain of the underwriters or securities dealers may distribute prospectuses by electronic means, such as e-mail.

Other Relationships

Some of the underwriters and their affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions. In addition, in the ordinary course of their business activities, the underwriters and their affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

Notice to Prospective Investors in the European Economic Area

In relation to each Member State of the European Economic Area which has implemented the Prospectus Directive (each, a "Relevant Member State"), with effect from and including the date on which the Prospectus Directive is implemented in that Relevant Member State (the "Relevant Implementation Date"), no offer of shares may be made to the public in that Relevant Member State other than:

A. to any legal entity which is a qualified investor as defined in the Prospectus Directive;

B. to fewer than 100 or, if the Relevant Member State has implemented the relevant provision of the 2010 PD Amending Directive, 150, natural or legal persons (other than qualified investors as defined in the Prospectus Directive), as permitted under the Prospectus Directive, subject to obtaining the prior consent of the representative; or

C. in any other circumstances falling within Article 3(2) of the Prospectus Directive,

D. provided that no such offer of shares shall require Yieldco or the representative to publish a prospectus pursuant to Article 3 of the Prospectus Directive or supplement a prospectus pursuant to Article 16 of the Prospectus Directive.

Each person in a Relevant Member State who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed that (A) it is a "qualified investor" within the meaning of the law in that Relevant Member State implementing Article 2(1)(e) of the Prospectus Directive, and (B) in the case of any shares acquired by it as a financial intermediary, as that term is used in Article 3(2) of the Prospectus Directive, the shares acquired by it in the offering have not been acquired on behalf of, nor have they been acquired with a view to their offer or resale to, persons in any Relevant Member State other than "qualified investors" as defined in the Prospectus Directive, or in circumstances in which the prior consent of the representative has been given to the offer or resale. In the case of any shares being offered to a financial intermediary as that term is used in Article 3(2) of the Prospectus Directive, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a non-discretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer of any shares to the public other than their offer or resale in a Relevant Member State to qualified investors as so defined or in circumstances in which the prior consent of the representative has been obtained to each such proposed offer or resale.

Yieldco, the representative and their affiliates will rely upon the truth and accuracy of the foregoing representation, acknowledgement and agreement.

This prospectus has been prepared on the basis that any offer of shares in any Relevant Member State will be made pursuant to an exemption under the Prospectus Directive from the requirement to publish a prospectus for offers of shares. Accordingly any person making or intending to make an offer in that Relevant Member State of shares which are the subject of the offering contemplated in this prospectus may only do so in circumstances in which no obligation arises for Yieldco or any of the underwriters to publish a prospectus pursuant to Article 3 of the Prospectus Directive in relation to such offer. Neither Yieldco nor the underwriters have authorized, nor do they authorize, the making of any offer of shares in circumstances in which an obligation arises for Yieldco or the underwriters to publish a prospectus for such offer.

For the purpose of the above provisions, the expression "an offer to the public" in relation to any shares in any Relevant Member State means the communication in any form and by any means of sufficient information on the terms of the offer and the shares to be offered so as to enable an investor to decide to purchase or subscribe the shares, as the same may be varied in the Relevant Member State by any measure implementing the Prospectus Directive in the Relevant Member State and the expression "Prospectus Directive" means Directive 2003/71/EC (including the 2010 PD Amending Directive, to the extent implemented in the Relevant Member States) and includes any relevant implementing measure in the Relevant Member State and the expression "2010 PD Amending Directive" means Directive 2010/73/EU.

Notice to Prospective Investors in the United Kingdom

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are "qualified investors" (as defined in the Prospectus Directive) (i) who have professional experience in matters relating to investments falling within Article 19 (5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended (the "Order") and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons"). This document must not be acted on or relied on in the United Kingdom by persons who are not relevant persons. In the United Kingdom, any investment or investment activity to which this document relates is only available to, and will be engaged in with, relevant persons.

Notice to Prospective Investors in Switzerland

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange ("SIX") or on any other stock exchange or regulated trading facility in Switzerland. This document has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, Yieldco, nor the shares offered hereby have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA, and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes ("CISA"). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

Notice to Prospective Investors in the Dubai International Financial Centre

This prospectus supplement relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority ("DFSA"). This prospectus supplement is intended for distribution only to persons of a type specified in the Offered Securities Rules of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus supplement nor taken steps to verify the information set forth herein and has no responsibility for the prospectus supplement. The shares to which this prospectus supplement relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this prospectus supplement you should consult an authorized financial advisor.

Notice to Prospective Investors in Japan

The securities have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (the Financial Instruments and Exchange Law) and each underwriter has agreed that it will not offer or sell any securities, directly or indirectly, in Japan or to, or for the benefit of, any resident of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to a resident of Japan, except pursuant to an exemption from the

registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Law and any other applicable laws, regulations and ministerial guidelines of Japan.

Notice to Prospective Investors in Hong Kong

The Class A common stock may not be offered or sold by means of any document other than (i) in circumstances which do not constitute an offer to the public within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), or (ii) to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap.571, Laws of Hong Kong) and any rules made thereunder, or (iii) in other circumstances which do not result in the document being a "prospectus" within the meaning of the Companies Ordinance (Cap.32, Laws of Hong Kong), and no advertisement, invitation or document relating to the shares of Class A common stock may be issued or may be in the possession of any person for the purpose of issue (in each case whether in Hong Kong or elsewhere), which is directed at, or the contents of which are likely to be accessed or read by, the public in Hong Kong (except if permitted to do so under the laws of Hong Kong) other than with respect to notes which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" within the meaning of the Securities and Futures Ordinance (Cap. 571, Laws of Hong Kong) and any rules made thereunder.

Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the Class A common stock may not be circulated or distributed, nor may the shares of Class A common stock be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Singapore other than (i) to an institutional investor under Section 274 of the Securities and Futures Act, Chapter 289 of Singapore (the "SFA"), (ii) to a relevant person, or any person pursuant to Section 275(1A), and in accordance with the conditions specified in Section 275 of the SFA or (iii) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA. Where the shares of Class A common stock are subscribed or purchased under Section 275 of the SFA by a relevant person which is: (a) a corporation (which is not an accredited investor) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or (b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary is an accredited investor, shares, debentures and units of shares and debentures of that corporation or the beneficiaries' rights and interest in that trust will not be transferable for six months after that corporation or that trust has acquired the shares of Class A common stock under Section 275 of the SFA except: (1) to an institutional investor under Section 274 of the SFA or to a relevant person, or any person pursuant to Section 275(1A) of the SFA and in accordance with the conditions specified in Section 275 of the SFA; (2) where no consideration is given for the transfer; or (3) by operation of law.

LEGAL MATTERS

The validity of the Class A common stock offered hereby will be passed upon for us by Kirkland & Ellis LLP (a partnership that includes professional corporations), Chicago, Illinois. The underwriters have been represented by Latham & Watkins, LLP, New York, New York. Kirkland & Ellis LLP has from time to time represented and may continue to represent NRG and some of its affiliates in connection with various legal matters.

EXPERTS

The combined financial statements of NRG YieldCo at December 31, 2011 and 2010, and for each of the two years in the period ended December 31, 2011, appearing in this prospectus and registration statement have been audited by KPMG LLP, an independent registered public accounting firm, as set forth in their report thereon appearing elsewhere herein, and are included in reliance upon such report given on the authority of such firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act that registers the shares of our Class A common stock to be sold in this offering. The registration statement, including the attached exhibits, contains additional relevant information about us and our Class A common stock. The rules and regulations of the SEC allow us to omit from this document certain information included in the registration statement.

You may read and copy the reports and other information we file with the SEC at the SEC's Public Reference Room at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. You may also obtain copies of this information by mail from the public reference section of the SEC, 100 F Street, N.E., Washington, D.C. 20549, at prescribed rates. You may obtain information regarding the operation of the public reference room by calling 1-800-SEC-0330. The SEC also maintains a website that contains reports, proxy statements and other information about issuers, like us, who file electronically with the SEC. The address of that website is http://www.sec.gov. This reference to the SEC's website is an inactive textual reference only and is not a hyperlink.

Upon completion of this offering, we will become subject to the reporting, proxy and information requirements of the Exchange Act, and as a result will be required to file periodic reports, proxy statements and other information with the SEC. These periodic reports, proxy statements and other information will be available for inspection and copying at the SEC's public reference room and the website of the SEC referred to above, as well as on our website, www. .com. This reference to our website is an inactive textual reference only and is not a hyperlink. The contents of our website are not part of this prospectus, and you should not consider the contents of our website in making an investment decision with respect to our Class A common stock.

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NRG YieldCo (Predecessor) Unaudited Combined Financial Statements

NRG YieldCo Audited Combined Financial Statements

NRG YIELDCO

COMBINED BALANCE SHEETS

	September 30, 2012 (Unaudited)	December 31, 2011
	(In millions)	
ASSETS		
Current Assets		
Cash and cash equivalents	$ 30	$ 24
Restricted cash	11	8
Accounts receivable—trade	20	24
Due from NRG and subsidiaries	1	1
Cash grant receivable	1	25
Inventory	5	5
Deferred tax assets—current	1	1
Prepayments and other current assets	7	2
Total current assets	76	90
Property, Plant and Equipment		
In service	553	548
Under construction	899	407
Total property, plant and equipment	1,452	955
Less accumulated depreciation	(110)	(92)
Net property, plant and equipment	1,342	863
Other Assets		
Equity investments in affiliates	71	78
Notes receivable	30	9
Intangible assets, net of accumulated amortization of $3 and $2	37	38
Other non-current assets	40	29
Total other assets	178	154
Total Assets	$ 1,596	$ 1,107

See notes to unaudited combined financial statements.

NRG YIELDCO

COMBINED BALANCE SHEETS (Continued)

	September 30, 2012	December 31, 2011
	(In millions)	
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities		
Current portion of long-term debt—external	$ 24	$ 33
Accounts payable	150	47
Due to NRG and subsidiaries	28	52
Derivative instruments	15	12
Accrued expenses and other current liabilities	11	12
Total current liabilities	228	156
Other Liabilities		
Long-term debt—external	600	440
Long-term debt—affiliate	27	32
Deferred income taxes	—	11
Derivative instruments	45	23
Other non-current liabilities	7	6
Total non-current liabilities	679	512
Total Liabilities	907	668
Commitments and Contingencies		
Stockholders' Equity		
Additional paid-in capital	700	434
Retained earnings	30	28
Accumulated other comprehensive loss	(41)	(23)
Total Stockholders' Equity	689	439
Total Liabilities and Stockholders' Equity	$ 1,596	$ 1,107

See notes to unaudited combined financial statements.

NRG YIELDCO

COMBINED STATEMENTS OF OPERATIONS

(Unaudited)

	For the Nine Months Ended September 30,	
	2012	2011
	(In millions)	
Operating Revenues		
Total operating revenues	$ 133	$ 126
Operating Costs and Expenses		
Cost of operations	80	79
Depreciation and amortization	18	16
Selling, general and administrative	10	9
Total operating costs and expenses	108	104
Operating Income	25	22
Other Expense		
Equity in earnings of unconsolidated affiliates	4	2
Other income, net	1	1
Interest expense	(25)	(13)
Total other expense	(20)	(10)
Income Before Income Taxes	5	12
Income tax expense	2	5
Net Income	$ 3	$ 7

See notes to unaudited combined financial statements.

NRG YIELDCO

COMBINED STATEMENTS OF COMPREHENSIVE LOSS

(Unaudited)

(In millions)	For the Nine Months Ended September 30, 2012	2011
	(In millions)	
Net Income	$ 3	$ 7
Other comprehensive loss, net of tax		
Unrealized loss on derivatives, net of income tax of $28 and $15	(31)	(11)
Comprehensive loss	$ (28)	$ (4)

See notes to Combined Financial Statements.

NRG YIELDCO

COMBINED STATEMENTS OF CASH FLOWS

(Unaudited)

	Nine Months Ended September 30,	
	2012	2011
	(In millions)	
Cash Flows from Operating Activities		
Net income	$ 3	$ 7
Adjustments to reconcile net income to net cash provided by operating activities:		
Distributions and equity in earnings of unconsolidated affiliates	(4)	(2)
Depreciation and amortization	18	16
Amortization of financing costs and debt discount/premiums	(1)	—
Amortization of intangibles and out-of-market commodity contracts	1	1
Changes in derivative instruments	3	1
Changes in deferred income taxes	2	5
Changes in other working capital	4	18
Net Cash Provided by Operating Activities	26	46
Cash Flows from Investing Activities		
Capital expenditures	(422)	(214)
Increase in restricted cash, net	(2)	(22)
Increase in notes receivable, net	(15)	—
Proceeds from renewable energy grants	27	—
Purchases of emission allowances	—	(7)
Investment in unconsolidated affiliates	(3)	(11)
Other	—	(1)
Net Cash Used by Investing Activities	(415)	(255)
Cash Flows from Financing Activities		
Capital contributions from NRG	265	216
Dividends and returns of capital to NRG	(11)	(2)
Proceeds from issuance of long-term debt—external	184	46
Payment of debt issuance costs	(11)	(12)
Payments of long-term debt—external	(32)	(12)
Payments of long-term debt—affiliate	—	(4)
Net Cash Provided by Financing Activities	395	232
Net Increase in Cash and Cash Equivalents	6	23
Cash and Cash Equivalents at Beginning of Period	24	32
Cash and Cash Equivalents at End of Period	$ 30	$ 55

	Nine Months Ended September 30,	
	2012	2011
	(In millions)	
Interest paid, net of amount capitalized	$ 13	$ 12
Non-cash investing and financing activities:		
Additions to fixed assets for accrued capital expenditures	94	66
Decrease to fixed assets for accrued grants and related tax impact	(3)	(3)
Non-cash capital contributions	11	—

See notes to unaudited combined financial statements.

NRG YieldCo

Notes to Unaudited Combined Financial Statements

Note 1—Nature of Business

The accompanying unaudited combined financial statements of NRG YieldCo have been prepared in connection with the proposed initial public offering of common shares of NRG YieldCo, Inc., or the Offering. NRG YieldCo, Inc. was formed on December 20, 2012 and is a subsidiary of NRG Energy, Inc., or NRG or the Parent. In connection with the Offering, a limited liability company to be formed, NRG YieldCo LLC, or YieldCo LLC, intends to acquire a portfolio of solar, wind and gas generation and thermal infrastructure assets, primarily located in the Northeast, Southwest and California regions of the United States from the Parent. YieldCo, Inc. intends to acquire a managing interest in YieldCo LLC. NRG YieldCo represents the combination of the assets that YieldCo LLC intends to acquire. The combined financial statements are viewed as the Predecessor of YieldCo LLC. The majority of the generation assets are under long-term contractual arrangements for the output from these assets. The thermal assets are regulated by regional public utility commissions whereby pricing is typically calculated using the operating costs plus a normal mark-up or negotiated with the off-taker via the applicable commission's rate approval process. They are comprised of district energy systems and combined heat and power plants that produce steam, hot water and/or chilled water and in some instances, electricity at a central plant. Subsequent to the Offering, YieldCo LLC expects to remain a majority-owned subsidiary of NRG and is expected to be comprised of the following projects:

Projects	Percentage Ownership	Net Capacity (MW)	Offtake Counterparty	Expiration
Conventional				
El Segundo	100	550	Southern California Edison	2023
Utility Scale Solar				
Alpine	100	66	Pacific Gas and Electric	2033
Avenal	49.95	23	Pacific Gas and Electric	2031
Avra Valley	100	25	Tucson Electric Power	2032
Blythe	100	21	Southern California Edison	2029
Borrego	100	26	San Diego Gas and Electric	2038
Roadrunner	100	20	El Paso Electric	2031
CVSR	48.95	122	Pacific Gas and Electric	2038
Distributed Solar				
AZ DG Solar Projects	100	5	Various	2025 - 2033
PFMG DG Solar Projects	51	5	Various	2032
Wind				
South Trent	100	101	AEP Energy Partners	2029
Thermal(a)	100	1,098	Various	Various

(a) For thermal energy, net capacity represents MWt for steam or chilled water.

The combined financial statements were prepared using NRG's historical basis in the assets and liabilities of the Predecessor, and include all revenues, expenses, assets, and liabilities attributed to the Predecessor. The historical combined financial statements also include allocations of certain NRG corporate expenses and income tax expense. Management believes the assumptions and methodology underlying the allocation of general corporate overhead expenses are reasonable. However, such expenses may not be indicative of the actual level of expense that would have been incurred by the Predecessor if it had operated as an independent, publicly-traded company during the periods prior to

NRG YieldCo

Notes to Unaudited Combined Financial Statements (Continued)

Note 1—Nature of Business (Continued)

the Offering or of the costs expected to be incurred in the future. In the opinion of management, the adjustments necessary for a fair presentation of the combined financial statements, in accordance with accounting principles generally accepted in the United States, or US GAAP, have been made.

The accompanying unaudited interim combined financial statements have been prepared in accordance with the Securities and Exchange Commission's, or SEC's, regulations for interim financial information. Accordingly, they do not include all of the information and notes required by U.S. GAAP for complete financial statements. The following notes should be read in conjunction with the accounting policies and other disclosures as set forth in the notes to NRG YieldCo's annual financial statements for the years ended December 31, 2011 and 2010 contained elsewhere in this prospectus. Interim results are not necessarily indicative of results for a full year.

In the opinion of management, the accompanying unaudited interim condensed combined financial statements contain all material adjustments consisting of normal and recurring accruals necessary to present fairly NRG YieldCo's combined financial position as of September 30, 2012, and the results of operations, comprehensive loss and cash flows for the nine months ended September 30, 2012, and 2011.

Use of Estimates

The preparation of combined financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions. These estimates and assumptions impact the reported amount of assets and liabilities and disclosures of contingent assets and liabilities as of the date of the combined financial statements. They also impact the reported amount of net earnings during the reporting period. Actual results could be different from these estimates.

Note 2—Property, Plant, and Equipment

NRG YieldCo's major classes of property, plant, and equipment were as follows:

	September 30, 2012	December 31, 2011	Depreciable Lives
	(In millions)		
Facilities and equipment	$ 523	$ 521	2 - 45 Years
Land and improvements	30	27	
Construction in progress	899	407	
Total property, plant, and equipment	1,452	955	
Accumulated depreciation	(110)	(92)	
Net property, plant, and equipment	$ 1,342	$ 863	

The increase in construction in progress relates primarily to the Alpine, Avra Valley and Borrego projects that began construction in late 2011 as well as additional construction on the El Segundo Energy Center, or ESEC, project. These additions to construction in progress were funded primarily through the issuance of long-term debt, as further discussed in Note 6, *Long-term debt*, and through capital contributions from NRG of approximately $276 million during the nine months ended September 30, 2012.

NRG YieldCo

Notes to Unaudited Combined Financial Statements (Continued)

Note 2—Property, Plant, and Equipment (Continued)

In 2011, the Roadrunner solar project, as a qualified renewable energy project, applied for a cash grant in lieu of investment tax credit from the U.S. Treasury Department in the amount of $21 million, which was received on March 20, 2012. A receivable for the cash grant was recorded when the cash grant application was filed, which resulted in a reduction to the book basis of the property, plant and equipment. In addition, the related recognizable deferred tax asset of $6 million was recorded as a distribution to NRG, with a corresponding reduction to the book basis of Roadrunner's property, plant, and equipment. Accordingly, the book value of Roadrunner's property, plant and equipment was reduced from $77 million to $50 million to account for the cash grant.

Note 3—Fair Value of Financial Instruments

For cash and cash equivalents, restricted cash, accounts receivable and accounts payable, the carrying amount approximates fair value because of the short-term maturity of those instruments. Derivative assets and liabilities are carried at fair market value.

The estimated carrying values and fair values of NRG YieldCo's recorded financial instruments not carried at fair market value are as follows:

	September 30, 2012		As of December 31, 2011	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
	(In millions)			
Assets				
Notes receivable	$ 30	$ 30	$ 9	$ 9
Liabilities				
Long-term debt, including current portion	651	655	505	510

The fair value of notes receivable and long-term debt are based on expected future cash flows discounted at market interest rates, or current interest rates for similar instruments and are classified as Level 3 within the fair value hierarchy.

Fair Value Accounting under ASC 820

ASC 820 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three levels as follows:

- Level 1—quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access as of the measurement date.
- Level 2—inputs other than quoted prices included within Level 1 that are directly observable for the asset or liability or indirectly observable through corroboration with observable market data. YieldCo's derivative instruments are valued utilizing Level 2 inputs.
- Level 3—unobservable inputs for the asset or liability only used when there is little, if any, market activity for the asset or liability at the measurement date.

NRG YieldCo

Notes to Unaudited Combined Financial Statements (Continued)

Note 3—Fair Value of Financial Instruments (Continued)

In accordance with ASC 820, NRG YieldCo determines the level in the fair value hierarchy within which each fair value measurement in its entirety falls, based on the lowest level input that is significant to the fair value measurement in its entirety.

Recurring Fair Value Measurements

NRG YieldCo records its derivative assets and liabilities at fair market value on the combined balance sheet on a recurring basis. These amounts are classified as Level 2 within the fair value hierarchy. There have been no transfers during the nine months ended September 30, 2012, between Levels 1 and 2.

Derivative fair value measurements

NRG YieldCo contracts are non-exchange-traded and valued using prices provided by external sources. For financial contracts, management utilizes third party pricing services. For NRG YieldCo's energy markets, management receives quotes from multiple sources and to the extent that multiple quotes are received, the prices reflect the average of the bid-ask mid-point prices obtained from all sources that it believes provide the most liquid market for the commodity. The fair value of each contract is discounted using a risk free interest rate. In addition, a credit reserve is applied to reflect credit risk, which is calculated based on credit default swaps. To the extent that the net exposure is an asset, NRG YieldCo uses the counterparty's default swap rate. If the exposure is a liability, NRG YieldCo uses the Parent's default swap rate. The credit reserve is added to the discounted fair value to reflect the exit price that a market participant would be willing to receive to assume the liabilities or that a market participant would be willing to pay for the assets. It is possible, however, that future market prices could vary from those used in recording assets and liabilities and such variations could be material.

Concentration of credit risk

Counterparty credit exposure includes credit risk exposure under certain long term agreements, including solar power purchase agreements, or PPAs. As external sources or observable market quotes are not available to estimate such exposure, NRG YieldCo valued these contracts based on various techniques including but not limited to internal models based on a fundamental analysis of the market and extrapolation of observable market data with similar characteristics. Based on these valuation techniques, as of December 31, 2011, credit risk exposure to these counterparties is immaterial. This amount excludes potential credit exposures for projects with long term PPAs that have not reached commercial operations. Many of these power contracts are with utilities or public power entities that have strong credit quality and specific public utility commission or other regulatory support.

Note 4—Accounting for Derivative Instruments and Hedging Activities

Energy Related Commodity Contracts

As of September 30, 2012, NRG YieldCo had forward contracts for the purchase of fuel commodities relating to the forecasted usage of its district energy centers. At September 30, 2012, these contracts were not designated as cash flow or fair value hedges.

NRG YieldCo

Notes to Unaudited Combined Financial Statements (Continued)

Note 4—Accounting for Derivative Instruments and Hedging Activities (Continued)

Interest Rate Swaps

As of September 30, 2012, NRG YieldCo had interest rate derivative instruments on recourse debt extending through 2013 and on non-recourse debt extending through 2029, the majority of which are designated as cash flow hedges.

Fair Value of Derivative Instruments

The following table summarizes the fair value within the derivative instrument valuation on the balance sheet:

	Fair Value Derivative Liabilities	
	September 30, 2012	December 31, 2011
	(In millions)	
Derivatives Designated as Cash Flow Hedges:		
Interest rate contracts current	$ 10	$ 7
Interest rate contracts long-term	37	22
Total Derivatives Designated as Cash Flow Hedges	47	29
Derivatives Not Designated as Cash Flow Hedges:		
Interest rate contracts current	3	—
Interest rate contracts long-term	8	—
Commodity contracts current	2	5
Commodity contracts long-term	—	1
Total Derivatives Not Designated as Cash Flow Hedges	13	6
Total Derivatives	$ 60	$ 35

Accumulated Other Comprehensive Income

The following tables summarize the effects on NRG YieldCo's accumulated OCI balance attributable to interest rate swaps designated as cash flow hedge derivatives, net of tax:

	Nine Months Ended September 30,	
	2012	2011
	(In millions)	
Accumulated OCI beginning balance	$ (23)	$ —
Reclassified from accumulated OCI to income:	4	—
Mark-to-market of cash flow hedge accounting contracts	(22)	(11)
Accumulated OCI balance, net of $13 and $8 of income tax	$ (41)	$ (11)

Amounts reclassified from accumulated OCI into income and amounts recognized in income from the ineffective portion of cash flow hedges are recorded to interest expense.

NRG YieldCo

Notes to Unaudited Combined Financial Statements (Continued)

Note 4—Accounting for Derivative Instruments and Hedging Activities (Continued)

NRG YieldCo's derivative commodity contracts do not impact the combined statement of operations as any losses if realized, will be collected from customers through adjustments allowed by customer contracts, tariffs, or laws.

See Note 4, *Fair Value of Financial Instruments,* for discussion regarding concentration of credit risk.

Note 5—Long-term Debt

Long-term debt consisted of the following:

	September 30, 2012	December 31, 2011	Interest Rate
	(In millions except rates)		
Debt—external:			
NRG West Holdings LLC, term loan, due 2023	$ 294	$ 159	L+2.25 - 2.75(a)
NRG Energy Center Minneapolis LLC, senior secured notes, due 2013, 2017, and 2025	141	151	5.95 - 7.31
South Trent Wind LLC, financing agreement, due 2020	73	75	L+2.50 - 2.625(a)
NRG Roadrunner LLC, due 2031	46	61	L+2.01(a)
NRG Solar Blythe LLC, credit agreement, due 2028	26	27	L+2.50(a)
NRG Solar Avra Valley LLC	40	—	L+2.25(a)
Other	4	—	various
Subtotal	624	473	
Debt—affiliate:			
Note payable to NRG Energy, Inc.—South Trent	27	32	L+1.75%
Subtotal	27	32	
Total debt	651	505	
Less current maturities	24	33	
Total long-term debt	$ 627	$ 472	

(a) L+ equals LIBOR plus x%.

Alpine Financing

On March 16, 2012, NRG Solar Alpine LLC, or Alpine, entered into a credit agreement with a group of lenders, or the Alpine Financing Agreement, for a $166 million construction loan that will convert to a term loan upon completion of the project and a $68 million cash grant loan. The construction loan has an interest rate of LIBOR plus an applicable margin of 2.50% and the cash grant loan has an interest rate of LIBOR plus an applicable margin of 2.25%. The term loan has an interest rate of LIBOR plus an applicable margin of 2.50%, which escalates 0.25% on the fifth anniversary of the term conversion. The term loan, which is secured by all the assets of Alpine, matures on the 10th anniversary of the term conversion and amortizes based upon a predetermined schedule. The cash grant loan matures upon the earlier of the receipt of the cash grant or February 2013. The Alpine Financing Agreement also includes a letter of credit facility on behalf of Alpine of up to $37 million. Alpine pays an availability fee of 100% of the applicable margin on issued letters of credit. As of

NRG YieldCo

Notes to Unaudited Combined Financial Statements (Continued)

Note 5—Long-term Debt (Continued)

September 30, 2012, $2 million was outstanding under the construction loan, nothing was outstanding under the cash grant loans, and $10 million in letters of credit in support of the project were issued.

Also related to the Alpine Financing Agreement, on March 16, 2012, Alpine entered into a series of fixed for floating interest rate swaps for approximately 85% of the outstanding term loan amount, intended to hedge the risks associated with floating interest rates. Alpine will pay its counterparty the equivalent of a 2.74% fixed interest payment on a predetermined notional value, and Alpine will receive quarterly the equivalent of a floating interest payment based on a one month LIBOR calculated on the same notional value through December 31, 2012 and based on a three month LIBOR from December 31, 2012 through the term loan maturity date. All interest rate swap payments by Alpine and its counterparty are made monthly through December 31, 2012, and quarterly thereafter and the LIBOR rate is determined in advance of each interest period. The notional amount of the swap, which became effective March 31, 2012, and matures on December 31, 2029, was $141 million as of September 30, 2012 and will increase and amortize in proportion to the loan.

Roadrunner Financing

On March 20, 2012, NRG Roadrunner LLC, or Roadrunner, received proceeds of $21 million under its cash grant application. These proceeds were used to repay its cash grant loan of $17 million plus accrued interest. The remaining cash was returned to NRG under the terms of the accounts agreement.

Avra Valley Financing

On August 30, 2012, NRG Solar Avra Valley LLC, or Avra Valley, entered into a credit agreement with a bank, or the Avra Valley Financing Agreement, for a $66 million construction loan that will convert to a term loan upon completion of the project and an $8 million cash grant loan. Both the construction and cash grant loans have interest rates of LIBOR plus an applicable margin of 2.25%. The term loan has an interest rate of LIBOR plus an applicable margin of 2.25%, which escalates 0.25% on the fifth, tenth, and fifteenth anniversary of the term conversion. The term loan, which is secured by all the assets of Avra Valley, matures on the 18th anniversary of the term conversion and amortizes based upon a predetermined schedule. The cash grant loan matures upon the earlier of three days after the receipt of the cash grant or May 2013. The Avra Valley Financing Agreement also includes a letter of credit facility on behalf of Avra Valley of up to $4 million. Avra Valley pays an availability fee of 100% of the applicable margin on issued letters of credit. As of September 30, 2012, $40 million was outstanding under the construction loan, nothing was outstanding under the cash grant loans, and no letters of credit in support of the project were issued.

Also related to the Avra Valley Financing Agreement, on August 30, 2012, Avra Valley entered into a fixed for floating interest rate swap for approximately 90% of the outstanding term loan amount, intended to hedge the risks associated with floating interest rates. Avra Valley will pay its counterparty the equivalent of a 2.333% fixed interest payment on a predetermined notional value, and Avra Valley will receive quarterly the equivalent of a floating interest payment based on a 3 month LIBOR calculated on the same notional value through the term loan maturity date. All interest rate swap payments by Avra Valley and its counterparty are made quarterly and the LIBOR rate is determined in advance of each interest period. The original notional amount of the swap, which becomes effective

NRG YieldCo

Notes to Unaudited Combined Financial Statements (Continued)

Note 5—Long-term Debt (Continued)

November 30, 2012, and matures on November 30, 2030 is $59 million and will amortize in proportion to the loan.

CVSR related Financings

On March 9, 2012, High Plains Ranch II LLC, completed its first borrowing of $138 million under the CVSR Financing Agreement with the Federal Financing Bank. As of September 30, 2012, $548 million was outstanding under the loan.

Note 6—Segment Reporting

NRG YieldCo's segment structure reflects how management currently makes financial decisions and allocates resources. Its businesses are primarily segregated based on conventional power generation, renewable businesses which consist of solar and wind, and the thermal and chilled water business. The Corporate segment reflects the corporate costs associated with NRG YieldCo.

	Nine Months Ended September 30, 2012				
	Conventional Generation	Renewables	Thermal	Corporate	Total
	(In millions)				
Operating revenues	$ —	$ 25	$ 108	$ —	$ 133
Operating expenses	1	6	81	2	90
Depreciation and amortization	—	7	11	—	18
Operating income/(loss)	(1)	12	16	(2)	25
Equity in earnings of unconsolidated affiliates	—	4	—	—	4
Other income, net	1	—	—	—	1
Interest expense	—	(19)	(6)	—	(25)
Income before income taxes	—	(3)	10	(2)	5
Income tax expense	—	—	—	2	2
Net income	—	(3)	10	(4)	3
Total assets	$ 516	$ 749	$ 330	$ 1	$ 1,596

NRG YieldCo

Notes to Unaudited Combined Financial Statements (Continued)

Note 6—Segment Reporting (Continued)

	Nine Months Ended September 30, 2011				
	Conventional Generation	Renewables	Thermal	Corporate	Total
	(In millions)				
Operating revenues	$ —	$ 19	$ 107	$ —	$ 126
Operating expenses	—	5	81	2	88
Depreciation and amortization	—	6	10	—	16
Operating income/(loss)	—	8	16	(2)	22
Equity in earnings of unconsolidated affiliates	—	2	—	—	2
Other income, net	—	1	—	—	1
Interest expense	—	(6)	(7)	—	(13)
Income/(loss) before income taxes	—	5	9	(2)	12
Income tax expense	—	—	—	5	5
Net income/(loss)	$ —	$ 5	$ 9	$ (7)	$ 7

Note 7—Income Taxes

Effective Tax Rate

The income tax provision consisted of the following:

	Nine Months Ended September 30,	
	2012	2011
	(In millions)	
Income before income taxes	$ 5	$ 12
Income tax expense	2	5
Effective tax rate	40.0%	41.7%

For the nine months ended September 30, 2012 and 2011, the overall tax rate was different than the statutory rate of 35% primarily due to the impact of state and local income taxes.

Report of Independent Registered Public Accounting Firm

The Management and Board of Directors
NRG Energy, Inc.:

We have audited the accompanying combined balance sheets of NRG YieldCo as of December 31, 2011 and 2010, and the related combined statements of operations, comprehensive (loss)/income, stockholders' equity, and cash flows for the years then ended. These combined financial statements are the responsibility of NRG Energy, Inc. management. Our responsibility is to express an opinion on these combined financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the combined financial position of NRG YieldCo as of December 31, 2011 and 2010, and the results of their combined operations and combined cash flows for the years then ended in conformity with U.S. generally accepted accounting principles.

/s/ KPMG LLP

Philadelphia, Pennsylvania

February 13, 2013

NRG YIELDCO

COMBINED STATEMENTS OF OPERATIONS

(In millions)	For the Year Ended December 31, 2011	2010
	(In millions)	
Operating Revenues		
Total operating revenues	$ 164	$ 143
Operating Costs and Expenses		
Cost of operations	104	97
Depreciation and amortization	22	16
Selling, general and administrative	12	10
Total operating costs and expenses	138	123
Operating Income	26	20
Other Income/(Expense)		
Equity in earnings (losses) of unconsolidated affiliates	1	(1)
Other income, net	1	—
Interest expense	(18)	(11)
Total other expense	(16)	(12)
Income Before Income Taxes	10	8
Income tax expense	4	3
Net Income	$ 6	$ 5

See notes to combined financial statements.

NRG YIELDCO

COMBINED STATEMENTS OF COMPREHENSIVE (LOSS)/INCOME

	For the Year Ended December 31,	
	2011	2010
	(In millions)	
Net Income	$ 6	$ 5
Other comprehensive loss, net of tax		
Unrealized loss on derivatives, net of income tax benefit of $15 and $0	(23)	—
Comprehensive (loss)/income	$ (17)	$ 5

See notes to combined financial statements.

NRG YIELDCO

COMBINED BALANCE SHEETS

	As of December 31, 2011	2010
	(In millions)	
ASSETS		
Current Assets		
Cash and cash equivalents	$ 24	$ 32
Restricted cash	8	4
Accounts receivable—trade	24	23
Due from NRG and subsidiaries	1	18
Renewable energy grant receivable	25	—
Inventory	5	4
Deferred tax assets—current	1	—
Prepayments and other current assets	2	1
Total current assets	90	82
Property, Plant and Equipment		
In service	548	448
Under construction	407	149
Total property, plant and equipment	955	597
Less accumulated depreciation	(92)	(71)
Net property, plant and equipment	863	526
Other Assets		
Equity investments in affiliates	78	2
Notes receivable—affiliates	9	16
Intangible assets, net of accumulated amortization	38	26
Other non-current assets	29	7
Total other assets	154	51
Total Assets	$ 1,107	$ 659

See notes to combined financial statements.

NRG YIELDCO

COMBINED BALANCE SHEETS (Continued)

	As of December 31, 2011	2010
	(In millions)	
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities		
Current portion of long-term debt—external	$ 33	$ 17
Accounts payable	47	58
Due to NRG and subsidiaries	52	71
Derivative instruments	12	3
Accrued expenses and other current liabilities	12	11
Total current liabilities	156	160
Other Liabilities		
Long-term debt—external	440	253
Long-term debt—affiliate	32	87
Deferred income taxes	11	22
Derivative instruments	23	1
Other non-current liabilities	6	7
Total non-current liabilities	512	370
Total Liabilities	668	530
Commitments and Contingencies		
Stockholders' Equity		
Additional paid-in capital	434	96
Retained earnings	28	33
Accumulated other comprehensive loss	(23)	—
Total Stockholders' Equity	439	129
Total Liabilities and Stockholders' Equity	$ 1,107	$ 659

See notes to combined financial statements.

NRG YIELDCO

COMBINED STATEMENTS OF CASH FLOWS

	Year Ended December 31,	
	2011	2010
	(In millions)	
Cash Flows from Operating Activities		
Net income	$ 6	$ 5
Adjustments to reconcile net income to net cash provided by operating activities:		
Distributions and equity in earnings (losses) of unconsolidated affiliates	(1)	1
Depreciation and amortization	22	15
Amortization of financing costs and debt discount/premiums	—	(1)
Amortization of intangibles and out-of-market commodity contracts	1	1
Changes in derivative instruments	2	—
Changes in deferred income taxes	4	3
Changes in other working capital	(6)	18
Net Cash Provided by Operating Activities	28	42
Cash Flows from Investing Activities		
Acquisition of businesses, net of cash acquired	—	(132)
Capital expenditures	(372)	(65)
Increase in restricted cash, net	(5)	(2)
Decrease/(increase) in notes receivable	8	—
Proceeds from renewable energy grants	—	18
Purchases of emission allowances	(7)	—
Investments in unconsolidated affiliates	(87)	(1)
Other	(1)	(2)
Net Cash Used by Investing Activities	(464)	(184)
Cash Flows from Financing Activities		
Capital contributions from NRG	341	22
Returns of capital to NRG	(90)	(46)
Proceeds from issuance of long-term debt—external	220	129
Proceeds from issuance of long-term debt—affiliate	—	68
Payment of debt issuance costs	(23)	(5)
Payments of long-term debt—external	(17)	(12)
Payments of long-term debt—affiliate	(3)	—
Net Cash Provided By Financing Activities	428	156
Net (Decrease)/Increase in Cash and Cash Equivalents	(8)	14
Cash and Cash Equivalents at Beginning of Period	32	18
Cash and Cash Equivalents at End of Period	$ 24	$ 32

	Year Ended December 31,	
	2011	2010
	(In millions)	
Interest paid, net of amount capitalized	$ 17	$ 12
Non-cash investing and financing activities:		
Additions to fixed assets for accrued capital expenditures	26	81
Decrease to fixed assets for accrued grants and related tax impact	(25)	(5)
Non-cash capital contributions	87	17
Non-cash dividends	(11)	(2)

See notes to combined financial statements.

NRG YIELDCO

COMBINED STATEMENT OF STOCKHOLDERS' EQUITY

	Paid-In Capital	Retained Earnings	Accumulated Other Comprehensive Loss	Total Stockholders' Equity
			(In millions)	
Balances at December 31, 2009	$ 103	$ 30	$ —	$ 133
Net income		5		5
Capital contributions—cash	22			22
Capital contributions—non cash	17			17
Return of capital	(46)			(46)
Dividends—settlement with affiliate		(2)		(2)
Balances at December 31, 2010	$ 96	$ 33	$ —	$ 129
Net income		6		6
Unrealized loss on derivatives			(23)	(23)
Capital contributions—cash	341			341
Capital contributions—non cash	87			87
Return of capital	(90)			(90)
Dividends—settlement with affiliate		(11)		(11)
Balances at December 31, 2011	$ 434	$ 28	$ (23)	$ 439

See notes to combined financial statements.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS

Note 1—Nature of Business

The accompanying combined financial statements of NRG YieldCo, have been prepared in connection with the proposed initial public offering of common shares of NRG YieldCo, Inc., or the Offering. NRG YieldCo, Inc. was formed on December 20, 2012 and is a subsidiary of NRG Energy, Inc., or NRG or the Parent. Prior to the Offering, a limited liability company to be formed, NRG YieldCo LLC, or YieldCo LLC, intends to acquire a portfolio of solar, wind and gas generation and thermal infrastructure assets, primarily located in the Northeast, Southwest and California regions of the United States from the Parent. YieldCo, Inc. intends to acquire a managing interest in YieldCo LLC. NRG YieldCo represents the combination of the assets that YieldCo LLC intends to acquire. The combined financial statements are viewed as the Predecessor of YieldCo LLC. The majority of the generation assets are under long-term contractual arrangements for the output from these assets. The thermal assets are regulated by regional public utility commissions whereby pricing is typically calculated using the operating costs plus a normal mark-up or negotiated with the off-taker via the applicable commission's rate approval process. They are comprised of district energy systems and combined heat and power plants that produce steam, hot water and/or chilled water and in some instances, electricity at a central plant. Subsequent to the Offering, YieldCo LLC expects to remain a majority-owned subsidiary of NRG and is expected to be comprised of the following projects:

Projects	Percentage Ownership	Capacity (MW)	Offtake Counterparty	Expiration
Conventional				
El Segundo	100	550	Southern California Edison	2023
Utility Scale Solar				
Alpine	100	66	Pacific Gas and Electric	2033
Avenal	49.95	23	Pacific Gas and Electric	2031
Avra Valley	100	25	Tucson Electric Power	2032
Blythe	100	21	Southern California Edison	2029
Borrego	100	26	San Diego Gas and Electric	2038
Roadrunner	100	20	El Paso Electric	2031
CVSR	48.95	122	Pacific Gas and Electric	2038
Distributed Solar				
AZ DG Solar Projects	100	5	Various	2025–2033
PFMG DG Solar Projects	51	5	Various	2032
Wind				
South Trent	100	101	AEP Energy Partners	2029
Thermal(a)	100	1,098	Various	Various

(a) For thermal energy, net capacity represents MWt for steam or chilled water.

The combined financial statements were prepared using NRG's historical basis in the assets and liabilities of the Predecessor, and include all revenues, expenses, assets, and liabilities attributed to the Predecessor. The historical combined financial statements also include allocations of certain NRG corporate expenses and income tax expense. Management believes the assumptions and methodology underlying the allocation of general corporate overhead expenses are reasonable. However, such expenses may not be indicative of the actual level of expense that would have been incurred by the Predecessor if it had operated as an independent, publicly-traded company during the periods prior to the Offering or of the costs expected to be incurred in the future. In the opinion of management, the

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 1—Nature of Business (Continued)

adjustments necessary for a fair presentation of the combined financial statements, in accordance with accounting principles generally accepted in the United States, or US GAAP, have been made. See Note 12, *Related Parties*, for further information regarding allocated expenses.

Note 2—Summary of Significant Accounting Policies

Basis of Presentation

NRG YieldCo's combined financial statements have been prepared in accordance with U.S. GAAP. The Financial Accounting Standards Board, or FASB, Accounting Standards Codification, or ASC, is the source of authoritative U.S. GAAP to be applied by nongovernmental entities. In addition, the rules and interpretative releases of the SEC under authority of federal securities laws are also sources of authoritative U.S. GAAP for SEC registrants.

The combined financial statements include NRG YieldCo's accounts and operations and those of its subsidiaries in which NRG YieldCo has a controlling interest. All significant intercompany transactions and balances have been eliminated in combination. The usual condition for a controlling financial interest is ownership of a majority of the voting interests of an entity. However, a controlling financial interest may also exist through arrangements that do not involve controlling voting interests. As such, NRG YieldCo applies the guidance of ASC 810, *Consolidations,* or ASC 810, to determine when an entity that is insufficiently capitalized or not controlled through its voting interests, referred to as a variable interest entity, or VIE, should be consolidated.

Cash and Cash Equivalents

Cash and cash equivalents include highly liquid investments with an original maturity of three months or less at the time of purchase.

Restricted Cash

Restricted cash consists primarily of funds held to satisfy the requirements of certain debt agreements and funds held within NRG YieldCo's projects that are restricted in their use. These funds are used to pay for capital expenditures, current operating expenses and current debt service payments as well as to fund required equity contributions, per the restrictions of the debt agreements.

Trade Receivables and Allowance for Doubtful Accounts

Trade receivables are reported on the balance sheet at the invoiced amount adjusted for any write-offs and the allowance for doubtful accounts. The allowance for doubtful accounts is reviewed periodically based on amounts past due and significance. The allowance for doubtful accounts was immaterial as of December 31, 2011 and 2010.

Inventory

Inventory consists principally of spare parts, fuel oil and coal and is valued at the lower of weighted average cost or market, unless evidence indicates that the weighted average cost will be recovered with a normal profit in the ordinary course of business. NRG YieldCo removes fuel

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 2—Summary of Significant Accounting Policies (Continued)

inventories as they are used in the production of steam, chilled water or electricity. Spare parts inventory are removed when they are used for repairs, maintenance or capital projects.

Property, Plant and Equipment

Property, plant and equipment are stated at cost or, in the case of business acquisitions, fair value; however impairment adjustments are recorded whenever events or changes in circumstances indicate that their carrying values may not be recoverable. See Note 3, *Business Acquisitions,* for more information on acquired property, plant and equipment. Significant additions or improvements extending asset lives are capitalized as incurred, while repairs and maintenance that do not improve or extend the life of the respective asset are charged to expense as incurred. Depreciation is computed using the straight-line method over the estimated useful lives. Certain assets and their related accumulated depreciation amounts are adjusted for asset retirements and disposals with the resulting gain or loss included in cost of operations in the combined statements of operations.

Asset Impairments

Long-lived assets that are held and used are reviewed for impairment whenever events or changes in circumstances indicate carrying values may not be recoverable. An impairment loss is recognized if the total future estimated undiscounted cash flows expected from an asset are less than its carrying value. An impairment charge is measured by the difference between an asset's carrying amount and fair value with the difference recorded in operating costs and expenses in the statements of operations. Fair values are determined by a variety of valuation methods, including appraisals, sales prices of similar assets and present value techniques.

Investments accounted for by the equity method are reviewed for impairment in accordance with ASC 323, *Investments-Equity Method and Joint Ventures*, or ASC 323, which requires that a loss in value of an investment that is other than a temporary decline should be recognized. NRG YieldCo identifies and measures losses in the value of equity method investments based upon a comparison of fair value to carrying value.

Project Development Costs and Capitalized Interest

Project development costs are expensed in the preliminary stages of a project and capitalized when the project is deemed to be commercially viable. Commercial viability is determined by one or a series of actions including among others, Board of Director approval pursuant to a formal project plan that subjects NRG YieldCo to significant future obligations that can only be discharged by the use of a NRG YieldCo asset.

Interest incurred on funds borrowed to finance capital projects is capitalized, until the project under construction is ready for its intended use. The amount of interest capitalized for the years ended December 31, 2011 and 2010 was $9 million and $2 million, respectively.

When a project is available for operations, capitalized interest and project development costs are reclassified to property, plant and equipment and amortized on a straight-line basis over the estimated useful life of the project's related assets. Capitalized costs are charged to expense if a project is abandoned or management otherwise determines the costs to be unrecoverable.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 2—Summary of Significant Accounting Policies (Continued)

Debt Issuance Costs

Debt issuance costs are capitalized and amortized as interest expense on a basis which approximates the effective interest method over the term of the related debt.

Intangible Assets

Intangible assets represent contractual rights held by NRG YieldCo. NRG YieldCo recognizes specifically identifiable intangible assets including customer contracts, customer relationships, power purchase agreements and development rights when specific rights and contracts are acquired. These intangible assets are amortized based on a straight-line basis.

Notes Receivable

Notes receivable consists of a variable rate note secured by equity interests in a joint venture.

Income Taxes

NRG YieldCo accounts for income taxes using the liability method in accordance with ASC 740, *Income Taxes*, or ASC 740, which requires that NRG YieldCo use the asset and liability method of accounting for deferred income taxes and provide deferred income taxes for all significant temporary differences.

NRG YieldCo's deferred income tax expense is the change in the net deferred income tax asset or liability, excluding amounts charged or credited to accumulated other comprehensive income.

NRG YieldCo reports some of its revenues and expenses differently for financial statement purposes than for income tax return purposes, resulting in temporary and permanent differences between the financial statements and income tax returns. The tax effects of such temporary differences are recorded as either deferred income tax assets or deferred income tax liabilities in the combined balance sheets. NRG YieldCo measures its deferred income tax assets and deferred income tax liabilities using income tax rates that are currently in effect. A valuation allowance is recorded to reduce the net deferred tax assets to an amount that is more-likely-than-not to be realized.

NRG YieldCo accounts for uncertain tax positions in accordance with ASC 740, which applies to all tax positions related to income taxes. Under ASC 740, tax benefits are recognized when it is more-likely-than-not that a tax position will be sustained upon examination by the authorities. The benefit recognized from a position that has surpassed the more-likely-than-not threshold is the largest amount of benefit that is more than 50% likely to be realized upon settlement. NRG YieldCo recognizes interest and penalties accrued related to uncertain tax benefits as a component of income tax expense.

In accordance with ASC 805, *Business Combinations*, or ASC 805, and as discussed further in Note 11, *Income Taxes*, changes to existing net deferred tax assets or valuation allowances or changes to uncertain tax benefits, are recorded to income tax expense.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 2—Summary of Significant Accounting Policies (Continued)

Revenue Recognition

Power Purchase Agreements, or PPAs

A significant majority of NRG YieldCo's revenues are currently obtained through PPAs or other contractual arrangements. All of these PPAs are recorded as operating leases in accordance with ASC 840, *Leases,* or ASC 840. ASC 840 requires minimum lease payments received to be amortized over the term of the lease and contingent rentals are recorded when the achievement of the contingency becomes probable. These leases have no minimum lease payments and all the rent is recorded as contingent rent on an actual basis when the electricity is delivered. The contingent rental income recognized in the years ended December 31, 2011 and 2010 was $26 million and $14 million, respectively.

Thermal Revenues

Steam and chilled water revenue is recognized based on customer usage as determined by meter readings. Some locations read customer meters throughout the month, and recognize estimated revenue for the period between meter read date and month-end. Unbilled revenue was $2 million and $1 million as of December 31, 2011 and 2010, respectively. Thermal's subsidiaries collect and remit state and local taxes associated with sales to their customers, as required by governmental authorities. Related revenues are presented on a net basis in the income statement.

Derivative Financial Instruments

NRG YieldCo accounts for derivative financial instruments under ASC 815, *Derivatives and Hedging*, or ASC 815, which requires that all derivatives are recorded on the balance sheet at fair value unless they qualify for a Normal Purchase Normal Sale, or NPNS, exception. Changes in the fair value of non-hedge derivatives are immediately recognized in earnings. Changes in the fair value of derivatives accounted for as hedges, if elected for hedge accounting, are either:

- Recognized in earnings as an offset to the changes in the fair value of the related hedged assets, liabilities and firm commitments; or
- Deferred and recorded as a component of accumulated OCI until the hedged transactions occur and are recognized in earnings.

NRG YieldCo's primary derivative instruments are fuels purchase contracts used to manage price risk associated with controlling customer reimbursable fuel costs and interest rate instruments used to mitigate variability in earnings due to fluctuations in interest rates. On an ongoing basis, NRG YieldCo assesses the effectiveness of all derivatives that are designated as hedges for accounting purposes in order to determine that each derivative continues to be highly effective in offsetting changes in fair values or cash flows of hedged items. Internal analyses that measure the statistical correlation between the derivative and the associated hedged item determine the effectiveness of such a contract designated as a hedge. If it is determined that the derivative instrument is not highly effective as a hedge, hedge accounting will be discontinued prospectively. In this case, the gain or loss previously deferred in accumulated OCI will be frozen until the underlying hedged item is delivered unless the transaction being hedged is no longer probable of occurring in which case the amount in OCI would be immediately reclassified into earnings.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 2—Summary of Significant Accounting Policies (Continued)

Revenues and expenses on contracts that qualify for the NPNS exception are recognized when the underlying physical transaction is delivered. While these contracts are considered derivative financial instruments under ASC 815, they are not recorded at fair value, but on an accrual basis of accounting. If it is determined that a transaction designated as NPNS no longer meets the scope exception, the fair value of the related contract is recorded on the balance sheet and immediately recognized through earnings.

Concentrations of Credit Risk

Financial instruments which potentially subject NRG YieldCo to concentrations of credit risk consist primarily of accounts receivable, notes receivable and derivative instruments. Accounts receivable, notes receivable, and derivative instruments are concentrated within entities engaged in the energy and financial industries. These industry concentrations may impact the overall exposure to credit risk, either positively or negatively, in that the customers may be similarly affected by changes in economic, industry or other conditions. In addition, many of NRG YieldCo's projects have only one customer. However, NRG YieldCo believes that the credit risk posed by industry concentration is offset by the diversification and creditworthiness of the customer base. See Note 5, *Fair Value of Financial Instruments,* for a further discussion of derivative concentrations.

Fair Value of Financial Instruments

The carrying amount of cash and cash equivalents, accounts receivables, accounts payables, and accrued liabilities approximates fair value because of the short-term maturity of these instruments. See Note 5, *Fair Value of Financial Instruments* for a further discussion of fair value of financial instruments.

Asset Retirement Obligations

Asset retirement obligations, or AROs, are accounted for in accordance with ASC 410-20, *Asset Retirement Obligations,* or ASC 410-20. Retirement obligations associated with long-lived assets included within the scope of ASC 410-20 are those for which a legal obligation exists under enacted laws, statutes, and written or oral contracts, including obligations arising under the doctrine of promissory estoppel, and for which the timing and/or method of settlement may be conditional on a future event. ASC 410-20 requires an entity to recognize the fair value of a liability for an ARO in the period in which it is incurred and a reasonable estimate of fair value can be made.

Upon initial recognition of a liability for an ARO, the asset retirement cost is capitalized by increasing the carrying amount of the related long-lived asset by the same amount. Over time, the liability is accreted to its future value, while the capitalized cost is depreciated over the useful life of the related asset. As of December 31, 2011 and 2010, the ARO liability was not material.

Guarantees

NRG YieldCo enters into various contracts that include indemnification and guarantee provisions as a routine part of its business activities. Examples of these contracts include EPC agreements, operation and maintenance agreements, service agreements, commercial sales arrangements and other types of contractual agreements with vendors and other third parties, as well as affiliates. These contracts generally indemnify the counterparty for tax, environmental liability, litigation

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 2—Summary of Significant Accounting Policies (Continued)

and other matters, as well as breaches of representations, warranties and covenants set forth in these agreements. Because many of the guarantees and indemnities NRG YieldCo issues to third parties and affiliates do not limit the amount or duration of its obligations to perform under them, there exists a risk that NRG YieldCo may have obligations in excess of the amounts currently estimated. For those guarantees and indemnities that do not limit the liability exposure, it may not be able to estimate what the liability would be until a claim is made for payment or performance due to the contingent nature of these contracts.

Stockholder's Equity

NRG YieldCo's historical stockholder's equity reflects the capital contributed by the Parent, as well as its retained earnings and accumulated comprehensive (losses)/income.

Earnings Per Share

During the periods presented, NRG YieldCo was wholly owned by NRG and accordingly, no earnings per share has been calculated.

Investments Accounted for by the Equity Method

NRG YieldCo has investments in two energy projects. The equity method of accounting is applied to these investments in affiliates because the ownership structure prevents NRG YieldCo from exercising a controlling influence over the operating and financial policies of the projects. Under this method, equity in pre-tax income or losses of the investments are reflected as equity in earnings of unconsolidated affiliates.

Business Combinations

NRG YieldCo accounts for its business combinations in accordance with ASC 805. ASC 805 requires an acquirer to recognize and measure in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree at fair value at the acquisition date. It also recognizes and measures the goodwill acquired or a gain from a bargain purchase in the business combination and determines what information to disclose to enable users of an entity's financial statements to evaluate the nature and financial effects of the business combination. In addition, transaction costs are expensed as incurred.

Liquidity

Many of NRG YieldCo's projects were under construction in 2011 and 2010. As further discussed in Note 9, *Long-Term Debt,* in order to fund current obligations, NRG YieldCo typically borrows under the related financing arrangements or receives funding from NRG.

Use of Estimates

The preparation of financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements, disclosure of contingent assets and liabilities at the date of the financial

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 2—Summary of Significant Accounting Policies (Continued)

statements, and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

In recording transactions and balances resulting from business operations, NRG YieldCo uses estimates based on the best information available. Estimates are used for such items as plant depreciable lives, tax provisions, uncollectible accounts, environmental liabilities and legal costs incurred in connection with recorded loss contingencies, among others. As better information becomes available or actual amounts are determinable, the recorded estimates are revised. Consequently, operating results can be affected by revisions to prior accounting estimates.

Recent Accounting Developments

ASU 2011-11—In December 2011, the FASB issued ASU No. 2011-11, *Balance Sheet (Topic 210) Disclosures about Offsetting Assets and Liabilities*, or ASU No. 2011-11. The guidance provides enhanced disclosure requirements to evaluate the effect or potential effect of netting arrangements on an entity's financial position by improving information about financial instruments and derivative instruments that either (1) offset in accordance with either ASC 210-20-45 or ASC 810-20-45 or (2) are subject to an enforceable master netting arrangement or similar agreement, irrespective of whether they are offset. Reporting entities will be required to disclose both gross and net information about both instruments and transactions eligible for offset in the statement of financial position and instruments and transactions subject to an agreement similar to a master netting arrangement. The disclosures required by ASU No. 2011-10 are required to be adopted retroactively. ASU No. 2011-11 is effective for annual and interim periods in fiscal years beginning on or after January 1, 2013, and early adoption is permitted. As this guidance provides only disclosure requirements, the adoption of this standard will not impact NRG YieldCo's results of operations, cash flows or financial position.

Note 3—Business Acquisitions

2011 Acquisition

California Valley Solar Ranch—On September 30, 2011, the Parent acquired 100% of 250 MW California Valley Solar Ranch project, or CVSR, in eastern San Luis Obispo County, California. Power generated from CVSR will be sold to Pacific Gas and Electric, PG&E, under a 25 year PPA. In connection with the acquisition, High Plains Ranch II, LLC, the direct owner of the CVSR project, entered into a financing arrangement with the Federal Financing Bank, or FFB, which is guaranteed by the United States Department of Energy, or U.S. DOE, to borrow up to $1.2 billion to fund the costs of constructing this solar facility, or the CVSR Financing Agreement. The terms of the borrowings are further described in Note 9, *Long-Term Debt*. Operations commenced during the third and fourth quarters of 2012 with the final phase expected to become operational through the fourth quarter of 2013.

The fair value of the property, plant and equipment at the acquisition date was measured primarily based on significant inputs that are not observable in the market and thus represent a Level 3 measurement as defined in ASC 820. The fair value of the property, plant and equipment acquired was determined utilizing the cost approach. Under this approach, the fair value approximates the current cost of replacing an asset with another of equivalent economic utility adjusted for functional obsolescence and physical depreciation. The assets acquired have been classified as construction in progress and will commence depreciation upon the commercial operation date of the facility.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 3—Business Acquisitions (Continued)

In connection with the Offering, NRG YieldCo intends to own 48.95% of CVSR, or High Plains Ranch II LLC, which it will account for under the equity method, as further discussed in Note 5, *Investments Accounted for by the Equity Method.*

2010 Acquisitions

South Trent Acquisition—On June 14, 2010, South Trent Wind LLC, or South Trent, a 100 MW wind farm near Sweetwater, Texas was acquired for a total purchase price of $111 million. South Trent commenced operations in January 2009 and consists of 44 Siemens turbines that produce up to 2.3 MW of power each. The project has a 20-year PPA for all generation from the site. In connection with the acquisition, NRG YieldCo paid $32 million in cash and South Trent entered into a financing arrangement that includes a $79 million term loan. See Note 9, *Long-Term Debt*, for additional information related to this financing arrangement. The purchase price was allocated to the fair value of the assets acquired and liabilities assumed, which included property, plant and equipment of $107 million and other assets and liabilities of $4 million.

Northwind Phoenix Acquisition—On June 22, 2010, through NRG Thermal LLC, Northwind Phoenix, LLC, or Northwind Phoenix, was acquired for a total purchase price of $100 million in cash, plus a payment for changes in acquired working capital. Northwind Phoenix owns and operates a district cooling system that provides chilled water to commercial buildings in the Phoenix, Arizona central business district. In addition, Northwind Phoenix maintains and operates combined heat and power plants that provide chilled water, steam and electricity in metropolitan Tucson and to portions of Arizona State University campuses in Tempe and Mesa, Arizona. The acquisition was financed with the issuance of $100 million in notes by NRG Thermal LLC. See note 9, *Long Term Debt,* for more information related to this financing arrangement. The purchase price was allocated to the fair value of the assets acquired and liabilities assumed, which included property, plant and equipment of $78 million, customer contracts of $15 million and customer relationships of $7 million.

The fair value of the property, plant and equipment at the acquisition date was measured primarily based on significant inputs that are not observable in the market and thus represent a Level 3 measurement as defined in ASC 820. The fair value of the property, plant and equipment acquired was determined utilizing the cost approach. Under this approach, the fair value approximates the current cost of replacing an asset with another of equivalent economic utility adjusted for functional obsolescence and physical depreciation.

Note 4—Property, Plant, and Equipment

NRG YieldCo's major classes of property, plant, and equipment were as follows:

	As of December 31,		Depreciable Lives
	2011	2010	
	(In millions)		
Facilities and equipment	$ 521	$ 429	2 - 45 Years
Land and improvements	27	19	
Construction in progress	407	149	
Total property, plant, and equipment	955	597	
Accumulated depreciation	(92)	(71)	
Net property, plant, and equipment	$ 863	$ 526	

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 4—Property, Plant, and Equipment (Continued)

As of December 31, 2010, property, plant and equipment was primarily related to the Thermal, South Trent and Blythe facilities, while construction in process related primarily to construction on the El Segundo Energy Center, or ESEC. In 2011, construction was completed on the Roadrunner facility and Thermal's Princeton Hospital project. In addition, construction in progress increased in 2011 for ESEC and Alpine.

In 2011, the Roadrunner solar project, as a qualified renewable energy project, applied for a cash grant in lieu of investment tax credit from the U.S. Treasury Department in the amount of $21 million, which was received on March 20, 2012. A receivable for the cash grant was recorded when the cash grant application was filed, which resulted in a reduction to the book basis of the property, plant and equipment. In addition, the related deferred tax asset of $6 million recognizable was recorded as a distribution to NRG, with a corresponding reduction to the book basis of Roadrunner's property, plant, and equipment. Accordingly, the book value of Roadrunner's property, plant and equipment was reduced from $77 million to $50 million to account for the cash grant.

In 2010, the Blythe solar project, as a qualified renewable energy project, received a cash grant in lieu of investment tax credits from the U.S. Treasury Department in the amount of $18 million which resulted in a reduction to the book value of Blythe's property, plant and equipment. In addition, the related deferred tax asset of $5 million recognizable was recorded as a distribution to NRG, with a corresponding reduction to the book basis of Blythe's property, plant and equipment. Accordingly, the book value of Blythe's property, plant and equipment was reduced from $68 million to $45 million to account for the cash grant.

Note 5—Investments Accounted for by the Equity Method

Avenal—NRG YieldCo intends to own a 49.95% equity interest in Avenal, acquired by NRG in April 2010, which consists of three solar PV projects in Kings County, California, totaling approximately 45 MWs, all of which became commercially operational during the third quarter of 2011. NRG intends to retain a 0.05% interest and Eurus Energy owns the remaining 50% of Avenal. Power generated by the projects is sold under a 20-year PPA. On September 22, 2010, Avenal entered into a $35 million promissory note facility with NRG YieldCo. Amounts drawn under the promissory note facility accrue interest at 4.5% per annum. As of December 31, 2011 and 2010, the amount outstanding under the facility was $9 million and $16 million, respectively. Also on September 22, 2010, Avenal entered into a $209 million financing arrangements with a syndicate of banks, or the Avenal Facility. As of December 31, 2011, Avenal had $125 million outstanding under the Avenal Facility. The undistributed equity earnings from Avenal were $1 million as of December 31, 2011.

CVSR—As described in Note 3, *Business Acquisitions*, NRG YieldCo intends own 48.95% of CVSR, located in San Luis Obispo, California, totaling 250 MW, while NRG will continue to own the remaining 51.05% of CVSR. Power generated by the project is sold under a 25-year PPA. Construction of the project has been funded by the CVSR Financing Agreement, as further described in Note 9, *Long-Term Debt*. As of December 31, 2011, there were no borrowings under the CVSR Financing Agreement.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 5—Investments Accounted for by the Equity Method (Continued)

The following table presents summarized financial information for CVSR:

	December 31, 2011
	(In millions)
Balance Sheet Data:	
Current assets	$ 20
Non-current assets	247
Current liabilities	92
Non-current liabilities	10

Note 6—Fair Value of Financial Instruments

For cash and cash equivalents, restricted cash, accounts receivable, accounts payable, and accrued liabilities the carrying amount approximates fair value because of the short-term maturity of those instruments. Derivative assets and liabilities are carried at fair market value.

The estimated carrying values and fair values of NRG YieldCo's recorded financial instruments not carried at fair market value are as follows:

	As of December 31,			
	2011		2010	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
	(In millions)			
Assets				
Notes receivable	$ 9	$ 9	$ 16	$ 16
Liabilities				
Long-term debt, including current portion	$ 505	$ 510	$ 357	$ 362

The fair value of notes receivable and long-term debt are based on expected future cash flows discounted at market interest rates, or current interest rates for similar instruments and are classified as Level 3 within the fair value hierarchy.

Fair Value Accounting under ASC 820

ASC 820 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three levels as follows:

- Level 1—quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access as of the measurement date.

- Level 2—inputs other than quoted prices included within Level 1 that are directly observable for the asset or liability or indirectly observable through corroboration with observable market data. YieldCo's derivative instruments are valued utilizing Level 2 inputs.

- Level 3—unobservable inputs for the asset or liability only used when there is little, if any, market activity for the asset or liability at the measurement date.

In accordance with ASC 820, NRG YieldCo determines the level in the fair value hierarchy within which each fair value measurement in its entirety falls, based on the lowest level input that is significant to the fair value measurement in its entirety.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 6—Fair Value of Financial Instruments (Continued)

Recurring Fair Value Measurements

NRG YieldCo records its derivative assets and liabilities at fair market value on the combined balance sheet on a recurring basis. These amounts are classified as Level 2 within the fair value hierarchy. There have been no transfers during the year ended December 31, 2011, between Levels 1 and 2.

Derivative fair value measurements

NRG YieldCo's contracts are non-exchange-traded valued using prices provided by external sources. For financial contracts, management utilizes third party pricing services. For NRG YieldCo's energy markets, management receives quotes from multiple sources. To the extent that multiple quotes are received, the prices reflect the average of the bid-ask mid-point prices obtained from all sources that it believes provide the most liquid market for the commodity. The fair value of each contract is discounted using a risk free interest rate. In addition, a credit reserve is applied to reflect credit risk, which is calculated based on credit default swaps. To the extent that the net exposure is an asset, NRG YieldCo uses the counterparty's default swap rate. If the exposure is a liability, NRG YieldCo uses the Parent's default swap rate. The credit reserve is added to the discounted fair value to reflect the exit price that a market participant would be willing to receive to assume the liabilities or that a market participant would be willing to pay for the assets. It is possible that future market prices could vary from those used in recording assets and liabilities and such variations could be material.

Concentration of credit risk

Counterparty credit exposure includes credit risk exposure under certain long term agreements, including solar PPAs. As external sources or observable market quotes are not available to estimate such exposure, NRG YieldCo estimated the exposure related to these contracts based on various techniques including but not limited to internal models based on a fundamental analysis of the market and extrapolation of observable market data with similar characteristics. Based on these valuation techniques, as of December 31, 2011, credit risk exposure to these counterparties is immaterial. This amount excludes potential credit exposures for projects with long term PPAs that have not reached commercial operations. Many of these power contracts are with utilities or public power entities that have strong credit quality and specific public utility commission or other regulatory support.

Note 7—Accounting for Derivative Instruments and Hedging Activities

ASC 815 requires NRG YieldCo to recognize all derivative instruments on the balance sheet as either assets or liabilities and to measure them at fair value each reporting period unless they qualify for a NPNS exception. NRG YieldCo may elect to designate certain derivatives as cash flow hedges, if certain conditions are met, and defer the effective portion of the change in fair value of the derivatives to accumulated OCI, until the hedged transactions occur and are recognized in earnings. The ineffective portion of a cash flow hedge is immediately recognized in earnings. For derivatives that are not designated as cash flow hedges or do not qualify for hedge accounting treatment, the changes in the fair value will be immediately recognized in earnings. Certain derivative instruments may qualify for the NPNS exception and are therefore exempt from fair value accounting treatment. ASC 815 applies to energy related commodity contracts and interest rate swaps.

Energy Related Commodity Contracts

To manage the commodity price risk associated with its competitive supply activities and the price risk associated with wholesale power sales, NRG YieldCo may enter into derivative hedging

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 7—Accounting for Derivative Instruments and Hedging Activities (Continued)

instruments, namely, forward contracts that commit NRG YieldCo to sell energy commodities or purchase fuels in the future. The objectives for entering into derivatives contracts as hedges include fixing the price for a portion of anticipated future electricity sales and fixing the price of a portion of anticipated fuel purchases for the operation of its subsidiaries. At December 31, 2011, NRG YieldCo had forward contracts for the purchase of energy and fuel commodities relating to the forecasted usage of the district energy centers. At December 31, 2011, these contracts were not designated as cash flow or fair value hedges.

Interest Rate Swaps

NRG YieldCo is exposed to changes in interest rates through the issuance of variable and fixed rate debt. In order to manage interest rate risk, NRG YieldCo enters into interest rate swap agreements. As of December 31, 2011, NRG YieldCo had interest rate derivative instruments on recourse debt extending through 2013 and on non-recourse debt extending through 2029, the majority of which are designated as cash flow hedges. See Note 9, *Long-Term Debt,* for information related to the notional amount and maturities of these swaps.

Fair Value of Derivative Instruments

The following table summarizes the fair value within the derivative instrument valuation on the balance sheet:

	Fair Value	
	Derivative Liabilities	
	December 31, 2011	December 31, 2010
	(In millions)	
Derivatives Designated as Cash Flow Hedges:		
Interest rate contracts current	$ 7	$ —
Interest rate contracts long-term	22	1
Total Derivatives Designated as Cash Flow Hedges	29	1
Derivatives Not Designated as Cash Flow Hedges:		
Commodity contracts current	5	3
Commodity contracts long-term	1	—
Total Derivatives Not Designated as Cash Flow Hedges	6	3
Total Derivatives	$ 35	$ 4

The net notional volume buys of the commodity contracts consisted of 3,565,000 and 2,439,000 of natural gas MMBtus as of December 31, 2011 and 2010, respectively, and 28,000 and 7,000 of power MWhs as of December 31, 2011 and 2010, respectively. See *Note 9—Long-term debt* for the notional amounts of the interest rate contracts.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 7—Accounting for Derivative Instruments and Hedging Activities (Continued)

Accumulated Other Comprehensive Income

The following tables summarize the effects on NRG YieldCo's accumulated OCI balance attributable to interest rate swaps designated cash flow hedge derivatives, net of tax:

	Year Ended December 31, 2011	Year Ended December 31, 2010
	(In millions)	
Accumulated beginning OCI balance	$ —	$ —
Mark-to-market of cash flow hedge accounting contracts	(23)	—
Accumulated ending OCI balance, net of income tax of $15 and $1	$ (23)	$ —
Gains expected to be realized from OCI during the next 12 months, net of income tax of $3 and $1	$ 4	$ 2

Amounts reclassified from accumulated OCI into income are recorded to interest expense.

NRG YieldCo's derivative commodity contracts do not impact the combined statement of operations as any gains or losses if realized, will be collected from customers through adjustments allowed by customer contracts, tariffs, or laws.

See Note 5, *Fair Value of Financial Instruments,* for discussion regarding concentration of credit risk.

Note 8—Intangible Assets

Intangible Assets—NRG YieldCo's intangible assets as of December 31, 2011, primarily reflect intangible assets established from its business acquisitions as well as the purchase of Nitrogen Oxide Regional Clean Air Incentive Market (RECLAIM) Trading Credits (NOx RTC's) and Federal Sulfur Dioxide Allowances (SO_2 Allowances) and are comprised of the following:

- *NOx RTCs and SO2 Allowances*—Emission allowances acquired by El Segundo Energy Center that will be amortized based on how much energy is generated. The emission allowances will begin amortizing once the facility is commercially operational in August of 2013.
- *Development rights*—Arising primarily from the acquisition of solar businesses in 2010 and 2011, these intangibles are amortized to depreciation and amortization expense on a straight-line basis over the estimated life of the related project portfolio.
- *Customer contracts*—Established with the acquisition of Northwind Phoenix, these intangibles represent the fair value at the acquisition date of contracts that primarily provide chilled water, steam and electricity to its customers. These contracts are amortized to revenues based on expected volumes on a straight-line basis.
- *Customer relationships*—Established with the acquisition of Northwind Phoenix, these intangibles represent the fair value at the acquisition date of the businesses' customer base. The customer relationships are amortized to depreciation and amortization expense based on the expected discounted future net cash flows by year.
- *PPAs*—Represents the fair value of PPAs acquired prior to the construction of the related projects. These will be amortized over the term of the PPA.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 8—Intangible Assets (Continued)

- *Other*—Consists of the acquisition date fair value of the contractual rights to a ground lease for South Trent and to utilize certain interconnection facilities for Blythe.

The following tables summarize the components of intangible assets subject to amortization:

Year Ended December 31, 2011	Emission Allowances	Development Rights	Customer Contracts	Customer Relationships	PPAs	Other	Total
			(In millions)				
January 1, 2011	$ —	$ 2	$ 15	$ 7	$ —	$ 3	$ 27
Purchases	7	2	—	—	4	—	13
Adjusted gross amount	7	4	15	7	4	3	40
Less accumulated amortization	—	—	(2)	—	—	—	(2)
Net carrying amount	$ 7	$ 4	$ 13	$ 7	$ 4	$ 3	$ 38

Year Ended December 31, 2010	Development Rights	Customer Contracts	Customer Relationships	Other	Total
		(In millions)			
January 1, 2010	$ —	$ —	$ —	$ 1	$ 1
Acquisition of businesses	2	15	7	2	26
Adjusted gross amount	2	15	7	3	27
Less accumulated amortization	—	(1)	—	—	(1)
Net carrying amount	$ 2	$ 14	$ 7	$ 3	$ 26

NRG YieldCo recorded amortization of $1 million during each of the years ended December 31, 2011 and 2010. The following table presents estimated amortization of NRG YieldCo's intangible assets for each of the next five years:

Year Ended December 31,	Total
2012	$ 2
2013	2
2014	3
2015	3
2016	3

The following table presents the weighted average amortization period related to the intangible assets acquired in the years ended December 31, 2011 and 2010:

	Development Rights	Customer Contracts	Customer Relationships	PPAs
2011	15	—	—	25
2010	15	10	36	—

Out-of-market contracts—The out-of-market contract liability represents the out-of-market value of the PPA for Blythe as of the date of the Blythe acquisition. This liability of $6 million is recorded in other non-current liabilities and is amortized to revenue on a units-of-production basis over the 20-year term of the agreement.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 9—Long-term Debt

Long-term debt consisted of the following:

	As of December 31, 2011	2010	Interest Rate
	(In millions except rates)		
Debt—external:			
NRG West Holdings LLC, term loan, due 2023	$ 159	$ —	L+2.25 - 2.75(b)
NRG Energy Center Minneapolis LLC, senior secured notes, due 2013, 2017, and 2025(a)	151	163	5.95 - 7.31
South Trent Wind LLC, financing agreement, due 2020	75	78	L+2.50(b)
NRG Roadrunner LLC, due 2031	61	—	L+2.01(b)
NRG Solar Blythe LLC, credit agreement, due 2028	27	29	L+2.50(b)
Subtotal	473	270	
Debt—affiliate:			
Notes payable to NRG Energy, Inc.—El Segundo Energy Center	—	55	L+3.00
Note payable to NRG Energy, Inc.—South Trent	32	32	L+2.00
Subtotal	32	87	
Total debt	505	357	
Less current maturities(a)	33	17	
Total long-term debt	$ 472	$ 340	

(a) Includes premium of $1 million as of December 31, 2011, and 2010.

(b) L+ equals LIBOR plus x%.

The financing arrangements described below contain certain covenants, including financial covenants, that NRG YieldCo is required to be in compliance with during the life of the arrangement. For the years ended December 31, 2011 and 2010, these requirements were met.

NRG West Holdings Credit Agreement

On August 23, 2011, NRG West Holdings LLC, or West Holdings, the owner of ESEC, entered into a credit agreement with a group of lenders in respect to ESEC, or the West Holdings Credit Agreement. The West Holdings Credit Agreement, which establishes a $540 million, two tranche construction loan facility with additional facilities for the issuance of letters of credit or working capital loans, is secured by the assets of West Holdings.

The two tranche construction loan facility consists of the $480 million Tranche A Construction Facility, or the Tranche A Facility, and the $60 million Tranche B Construction Facility, or the Tranche B Facility. The Tranche A and Tranche B Facilities, which mature in August 2023, convert to a term loan and have an interest rate of LIBOR, plus an applicable margin which increases by 0.125% periodically from conversion through year eight for the Tranche A Facility and increases by 0.125% upon term conversion and on the third and sixth anniversary of the term conversion and by 0.250% on the eighth anniversary of the term conversion for the Tranche B Facility. The Tranche A and Tranche B

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 9—Long-term Debt (Continued)

Facilities amortize based upon a predetermined schedule over the term of the loan with the balance payable at maturity.

The West Holdings Credit Agreement also provides for the issuance of letters of credit and working capital loans to support the ESEC collateral needs. This includes letter of credit facilities on behalf of West Holdings of up to $90 million in support of the PPA, up to $48 million in support of the collateral agent, and a working capital facility which permits loans or the issuance of letters of credit of up to $10 million.

As of December 31, 2011, under the West Holdings Credit Agreement, West Holdings borrowed $159 million under the Tranche A Facility, issued a $30 million letter of credit in support of the PPA, and issued a $6 million letter of credit under the working capital facility.

Thermal

In 1993, the predecessor entity to a subsidiary of NRG Thermal, NRG Energy Center Minneapolis LLC, or NRG Thermal Minneapolis, issued $84 million of 7.31% senior secured notes due June 2013, of which $12 million remained outstanding as of December 31, 2011. In 2002, NRG Thermal Minneapolis issued an additional $55 million of 7.25% Series A notes due August 2017, of which $29 million remained outstanding as of December 31, 2011, and $20 million of 7.12% Series B notes due August 2017, of which $10 million remained outstanding as of December 31, 2011. In 2010, NRG Thermal Minneapolis issued $100 million of 5.95% Series C notes due June 23, 2025, of which $100 million remained outstanding as of December 31, 2011.

The indebtedness under these notes is secured by substantially all of the assets of NRG Thermal Minneapolis. NRG Thermal has guaranteed the indebtedness, and its guarantee is secured by a pledge of the equity interests in all of NRG Thermal's subsidiaries.

South Trent Financing Agreement

In connection with the acquisition, on June 14, 2010, South Trent Wind LLC entered into a financing agreement, or the South Trent Financing Agreement, with a group of lenders, which matures on June 14, 2020. The South Trent Financing Agreement includes a $79 million term loan, as well as a $10 million letter of credit facility in support of the PPA. The South Trent Financing Agreement also provides for up to $7 million in additional letter of credit facilities. The term loan accrues interest at LIBOR plus a margin based upon a grid, which is initially 2.5% and increases every two years by 12.5 basis points. The term loan amortizes quarterly based upon a predetermined schedule with the unamortized portion due at maturity. As of December 31, 2011, $75 million was outstanding under the term loan and $10 million was issued under the letter of credit facility.

Roadrunner Financing

On May 25, 2011, NRG Roadrunner LLC, or Roadrunner, entered into a credit agreement with a bank, or the Roadrunner Financing Agreement, for a $47 million construction loan that converted to a term loan on January 10, 2012 and a $21 million cash grant loan, both of which have an interest rate of LIBOR plus an applicable margin of 2.01%. The term loan has an interest rate of LIBOR plus an applicable margin which escalates 0.25% every five years and ranges from 2.10% at closing to 2.76% in year fifteen through maturity. The term loan, which is secured by all the assets of

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 9—Long-term Debt (Continued)

Roadrunner, matures on September 30, 2031, and amortizes based upon a predetermined schedule. The cash grant loan matured upon the receipt of the cash grant on March 20, 2012. The Roadrunner Financing Agreement also includes a letter of credit facility on behalf of Roadrunner of up to $5 million. Roadrunner pays an availability fee of 100% of the applicable margin on issued letters of credit. As of December 31, 2011, $47 million was outstanding under the construction loan, $14 million was outstanding under the cash grant loans and $2 million in letters of credit in support of the PPA were issued. On January 10, 2012, in connection with the conversion of the construction loan to a term loan, Roadrunner borrowed an additional $4 million of cash grant loans and issued a $3 million letter of credit in support of debt service.

Blythe Credit Agreement

On June 24, 2010, NRG Solar Blythe LLC, or Blythe, entered into a credit agreement with a bank, or the Blythe Credit Agreement, for a $30 million term loan which has an interest rate of LIBOR plus an applicable margin which escalates 0.25% every three years and ranges from 2.5% at closing to 3.75% in year fifteen. The term loan matures in June 2028, amortizes based upon a predetermined schedule, and is secured by all of the assets of Blythe. The bank has also issued two letters of credit on behalf of Blythe, totaling $6 million. Blythe pays an availability fee of 100% of the applicable margin on these issued letters of credit. As of December 31, 2011, $27 million was outstanding under the term loan and $6 million in letters of credit were issued.

CVSR related financings

As discussed in Note 3, *Business Acquisitions*, in connection with the acquisition, High Plains Ranch II, LLC entered into the CVSR Financing Agreement with the Federal Financing Bank, or FFB, to borrow up to $1.2 billion to fund the costs of constructing the solar facility. The CVSR Financing Agreement matures in 2037 and the loans provided by the FFB, are guaranteed by the U.S. DOE. Amounts borrowed under the CVSR Financing Agreement accrue interest at a fixed rate based on U.S. Treasury rates plus a spread of 0.375%, and are secured by the assets of CVSR. As of December 31, 2011, no amounts were drawn under this agreement. In 2012, CVSR submitted an application to the U.S. Department of Treasury for a cash grant for the phase of the project that began commercial operations in 2012. CVSR intends to submit an application for cash grants for the remaining phases as they begin operating commercially. Any proceeds received will be utilized to repay borrowings under the CVSR Financing Agreement.

Under the terms of the CVSR Financing Agreement, CVSR entered into a series of swaptions with a notional value of $686 million, or 80% of the guaranteed term loan amount, in order to hedge the project interest rate risk. These swaptions mature over a series of seven scheduled settlement dates to correspond with the completion dates of the project.

Interest Rate Swaps—Project Financings

Many of NRG YieldCo's project subsidiaries entered into interest rate swaps, intended to hedge the risks associated with interest rates on non-recourse project level debt. These swaps amortize in proportion to their respective loans and are floating for fixed where the project company pays its counterparty the equivalent of a fixed interest payment on a predetermined notional value and will receive quarterly the equivalent of a floating interest payment based on the same notional value. All

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 9—Long-term Debt (Continued)

interest rate swap payments by the project company and its counterparty are made quarterly and the LIBOR is determined in advance of each interest period. The following table summarizes the swaps, some of which are forward starting as indicated, related to project level debt as of December 31, 2011.

	% of Principal	Fixed Interest Rate	Floating Interest Rate	Notional Amount at December 31, 2011	Notional Amount at December 31, 2010	Effective Date	Maturity Date
				(In millions)	(In millions)		
NRG West Holdings LLC	75%	2.4165%	3-mo. LIBOR	135	—	November 30, 2011	August 31, 2023
South Trent Wind LLC	75%	3.265%	3-mo. LIBOR	56	58	June 14, 2010	June 14, 2020
South Trent Wind LLC	75%	4.95%	3-mo. LIBOR	21	21	June 14, 2020	June 14, 2028
NRG Solar Roadrunner LLC	75%	4.313%	3-mo. LIBOR	36	—	September 30, 2011	December 31, 2029
NRG Solar Blythe LLC	75%	3.563%	3-mo. LIBOR	20	20	June 25, 2010	June 25, 2028

Annual Maturities

Annual payments based on the maturities of NRG YieldCo's debt, for the years ending after December 31, 2011 are as follows:

	(In millions)
2012	$ 33
2013	18
2014	45
2015	57
2016	61
Thereafter	291
Total	$ 505

Notes payable to NRG Energy, Inc.—El Segundo Energy Center

In July 2010, NRG YieldCo amended two of its intercompany notes to NRG El Segundo Energy Center LLC and NRG West Holdings LLC increasing the amount that NRG would lend to $325 million and $230 million, respectively, and adjusting the interest rate to LIBOR plus 3% to more closely reflect the increased rate that NRG was required to pay as a result of changing market conditions. In addition, NRG issued a $50 million note to NRG West Procurement Company on the same terms as the other notes. The maturity of all three notes was July 1, 2012 with a provision to extend the note for additional one-year periods unless notice is given. On August 23, 2011, prior to the West Holdings credit agreement being executed, $82 million of notes outstanding and intercompany balances outstanding were converted into equity in the project.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 9—Long-term Debt (Continued)

Notes payable to NRG Energy, Inc.—South Trent

On June 14, 2010, NRG South Trent Holding LLC, entered into a $34 million promissory note, or the South Trent Note, with a wholly-owned subsidiary of NRG, which matures on June 13, 2022. Borrowings under the South Trent Note accrue interest at LIBOR plus 2%. The South Trent Note provides customary events of default, which include, among others, nonpayment of principal or interest, breach of other obligations and certain events of bankruptcy or insolvency. As of December 31, 2011, $32 million was outstanding under the South Trent Note.

Note 10—Segment Reporting

NRG YieldCo's segment structure reflects how management currently makes financial decisions and allocates resources. Its businesses are primarily segregated based on conventional power generation, renewable businesses which consist of solar and wind, and the thermal and chilled water business. The Corporate segment reflects the corporate costs associated with NRG YieldCo.

For the year ended December 31, 2011, NRG YieldCo derived 10% or $16 million of its total revenue from a customer in its renewable segment.

	Year Ended December 31, 2011				
	Conventional Generation	Renewables	Thermal	Corporate	Total
	(In millions)				
Operating revenues	$ —	$ 26	$ 138	$ —	$ 164
Operating expenses	1	7	106	2	116
Depreciation and amortization	—	8	14	—	22
Operating income/(loss)	(1)	11	18	(2)	26
Equity in earnings of unconsolidated affiliates	—	1	—	—	1
Other income, net	—	1	—	—	1
Interest expense	—	(9)	(9)	—	(18)
Income before income taxes	(1)	4	9	(2)	10
Income tax expense	—	—	—	4	4
Net income	$ (1)	$ 4	$ 9	$ (6)	$ 6
Balance sheet					
Equity investments in affiliates	$ —	$ 78	$ —	$ —	$ 78
Capital expenditures(a)	241	111	20	—	372
Total assets	$ 365	$ 415	$ 326	$ 1	$ 1,107

(a) Includes accruals.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 10—Segment Reporting (Continued)

	Year Ended December 31, 2010				
	Conventional Generation	Renewables	Thermal	Corporate	Total
	(In millions)				
Operating revenues	$ —	$ 14	$ 129	$ —	$ 143
Operating expenses	1	3	102	1	107
Depreciation and amortization	—	5	11	—	16
Operating income/(loss)	(1)	6	16	(1)	20
Equity in earnings of unconsolidated affiliates	—	(1)	—	—	(1)
Other income, net	—	—	—	—	—
Interest expense	—	(4)	(7)	—	(11)
Income/(loss) before income taxes	(1)	1	9	(1)	8
Income tax expense	—	—	—	3	3
Net income/(loss)	$ (1)	$ 1	$ 9	$ (4)	$ 5
Balance sheet					
Equity investments in affiliates	$ —	$ 2	$ —	$ —	$ 2
Capital expenditures(a)	40	—	25	—	65
Total assets	$ 168	$ 213	$ 338	$ —	$ 659

(a) Includes accruals.

Note 11—Income Taxes

The income tax provision from continuing operations consisted of the following amounts:

	Year Ended December 31,	
	2011	2010
	(In millions, except percentages)	
Deferred		
U.S. Federal	$ 4	$ 3
State	—	—
Total income tax	$ 4	$ 3
Effective tax rate	40.0%	37.5%

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 11—Income Taxes (Continued)

A reconciliation of the U.S. federal statutory rate of 35% to NRG YieldCo's effective rate is as follows:

	Year Ended December 31,	
	2011	2010
	(In millions, except percentages)	
Income Before Income Taxes	$ 10	$ 8
Tax at 35%	4	3
Income tax expense	$ 4	$ 3
Effective income tax rate	40.0%	37.5%

The effective tax rates for the years ended December 31, 2011 and 2010, differ from the statutory rate of 35% primarily due to the impact of state and local income taxes.

The temporary differences, which gave rise to the deferred tax assets and liabilities consisted of the following:

	As of December 31,	
	2011	2010
	(In millions)	
Deferred tax liabilities:		
Difference between book and tax basis of property	$ 65	$ 28
Intangibles amortization	1	—
Investment in projects	4	—
Total deferred tax liabilities	70	29
Deferred tax assets:		
Deferred compensation, pension, accrued vacation and other reserves	2	2
Differences between book and tax basis of contracts	3	3
Derivatives, net	16	—
U.S. Federal net operating loss carryforwards	34	1
State net operating loss carryforwards	5	—
Total deferred tax assets	60	6
Net deferred tax liability	$ 10	$ 22

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 11—Income Taxes (Continued)

The following table summarizes NRG YieldCo's net deferred tax position:

	As of December 31, 2011	2010
	(In millions)	
Current deferred tax asset	$ 1	$ —
Non-current deferred tax liability	11	22
Net deferred tax liability	$ 10	$ 22

Deferred tax assets and valuation allowance

NRG YieldCo believes that it is more likely than not that future earnings will be sufficient to utilize the deferred tax assets, which includes reversal of existing deferred tax liabilities, and thus a valuation allowance is not required.

NOL carryforwards—At December 31, 2011 and 2010, NRG YieldCo had domestic net operating losses, or NOLs, for federal income tax purposes of $34 million and $1 million, respectively, as well as cumulative state NOLs of $5 million as of December 31, 2011, which will expire starting in 2030.

Uncertain tax positions

NRG YieldCo has not identified any uncertain tax positions that require evaluation as of December 31, 2011 or 2010.

Note 12—Related Party Transactions

NRG Energy, Inc.

Amounts were allocated from NRG for general corporate overhead costs attributable to the operations of the Predecessor. These amounts totaled $4 million and $2 million for the years ended December 31, 2011 and 2010, respectively. The general corporate overhead expenses incurred by NRG include costs from certain corporate and shared services functions provided by NRG. The amounts reflected include (i) charges that were incurred by NRG that were specifically identified as being attributable to the Predecessor and (ii) an allocation of all of NRG's remaining general corporate overhead costs based on the proportional level of effort attributable to the operation of our facilities. These costs include legal, accounting, tax, treasury, information technology, insurance, employee benefit costs, communications, human resources, and procurement. All corporate costs that were specifically identifiable to a particular NRG operating facility have been allocated to that facility, including the Predecessor. Where specific identification of charges to a particular NRG operating facility was not practicable, a reasonable method of allocation was applied to all remaining general corporate overhead costs. The allocation methodology for all remaining corporate overhead costs is based on management's estimate of the proportional level of effort devoted by corporate resources that is attributable to each of YieldCo's operating facilities. In the opinion of management, the cost allocations have been determined on a basis considered to be a reasonable reflection of all costs of doing business by the Predecessor. The amounts that would have been or will be incurred on a stand-alone basis could differ from the amounts allocated due to economies of scale, management judgment, or other factors.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 12—Related Party Transactions (Continued)

El Segundo Energy Center

On March 31, 2011, ESEC executed an Operations & Management, or O&M agreement with NRG El Segundo Operations, Inc. a wholly-owned subsidiary of NRG, to manage, operate and maintain the facility for an initial term of ten years following the commercial operations date and extends automatically by an additional five years under the terms and conditions upon written notice 120 days prior to the expiration of the initial term. ESEC does not anticipate incurring any costs under this agreement until the commercial operations date.

On March 31, 2011, ESEC executed an easement agreement with El Segundo Power II LLC, a wholly-owned subsidiary of NRG, for a parcel of real property located in the city of El Segundo, CA. The easement is for the construction, operation and maintenance of sewer lines as well as for the construction, operations and management of right of way and facilities lay down and staging areas for the project. In addition, ESEC executed a ground lease and easement agreement with El Segundo Power LLC, a wholly-owned subsidiary of NRG, for a parcel of real property in the city of El Segundo, CA. The easement is for the construction, operation and maintenance of electrical and gas lines as well as for the construction, operation and maintenance of certain utility lines, and certain sanitary and waste water discharge for the project. ESEC also executed a construction management services agreement with NRG Construction Services LLC, a wholly owned subsidiary of NRG, to act as construction manager of the project, to manage the design, engineering, procurement, construction, commissioning, testing initial start-up and close-out of construction activities for the Facility. As of December 31, 2011, the Company had incurred approximately $2 million in construction management services from NRG Construction Services LLC.

On February 23, 2011, ESEC entered into a purchase and sale agreement with El Segundo Power LLC, for NOx RTC's and SO_2 allowances. ESEC paid $7.5 million for the aggregate quantity of NOx RTC's and SO_2 allowances.

On December 31, 2010, ESEC entered into an agreement to purchase emission reduction credits, or ERCs, from El Segundo Power LLC, at the fair market value of the ERCs, which was determined to be $19 million. The rights to the ERCs were turned over to the Southern California Air Quality Management District in exchange for the processing of a permit to operate for the ESEC project. The cost of the air permit was recorded as a cost to construct the project.

South Trent

On August 16, 2010, South Trent, entered into an agreement with NRG Texas Power LLC, or NRG Texas, a wholly owned subsidiary of NRG, to provide operational project management services and an agreement with NRG Texas to provide administrative services to the wind farm. Each contract allows for an annual charge of $200,000, with annual escalation. In addition, the first contract allows for, after expiration of the warranty period in December 2010, a scheduled maintenance fee of $5,160 per turbine and an unscheduled maintenance crew fee of $396,000 annually, both with an annual escalation. Finally, the first agreement also allows for reimbursement of expenses. For the year ended December 31, 2011, NRG YieldCo paid NRG Texas approximately $1 million for services rendered.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 12—Related Party Transactions (Continued)

Thermal

NRG Energy Center Dover LLC, or NRG Dover, a Thermal operating company is party to a Power Sales and Services Agreement with NRG Power Marketing LLC, or NRG Power Marketing, a wholly-owned subsidiary of NRG. The agreement is automatically renewed on a month-to-month basis unless terminated by either party upon at least 30 day written notice. Under the agreement, NRG Power Marketing has the exclusive right to (i) manage, market and sell power, (ii) procure fuel and fuel transportation for operation of the Dover generating facility, to include for purposes other than generating power, (iii) procure transmission services required for the sale of power, and (iv) procure and market emissions credits for operation of the Dover generating facility.

In addition, NRG Power Marketing has the exclusive right and obligation to direct the output from the generating facility, in accordance with and to meet the terms of any power sales contracts executed against the power generation of the Dover facility. Under the agreement, NRG Power Marketing pays NRG Dover gross receipts generated through sales, less costs incurred by NRG Power Marketing related to providing such services as transmission and delivery costs, as well as fuel costs. During 2011 the existing coal purchase contract expired and NRG Power Marketing entered into a new contract, which expired in December 2012, to purchase coal for the Dover Facility. For the years ended December 31, 2011 and 2010, NRG Dover purchased approximately $4 million and $5 million, respectively, under these agreements.

Blythe

In 2011 and 2010, Blythe distributed capital of $46 million and $2 million, respectively, to a subsidiary of NRG.

Roadrunner

In 2011, Roadrunner distributed capital of $8 million to a subsidiary of NRG.

Long-Term Debt and Letters of Credit

NRG's financial support related to the Company's investments in CVSR is described in Note 5, *Investments Accounted for by the Equity Method.*

NRG YieldCo has various debt arrangements between its various subsidiaries and NRG, as further discussed in Note 9, *Long-Term Debt*. NRG has also issued letters of credit on behalf of NRG YieldCo's subsidiaries for the following projects:

	As of December 31,	
	2011	2010
	(In millions)	
Alpine	$ 8	$ 2
ESEC	—	30
Borrego	8	2
	$ 16	$ 34

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 13—Commitments and Contingencies

Operating Lease Commitments

NRG YieldCo leases certain facilities and equipment under operating leases, some of which include escalation clauses, expiring on various dates through 2030. The effects of these scheduled rent increases, leasehold incentives, and rent concessions are recognized on a straight-line basis over the lease term unless another systematic and rational allocation basis is more representative of the time pattern in which the leased property is physically employed. Lease expense under operating leases was$3 million and $1 million for the years ended December 31, 2011 and 2010, respectively.

Future minimum lease commitments under operating leases for the years ending after December 31, 2011, are as follows:

Period	(In millions)
2012	$ 3
2013	3
2014	3
2015	3
2016	3
Thereafter	41
Total	$ 56

Coal, Gas and Transportation Commitments

NRG YieldCo has entered into contractual arrangements to procure auxiliary power, fuel and transportation services and for the years ended December 31, 2011 and 2010, purchased $36 million and $33 million, respectively, under such arrangements.

As of December 31, 2011, NRG YieldCo's commitments under such outstanding agreements are estimated as follows:

Period	(In millions)
2012	$ 18
2013	4
Total	$ 22

Engineering, Procurement and Construction, or EPC, Agreements

On October 28, 2011, NRG Solar Alpine LLC, or Alpine, executed an EPC agreement with First Solar Electric Inc. (First Solar) to design, engineer and procure certain equipment and materials, install, construct test, commission and energize the 66 MW solar generating facility. Alpine has a 20 year PPA with Pacific Gas & Electric to supply all the energy output as well as renewable energy attributes from the facility. NRG YieldCo expects commercial operations of the facility to begin during the first quarter of 2013. For the year ended December 31, 2011, costs of $21 million were incurred under the EPC agreement.

NRG YIELDCO

NOTES TO COMBINED FINANCIAL STATEMENTS (Continued)

Note 13—Commitments and Contingencies (Continued)

On November 30, 2011, NRG Solar Borrego I LLC, or Borrego, executed an EPC agreement with Sunora Energy Solutions I LLC. (Sunora) to design, engineer and procure certain equipment and materials, install, construct test, commission and energize the 26 MW solar generating facility. Borrego has a 25 year PPA with San Diego Gas & Electric Co. to supply all the energy output as well as renewable energy attributes from the facility. The facility began commercial operations during the first quarter of 2013. No costs were incurred under the EPC agreement during the years ended December 31, 2011 and 2010.

On December 19, 2011, NRG Solar Avra Valley LLC, or Avra Valley, executed an EPC agreement with First Solar to design, engineer and procure certain equipment and materials, install, construct test, commission and energize the 25 MW solar generating facility. Avra Valley has a 20 year PPA with Tucson Electric Co. to supply all the energy output as well as renewable energy attributes from the facility. The facility began commercial operations during the fourth quarter of 2012. No costs were incurred under th EPC agreement during the years ended December 31, 2011 and 2010.

Contingencies

In the normal course of business, NRG YieldCo is subject to various claims and litigation. Management expects that these various litigation items will not have a material adverse effect on the results of operations or financial position of NRG YieldCo.

Through and including , 2013 (the 25th day after the date of this prospectus), all dealers that effect transactions in these securities may be required to deliver a prospectus.

Shares

Class A Common Stock

PRELIMINARY PROSPECTUS

BofA Merrill Lynch

Goldman, Sachs & Co.

Citi

, 2013

PART II

Item 13. Other expenses of issuance and distribution

The following table sets forth the costs and expenses, other than underwriting discounts and commissions, to be paid by us in connection with the sale of the shares of Class A common stock being registered hereby. All amounts are estimates except for the SEC registration fee, the FINRA filing fee and the New York Stock Exchange listing fee.

SEC registration fee	$ *
FINRA filing fee	*
New York Stock Exchange listing fee	*
Accounting fees and expenses	*
Printing and engraving expenses	*
Transfer agent and registrar fees and expenses	*
Other expenses	*
Total	$ *

* To be provided by amendment.

Item 14. Indemnification of directors and officers

Section 102(b)(7) of the DGCL allows a corporation to provide in its certificate of incorporation that a director of the corporation will not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except where the director breached the duty of loyalty, failed to act in good faith, engaged in intentional misconduct or knowingly violated a law, authorized the payment of a dividend or approved a stock repurchase in violation of Delaware corporate law or obtained an improper personal benefit. Our amended and restated certificate of incorporation will provide for this limitation of liability.

Section 145 of the DGCL, or Section 145, provides that a Delaware corporation may indemnify any person who was, is or is threatened to be made, party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person is or was an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was illegal. A Delaware corporation may indemnify any persons who are, were or are a party to any threatened, pending or completed action or suit by or in the right of the corporation by reason of the fact that such person is or was a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit, provided such person acted in good faith and in a manner he reasonably believed to be in or not opposed to the corporation's best interests, provided that no indemnification is permitted without judicial approval if the officer, director, employee or agent is adjudged to be liable to the corporation. Where an officer or director is successful on the merits or otherwise in the defense of any action referred to above, the corporation must indemnify him against the expenses which such officer or director has actually and reasonably incurred.

Section 145 further authorizes a corporation to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or enterprise, against any liability asserted against him and incurred by him in any such capacity, or arising out of his or her status as such, whether or not the corporation would otherwise have the power to indemnify him under Section 145.

Our amended and restated bylaws will provide that we must indemnify our directors and officers to the fullest extent permitted by the DGCL and must also pay expenses incurred in defending any such proceeding in advance of its final disposition upon delivery of an undertaking, by or on behalf of an indemnified person, to repay all amounts so advanced if it should be determined ultimately that such person is not entitled to be indemnified.

We intend to enter into indemnification agreements with certain of our executive officers and directors pursuant to which we will agree to indemnify such persons against all expenses and liabilities incurred or paid by such person in connection with any proceeding arising from the fact that such person is or was an officer or director of our company, and to advance expenses as incurred by or on behalf of such person in connection therewith.

The indemnification rights set forth above shall not be exclusive of any other right which an indemnified person may have or hereafter acquire under any statute, provision of our certificate of incorporation, our bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

We expect to maintain standard policies of insurance that provide coverage (1) to our directors and officers against loss rising from claims made by reason of breach of duty or other wrongful act and (2) to us with respect to indemnification payments that we may make to such directors and officers.

The proposed form of Underwriting Agreement to be filed as Exhibit 1.1 to this Registration Statement will provide for indemnification of our directors and officers by the underwriters party thereto against certain liabilities. See "Item 17. Undertakings" for a description of the Commission's position regarding such indemnification provisions.

Item 15. Recent sales of unregistered securities

None.

Item 16. Exhibits and Financial Statement Schedules

(a) Exhibits

The exhibit index attached hereto is incorporated herein by reference.

(b) Financial Statement Schedule

All schedules have been omitted because the information required to be set forth in the schedules is either not applicable or is shown in the financial statements or notes thereto.

Item 17. Undertakings

The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the provisions referenced in Item 14 of this registration statement or otherwise, the registrant has been advised that in the opinion

of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered hereunder, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

The undersigned registrant hereby undertakes that:

(1) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in the form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective; and

(2) For the purpose of determining any liability under the Securities Act of 1933, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at the time shall be deemed to be the initial bona fide offering thereof.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, NRG Yieldco, Inc., a Delaware corporation, has duly caused this Registration Statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Princeton, State of New Jersey, on February 13, 2013.

NRG YIELDCO, INC.

By: _____

Name: David R. Hill
Title: Executive Vice President and General Counsel

POWER OF ATTORNEY

Each person whose signature appears below constitutes and appoints and , and each of them singly, his true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all (i) amendments (including post-effective amendments) and additions to this registration statement and (ii) any and all additional registration statements pursuant to Rule 462(b) of the Securities Act of 1933, as amended, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agents full power and authority to do and perform each and every act in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or either of them or their or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.

* * * * *

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement on Form S-1 has been signed by the following persons in the capacities indicated on February 13, 2013.

Signature	Title
_____ David W. Crane	President and Chief Executive Officer (principal executive officer)
_____ Kirkland B. Andrews	Executive Vice President and Chief Financial Officer (principal financial and accounting officer)

EXHIBIT INDEX

Exhibit Number	Exhibit Description
1.1*	Form of Underwriting Agreement
3.1*	Form of Amended and Restated Certificate of Incorporation
3.2*	Form of Amended and Restated Bylaws
4.1*	Form of Specimen Stock Certificate
5.1*	Opinion of Kirkland & Ellis LLP
10.1*	Form of Management Services Agreement by and between NRG Yieldco, Inc. and NRG Energy, Inc.
10.2*	Form of Right of First Offer Agreement by and between NRG Yieldco, Inc. and NRG Energy, Inc.
10.3*	Form of Exchange Agreement by and among NRG Yieldco, Inc., NRG Yieldco LLC and NRG Energy, Inc.
10.4*	Form of Registration Rights Agreement by and between NRG Yieldco, Inc. and NRG Energy, Inc.
10.5*	Form of Licensing Agreement by and between NRG Yieldco, Inc. and NRG Energy, Inc.
10.6*	Credit Agreement by and among NRG Yieldco, Inc. and the lenders party thereto
10.7	Credit Agreement, dated as of August 23, 2011, by and among NRG West Holdings LLC, as borrower, ING Capital LLC, as Mandated Lead Arranger, Union Bank, N.A., as Mandated Lead Arranger, Mizuho Corporate Bank, Ltd., as Mandated Lead Arranger and Joint Bookrunner, RBS Securities Inc., as Mandated Lead Arranger and Joint Bookrunner, Credit Agricole Corporate and Investment Bank, as Mandated Lead Arranger, Joint Bookrunner and Administrative Agent, and the financial institutions from time to time party thereto
10.8	Loan Guarantee Agreement, dated as of September 30, 2011, by and among High Plains Ranch II, LLC, as borrower, the U.S. Department of Energy, as guarantor, and the U.S. Department of Energy, as loan servicer
10.9	Operation and Maintenance Agreement, dated as of March 31, 2011, by and among El Segundo Energy Center LLC and NRG El Segundo Operations Inc.
10.10	Project Administration Services Agreement, dated as of March 31, 2011, by and among NRG West Holdings LLC, El Segundo Energy Center LLC and NRG West Coast LLC
10.11	Operation and Maintenance Agreement, dated as of January 31, 2011, by and among Avenal Solar Holdings LLC and NRG Energy Services LLC
10.12	Asset Management Agreement, dated as of August 30, 2012, by and among NRG Solar Avra Valley LLC and NRG Solar Asset Management LLC
10.13	Operation and Maintenance Agreement, dated as of August 1, 2012, by and among NRG Energy Services LLC and NRG Solar Borrego I LLC
10.14	Asset Management Agreement, dated as of March 15, 2012, by and among NRG Solar Alpine LLC and NRG Solar Asset Management LLC
10.15	Operation and Maintenance Agreement, dated as of September 30, 2011, by and among NRG Energy Services LLC and High Plains Ranch II, LLC

Exhibit Number	Exhibit Description
10.16	Project Administration Agreement, dated as of August 16, 2010, by and among South Trent Wind LLC and NRG Texas Power LLC
21.1*	List of subsidiaries of NRG Yieldco, Inc.
23.1*	Consent of KPMG, LLP, independent public registered accounting firm
23.2*	Consent of Kirkland & Ellis LLP (included in Exhibit 5.1)
24.1*	Powers of Attorney (included on signature page)

* To be filed by amendment.

Exhibit 10.7

Execution Version

CREDIT AGREEMENT

among

NRG WEST HOLDINGS LLC,
as Borrower,

ING CAPITAL LLC,
as Mandated Lead Arranger

UNION BANK, N.A.,
as Mandated Lead Arranger

MIZUHO CORPORATE BANK, LTD.,
as Mandated Lead Arranger and Joint Bookrunner,

RBS SECURITIES INC.,
as Mandated Lead Arranger and Joint Bookrunner,

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,
as Mandated Lead Arranger, Joint Bookrunner and
Administrative Agent

and

THE LENDERS PARTY HERETO

in respect of
THE EL SEGUNDO ENERGY CENTER

Table of Contents

Schedule 5.2	Financing Document Approvals
Schedule 5.3	Borrower Equity Interests
Schedule 5.5	Litigation
Schedule 5.6	Material Permits

Schedule 5.7	Material Project Documents
Schedule 5.12	Foreign Properties of Borrower
Schedule 5.14	Environmental Matters
Schedule 5.22	Proposed Change Orders

This CREDIT AGREEMENT is dated as of August 23, 2011 among NRG West Holdings LLC, as Borrower, ING Capital LLC, as Mandated Lead Arranger, Union Bank, N.A., as Mandated Lead Arranger, Mizuho Corporate Bank, Ltd., as Mandated Lead Arranger and Joint Bookrunner, RBS Securities Inc., as Mandated Lead Arranger and Joint Bookrunner, Credit Agricole Corporate and Investment Bank, as Mandated Lead Arranger, Joint Bookrunner and Administrative Agent, and each of the financial institutions from time-to-time party hereto as Lenders and Issuing Banks.

W I T N E S S E T H :

WHEREAS, the Borrower has requested that the Lenders and Issuing Banks provide the credit facilities described herein upon the terms and subject to the conditions set forth herein in order to finance a portion of the Project Costs and other costs and expenses incurred in developing, constructing, owning, operating and managing a combined cycle power plant consisting of two fast start, highly efficient units totalling approximately 550 megawatts, to be located on a site in El Segundo, Los Angeles County, California, in the United States (as further defined below, the "Project"); and

WHEREAS, the Lenders and Issuing Banks are willing to provide such credit facilities upon such terms and subject to such conditions;

NOW, THEREFORE, in consideration of the premises and mutual agreements hereinafter contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND RULES OF INTERPRETATION

1.1 Defined Terms. Except as otherwise expressly provided herein, capitalized terms used in this Credit Agreement and its appendices, schedules and exhibits shall have the respective meanings assigned to such terms in Appendix A hereto.

1.2 Rules of Interpretation. Except as otherwise expressly provided herein, the rules of interpretation set forth in Appendix A hereto shall apply to this Credit Agreement.

1.3 Accounting Principles. Except as otherwise expressly provided in this Credit Agreement, all computations and determinations as to financial matters, and all financial statements to be delivered under this Credit Agreement shall be made or prepared in accordance with U.S. GAAP (including principles of consolidation where appropriate) applied on a consistent basis.

ARTICLE II

THE CREDIT FACILITIES

2.1 Construction Facilities.

(a) The Tranche A Lenders hereby establish for the benefit of the Borrower a construction loan facility (the "Tranche A Construction Facility") having an initial committed principal amount equal to the Tranche A Loan Amount.

(b) The Tranche B Lenders hereby establish for the benefit of the Borrower a construction loan facility (the "Tranche B Construction Facility", and, together with the Tranche A Construction Facility, the "Construction Facilities") having an initial aggregate committed principal amount set forth opposite the heading "*Tranche B Loan Amount*" on Appendix B (the "Tranche B Loan Amount").

(c) Subject to and upon the terms and conditions set forth herein:

(i) each Tranche A Lender severally agrees to make, from time-to-time during the Tranche A Construction Loan Availability Period, loans under the Tranche A Construction Facility (the "Tranche A Construction Loans") to the Borrower in an aggregate principal amount that will not result in (x) such Tranche A Lender's Tranche A Construction Loans exceeding the Tranche A Construction Loan Commitment of such Tranche A Lender or (y) the aggregate amount of all Tranche A Construction Loans exceeding the Tranche A Loan Amount; and

(ii) each Tranche B Lender severally agrees to make, from time-to-time during the Tranche B Construction Loan Availability Period, loans under the Tranche B Construction Facility (the "Tranche B Construction Loans" and, together with the Tranche A Construction Loans, the "Construction Loans") to the Borrower in an aggregate principal amount that will not result in (x) such Tranche B Lender's Tranche B Construction Loans exceeding the Tranche B Construction Loan Commitment of such Tranche B Lender or (y) the aggregate amount of all Tranche B Construction Loans exceeding the Tranche B Loan Amount.

(d) The Construction Loans are available only on the terms and subject to the conditions specified hereunder, and once repaid, in whole or in part, at maturity (in accordance with Sections 2.1(f), 2.2(e) and 3.15(a)) or by prepayment, may not be re-borrowed in whole or in part.

(e) The proceeds of the Construction Loans shall be used solely (x) to pay Project Costs in accordance with the Construction Budget and (y) to make no more than three True-Up Distributions in accordance with the next sentence and Section 7.9(c). Subject to the satisfaction of the conditions set forth in Section 4.2, on each of (i) the date of the initial Borrowing of the Construction Loans, (ii) a Business Day selected by the Borrower during the Tranche A Construction Loan Availability Period or the Tranche B Construction Loan Availability Period on which the Borrower has delivered a Borrowing Request (the "Optional True-Up Date") and (iii) the Term Conversion Date, the Borrower may draw Construction Loans

equal to the positive difference between (x) the aggregate amount of Equity Contributions made (or, if less, deemed made in accordance with the definition thereof) prior to the date of such Disbursement and (y) the Required Equity Contribution (each such drawing, a "True-Up Drawing" and together, the "True-Up Drawings") and make a True-Up Distribution in accordance with Section 7.9(c).

(f) The Construction Loans shall, if the Term Conversion Date has not theretofore occurred, mature and be immediately payable on the Date Certain.

2.2 Term Facilities.

(a) The Tranche A Lenders hereby establish for the benefit of the Borrower a term loan facility (the "Tranche A Term Facility") in an aggregate principal amount equal to the Tranche A Loan Amount (or, if less on the Term Conversion Date, an amount equal to the principal amount of the Tranche A Construction Loans outstanding as of the Term Conversion Date (after giving effect to any Borrowing of Tranche A Construction Loans on such date and any prepayment of Tranche A Construction Loans on such date in accordance herewith)).

(b) The Tranche B Lenders hereby establish for the benefit of the Borrower a term loan facility (the "Tranche B Term Facility", and together with the Tranche A Term Facility, the "Term Facility") in an aggregate principal amount equal to the Tranche B Loan Amount (or, if less on the Term Conversion Date, an amount equal to the principal amount of the Tranche B Construction Loans outstanding as of the Term Conversion Date (after giving effect to any Borrowing of Tranche B Construction Loans on such date and any prepayment of Tranche B Construction Loans on such date in accordance herewith)).

(c) Subject to and upon the terms and conditions set forth herein:

(i) each Tranche A Lender agrees that on the Term Conversion Date, all Tranche A Construction Loans of such Tranche A Lender outstanding on such date (after giving effect to any Borrowing of Tranche A Construction Loans on such date and any prepayment of Tranche A Construction Loans on such date in accordance herewith) shall automatically convert into term loans under the Tranche A Term Facility (each, a "Tranche A Term Loan"); and

(ii) each Tranche B Lender agrees that on the Term Conversion Date, all Tranche B Construction Loans of such Tranche B Lender outstanding on such date (after giving effect to any Borrowing of Tranche B Construction Loans on such date and any prepayment of Tranche B Construction Loans on such date in accordance herewith) shall automatically convert into term loans under the Tranche B Term Facility (each, a "Tranche B Term Loan", and together with Tranche A Term Loans, the "Term Loans").

For the avoidance of doubt, the Tranche A Construction Loans and the Tranche B Construction Loans shall convert to Tranche A Term Loans and Tranche B Term Loans (respectively) on the same date.

(d) Construction Loans shall be deemed to be continued as and converted to Term Loans as provided hereby. The Term Loans are available only on the terms and conditions specified herein and, once repaid, in whole or in part, at maturity or by prepayment, may not be reborrowed in whole or in part.

(e) The Term Loans shall mature and be immediately payable on the earlier of (i) the tenth anniversary of the Term Conversion Date and (ii) August 31, 2023 (the "Term Maturity Date").

2.3 Revolving Facility.

(a) The Revolver Lenders hereby establish for the benefit of the Borrower a revolving facility (the "Revolving Facility") having an initial aggregate committed amount set forth opposite the heading "*Revolving Amount*" on Appendix B (the "Revolving Amount").

(b) Subject to and upon the terms and conditions set forth herein, each Revolver Lender agrees to:

(i) prior to the Term Conversion Date, issue one or more irrevocable standby letters of credit (collectively, the "LGIA Letter of Credit") for the account of the Borrower in respect of the Project Owner's obligation to provide performance guarantees under the Large Generator Interconnection Agreement for the benefit of the Offtaker and CAISO, pursuant to the Large Generator Interconnection Agreement, and in the form set forth below the heading identifying such LGIA Letter of Credit on Appendix D; and

(ii) make, from time-to-time during the period from the Term Conversion Date until the last day of the Revolver Availability Period, revolving loans under the Revolving Facility (together with any LC Loan resulting from a drawing on any LGIA Letter of Credit, the "Revolving Loans") to the Borrower in an aggregate principal amount that will not result in the aggregate amount of all Revolving Loans (including any LC Loans resulting from a drawing under any LGIA Letter of Credit) exceeding the Revolving Amount.

(c) Each LGIA Letter of Credit shall expire on the date set forth therein, which shall be determined in accordance with Section 3.25 and Appendix D and shall not in any event be later than the last day of the LGIA Availability Period.

(d) The Revolving Loans may be prepaid in accordance with Section 3.16 and re-borrowed, subject to the terms and conditions set forth in this Credit Agreement, including the satisfaction or waiver of the conditions precedent set forth in Section 4.3 in accordance therewith.

(e) The proceeds of the Revolving Loans shall be applied solely to O&M Expenses.

(f) The Revolving Loans shall mature and be immediately payable on the last day of the Revolver Availability Period (or, if the Term Conversion Date does not occur on or prior to the Date Certain, the Date Certain) (the "Revolver Maturity Date").

2.4 TALC Facility.

(a) The TALC Issuing Bank and TALC Participating Banks hereby establish for the account of the Borrower a participating letter of credit facility (the "TALC Facility") having an initial aggregate committed amount set forth opposite the heading "*TALC Facility Amount*" on Appendix B (the "TALC Facility Amount").

(b) Subject to and upon the terms and conditions set forth herein, the TALC Issuing Bank agrees to issue, one or more irrevocable standby letters of credit (collectively, the "TA Letters of Credit") for the account of the Borrower and the benefit of the Offtaker pursuant to the Tolling Agreement, in the form set forth below the heading identifying such TA Letters of Credit on Appendix D.

(c) The TALC Participating Banks shall participate in each TA Letter of Credit issued under the TALC Facility in accordance with Section 3.25.

(d) Each TA Letter of Credit shall expire on the date set forth therein, which shall be determined in accordance with Section 3.25 and Appendix D and shall not in any event be later than the fifth Business Day after the last day of the TALC Availability Period.

(e) Any LC Loans resulting from drawings under the TA Letters of Credit shall mature and be immediately payable on the day that is five Business Days after the last day of the TALC Availability Period (or, if the Term Conversion Date does not occur on or prior to the Date Certain, the Date Certain) (the "TALC Maturity Date").

2.5 DSR LC Facility

(a) The DSR Issuing Banks hereby establish for the account of the Borrower a non-participating letter of credit facility (the "DSR LC Facility") having an initial aggregate committed amount set forth opposite the heading "DSR Facility Amount" on Appendix B (the "DSR Facility Amount").

(b) Subject to and upon the terms and conditions set forth herein, each DSR Issuing Bank agrees to issue one or more irrevocable standby letters of credit (collectively, the "DSR Letters of Credit") for the account of the Borrower and for the benefit of the Collateral Agent in accordance with the Accounts Agreement in the form set forth below the heading identifying such DSR Letters of Credit on Appendix D.

(c) Each DSR Letter of Credit shall expire on the date set forth therein, which shall be determined in accordance with Section 3.25 and Appendix D and shall not in any event be later than the last day of the DSR Availability Period.

(d) Any LC Loans resulting from drawings under the DSR Letters of Credit shall mature and be immediately payable on the last day of the DSR Availability Period (or, if

the Term Conversion Date does not occur on or prior to the Date Certain, the Date Certain) (the "DSR Maturity Date").

ARTICLE III

TERMS OF THE CREDIT FACILITIES

3.1 Borrowings Generally.

(a) Each Borrowing shall consist of Loans of the same Tranche and shall be made by the relevant Lenders ratably in accordance with their respective Commitments under the relevant Tranche as of the date such Loans are made hereunder. Subject to Section 3.8, each Borrowing shall be comprised entirely of Base Rate Loans or LIBOR Loans as the Borrower may request in accordance herewith. The Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required hereunder. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder.

(b) Each Borrowing shall be in an aggregate amount that is not less than the Borrowing Minimum and, if more than the Borrowing Minimum, is an integral multiple of the Borrowing Multiple in excess thereof; provided, that a Borrowing may be in an aggregate amount that is equal to the entire unused balance of the aggregate applicable Commitments or, with respect to any LC Loan deemed made in accordance with Section 3.25(f), the amount of the relevant drawing under the relevant Specified Letters of Credit.

(c) Borrowings of more than one Type may be outstanding at the same time. There shall not at any time be more than a total of twelve Interest Periods of LIBOR Loans outstanding hereunder at any one time. If two or more Borrowings of the same Tranche and having the same Interest Period are outstanding hereunder at any one time, then the Administrative Agent may in its sole discretion combine the Loans comprising such Borrowings into one Loan.

(d) Notwithstanding any other provision of this Credit Agreement, the Borrower shall not be entitled to request, or to elect to Convert or continue, any Borrowing of any Loan if the Interest Period requested with respect thereto would end after the Maturity Date of such Loan.

3.2 Borrowing Request. To request a Borrowing of a Construction Loan or a Revolving Loan, the Borrower shall deliver a Borrowing Request to the Administrative Agent at its Notice Office not later than 11:00 a.m. (New York City time) on (x) the third Business Day prior to the proposed date of Borrowing set forth therein in the case of LIBOR Loans or (y) the first Business Day prior to the proposed date of Borrowing set forth therein in the case of Base Rate Loans. Each Borrowing Request shall be appropriately completed to specify (i) the Tranches of Loans being requested, (ii) the aggregate principal amount of

each such Tranche of Loans, (iii) the date of such Borrowing (which shall be a Business Day), (iv) the Type of Loans being requested and (v) in the case of LIBOR Loans, the initial Interest Period to be applicable

thereto. The Administrative Agent shall promptly give each Lender notice of the proposed Borrowing, of such Lender's proportionate share thereof and of the other matters required by the immediately preceding sentence to be specified in the Borrowing Request. If the Borrowing Request does not elect a Type of Borrowing, then the requested Borrowing shall be a Base Rate Loan. If the Borrowing Request elects a Borrowing of LIBOR Loans but does not specify an Interest Period, then the requested Borrowing shall have an initial Interest Period of one month. This Section 3.2 shall not apply to Borrowings of Term Loans or LC Loans.

3.3 Disbursement of Funds. Subject to the terms and conditions hereof, on the date specified in each Borrowing Request, each Lender will make available through such Lender's Applicable Lending Office its *pro rata* portion (if any) of the aggregate amount of each Tranche of Construction Loans or Revolving Loans requested on such date, in each case, by wire transfer in Dollars and in immediately available funds to the AA Disbursement Account, and the Administrative Agent will deposit the aggregate of the amounts so made available by the Lenders in accordance with the Borrowing Request and the Accounts Agreement. Unless the Administrative Agent has been notified by any Lender prior to the applicable date of the Borrowing that such Lender does not intend to make available to the Administrative Agent such Lender's *pro rata* portion of the Borrowing of any Tranche of Construction Loans or Revolving Loans on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date, and the Administrative Agent may (but shall have no obligation to), in reliance upon such assumption, make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount from such Lender on demand. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower, and the Borrower shall be required to pay such corresponding amount to the Administrative Agent forthwith upon the Administrative Agent's demand therefor. The Administrative Agent shall also be entitled to recover on demand from such Lender or the Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower until the date such corresponding amount is recovered by the Administrative Agent, at a rate *per annum* equal to (a) if such amount is recovered from such Lender, the cost to the Administrative Agent of acquiring overnight federal funds at the then applicable rate and (b) if such amount is recovered from the Borrower, the then applicable rate of interest for the relevant Loans provided for herein. If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Credit Agreement, and the Borrower's obligation to repay the Administrative Agent such corresponding amount pursuant to this Section 3.3 shall cease. Nothing in this Section 3.3 shall be deemed to relieve any Lender from its obligation to make any Loan hereunder or to prejudice any rights which the Borrower may have against any Lender as a result of any failure by such Lender to make Loans hereunder. This Section 3.3 shall not apply to Borrowings of Term Loans or LC Loans.

3.4 Evidence of Secured Obligations and Notes.

(a) Each Lender will maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender as a result of the Loans

of such Lender made hereunder, including the amounts of principal, interest and other Secured Obligations payable and paid to such Lender from time-to-time under this Credit Agreement and (if issued) the Notes. The entries made by each Lender in such account or accounts pursuant to the foregoing sentence shall constitute *prima facie* evidence of the existence and amounts of the Loans and other Secured Obligations therein recorded; provided, that the failure of any Lender to maintain such account or accounts, or any error therein, shall not in any manner affect the obligations of the Borrower to repay or pay the Loans made by such Lender, accrued interest thereon and the other Secured Obligations of the Borrower to such Lender hereunder in accordance with the terms of this Credit Agreement and the other Financing Documents. Each Lender will advise the Borrower of the outstanding Indebtedness hereunder to such Lender upon written request therefor.

(b) At the request of any Lender, the Borrower's obligation to pay the principal of, and interest on, any Tranche of Loans made by such Lender shall be evidenced by a Note in respect of such Tranche duly executed and delivered by the Borrower with blanks appropriately completed in conformity herewith.

(c) Each Lender will note on its internal records the amount of each Loan made by it and each payment made in respect thereof and will prior to any transfer of any of its Notes endorse on the reverse side thereof the outstanding principal amount of Loans evidenced thereby. Failure to make such notation shall not affect the Borrower's obligations in respect of such Loans.

3.5 Conversions. The Borrower shall have the option to Convert on any Business Day the principal amount of the Loans made pursuant to one or more Borrowings from one Type of Loan into another Type of Loan; provided, that (a) Loans may not be so Converted into another Type unless the aggregate principal amount of Loans to be so Converted is not less than the Borrowing Minimum and, if more than the Borrowing Minimum, is an integral multiple of the applicable Borrowing Multiple in excess thereof, (b) no Conversion of all or any portion of any LIBOR Loan into a Base Rate Loan may be effected on any day other than the last day of an Interest Period applicable to such LIBOR Loan, unless the Borrower pays all amounts owing under Section 3.12 as a result of such Conversion, (c) no partial Conversion of LIBOR Loans shall reduce the outstanding principal amount of such LIBOR Loans made pursuant to a single Borrowing to less than the applicable Borrowing Minimum, (d) Base Rate Loans may only be Converted into LIBOR Loans if no Default or Event of Default is in existence on the date of Conversion and (e) no Conversion pursuant to this Section 3.5 shall result in a greater number of Interest Periods of LIBOR Loans being outstanding at any one time than is permitted under Section 3.1(c) hereof. Each such Conversion shall be effected by the Borrower by delivering a Conversion Request to the Administrative Agent at its Notice Office prior to 11:00 a.m. (New York City time) on the third Business Day prior to the proposed date of Conversion. Each Conversion Request shall be appropriately completed to specify (i) the principal amount of each Tranche of Loans to be so Converted, (ii) the date of such Conversion (which shall be a Business Day), (iii) the Type of Loans from which each such Tranche of Loans is being Converted and the Type of Loans into which each such Tranche of Loans is being Converted and (iv) if any Loans are being Converted into LIBOR Loans, the Interest Period to be initially applicable thereto. The Administrative Agent shall give each Lender prompt notice of any such proposed Conversion affecting any of its Loans.

3.6 Interest.

(a) The Borrower agrees to pay interest in respect of the unpaid principal amount of each Base Rate Loan from the date of Borrowing thereof or Conversion thereof into a Base Rate Loan, until the earlier of (i) the maturity of such Base Rate Loan (whether by acceleration or otherwise) and (ii) the Conversion of such Base Rate Loan to a LIBOR Loan pursuant hereto, at a rate *per annum* which shall be equal to the sum of (A) the Base Rate in effect from time-to-time *plus* (B) the Applicable Margin.

(b) The Borrower agrees to pay interest in respect of the unpaid principal amount of each LIBOR Loan from the date of Borrowing thereof or Conversion thereof into a LIBOR Loan until the earlier of (i) the maturity of such LIBOR Loan (whether by acceleration or otherwise) and (ii) the Conversion of such LIBOR Loan to a Base Rate Loan pursuant hereto, at a rate *per annum* which shall, during each Interest Period applicable thereto, be equal to the sum of (x) the Adjusted LIBO Rate in effect for such Interest Period *plus* (y) the Applicable Margin.

(c) Accrued (and theretofore unpaid) interest shall be payable (i) in respect of each Base Rate Loan, quarterly in arrears on the last Business Day of each February, May, August and November, (ii) in respect of each LIBOR Loan, on the last day of each Interest Period applicable thereto and, in the case of an Interest Period in excess of six months, on each date occurring at six-month intervals after the first day of such Interest Period, and (iii) in respect of each Loan, upon any repayment or prepayment (on the amount repaid or prepaid), Conversion (on the amount Converted), at maturity (whether by acceleration or otherwise) and, after such maturity, on demand. Notwithstanding the foregoing, interest payable in accordance with Section 3.23 shall be payable as provided therein.

(d) On each Interest Determination Date in respect of any LIBOR Loan, the Administrative Agent shall determine the Adjusted LIBO Rate for the applicable Interest Period to be applicable to the Loans or to any portion thereof and shall promptly notify the Borrower and the Lenders thereof. Each such determination shall, absent manifest error, be final, conclusive and binding on all parties hereto.

3.7 Interest Periods for LIBOR Loans.

(a) The Borrower shall have the right to elect (i) in the case of the initial Interest Period applicable to any LIBOR Loan, in the Borrowing Request or, in respect of any LIBOR Loan being Converted from a Base Rate Loan, in the Conversion Request and (ii) in the case of any subsequent Interest Period applicable to any LIBOR Loan, in a written notice delivered to the Administrative Agent on the third Business Day prior to the expiration of the current Interest Period applicable to such Loan, the interest period (the "Interest Period") applicable to such LIBOR Loan, which Interest Period shall, at the option of the Borrower, be one, two, three or six months or (if available to all Lenders) nine or twelve months; provided, that:

(i) the aggregate principal amount of Term Loans having an Interest Period of three months as of any date following the Term Conversion Date shall

be not less than the aggregate notional amount of the Rate Swap Transactions as of the next succeeding Principal Payment Date to occur after such date;

(ii) all LIBOR Loans comprising the same Borrowing shall have the same Interest Period;

(iii) the initial Interest Period for any LIBOR Loan shall commence on the date of Borrowing of such LIBOR Loan (or the date of Conversion thereof from a Base Rate Loan) and each Interest Period occurring thereafter in respect of such LIBOR Loan shall commence on the last day of the immediately preceding Interest Period;

(iv) if any Interest Period begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month;

(v) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day;

(vi) any Interest Period that would otherwise extend beyond the relevant Maturity Date shall end on such Maturity Date; and

(vii) if the Term Conversion Date shall occur on a date that is not the last day of an Interest Period for any Construction Loans being converted to Term Loans on such date, then, notwithstanding any other provision herein to the contrary, the Interest Period applicable to such Construction Loans need not end on the Term Conversion Date but instead may be continued until the last day of such Interest Period (it being understood that the Applicable Margin relating to Term Loans shall apply to such Loans from and after the Term Conversion Date).

(b) If, upon the expiration of any Interest Period, the Borrower has failed to elect a new Interest Period to be applicable to any LIBOR Loan as provided above, the Borrower shall be deemed to have elected an Interest Period of three months effective as of the expiration date of such current Interest Period.

3.8 Inability to Determine Rates. If before the commencement of any Interest Period for any LIBOR Loan Borrowing the Administrative Agent determines that for any reason adequate and reasonable means do not exist for determining the Adjusted LIBO Rate for any Interest Period with respect to any LIBOR Loans, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or continue LIBOR Loans hereunder shall be suspended until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exists. Upon the delivery of such notice, (a) the Borrower may revoke any pending Borrowing Request or Conversion Request or notice of continuation and (b) if the Borrower does not revoke such

Borrowing Request, Conversion Request or notice, then the Lenders shall make, Convert or continue the Loans, as proposed by the Borrower, in the amount specified in the applicable notice submitted by the Borrower, but such Loans shall be made, Converted or continued as Base Rate Loans instead of LIBOR Loans.

3.9 LIBO Rate Dislocation. If the Majority Lenders notify the Administrative Agent in writing that their respective cost of obtaining matching deposits in the interbank market would be in excess of the Adjusted LIBO Rate in respect of any Interest Period, then the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the affected Lenders to maintain, make or continue LIBOR Loans hereunder shall be suspended until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exists. Upon the delivery of such notice, (a) each affected Lender may (by notice to the Administrative Agent and the Borrower) elect to convert all outstanding LIBOR Loans owed to such Lender and having such Interest Period to Base Rate Loans and the Borrower shall pay all Liquidation Costs incurred in connection therewith in accordance with Section 3.12, (b) the Borrower may revoke any pending Borrowing Request or Conversion Request or notice of continuation of any LIBOR Loans specifying such Interest Period and (c) if the Borrower does not revoke such Borrowing Request, Conversion Request or notice, then the Lenders shall make, Convert or continue the Loans, as proposed by the Borrower, in the amount specified in the applicable notice submitted by the Borrower, but such Loans shall be made, Converted or continued as Base Rate Loans instead of LIBOR Loans.

3.10 Illegality

(a) If any Lender determines that the introduction of any Law, or any change in any Law, or in the interpretation or administration of any Law, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its Applicable Lending Office to make or maintain a LIBOR Loan, then, on notice thereof by the Lender to the Borrower through the Administrative Agent, any obligation of that Lender to make such Loan as a LIBOR Loan shall be suspended until the Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist.

(b) If, pursuant to Section 3.10(a), any Lender determines that it is unlawful for such Lender or its Applicable Lending Office to maintain a LIBOR Loan, then, on notice thereof by the Lender to the Borrower through the Administrative Agent, any obligation of that Lender to maintain Loans as LIBOR Loans shall be suspended until such Lender notifies the Borrower through the Administrative Agent that the circumstances giving rise to such determination no longer exist. The Borrower shall, upon its receipt of such notice and demand to do so from such Lender, Convert the LIBOR Loans of such Lender then outstanding into Base Rate Loans, either on the last day of the Interest Period in respect of such LIBOR Loans, if the Lender may lawfully continue to maintain such LIBOR Loans until such day, or immediately, if the Lender may not lawfully continue to maintain such LIBOR Loans until such day.

(c) If the obligation of any Lender to make or maintain LIBOR Loans has been suspended in accordance with this Section 3.10, then the Borrower may elect, by giving notice to such Lender through the Administrative Agent, that all Loans which would otherwise

be made by such Lender as LIBOR Loans shall instead be made or maintained as Base Rate Loans.

(d) Before giving notice to the Borrower through the Administrative Agent under this Section 3.10, the affected Lender shall designate a different Applicable Lending Office with respect to its LIBOR Loans if such designation (i) will avoid the need for giving such notice or making any demand for Conversion and (ii) will not, in the judgment of such Lender, be illegal or otherwise disadvantageous to such Lender.

3.11 Increased Costs and Reduction of Return

(a) If any Lender in good faith determines (which determination shall, absent manifest error, be final, conclusive and binding upon all parties hereto) at any time that such Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to any LIBOR Loan (other than any increased cost or reduction in the amount received or receivable resulting from the imposition of or a change in the rate of net income taxes or similar charges or otherwise duplicative of the provisions of Section 3.24) because of any Change in Law, then the Borrower shall pay to such Lender, upon written demand therefor by such Lender to the Borrower through the Administrative Agent, (such written demand notice to include a statement from the Lender certifying the Lender's good faith determination of increased costs or reduction of return under this Section 3.11(a), such additional amounts as shall be required to compensate such Lender for such increased costs or reductions in amounts received or receivable hereunder; provided, that the Borrower shall be under no obligation to compensate such Lender with respect to any period before the date that is 270 days prior to the date on which such Lender makes a claim hereunder if such Lender prior to such date knew or would reasonably be expected to know of the circumstances giving rise to the claim hereunder and the fact that such circumstances would result in the claim hereunder. A written notice as to the additional amounts owed to any Lender, showing in reasonable detail the basis for the calculation thereof, submitted to the Borrower by such Lender (through the Administrative Agent) shall, absent clearly demonstrable error, be final, conclusive and binding on all parties hereto.

(b) If any Lender shall have determined in good faith that (i) the introduction of any Capital Adequacy Regulation, (ii) any change in any Capital Adequacy Regulation, (iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof, or (iv) compliance by such Lender (or its Applicable Lending Office) or any corporation controlling such Lender with any Capital Adequacy Regulation, affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation controlling such Lender and (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy and such Lender's desired return on capital) determines that the amount of such capital is increased as a consequence of its Commitment, Loans, credits or other obligations under this Credit Agreement, then, upon demand of such Lender to the Borrower through the Administrative Agent, the Borrower shall pay to such Lender, from time-to-time as specified by such Lender, upon written demand therefor by such Lender to the Borrower through the Administrative Agent (such written demand notice to include a statement from the Lender certifying such Lender's determination of increased costs under this Section

3.11(b), which shall be conclusive and binding absent clearly demonstrable error), such additional amounts sufficient to compensate such Lender for such increase; provided, that the Borrower shall be under no obligation to compensate such Lender with respect to any period before the date that is 270 days prior to the date on which such Lender makes a claim hereunder if such Lender prior to such date knew or would reasonably be expected to know of the circumstances giving rise to the claim hereunder and the fact that such circumstances would result in the claim hereunder.

(c) Before giving notice to the Borrower through the Administrative Agent under Section 3.11(a) or 3.11(b), the affected Lender shall designate a different Applicable Lending Office with respect to its Loans if such designation (i) will avoid the need for giving such notice or making any demand for compensation under such section and (ii) will not, in the judgment of such Lender, be illegal or otherwise disadvantageous to such Lender.

(d) Any determination made by Lender in accordance with Sections 3.10(a), 3.10(b), 3.11(a) or 3.11(b) shall be set forth in a certificate of an authorized signatory of such Lender and shall be delivered to the Borrower and the Administrative Agent.

3.12 Liquidation Costs. The Borrower shall reimburse each Lender and hold such Lender harmless from any loss or expense which such Lender may sustain or incur as a consequence of:

(a) the failure of the Borrower to make on a timely basis any scheduled payment of principal of any Loan;

(b) the failure of the Borrower to borrow or Convert a Loan after the Borrower has given (or is deemed to have given) a Borrowing Request or a Conversion Request;

(c) the failure of the Borrower to make any prepayment in accordance with any notice delivered under Section 3.16;

(d) the prepayment or repayment or other payment (including after acceleration thereof) of a LIBOR Loan on a day that is not the last day of the relevant Interest Period; or

(e) the Conversion of any LIBOR Loan to a Base Rate Loan on a day that is not the last day of an Interest Period;

including any such loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Lender's Loans or from fees payable to terminate the deposits from which such funds were obtained (as applicable, "Liquidation Costs").

3.13 Fees.

(a) Commitment Fees. The Borrower agrees to pay to the Administrative Agent the following commitment commission (each a "Commitment Fee"):

(i) for the account of each Tranche A Lender, a commitment fee for the Tranche A Construction Loan Availability Period, computed at a rate equal to 0.75% *per annum* on the daily average amount of the Unutilized Commitment of such Lender in respect of the Tranche A Construction Facility during such period, commencing on the date hereof and payable in arrears on (A) each Semi-Annual Date and (B) the last day of the Tranche A Construction Loan Availability Period;

(ii) for the account of each Tranche B Lender, a commitment fee for the Tranche B Construction Loan Availability Period, computed at a rate equal to 0.75% *per annum* on the daily average amount of the Unutilized Commitment of such Lender in respect of the Tranche B Construction Facility during such period, commencing on the date hereof and payable in arrears on (A) each Semi-Annual Date and (B) the last day of the Tranche B Construction Loan Availability Period; and

(iii) for the account of the Revolver Lenders, a commitment fee for the Revolving Loan Availability Period equal to the sum of (x) 0.75% *per annum* on the daily average Unutilized Commitment of such Lender in respect of the Revolving Facility *plus* (y) prior to the Term Conversion Date, 0.50% *per annum* on daily average Unavailable Commitment of such Lender in respect of the Revolving Facility, in each case, commencing on the date hereof and payable in arrears on (A) each Semi-Annual Date and (B) the last day of the Revolver Availability Period.

(b) Administrative Agency Fee. The Borrower agrees to pay to the Administrative Agent for its own account an administrative agency fee equal to (x) on or prior to the Term Conversion Date, $100,000 *per annum* and (y) after the Term Conversion Date, $80,000 *per annum*, in each case *multiplied by* the Inflation Factor (pro rated for the first and last years of the term hereof) and payable annually in advance.

(c) Letter of Credit Fees. The Borrower shall pay the following fees in respect of the LC Facilities (collectively, the "Letters of Credit Fees"):

(i) a commitment fee equal to the sum of (x) 0.75% *per annum* on the daily average Unutilized Commitment of each TALC Participating Bank *plus* (y) prior to the Term Conversion Date, 0.50% *per annum* on the daily average Unavailable Commitment of each TALC Participating Bank, commencing on the date hereof and payable semi-annually in arrears to the TALC Participating Banks on (A) each Semi-Annual Date and (B) the last Business Day of the TALC Availability Period;

(ii) a commitment fee equal to (x) prior to the Term Conversion Date, 0.50% *per annum* on the daily average Unavailable Commitment of each DSR Issuing Bank and (y) on and after the Term Conversion Date, 0.75% *per annum* on the daily average Unutilized Commitment of each DSR Issuing Bank, commencing on the date hereof and payable semi-annually in arrears to the DSR

Issuing Banks on (A) each Semi-Annual Date and (B) the last Business Day of the DSR Availability Period;

(iii) a letter of credit fee in respect of the aggregate average daily maximum available amount of all TA Letters of Credit equal to the then-Applicable Margin on Tranche A Construction Loans or Tranche A Term Loans (as applicable as of the time of determination) bearing interest at the Adjusted LIBO Rate, payable semi-annually in arrears ratably to the TALC Participating Banks on (A) each Semi-Annual Date and (B) the last Business Day of the TALC Availability Period;

(iv) a letter of credit fee in respect of the aggregate average daily maximum available amount of all LGIA Letters of Credit equal to the then-Applicable Margin on Revolving Loans bearing interest at the Adjusted LIBO Rate, payable semi-annually in arrears to the LGIA Issuing Bank on (A) each Semi-Annual Date and (B) the last Business Day of the Revolver Availability Period;

(v) a letter of credit fee in respect of the aggregate average daily maximum available amount of each DSR Letters of Credit equal to the then-Applicable Margin on the Tranche B Term Loans bearing interest at the Adjusted LIBO Rate, payable semi-annually in arrears to the

relevant DSR Issuing Bank on (A) each Semi-Annual Date and (B) the last Business Day of the DSR Availability Period; and

(vi) a fronting fee in respect of each issued TA Letter of Credit equal to 0.20% of the undrawn stated amount of such TA Letter of Credit held by the TALC Participating Banks in accordance with Section 3.25(g) (other than the TALC Issuing Bank), payable semi-annually in arrears to the TALC Issuing Bank on (A) each Semi-Annual Date and (B) the last Business Day of the TALC Availability Period.

(e) Other Fees. The Borrower agrees to, and shall cause each other Borrower Party to, pay to the Agents, the Joint Bookrunners and the Mandated Lead Arrangers, for their respective accounts, such other fees as have been agreed to in writing by the Borrower Parties and such other Person.

3.14 Tranche A Loan Amount; Etc.

(a) The updated Base Case Model delivered in accordance with Section 4.2(m) shall set forth (i) the notional amortization for the Tranche A Term Loans constructed from the Contracted Amortization Amounts in respect of each Semi-Annual Date set forth on Appendix C (the "Tranche A Notional Amortization") and (ii) the aggregate sum of the projected Contracted Amortization Amounts in respect of each such Semi-Annual Date (such aggregate sum being the "Tranche A Loan Amount"). For purposes of the foregoing, the "Contracted Amortization Amounts" shall mean, with respect to each Semi-Annual Date, the principal payment amount that causes the Base Case Model delivered and updated in accordance with

Section 4.2(m) to yield a 1.40:1.00 Projected DSCR as determined on a rolling twelve-month basis for the period ending on such Semi-Annual Date (for the avoidance of doubt, taking into account solely those Project Revenues projected to be payable to the Project Owner under the Tolling Agreement assuming that the Initial Delivery Date thereunder in respect of each Generating Unit occurs on the Projected Completion Date and any reimbursed or other amounts projected to be received by the Borrower pursuant to the Large Generator Interconnection Agreement).

(b) The updated Base Case Model delivered in accordance with Section 4.2(m) shall set forth the dates and the amounts (in Dollars) of the projected Disbursements under the Construction Facilities (which shall equal the Tranche A Loan Amount *plus* the Tranche B Loan Amount) (the "Notional Disbursement Schedule").

(c) The updated Base Case Model delivered in accordance with Section 4.2(m) shall set forth a percentage amortization for the Tranche A Term Loans for each date set out on Appendix C constructed by (i) dividing (x) the Contracted Amortization Amount in respect of each Semi-Annual Date set out on Appendix C by (y) the Tranche A Term Loan Amount and (ii) with respect solely to the first Semi-Annual Date set out on Appendix C and each date prior to such first Semi-Annual Date, further dividing the percentage for such first Semi-Annual Date derived by application of subpart (i) of this Section 3.14(c) by six (the "Tranche A Percentage Amortization").

3.15 Amortization Schedules; Repayment of Principal.

(a) Upon the conversion of the Construction Loans to Term Loans on the Term Conversion Date in accordance with Section 2.2(c), such Construction Loans will no longer be outstanding as Loans hereunder. If the Term Conversion Date does not occur on or prior to January 28, 2014 (the "Date Certain"), then the Borrower shall repay the aggregate principal amount of the Construction Loans on the Date Certain.

(b) On the Term Conversion Date, the Borrower shall deliver to the Administrative Agent an amortization schedule for each Tranche of the Term Loans (the "Amortization Schedules") which shall be constructed by multiplying the aggregate amount of the relevant Tranche of Term Loans on the Term Conversion Date after giving effect to Section 3.15(a) by:

(i) in respect of the Semi-Annual Date occurring on or about February 28, 2014, the aggregate sum of the respective percentages set forth on the Projected Amortization Schedule under the relevant heading for such Tranche and opposite each month (if any) beginning on or after the last day of the full calendar month to occur after the Term Conversion Date and prior to February 28, 2014; and

(ii) in respect of each Semi-Annual Date set forth on the Projected Amortization Schedule that is after February 28, 2014, the respective percentages set forth on the Projected Amortization Schedule under the relevant heading for such Tranche and opposite such Semi-Annual Date.

The Amortization Schedules shall be effective solely upon the written confirmation by the Administrative Agent that such Amortization Schedules were constructed in accordance with this Section 3.15(b). The principal of the Term Loans shall be due and payable on each Semi-Annual Date in accordance with the Amortization Schedules constructed and confirmed in accordance with this Section 3.15(b).

(c) The difference between the aggregate sum of the percentages set out under the heading of each Tranche and opposite all months beginning on or prior to the second Semi-Annual Date set forth on Appendix C and the aggregate percentage of such months applied in accordance with Section 3.15(b) shall be multiplied by the aggregate amount of the relevant Tranche of Term Loans on the Term Conversion Date after giving effect to Section 3.15(a). The principal amount of the Tranche A Term Loans resulting from such calculation is the "Tranche A Deferred Principal Amount". The principal amount of the Tranche B Term Loans resulting from such calculation is the "Tranche B Deferred Principal Amount" and, together with the Tranche A Deferred Principal Amount, the "Deferred Principal Amount". The Deferred Principal amount shall be payable in accordance with Sections 3.16 and 3.17.

(d) The Borrower shall repay the aggregate outstanding principal amount of each Tranche of Loans on the respective Maturity Date of such Tranche of Loans.

3.16 Voluntary Prepayment of Principal. The Borrower shall have the right to prepay the Loans, without premium or penalty, in whole or in part at any time and from time-to-time after the Closing Date on the following terms and conditions: (i) the Borrower shall give the Administrative Agent at the Notice Office at least five Business Days' prior written notice of its intent to prepay the Loans, the aggregate principal amount of the prepayment, the Types of Loans to be prepaid and, in the case of LIBOR Loans, the specific Borrowing or Borrowings pursuant to which such LIBOR Loans were made (which notice the Administrative Agent shall promptly transmit to each of the Lenders); (ii) such prepayment shall be in an aggregate principal amount not less than the Borrowing Minimum and, if more than the Borrowing Minimum, in an integral multiple of the Borrowing Multiple (unless the entire Tranche of Loans is being prepaid);

(iii) prepayments of a LIBOR Loan may only be made pursuant to this Section 3.16 on the last day of an Interest Period applicable thereto (unless the Borrower pays all Liquidation Costs resulting from the prepayment of such LIBOR Loan on a day other than the last day of the Interest Period applicable thereto); and (iv) each prepayment of Loans pursuant to this Section 3.16 shall be applied *first*, to reduce the Deferred Principal Amount *pro rata* between the Tranches and among the Term Lenders within each such Tranche to $0.00, *second*, to reduce the LC Loans resulting from a draw on the DSR Letters of Credit to $0.00, *third*, to reduce Revolving Loans to $0.00, *fourth*, to the scheduled principal payments of Tranche B Term Loans in inverse chronological order of their due dates to $0.00, *fifth*, to reduce the scheduled principal payments of Tranche A Term Loans on a *pro rata* basis to $0.00 and *finally*, to reduce any LC Loans resulting from a draw on the TA Letters of Credit on a *pro rata* basis. In no event shall any voluntary prepayment be funded from the proceeds of any Loan.

3.17 Mandatory Prepayments of Principal

(a) The Borrower shall prepay the Loans, without premium or penalty (except for any Liquidation Costs), with the Mandatory Prepayment Portion of the following Collateral Proceeds:

(i) all Loss Proceeds received by any Borrower Party that are not applied, or are not permitted to be applied, to the Restoration of the Project in accordance with the Collateral Agreement or are not allowed to be retained or re-invested by the Borrower Parties in accordance with the Collateral Agreement;

(ii) all Disposition Proceeds received by any Borrower Party that are not applied, or are not permitted to be applied, to the purchase of replacement assets in accordance with the Collateral Agreement or are not allowed to be retained or re-invested by the Borrower Parties in accordance with the Collateral Agreement;

(iii) all proceeds of any Delay Liquidated Damages in accordance with the Collateral Agreement;

(iv) all Buy-down Proceeds in accordance with the Collateral Agreement; and

(v) all Distribution Sweep Proceeds in accordance with the Collateral Agreement.

(b) On the Term Conversion Date, all proceeds of any Delay Liquidated Damages shall be applied: *first* to repay any LC Loans resulting from a draw on the TA Letters of Credit; *second*, to reduce the Deferred Principal Amount *pro rata* between the Tranches and among the Term Lenders within each such Tranche to $0.00; *third*, to reduce remaining scheduled principal payments of the Term Loans *pro rata* between the Tranches and among the Term Lenders within each such Tranche in inverse chronological order of the due dates thereof to $0.00; *fourth*, LC Loans resulting from a draw on the DSR Letters of Credit on a *pro rata* basis to $0.00; and *finally*, Revolving Loans on a *pro rata* basis to $0.00.

(c) Loss Proceeds, Disposition Proceeds and Buy-down Proceeds received prior to the Term Conversion Date shall reduce the amount of the Construction Loans converted to Term Loans in accordance with Section 3.15(a) and used to construct the Amortization Schedule in accordance with Section 3.15(b) *pro rata*.

(d) Loss Proceeds, Disposition Proceeds, Buy-down Proceeds and Distribution Sweep Proceeds received on and after the Term Conversion Date shall be applied: *first*, to reduce the Deferred Principal Amount *pro rata* between the Tranches and among the Term Lenders within each such Tranche to $0.00; *second*, to reduce remaining scheduled principal payments of the Term Loans *pro rata* between the Tranches and among the Term Lenders within each such Tranche in inverse chronological order of their due dates to $0.00; *third*, to reduce the LC Loans resulting from a draw on the DSR Letters of Credit on a *pro rata* basis to $0.00; *fourth*, to reduce the Revolving Loans on a *pro rata* basis to $0.00; and *finally* to reduce any LC Loans resulting from a draw on the TA Letters of Credit on a *pro rata* basis.

(e) Mandatory prepayments to be made with Loss Proceeds, Disposition Proceeds and Buy-down Proceeds shall be made (i) in respect of any LIBOR Loan, on the last day of the relevant Interest Period in respect thereof or on such earlier date as selected by the Borrower (provided, that Borrower pays any Liquidation Costs arising from such earlier prepayment), (ii) in respect of any Base Rate Loan, on the fifth Business Day following receipt of the relevant Collateral Proceeds in the Proceeds Account and (iii) in respect of any Loan that has been Converted from a LIBOR Loan to a Base Rate Loan prior to prepayment in accordance with subpart (i) of this Section 3.17(e), on the third Business Day following such Conversion. Mandatory prepayments to be made with Distribution Sweep Proceeds shall be made on the Monthly Transfer Date immediately following the relevant Semi-Annual Date or on the following Interest Period in respect of LIBOR Loans but in no event later than three months after such Monthly Transfer Date.

(f) Mandatory prepayments to be made with proceeds of any Delay Liquidated Damages shall be made on the Term Conversion Date (provided, that, if the Term Conversion Date occurs on a day that is not the last day of the relevant Interest Period in respect of any LIBOR Loan to be repaid, the Borrower pays any Liquidation Costs arising from such earlier prepayment).

3.18 Mandatory Reduction of Rate Swap Transactions.

(a) If the Borrower prepays the Construction Loans prior to the Term Conversion Date, then the Borrower shall (i) reconstruct the Notional Amortization on the Projected Amortization Schedule by multiplying (x) the aggregate amount of the relevant Tranche of Construction Loans after giving effect to such prepayment *plus* the aggregate remaining Construction Loan Commitments of such Tranche by (y) the percentages set forth on Appendix C and (ii) concurrently with such prepayment, partially terminate the Rate Swap Transactions by reducing the relevant notional amount thereunder in accordance with the Rate Swap Agreements to the extent necessary (if necessary) so that after giving effect to such prepayment and the application thereof in accordance with Section 3.16 or 3.17, the Borrower is in compliance with Section 7.26.

(b) If the Borrower prepays the Term Loans, then the Borrower shall, concurrently with such prepayment, partially terminate the Rate Swap Transactions by reducing the relevant notional amount thereunder in accordance with the Rate Swap Agreements to the extent necessary (if necessary) so that after giving effect to such prepayment and the application thereof in accordance with Section 3.16 or 3.17, the Borrower is in compliance with Section 7.26.

3.19 Cancellation of Commitments

(a) Subject to Section 3.19(c), the Borrower may ratably cancel all or any part of (i) the Tranche A Construction Loan Commitments by written notice to the Tranche A Lenders, (ii) the Tranche B Construction Loan Commitments by written notice to the Tranche B Lenders or (iii) (after the Term Conversion Date) the Revolving Loan Commitments by written notice to the Revolving Lenders.

(b) The Borrower may not cancel all or any part of the LC Facilities.

(c) Notwithstanding anything to the contrary set forth in this Credit Agreement, the Borrower shall not cancel all or any portion of the Tranche A Construction Loan Commitments or the Tranche B Construction Loan Commitments prior to the Term Conversion Date unless (i) no event has occurred or could reasonably be expected to occur to cause any Major Milestone Date to be delayed, (ii) the proposed reduction in Commitments requested by the Borrower will not result in a deficiency of funds necessary to achieve the Project Completion Date by the Date Certain and otherwise satisfy the condition contained in Section 4.6(e) and (iii) each Tranche A Lender or Tranche B Lender, as may be the case, shall have received a certificate from the Borrower, confirmed by the Independent Engineer, with respect to the matters set forth in this Section 3.19(c).

(d) Notwithstanding anything to the contrary set forth in this Credit Agreement, on the Term Conversion Date:

(i) all remaining Tranche A Construction Loan Commitments (after giving effect to (x) any Borrowing of Tranche A Construction Loans in accordance with Section 2.1 and (y) the Conversion of all Tranche A Construction Loans to Tranche A Term Loans in accordance with and pursuant to Sections 2.2 and 3.5(e)) shall automatically be cancelled; and

(ii) all remaining Tranche B Construction Loan Commitments (after giving effect to (x) any Borrowing of Tranche B Construction Loans in accordance with Sections 2.1 and (y) the Conversion of all Tranche B Construction Loans to Tranche B Term Loans in accordance with and pursuant to Sections 2.2 and 3.5(e)) shall automatically be cancelled.

(e) The Lenders may cancel their respective Commitments in accordance with Section 9.1.

(f) The Lenders may cancel their respective Commitments if the initial Borrowing of the Construction Loans has not occurred on or prior to the twelve month anniversary of the Closing Date.

3.20 Method and Place of Payment.

(a) Except as set forth in the following sentence or as otherwise specifically provided herein, all payments under this Credit Agreement or any Note shall be made to the Administrative Agent for the account of the Lender or Lenders entitled thereto not later than 2:00 p.m. (New York City time) on the date when due and shall be made in Dollars in immediately available funds to the AA Payment Account or pursuant to such other instructions as the Administrative Agent shall designate to the Borrower in writing. Whenever any payment to be made hereunder or under any Note is stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the applicable rate during such extension; provided, that if the day on which any such payment relating to a LIBOR Loan is due

is not a Business Day but is a day of the month after which no further Business Day occurs in such month, then the due date thereof shall be the next preceding Business Day.

(b) With respect to any repayment of Loans pursuant to Section 3.15 or any mandatory prepayment of Loans pursuant to Section 3.17, the Borrower may designate the Types of Loans which are to be repaid or prepaid and, in the case of LIBOR Loans, the specific Borrowing or Borrowings pursuant to which such LIBOR Loans were made; provided, that (i) repayments and prepayments of LIBOR Loans may only be made on the last day of an Interest Period applicable thereto unless all such LIBOR Loans with Interest Periods ending on or prior to the date of required repayment or prepayment and all Base Rate Loans have been paid in full or the Borrower pays Liquidation Costs, (ii) if any repayment or prepayment of LIBOR Loans made pursuant to a single Borrowing shall reduce the outstanding Loans made pursuant to such Borrowing to an amount less than the Borrowing Minimum, then such outstanding Loans shall immediately be Converted into Base Rate Loans, and (iii) each repayment or prepayment of Loans made pursuant to a single Borrowing shall be applied *pro rata* across such Loans. In the absence of a designation by the Borrower as described in the preceding sentence, the Administrative Agent shall, subject to the above, make such designation in its sole discretion.

3.21 Computations. All computations of interest and Fees hereunder shall be made on the basis of a 360-day year and the actual number of days elapsed; provided that computations of interest on Base Rate Loans calculated under clause (b) of the definition thereof hereunder shall be made on the basis of a 365- or 366-day year, as the case may be, and the actual number of days elapsed.

3.22 Application of Payments; Sharing.

(a) Subject to the provisions of this Section 3.22, the Administrative Agent agrees that promptly after its receipt of each payment from or on behalf of the Borrower in respect of any Secured Obligations of the Borrower hereunder or under any other Financing Document, it shall promptly distribute such payment to the Lenders *pro rata* based upon their respective shares, if any, of the Secured Obligations with respect to which such payment was received.

(b) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than its *pro rata* share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the Administrative Agent of such fact, and (ii) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided, that: (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express

terms of this Credit Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or TALC Participations to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(c) Notwithstanding the foregoing, if there are insufficient funds in the Secured Accounts to make each of the principal payments of the Loans in accordance with both Sections 3.4(e) and 7.8(iii) of the Collateral Agreement, then such funds shall be applied *first*, to the repayment in full of the outstanding principal amount of all Loans other than the Term Loans (if any); *second*, to the repayment in full of the outstanding principal amount of the Tranche A Term Loans; and *finally*, to the repayment of the outstanding principal amount of the Tranche B Term Loans.

3.23 Late Payments. If any amounts required to be paid by the Borrower under this Credit Agreement or the other Financing Documents (including the principal of or interest theretofore accrued on any Loan hereunder or any Fees or other amounts otherwise payable to the Administrative Agent, any Lender, any Issuing Bank or any Participating Banks) remain unpaid after such amounts are due, then (to the extent permitted by applicable Law) such overdue amounts shall bear interest from the date due until such amounts are paid in full at the Default Rate, with such interest to be payable on demand.

3.24 Net Payments

(a) All payments made by the Borrower hereunder or under any other Financing Document will be made without setoff, counterclaim or other defense. Except as provided in Section 3.24(b), all such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments (but excluding, in the case of any Lender, except as provided in the second succeeding sentence, Excluded Taxes) and all interest, penalties or similar liabilities with respect thereto (all such non-excluded taxes, levies, imposts, duties, fees, assessments or other charges being referred to collectively as "Applicable Taxes"). If any Applicable Taxes are so levied or imposed, the Borrower agrees to pay the full amount of such Applicable Taxes, and such additional amounts as may be necessary so that every payment of all amounts due hereunder or under any other Financing Document, after withholding or deduction for or on account of any Applicable Taxes, will not be less than the amount provided for herein or in such other Financing Document. If any amounts are payable in respect of Applicable Taxes pursuant to the preceding sentence, then the Borrower shall be obligated to reimburse each Lender, upon the written request of such Lender, for (i) taxes imposed on or measured by the net income of such Lender pursuant to the laws of the jurisdiction in which such Lender is organized or the jurisdiction in which the principal office or Applicable Lending Office of such Lender is located or any political subdivision or taxing

authority thereof or therein, and (ii) any withholding of Applicable Taxes, in each case as such Lender determines are payable by, or withheld from, such Lender in respect of any amounts paid to or on behalf of such Lender pursuant to the preceding sentence and this sentence. The Borrower will furnish to the Administrative Agent within 45 days after the date of the payment of any Applicable Taxes due pursuant to applicable Law certified copies of tax receipts evidencing such payment by the Borrower. The Borrower agrees to indemnify and hold harmless each Lender, and reimburse such Lender upon its written request, for the amount of any Applicable Taxes so levied or imposed and paid by such Lender.

(b)

(i) Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) agrees to deliver to the Borrower and the Administrative Agent, on or prior to the Closing Date, (i) two accurate and complete original signed copies of Internal Revenue Service Form W-8ECI or Form W-8BEN (with respect to a complete exemption under an income tax treaty) (or successor forms) certifying to such Lender's entitlement as of such date to a complete exemption from United States withholding tax with respect to payments to be made to it under this Credit Agreement and under any other Financing Document or (ii) if such Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code and cannot deliver either Internal Revenue Service Form W-8ECI or Form W-8BEN (with respect to a complete exemption under an income tax treaty) pursuant to clause (i) above, (A) a certificate substantially in the form of Exhibit 3 (any such certificate, an "Applicable Tax Certificate") and (B) two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN (with respect to the portfolio interest exemption) (or successor form) certifying to such Lender's entitlement as of such date to a complete exemption from United States withholding tax with respect to payments of interest to be made to it under this Credit Agreement and under any other Financing Document. In addition, each Lender agrees that from time-to-time after the Closing Date (or, in the case of a Lender that is an assignee or transferee of an interest under this Credit Agreement pursuant to Section 11.11 (unless such Lender was already a Lender hereunder prior to such assignment or transfer), from time-to-time after the date of such assignment or transfer to such Lender), when a lapse in time or change in circumstances renders the previous forms and/or Applicable Tax Certificate (as applicable) obsolete or inaccurate in any material respect, it will deliver to the Borrower and the Administrative Agent two new accurate and complete original signed copies of Internal Revenue Service Form W-8ECI, Form W-8BEN (with respect to a complete exemption under an income tax treaty), Form W-8BEN (with respect to the portfolio interest exemption) (or successor forms) and/or an Applicable Tax Certificate, as the case may be, and such other forms as may be required in order to confirm or establish the entitlement of such Lender to a continued exemption from or reduction in United States withholding tax with respect to payments made to it under this Credit Agreement and any other Financing Document. If any Lender is unable to deliver any such form and/or Applicable Tax Certificate, it shall immediately notify the Borrower and the Administrative Agent of such inability, in which case

such Lender shall not be required to deliver any such form and/or Applicable Tax Certificate pursuant to this Section 3.24(b). Notwithstanding anything to the contrary contained in Section 3.24(a), but subject to Section 11.11(d) and the immediately succeeding sentence: (x) the Borrower shall be entitled, to the extent it is required to do so by law, to deduct or withhold income or similar taxes imposed by the United States (or any political subdivision or taxing authority thereof or therein) from interest, fees or other amounts payable hereunder for the account of any Lender which is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. Federal income tax

purposes to the extent that such Lender has not provided to the Borrower U.S. Internal Revenue Service forms that establish a complete exemption from such deduction or withholding and (y) the Borrower shall not be obligated pursuant to Section 3.24(a) hereof to gross-up payments to be made to a Lender in respect of income or similar taxes imposed by the United States if (I) such Lender has not provided to the Borrower the Internal Revenue Service forms required to be provided pursuant to this Section 3.24(b) or (II) in the case of a payment, other than interest, to a Lender that is not a "bank" as described in clause (ii) above, to the extent that such forms do not establish a complete exemption from withholding of such Applicable Taxes. Notwithstanding anything to the contrary contained in the preceding sentence or elsewhere in this Section 3.24, the Borrower agrees to pay additional amounts and to indemnify each Lender in the manner set forth in Section 3.24(a) (without regard to the identity of the jurisdiction requiring the deduction or withholding) in respect of any amounts deducted or withheld by it as described in the immediately preceding sentence as a result of any changes after the Closing Date in any applicable Law relating to the deducting or withholding of income or similar Applicable Taxes.

(ii) Each Lender that is a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) shall deliver to the Borrower and the Administrative Agent executed originals of the Internal Revenue Service Form W-9 to enable the Borrower and the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(c) Each Lender described in Section 3.24(b)(i) shall provide, promptly upon the reasonable demand of the Borrower or the Administrative Agent, any information, form or document as prescribed by the Internal Revenue Service to (x) demonstrate that such Lender has complied with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) and 1472(b) of the Internal Revenue Code, as applicable), or (y) to determine the amount to deduct and withhold from such payment.

(d) Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of taxes withheld or deducted from funds paid for the account of such Lender. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Applicable Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts

pursuant to Section 3.24(a), it shall pay to such Borrower an amount equal to such refund (but only to the extent of the indemnity payments made, or additional amounts paid, by such Borrower under Section 3.24 with respect to the Applicable Taxes giving rise to such refund), net of all out-of-pocket expenses and net of any loss or gain realized in the conversion of such funds from or to another currency incurred by the Administrative Agent or any Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Borrower, upon the written request of the Administrative Agent or any Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or any Lender in the event the Administrative Agent or any such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

3.25 Specified Letter of Credit Mechanics.

(a) To request the issuance of a Specified Letter of Credit under the TALC Facility, the Borrower shall deliver an appropriately completed and duly executed LC Request to the TALC Issuing Bank and the Administrative Agent not less than the second Business Day prior to the proposed Issuance Date thereof. To request the issuance of a Specified Letter of Credit under any other LC Facility, the Borrower shall deliver an appropriately completed and duly executed LC Request to the relevant Issuing Bank and the Administrative Agent not less than three Business Days in advance of the proposed Issuance Date thereof. If requested by any relevant Issuing Bank, the Borrower shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Specified Letter of Credit.

(b) To request the amendment, renewal or extension of an outstanding Specified Letter of Credit (to the extent such amendment, renewal or extension is in accordance with the terms, conditions and requirements of this Credit Agreement), the Borrower shall deliver an appropriately completed and duly executed LC Request to the relevant Issuing Bank and the Administrative Agent not less than two Business Days in advance of the requested date of amendment, renewal or extension thereof.

(c) Each LC Request shall include or attach such information as shall be necessary to issue, amend, renew or extend such Specified Letter of Credit (including the beneficiary, maturity, initial stated amount, and form thereof).

(d) The making of each LC Request shall be deemed to be a representation and warranty by the Borrower to the relevant Issuing Banks and the TALC Participating Banks (as applicable) that such Specified Letter of Credit may be issued, amended, renewed or extended in accordance with, and will not violate the requirements of, this Credit Agreement or any other Financing Document. The relevant Issuing Bank shall, on the terms and subject to the conditions of this Credit Agreement, on the date requested by the Borrower in the relevant LC Request, issue, amend, renew or extend (as applicable) the requested Specified Letter of Credit in accordance with the Issuing Bank's usual and customary practices; provided, that in the case of the issuance of a Specified Letter of Credit, the relevant Issuing Bank shall not have received

notice prior to such issuance from the Borrower, the Administrative Agent or any TALC Participating Bank (as applicable) that one or more of the conditions specified in Section 4.1, Section 4.3, Section 4.4 or Section 4.5 (as applicable) are not then satisfied. Upon the issuance, amendment, renewal or extension of any Specified Letter of Credit in accordance with the terms of this Credit Agreement, the relevant Issuing Bank shall promptly notify the Borrower, and the Administrative Agent and, if applicable, the TALC Participating Banks in writing of such issuance, amendment, renewal or extension, and such notice shall be accompanied by a copy of the relevant Specified Letter of Credit or the amendment thereto, as the case may be.

(e) If the Issuing Bank shall make an LC Disbursement, the Issuing Bank shall give the Borrower, the Administrative Agent and (with respect to an LC Disbursement under a TA Letter of Credit) each TALC Participating Bank prompt written notice of such LC Disbursement; provided, that the failure to give any such notice shall in no way affect, impair or diminish the Borrower's obligations hereunder (other than in respect of timing of its reimbursement obligations hereunder). The stated amount of any Specified Letter of Credit shall be reduced by the amount of each LC Disbursement thereunder.

(f) Each LC Disbursement shall be automatically converted into loans hereunder in an aggregate initial principal amount equal to the amount of such LC Disbursement (or in the case of an LC Disbursement in respect of any TA Letter of Credit, each TALC Participating Bank's TALC Percentage of the amount of such LC Disbursement) (each, an "LC Loan"). Upon the deemed Borrowing of LC Loans in accordance with this Section 3.25(f), the relevant LC Disbursement shall be deemed retired in full. The LC Loans made pursuant to this Section 3.25(f) shall be Base Rate Loans until Converted in accordance with Section 3.5.

(g) Immediately upon the issuance by the TALC Issuing Bank of each TA Letter of Credit, the TALC Issuing Bank shall be deemed to have sold and transferred to each TALC Participating Bank and each TALC Participating Bank shall be deemed irrevocably and unconditionally to have purchased and received from the TALC Issuing Bank, without recourse or warranty, an undivided interest and participation, to the extent of such TALC Participating Bank's TALC Percentage, in such TA Letter of Credit, each LC Disbursement made thereunder and the obligations of the Borrower under this Credit Agreement with respect thereto (including any LC Disbursement and the resulting LC Loans). In determining whether to pay under any TA Letters of Credit, the TALC Issuing Bank shall have no obligation relative to the other Lenders other than to confirm that any documents required to be delivered under such TA Letters of Credit appear to have been delivered and that they appear to substantially comply on their face with the requirements thereof. Any action taken or omitted to be taken by the TALC Issuing Bank under or in connection with any TA Letters of Credit shall not create any resulting liability to the Borrower, any Lender or any other Person unless such action is taken or omitted to be taken with gross negligence or willful misconduct on the part of the TALC Issuing Bank (as determined by a court of competent jurisdiction in a final and non-appealable decision). If the TALC Issuing Bank makes an LC Disbursement, then the TALC Issuing Bank shall promptly notify the Administrative Agent, and the Administrative Agent shall promptly notify each TALC Participating Bank, and each TALC Participating Bank shall promptly and unconditionally pay to the TALC Issuing Bank the amount of such TALC Participating Bank's TALC Percentage of the amount of such LC Disbursement (less any amount received by the Issuing Bank from the Borrower in respect of such LC Disbursement prior to such payment) (as applicable to each

TALC Participating Bank, such TALC Participating Bank's "TALC Participation Amount") in Dollars and in same day funds. If the Administrative Agent so notifies a TALC Participating Bank prior to 12:00 noon (New York City time) on any Business Day, then such TALC Participating Bank shall make available to the TALC Issuing Bank its TALC Participation Amount on such Business Day in same day funds. If the Administrative Agent so notifies a TALC Participating Bank after 12:00 noon (New York City time) on any Business Day, then such TALC Participating Bank shall make available to the TALC Issuing Bank its TALC Participation Amount on the next succeeding Business Day in same day funds. If and to the extent such TALC Participating Bank shall not have made its TALC Participation Amount available to the TALC Issuing Bank in accordance with this Section 3.25(g), such TALC Participating Bank agrees to pay to the TALC Issuing Bank, forthwith on demand its TALC Participation Amount, together with interest thereon, for each day from such date until the date such amount is paid to such TALC Issuing Bank at the interest rate applicable to Tranche B Construction Loans or Tranche B Term Loans, as applicable, that are maintained as Base Rate Loans. The failure of any TALC Participating Bank to make available to the TALC Issuing Bank its TALC Participation Amount shall not relieve any other TALC Participating Bank of its obligation hereunder to make available to the TALC Issuing Bank its TALC Participation Amount on the date required, as specified above, but no TALC Participating Bank shall be responsible for the failure of any other TALC Participating Bank to make available to the TALC Issuing Bank such other TALC Participating Bank's TALC Participation Amount. Whenever the TALC Issuing Bank receives a payment of a reimbursement obligation as to which it has received any payments from the TALC Participating Banks pursuant to this Section 3.25(g), the TALC Issuing Bank shall pay to each such TALC Participating Bank which has paid a TALC Participation Amount, in Dollars and in same day funds, an amount equal to such TALC Participating Bank's share (based upon the proportionate aggregate amount originally funded by such TALC Participating Bank to the aggregate amount funded by all TALC Participating Banks) of the principal amount of such reimbursement obligation and interest thereon accruing after the purchase of the respective participations in accordance herewith. Upon the request of any TALC Participating Bank, the TALC Issuing Bank shall furnish to such TALC Participating Bank copies of any TA Letters of Credit issued by it and such other documentation as may reasonably be requested by such TALC Participating Bank. The obligations of the TALC Participating Banks to make payments to the TALC Issuing Bank hereunder shall be irrevocable and not subject to any qualification or exception whatsoever and shall be made in accordance with the terms and conditions of this Credit Agreement under all circumstances, including any of the following circumstances: (i) any lack of validity or enforceability of this Credit Agreement or any of the other Financing Documents; (ii) the existence of any claim, setoff, defense or other right which the Borrower or any other Borrower Party may have at any time against a beneficiary named in any TA Letters of Credit, any transferee of any TA Letters of Credit (or any Person for whom any such transferee may be acting), the Administrative Agent, any TALC Participating Bank, or any other Person, whether in connection with this Credit Agreement, any TA Letters of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transaction between the Borrower or any other Borrower Party and the beneficiary named in any such TA Letters of Credit); (iii) any draft, certificate or any other document presented under any TA Letters of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) the

surrender or impairment of any security for the performance or observance of any of the terms of any of the Financing Documents; or (v) the occurrence of any Default or Event of Default.

(h) The obligations of the Borrower under this Section 3.25 to reimburse the relevant Issuing Bank with respect to drafts, demands and other presentations for payment under any Specified Letter of Credit (including, in each case, interest on such payments) in cash or by the automatic conversion thereof into LC Loans shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Borrower or any other Borrower Party may have or have had against the Issuing Bank, including, any defense based upon the failure of any drawing under any Specified Letter of Credit to conform to the terms of such Specified Letter of Credit or any non-application or misapplication by the beneficiary of the proceeds of such drawing; provided, that the Borrower shall not be obligated to reimburse the Issuing Bank for any wrongful payment made by the Issuing Bank under any Specified Letter of Credit as a result of acts or omissions constituting willful misconduct or gross negligence on the part of the Issuing Bank (as determined by a court of competent jurisdiction in a final and non-appealable decision); provided, further, that such Issuing Bank shall not be excused from liability to the Borrower to the extent of any damages suffered by the Borrower that are caused by the Issuing Bank's willful misconduct or gross negligence when determining whether drafts and other documents presented under a Specified Letter of Credit comply with the terms thereof.

3.26 Replacement of Lenders.

(a) If (i) any Lender delivers a certificate requesting compensation pursuant to Section 3.11, (ii) any Lender delivers a notice described in Section 3.10, (iii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority on account of any Lender pursuant to Section 3.24, (iv) any Lender or Issuing Bank becomes a Non-Consenting Creditor, (v) any Lender becomes a Defaulting Lender or (vi) any Issuing Bank fails to issue a Specified Letter of Credit in accordance herewith, then the Borrower may, at its sole expense and effort (including with respect to the processing and recordation fee referred to in Section 11.11 except to the extent paid by the Eligible Assignee), upon notice to such Lender or Issuing Bank and the Administrative

Agent, require such Lender or Issuing Bank to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 11.11), all of its interests, rights and obligations under this Credit Agreement to an Eligible Assignee that shall assume such assigned obligations; provided, that:

(A) in the case of any such assignment resulting from the circumstances set forth in subparts (i), (ii) or (iii) above, such assignment will result in a reduction in the relevant compensation or payments thereafter;

(B) in the case of any such assignment resulting from a Lender or Issuing Bank becoming a Non-Consenting Creditor, the applicable assignee shall have consented in writing to the applicable amendment, waiver or consent;

(C) such assignment shall not conflict with any applicable requirement of Law;

(D) the Borrower shall have received each consent required by Section 11.11 in accordance therewith;

(E) the Borrower or such Eligible Assignee shall have paid to the affected Lender or the Issuing Bank in immediately available funds an amount equal to the sum of the principal of its Loans, accrued interest thereon, Fees and other amounts payable to it hereunder and under the other Financing Documents (including any amounts under Section 3.12) from the assignee (to the extent of such outstanding principal and accrued interest and Fees) or the Borrower (in the case of all other amounts); and

(F) if such Defaulting Lender is an Issuing Bank, the Borrower shall have delivered the originals of all Specified Letters of Credit issued by such Issuing Bank for cancelation by such Issuing Bank.

(b) A Lender or Issuing Bank shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

3.27 Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Credit Agreement, if any Lender or Issuing Bank becomes a Defaulting Lender, then, until such time as such Lender or Issuing Bank is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Waivers and Amendments. The amount of such Defaulting Lender's applicable Commitment, applicable Loans and TALC Participation shall be excluded for purposes of voting, and the calculation of voting, on any matters (including the granting of any consents or waivers) with respect to any of the Financing Documents (other than consents, modification or waivers that (i) extend the final scheduled maturity of any Loan or Note held by such Defaulting Lender or extend the stated expiration date of any Specified Letter of Credit issued by such Defaulting Lender beyond the Maturity Date of such Loan, Note or Specified Letter of Credit, (ii) reduce the rate or extend the time of payment of interest or Fees on or in respect of any Loan or Note held by such Defaulting Lender or Specified Letter of Credit issued by such Defaulting Lender (except in connection with the waiver of applicability of any post-default increase in interest rates), (iii) reduce (or forgive) the principal amount of any Loan or Note held by such Defaulting Lender, (iv) increase the amount of any Commitment of such Defaulting Lender or (v) change the voting provisions hereof).

(b) Defaulting Lender Waterfall. Any payment of principal, interest, Fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.14 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the

payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment of any amounts owing by such Defaulting Lender to the TALC Issuing Bank hereunder; *third*, if such Defaulting Lender is a TALC Participating Bank, to Cash Collateralize the TALC Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 3.28; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Credit Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released *pro rata* in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Credit Agreement and (y) if such Defaulting Lender is a TALC Participating Bank, Cash Collateralize the TALC Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future TA Letters of Credit issued under this Credit Agreement, in accordance with Section 3.28; *sixth*, to the payment of any amounts owing to the Lenders or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Credit Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Credit Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Specified Letters of Credit were issued at a time when the relevant conditions set forth in Article IV were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders *pro rata* in accordance with the Commitments under the applicable Credit Facility without giving effect to Section 3.27(d). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 3.27(b) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) Certain Fees.

(i) No Defaulting Lender shall be entitled to receive any Commitment Fee under Sections 3.13(a) for any period during which the relevant Lender is a Defaulting Lender (and, notwithstanding anything to the contrary herein, the Borrower shall not be required to pay any such Fee that otherwise would have been required to have been paid to that Defaulting Lender).

(ii) Each TALC Participating Bank that is a Defaulting Lender shall be entitled to receive Letter of Credit Fees under Sections 3.13(d)(i) or 3.13(d)(iii) for any period during which that Issuing Bank is a Defaulting Lender only to the extent allocable to that portion of the

TALC Participation for which it has provided Cash Collateral pursuant to Section 3.28.

(iii) With respect to any Fees not required to be paid to any Defaulting Lender pursuant to Section 3.27(c)(ii), the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such Fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's TALC Participation that has been reallocated to such Non-Defaulting Lender pursuant to Section 3.27(d), (y) pay to the TALC Issuing Bank the amount of any such Fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such Fee.

(d) Reallocation of TALC Participations to Reduce Fronting Exposure. All or any part of any Defaulting Lender's TALC Participation shall be reallocated among the Non-Defaulting Lenders in accordance with their respective TALC Percentages (calculated without regard to such Defaulting Lender's TALC Percentages) but only to the extent that (x) the conditions set forth in Section 4.4 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation would not cause the aggregate TALC Participating Amount of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's TALC Commitment. For the avoidance of doubt, the TALC Issuing Bank and the TALC Participating Banks agree that drawings under the TA Letter of Credit under the Tolling Agreement result from or are otherwise predicated upon facts that constitute Defaults or Events of Default and that no reallocation will occur hereunder if a TALC Participating Bank becomes a Defaulting Lender solely as a result of its failure to pay to the TALC Issuing Bank its relevant TALC Participation Amount upon such drawing. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that TALC Participating Bank having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(e) Cash Collateral by Borrower; Prepayment of LC Loans. If the reallocation described in Section 3.27(d) cannot, or can only partially, be effected, then the Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, Cash Collateralize the TALC Issuing Bank's Fronting Exposure in accordance with the procedures set forth in Section 3.28; provided, that if any TALC Participating Bank becomes a Defaulting Lender solely as a result of its failure to pay to the TALC Issuing Bank its relevant TALC Participation Amount upon the drawing of a TA Letter of Credit, then the Borrower shall have the right, in lieu of Cash Collateralization and notwithstanding the provisions of Section 3.22, to prepay such LC Loans as are owed to the TALC Issuing Bank in aggregate amount equal to such Defaulting Lender's TALC Participation Amount in accordance with Section 3.16 within five Business Days.

(f) Defaulting Lender Cure. If the Borrower, the Administrative Agent and (if the Defaulting Lender is a TALC Participating Bank) the TALC Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding

Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations of the Credit Facilities to be held *pro rata* by the Lenders in accordance with the Commitments under the applicable Credit Facility (without giving effect to Section 3.27(d)), whereupon such Lender will cease to be a Defaulting Lender; provided, that no adjustments will be made retroactively with respect to Fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(g) New TA Letters of Credit. So long as any TALC Participating Bank is a Defaulting Lender, the TALC Issuing Bank shall not be required to issue, extend, renew or increase any TA Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

3.28 Cash Collateralization.

(a) Cash Collateralization. If at any time there shall exist a Defaulting Lender that is a TALC Participating Bank, then within five Business Days following the written request of the Administrative Agent or the TALC Issuing Bank (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize or shall cause the Cash Collateralization of the TALC Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 3.27(d) and any Cash Collateral provided by such Defaulting Lender) from funds that are not credited or creditable to the Secured Accounts in an amount not less than the Minimum Collateral Amount.

(b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the TALC Issuing Bank, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of TALC Facility, to be applied pursuant to Section 3.28(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the TALC Issuing Bank as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, then the Borrower will, within five Business Days of demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Credit Agreement, Cash Collateral provided under this Section 3.28 or Section 3.27 in respect of TA Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations of TA Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the TALC Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 3.28 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the TALC Issuing Bank that there exists excess

Cash Collateral; provided, that, subject to Section 3.27, the Person providing Cash Collateral and the TALC Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations; and, provided, further, that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Collateral Documents.

ARTICLE IV

CONDITIONS PRECEDENT

4.1 Conditions to Closing. The closing of the transactions hereunder (the "Closing") is subject to the prior satisfaction of each of the following conditions (unless waived in writing by each Financing Party):

(a) Representations and Warranties. The representations and warranties of the Borrower Parties set forth in the Financing Documents shall be true and correct in all material respects on and as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(b) Transaction Documents. Each of the Transaction Documents (other than the Term Notes, any Additional Project Documents not then in existence and the Rate Swap Confirmations) shall have been duly authorized, executed, delivered and (if applicable) released from documentary escrow by each party thereto. The Administrative Agent shall have received a fully-executed version of each such Transaction Document (it being understood that, to the extent an original counterpart thereof is not required to be delivered to the Administrative Agent as a condition to the effectiveness or enforceability thereof under applicable Law, a photostatic or electronic copy thereof shall satisfy this condition).

(c) Notes. The Borrower shall have duly authorized and executed each Note (other than a Term Note) for the account of each Lender that has made a request therefor pursuant to Section 3.4(b). Each such Note shall be appropriately completed with the name of the payee, the maximum principal amount thereof and the date of issuance (which shall be the Closing Date) inserted therein. An original of each such Note shall have been delivered by the Borrower to the Administrative Agent for further distribution to the payee listed therein.

(d) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing.

(e) Funding of Equity Contributions. The Pledgor shall have contributed to the Borrower the Required Equity Contribution. The proceeds of such Required Equity

Contribution shall have been applied to the payment of Project Costs (directly by the Borrower or through the further contribution to and payment by the Procurement Sub or Project Owner).

(f) Closing Certificates. The Borrower shall have appropriately completed, duly authorized, executed, and delivered to the Administrative Agent and (if applicable) released from documentary escrow the Borrower Closing Certificate. The Pledgor shall have appropriately completed, duly authorized, executed and delivered to the Administrative Agent and (if applicable) released from documentary escrow the Pledgor Closing Certificate. Each such Closing Certificate is true and correct in all respects and attaches true and correct copies of all documents specified therein appropriately completed as specified therein.

(g) Good Standing. Each Borrower Party and the Pledgor shall be in good standing under the jurisdiction of its formation and the Administrative Agent shall have received a certificate of good standing in respect of each such Borrower Party and the Pledgor certified by the Secretary of State of such state and dated not more than ten days prior to the Closing Date. Each Borrower Party and the Pledgor shall be qualified to do business in the jurisdiction where the Project is located and the Administrative Agent shall have received a certificate of the relevant state official evidencing such qualification dated not more than ten days prior to the Closing Date.

(h) Insurance. Insurance complying with the Collateral Agreement shall be in full force and effect, and each Financing Party shall have received a binder or certificates signed by the insurer or a broker authorized to bind the insurer with respect to each policy of insurance required to be in effect pursuant to the Collateral Agreement evidencing such insurance (including the designation of the Collateral Agent as loss payee or additional insured thereunder to the extent required by the Collateral Agreement). In addition, each Financing Party shall have received a report from the Insurance Consultant in accordance with Section 4.1(i) and a certificate from the Insurance Consultant dated the Closing Date, certifying that all insurance policies required to be maintained (or caused to be maintained) by the Borrower Parties pursuant to Section 7.17 and the Collateral Agreement have been obtained and are in full force and effect on the Closing Date, and that such insurance policies comply in all respects with the requirements of the Collateral Agreement.

(i) Consultants' Reports. Each Financing Party shall have received an electronic copy of a report of each Independent Consultant as to the matters set forth opposite such report on Appendix I.

(j) Permits. Each Financing Party shall have received photostatic or electronic copies of (x) all Material Permits held in the name of the Borrower Parties and Affiliate Project Participants and, if requested, certified copies of all applications made for such Material Permits required to have been obtained on or before the Closing Date and (y) all Material Permits known to the Borrower that are held in the name of any Material Project Participants that are not Affiliate Project Participants except those Material Permits listed on Schedule 4.1(j).

(k) Creation, Perfection and Priority of Liens. The Liens of the Collateral Agent over the Collateral shall have been created and perfected in accordance with the Collateral

Agreement and such Liens shall constitute first-priority Liens subject only to (i) Permitted Priority Liens and (ii) other Permitted Liens to the extent junior to the Liens granted to the Collateral Agent under the Security Documents and the Administrative Agent shall have received evidence reasonably satisfactory to it of the foregoing.

(l) Lien Searches. The Administrative Agent shall have received lien search reports of a recent date before the Closing Date for each of the jurisdictions in which UCC-1 financing statements, fixture filings and the Mortgage are intended to be filed in respect of the Collateral which such reports shall

not include any Liens other than (i) Permitted Priority Liens and (ii) other Permitted Liens to the extent junior to the Liens granted to the Collateral Agent under the Security Documents. The Administrative Agent shall have received each California 20-Day Preliminary Notice issued pursuant to California Civil Codes §3097, 3098, 3111 and 3259.5 and delivered to the Borrower Parties on or prior to the Closing Date.

(m) Legal Opinions. The Administrative Agent shall have received photostatic or electronic copies of the following legal opinions, which legal opinions shall be dated the Closing Date and addressed to, and be in form and substance satisfactory to, each Agent and each Financing Party:

(i) a legal opinion of in-house counsel to each of the Borrower Parties and the Pledgor;

(ii) a legal opinion of Jones Day, special New York and California counsel to the Borrower Parties, the Pledgor and each Affiliated Project Party;

(iii) a legal opinion of Jones Day, special federal energy regulatory and federal permitting counsel to the Borrower Parties, the Pledgor and each Affiliated Project Party;

(iv) a legal opinion of Stoel Rives LLP, special federal and state environmental counsel, state energy regulatory and state and local permitting counsel to the Borrower Parties, the Pledgor and each Affiliated Project Party;

(v) a legal opinion of counsel to the Equipment Supplier and Equipment Servicer as to the matters set forth on Appendix 2 to each Consent Agreement with the Equipment Supplier and the Equipment Servicer; and

(vi) a legal opinion of counsel to the BOP Contractor as to the matters set forth on Appendix 2 to each Consent Agreement with the BOP Contractor.

(n) Financial Information, etc. Each Financing Party shall have received an electronic copy of a *pro forma* balance sheet of each Borrower Party and the Pledgor, dated the Closing Date.

(o) U.S.A. Patriot Act. Each Financing Party shall have received, at least three Business Days prior to the Closing Date, electronic copies of all documentation and other information required by bank regulatory authorities or the generally applicable internal policies

of the such Financing Party under applicable "know your customer" and anti-money laundering rules and regulations, including the U.S.A. Patriot Act.

(p) Environmental Matters. Each Financing Party shall have received an electronic copy of a "Phase 1 Environmental Site Assessment" confirming that there are no recognized environmental conditions in connection with the Project, the Facility or the Site, except to the extent set forth on Schedule 5.14.

(q) Fees and Expenses. The Borrower shall have paid or arranged for the payment when due of all reasonable and documented Fees, expenses (including Attorney Costs) and other charges due and payable by it on or prior to the Closing Date under this Credit Agreement or under any of the other Financing Documents.

(r) Construction Budget and Project Schedule; Sources and Uses. Each Financing Party shall have received an electronic copy (whether delivered separately or as part of the Base Case Model delivered in accordance with Section 4.1(t)) of (i) the Construction Budget, (ii) each Project Schedule and (iii) a sources and uses of funds demonstrating that the Construction Facilities are sufficient to timely fund all future Project Costs set forth in the Construction Budget, including the Contingency, each of which shall be reasonably satisfactory to such Financing Party.

(s) *Pro Forma* Operating Budget; *Pro Forma* Operating Report. Each Financing Party shall have received an electronic copy (whether delivered separately or as part of the Base Case Model delivered in accordance with Section 4.1(t)) of a *pro forma* Operating Budget and a *pro forma* Operating Report, in each case, in form, scope and substance reasonably satisfactory to such Financing Party.

(t) Base Case Model. The Borrower shall have delivered to each Financing Party an electronic copy of the Base Case Model, incorporating the inputs from the Construction Budget, the Project Schedules, the projected Operating Performance and sources and uses of funds delivered in accordance with Section 4.1(r), the *pro forma* Operating Budget delivered in accordance with Section 4.1(s), and the anticipated fixed rate payable by the Borrower under each of the Rate Swap Transactions to be entered into in accordance with Section 7.26, and otherwise in form, scope and substance reasonably satisfactory to such Financing Party.

(u) Financial Ratios. The Base Case Model delivered in accordance with Section 4.1(t) shall project a minimum Projected DSCR on a rolling twelve-month basis beginning on August 30, 2013 and ending on August 31, 2023 of not less than 1.40:1.00.

(v) Commencement of Work. The Administrative Agent shall have received evidence that: (i) the Construction Manager shall have received and accepted the "Notice to Proceed" (as defined in the Construction Management Agreement); (ii) the BOP Contractor shall have received and accepted the "Full Notice to Proceed" (as defined in the BOP Contract); (iii) the Equipment Servicer shall have received and accepted the "Full Notice to Proceed" (as defined in the Equipment Services Agreement); and (iv) the Equipment Supplier shall have received and accepted the "Full Notice to Proceed" (as defined in the Equipment Purchase Agreement).

(w) Debt Repayment. Each Borrower Party shall have repaid all of its existing Indebtedness, other than Permitted Indebtedness and all Liens associated therewith encumbering any Collateral, other than Permitted Liens, shall have been released.

(x) Additional Matters. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the transactions contemplated by this Credit Agreement and the other Transaction Documents shall be reasonably satisfactory in form and substance to the Administrative Agent, and the Administrative Agent shall have received such other documents, certificates, and instruments relating to this Credit Agreement or

any other Transaction Document or the transactions contemplated hereby or thereby as the Administrative Agent shall have reasonably requested, in each case in form and substance reasonably satisfactory to the Administrative Agent.

For purposes of this Section 4.1, a Financing Party shall be deemed to have received an electronic copy of any document that was posted on the Borrower's online data site located at www.intralinks.com as of 5:00 p.m. (New York time) on the day immediately preceding the Closing Date; unless, (x) such Financing Party did not receive electronic notice of such posting or (y) such Financing Party notifies the Administrative Agent and the Borrower that such Financing Party has not had reasonably sufficient time to review such electronic copy prior to the Closing Date.

4.2 Conditions to the Disbursement of Construction Loans. The obligation of any (a) Tranche A Lender to make any Tranche A Construction Loan or (b) Tranche B Lender to make any Tranche B Construction Loan, as the case may be, on any Disbursement Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by (x) in the case of Tranche A Construction Loans, the Requisite Tranche A Lenders or (y) in the case of Tranche B Construction Loans, Requisite Tranche B Lenders):

(a) Closing Date. The Closing shall have theretofore occurred.

(b) Borrowing Request. The Administrative Agent shall have received a Borrowing Request pursuant to and in compliance with Section 3.2 in respect of the Disbursement of Construction Loans on such Disbursement Date.

(c) Construction Requisition. The Administrative Agent shall have received (i) not less than five Business Days prior to such Disbursement Date, a Construction Requisition and (ii) not less than two Business Days prior to such Disbursement Date, a certificate of the Independent Engineer confirming such Construction Requisition.

(d) Representations and Warranties. The representations and warranties of the Borrower contained in Article V hereof and the representations and warranties of each Borrower Party, and the Pledgor and the Affiliated Project Parties contained in any other Financing Document to which any such Person is a party shall be true and correct in all material respects on and as of such Disbursement Date as if made on and as of such date (both before and after giving effect to the Disbursement to be made on such date) (or, if stated to have been made solely as of an earlier date, were true and correct in all material respects as of such earlier date).

(e) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing.

(f) Construction Budget; Notional Disbursement Schedule. The making of such Construction Loan shall be in accordance with the Construction Budget and the Notional Disbursement Schedule (subject to variances to the Notional Disbursement Schedule that are reasonably commensurate with modifications to the Construction Budget that are made in accordance with Section 7.28). The aggregate amount of Project Costs set forth in the then-applicable Construction Budget are sufficient to cause the Term Conversion Date to occur prior to the Date Certain and the Available Construction Funds both before and after giving effect to such Disbursement shall be equal to or greater than the aggregate amount of unpaid Project Costs set forth in the Construction Budget.

(g) No Liens. There shall not have been filed against or served upon the Collateral Agent or any of the Borrower Parties with respect to the Project or any part thereof any Stop Notice or notice of any Lien or claim of Lien or attachment upon or claim affecting the right to receive payment of any of the moneys payable to any of the Persons named on the relevant Construction Requisition (other than a Permitted Lien) which has not been released by prior payment (after the date hereof with the proceeds of Construction Loans) or in respect of which a bond or other security acceptable to Administrative Agent has not been posted or provided or which will not be released with the payment of the related obligation out of Construction Loans to be disbursed on the relevant Disbursement Date.

(h) Lien Releases; Etc. The Borrower shall have delivered to the Administrative Agent (i) a Lien Waiver Report completed in good faith using commercially reasonable efforts setting forth the information required thereby in respect of each M&M Party known to the Borrower Parties, including any Person identified in a notice delivered to the Borrower Parties or their Affiliates in accordance with Section 8.1 of any of the BOP Contract, the Equipment Purchase Agreement or the Equipment Services Agreement and any Person that has delivered to the Borrower Parties or (if relating to the Project) their Affiliates a California 20-Day Preliminary Notice pursuant to California Civil Codes §3097, 3098, 3111 or 3259.5, (ii) properly completed and duly executed conditional lien waivers (in the form provided under California Civil Code §3262, as amended) from each M&M Party that is to be directly or indirectly paid from funds requested under the related Borrowing of the Construction Loans, each of which shall be dated not earlier than the Relevant Work Date, (iii) one or more properly completed and duly executed unconditional lien waivers (in the form provided under California Civil Code §3262, as amended) from each M&M Party that is to be directly or indirectly paid from funds requested under the related Borrowing, each of which shall be dated not earlier than the date of the most recent conditional lien waiver delivered in accordance with subpart (ii) of this sentence. All work previously done on the Project shall have been done in all material respects in accordance with the applicable M&M Contracts. Other than with respect to the initial Borrowing of the Construction Loans (to the extent amounts are funded from sources other than the Construction Loans on the date thereof), all amounts directly or indirectly paid to any M&M Party since the initial

Borrowing of the Construction Loans have been directly or indirectly funded with the proceeds of the Construction Loans (unless otherwise approved by the Administrative Agent, such approval not to be unreasonably withheld, conditioned or delayed).

(i) Fees and Expenses. The Borrower shall have paid or arranged for the payment when due (including, to the extent permitted, out of Disbursements) of all reasonable and documented Fees, expenses (including Attorney Costs) and other charges payable by it on or prior to such Disbursement Date under this Credit Agreement or under any other Financing Document.

(j) Title Policy Endorsement. The Administrative Agent shall have received (i) a "bring-down" endorsement to the Title Policy to the Disbursement Date of such Construction Loans, insuring the continuing first priority Lien of the Mortgage (subject only to (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens for the benefit of the Secured Parties under the Mortgage) and otherwise in form and substance satisfactory to the Administrative Agent and (ii) either (A) with respect to the initial Borrowing of the Construction Loans only, a 32-06 Endorsement and (B) with respect to each other Borrowing of the Construction Loans, a 33-06 Endorsement, in each case, with a Date of Coverage (as

defined therein) that is the same as the date of the relevant Borrowing of the Construction Loans with copies of all executed conditional and unconditional lien waivers required to be delivered pursuant to Section 4.2(h) attached thereto.

(k) Funding of Equity Contributions. The Pledgor shall have contributed to the Borrower the Required Equity Contribution. The proceeds of such Required Equity Contribution shall have been applied to the payment of Project Costs (directly by the Borrower or through the further contribution to and payment by the Procurement Sub or Project Owner).

(l) Remediation. With respect solely to the initial Borrowing of the Construction Loans: (i) the U.S. Environmental Protection Agency shall have issued EPA Letters that set forth, with a reasonable level of certainty, the remediation that is as of such date required in respect of all environmental conditions identified at the Site on or prior to the initial Borrowing of the Construction Loans; (ii) the Borrower shall have delivered to the Administrative Agent the Remediation Work Plan, as updated as of the initial Borrowing of the Construction Loans; (iii) the Borrower shall, or shall have caused the relevant Borrower Parties to, have entered into such Change Orders, in accordance with Section 7.15, as are necessary to reflect the Remediation Work Plan; (iv) the Borrower shall have amended the Construction Budget, in accordance with Section 7.28, to the extent necessary to incorporate the costs of all such Change Orders, (v) the Borrower shall have delivered to the Administrative Agent a sources and uses of funds demonstrating that the Construction Facilities and the Required Equity Contribution are sufficient to fund all past and future Project Costs set forth in the then-applicable Construction Budget, including the Contingency and (vi) the Borrower shall have delivered to the Administrative Agent a written confirmation of the Independent Engineer that (A) the Remediation Work Plan as of the date of the initial Borrowing of the Construction Loans sets forth with reasonable certainty all corrective actions that are

necessary or reasonably appropriate to satisfy the conditions and comply with any other requirements set forth in the EPA Letters and (B) the Change Orders referenced in subpart (iii) of this Section 4.2(l) incorporate with reasonable certainty all schedule and cost impacts to the Project that can reasonably be expected to result from the remaining execution of the Remediation Work Plan in accordance therewith. With respect solely to the initial Borrowing of the Construction Loans, the aggregate undrawn amount of the Environmental Indemnity is not less than $37,500,000.00.

(m) Updated Base Case Model. With respect solely to the initial Borrowing of the Construction Loans, the Borrower shall have delivered to the Administrative Agent the updated Base Case Model, modified solely to reflect (x) any amendment to the Construction Budget prior to such initial Borrowing, (y) the fixed interest rate payable under the Rate Swap Transactions entered into in accordance with Section 7.26 and (z) the Tranche A Loan Amount as of the initial Borrowing of the Construction Loans, and such updated Base Case Model shall project a minimum Projected DSCR on a rolling twelve-month basis beginning on August 30, 2013 and ending on August 31, 2023 of not less than 1.40:1.00.

(n) Updated Projected Amortization Schedule. With respect solely to the initial Borrowing of the Construction Loans, the Borrower shall have delivered to the Administrative Agent an updated Projected Amortization Schedule, modified solely to include the Tranche A Notional Amortization and the Tranche A Percentage Amortization.

4.3 Conditions to the Issuance of LGIA Letters of Credit or Disbursement of Revolving Loans. The obligation of the Revolver Lenders to make (x) any Revolving Loan on any Disbursement Date, or (y) issue an LGIA Letter of Credit, on any Issuance Date, is subject to the prior satisfaction of each of the following conditions (unless waived in writing by the Requisite Revolving Lenders):

(a) Closing Date; Etc. The Closing shall have theretofore occurred. The initial Borrowing of the Construction Loans shall have been made or will be made concurrently therewith.

(b) Borrowing Request. In the case of a request for Revolving Loans, the Administrative Agent shall have received a Borrowing Request pursuant to and in compliance with Section 3.2.

(c) LGIA Letter of Credit Request. In the case of a request for the issuance of the LGIA Letter of Credit, the Revolving Lender shall have received an LC Request pursuant to and in compliance with Section 3.25(a) in respect of the issuance of such LGIA Letter of Credit.

(d) Representations and Warranties. The representations and warranties of the Borrower contained in Article V hereof and the representations and warranties of each Borrower Party, and the Pledgor and the Affiliated Project Parties contained in any other Financing Document to which any such Person is a party shall be true and correct in all

material respects on and as of such Issuance Date or Disbursement Date (both before and after giving effect to any Loans or the issuance of any Specified Letter of Credit on such Issuance Date or Disbursement Date) (or, if stated to have been made solely as of an earlier date, were true and correct in all material respects as of such earlier date).

(e) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing (unless the issuance of any LGIA Letter of Credit would cure any Default).

(f) Fees and Expenses. The Borrower shall have paid or arranged for the payment when due (including, if a Disbursement Date, out of Disbursements) of all reasonable and invoiced Fees, expenses (including Attorney Costs) and other charges payable by it on or prior to such Disbursement Date or Issuance Date under this Credit Agreement or under any other Financing Document.

4.4 Conditions to the Issuance of the TA Letter of Credit. The obligation of the TALC Issuing Bank to issue a TA Letter of Credit on any Issuance Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by the TALC Issuing Bank and the Requisite TALC Participating Banks):

(a) Closing Date; Etc. The Closing shall have theretofore occurred. The initial Borrowing of the Construction Loans shall have been made or will be made concurrently therewith.

(b) LC Request. The TALC Issuing Bank shall have received an LC Request pursuant to and in compliance with Section 3.25(a) in respect of the issuance of such TA Letter of Credit.

(c) Representations and Warranties. The representations and warranties of the Borrower contained in Article V hereof and the representations and warranties of each Borrower Party, and the Pledgor and the Affiliated Project Parties contained in any other Financing Document to which any such Person is a party shall be true and correct in all material respects on and as of such Issuance Date as if made on and as of such Issuance Date (both before and after giving effect to the issuance of the TA Letter of Credit on such date) (or, if stated to have been made solely as of an earlier date, were true and correct in all material respects as of such earlier date).

(d) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing (unless the issuance of any TALC Letter of Credit would cure any Default).

(e) Fees and Expenses. The Borrower shall have paid or arranged for the payment when due (including, to the extent such Issuance Date is also a Disbursement Date, out of Disbursements) of all reasonable and invoiced Fees, expenses (including Attorney Costs) and other charges payable by it on or prior to such Issuance Date under this Credit Agreement or under any other Financing Document.

4.5 Conditions to the Issuance of the DSR Letter of Credit. The obligation of each DSR Issuing Bank to issue a DSR Letter of Credit on any Issuance Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by such DSR Issuing Bank):

(a) Closing Date; Etc. The Closing shall have theretofore occurred. The initial Borrowing of the Construction Loans shall have been made. The Term Conversion Date shall have theretofore occurred.

(b) LC Request. Such DSR Issuing Bank shall have received an LC Request pursuant to and in compliance with Section 3.25(a) in respect of the issuance of such DSR Letter of Credit.

(c) Representations and Warranties. The representations and warranties of the Borrower contained in Article V hereof and the representations and warranties of each Borrower Party, and the Pledgor and the Affiliated Project Parties contained in any other Financing Document to which any such Person is a party shall be true and correct in all material respects on and as of such Issuance Date as if made on and as of such date (both before and after giving effect to the issuance of the DSR Letters of Credit on such Issuance Date) (or, if stated to have been made solely as of an earlier date, were true and correct in all material respects as of such earlier date).

(d) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing (unless the issuance of any DSR Letter of Credit would cure any Default).

(e) Fees and Expenses. The Borrower shall have paid or arranged for the payment when due (including, to the extent such Issuance Date is also a Disbursement Date, out of Disbursements) of all reasonable and invoiced Fees, expenses (including Attorney Costs) and other charges payable by it on or prior to such Disbursement Date under this Credit Agreement or under any other Financing Document.

4.6 Conditions to the Term Conversion Date. The occurrence of the Term Conversion Date shall be subject to the conditions precedent that the Administrative Agent shall have received, or the Requisite Term Lenders shall have waived receipt of, the following documents, materials and other written information, each of which shall be in form and substance satisfactory to the Requisite Term Lenders, and that the other conditions set forth below shall have been satisfied or waived by the Requisite Term Lenders:

(a) Term Notes. Each Lender that has made a request therefor pursuant to Section 3.4(b) shall have received original Term Notes in respect of the Term Loans made or maintained by it, duly completed, executed and delivered by the Borrower, each of which shall (i) be dated the Term Conversion Date, (ii) mature on the Term Maturity Date, and (iii) bear interest as provided in Article III.

(b) Insurance. The Administrative Agent shall have received a certified copy of the insurance policies required to have been obtained and be in effect on the Term Conversion Date in accordance with Section 7.17 and the Collateral Agreement or

certificates of insurance with respect thereto, together with evidence of the payment of all premiums therefor, and a certificate of the Insurance Consultant, certifying that insurance complying with the Collateral Agreement, covering the risks and otherwise satisfying the requirements referred to therein, has been obtained and is in full force and effect.

(c) Permits. All Material Permits shall have been duly obtained, shall be held solely in the name of the Project Owner (or, if necessary, the applicable Project Participant) shall be in full force and effect, shall be final and not subject to any appeal or modification and all appeal periods applicable hereto have expired and shall be free from conditions or requirements the compliance with which could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party, or which the relevant Borrower Party does not reasonably expect to be able to satisfy; provided, that with respect to Material Permits which cannot be obtained on or prior to the Term Conversion Date in the exercise of reasonable diligence (but which are routinely obtainable, can be obtained only after completion of certain operations testing or can be obtained only after a period of operations), the Administrative Agent shall have received assurances satisfactory to the Independent Engineer that such Permits will be obtained by the time needed in connection with the operation of the Project.

(d) Completion Certificates. The Administrative Agent shall have received (i) an original executed counterpart of the Borrower Completion Certificate (the statements contained in which shall be true and correct in all material respects), and (ii) an original executed counterpart of the Independent Engineer Completion Certificate.

(e) Project Completion Date. The Project Completion Date shall have occurred.

(f) Opinions. The Administrative Agent shall have received supplemental opinions of counsel to the Borrower, dated as of the Term Conversion Date, opining as to each of the matters set forth on Appendix K, subject to such qualifications and assumptions as are customary in New

York, California or Federal opinion practice (as applicable).

(g) Operating Budget. The Borrower shall have proposed an Operating Budget in accordance with Section 6.6 for the period described in Section 6.6, and such Operating Budget shall have been adopted in accordance with Section 6.6.

(h) Title Insurance; Survey.

(i) The Borrower shall have delivered to the Administrative Agent a Title Policy which has been reissued by the Title Insurer (the "Reissued Title Policy") and such Reissued Title Policy (a) insures the continuing first priority of the Mortgage (subject only to (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Secured Parties pursuant thereto) and otherwise in form and substance reasonably satisfactory to Administrative Agent, (b) is

issued as of the Term Conversion Date, (c) contains only the coverage exceptions set forth in the Title Policy as of the Closing Date or that are otherwise approved by the Administrative Agent (provided, that any mechanics' and materialmen's exceptions included in the Title Policy shall be deleted in the Reissued Title Policy), (d) provides that the ALTA 32 endorsement to the Title Policy is of no further force or effect and (e) is in an amount equal to the Title Policy Amount.

(ii) The Borrower shall have delivered to the Administrative Agent a final "as-built" survey of the Site, addressed to -the Collateral Agent for the benefit of the Secured Parties, the Title Insurance Companies and the Borrower, updated to within thirty days of the Term Conversion Date, showing the completed Project, which survey shall be in form and substance reasonably satisfactory to the Collateral Agent and the Title Insurance Companies, and shall disclose no easements, rights-of-way or encumbrances, other than (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Secured Parties pursuant to the Mortgage.

(iii) The Borrower shall have prepared and caused to be executed and recorded such amendments to the Mortgage or other confirmatory documents as may be reasonably requested by the Collateral Agent in order to protect, confirm or maintain the first-priority Lien of the Mortgage on the Mortgaged Property, as reflected in the final survey delivered pursuant to this Section 4.6(h).

(i) Lien Releases; Etc. The Borrower shall have delivered to the Administrative Agent (i) a properly completed and duly executed unconditional lien waiver upon final payment (in the form provided under California Civil Code §3262, as amended) from each M&M Party, each of which waivers shall be substantially consistent with any relevant requirements of the applicable M&M Contract, (ii) a properly completed and duly executed conditional lien waiver upon final payment (in the form provided under California Civil Code §3262, as amended) from each M&M Party together with evidence reasonably satisfactory to Administrative Agent that the amount set forth in such conditional lien waiver upon final payment has been paid, each of which waivers shall be substantially consistent with any relevant requirements of the applicable M&M Contract or (iii) other evidence reasonably satisfactory to Administrative Agent that such M&M Party has been paid in full or otherwise has no mechanics lien rights with respect to the Project. Notwithstanding anything to the contrary with the foregoing, the requirements under this Section 4.6(i) shall not be applicable with respect to work performed prior to the Closing Date by an M&M Party that does not perform work after the Closing Date to the extent payment for such work and such M&M Party are identified on the certificate delivered to the Title Company and attached hereto as Schedule 4.6(i).

(j) No Liens. (i) There shall not have been filed against or served upon the Collateral Agent or any of the Borrower Parties with respect to the Project or any part thereof any Stop Notice or notice of any Lien or claim of Lien or attachment upon or claim affecting the right to receive payment of any of the moneys payable to any of the Persons named on any relevant Construction Requisition in respect of Construction Loans to be disbursed on the Term Conversion Date (other than a Permitted Lien) which

has not been released by prior payment (after the date hereof, with the proceeds of Construction Loans) or in respect of which a bond or other security acceptable to Administrative Agent has not been posted or provided or which will not be released with the payment of the related obligation out of Construction Loans to be disbursed on the Term Conversion Date and (ii) all applicable filing periods for any such Liens that are mechanics' and/or materialmen's Liens shall have expired; unless, the Reissued Title Policy delivered pursuant to Section 4.6(h) above insures against any and all losses arising by reason of any such pending or potential relevant mechanics or materialmen's Lien or other Lien gaining priority over the Mortgage.

(k) Merger. The Procurement Sub and the Project Owner shall have effected the Merger contemplated by Section 7.33.

(l) Borrower Equity Interests. The Borrower shall own no assets, other than the Pledged Equity Interests of the Project Owner.

(m) Expected Initial Delivery Date. The Expected Initial Delivery Date shall have theretofore occurred.

(n) Funding of DSRA. The Debt Service Reserve Account shall have been funded in cash or by the posting of DSR Letters of Credit to the DSR Required Balance in accordance with the Collateral Agreement.

(o) TALC Facility. All LC Loans resulting from drawings under any TA Letter of Credit, together with any Liquidation Costs incurred by the Borrower as a result of such prepayment, have been repaid in accordance with Sections 3.17(b) and 3.17(f).

(p) Other Documents. The Administrative Agent shall have received original counterparts of such other statements, certificates and documents as the Administrative Agent may reasonably request.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND AGREEMENTS

In order to induce each of the Lenders to enter into this Credit Agreement and to make the Loans and issue or participate in the Specified Letters of Credit, the Borrower makes the following representations, warranties and agreements as of the date hereof (or as of such other date as may be expressly

specified with respect to such representation, warranty or agreement), all of which shall survive the execution and delivery of this Credit Agreement and the Notes, the making, Conversion and continuance of the Loans and the issuance of the Specified Letters of Credit:

5.1 Organization. Each Borrower Party is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware. Each Borrower Party is duly authorized and qualified to do business and is in good standing in each jurisdiction in which it owns or leases Property or in which the conduct of its business requires it to so qualify, except where the failure to so qualify would not have a Material Adverse Effect. Each

Borrower Party has the requisite limited liability company power and authority to own or lease and operate its Properties, to carry on its business (including with respect to the Project), to borrow money, to create the Liens as contemplated by the Security Documents and to execute, deliver and perform each Transaction Document (including the Notes) to which it is or will be a party.

5.2 Authority and Consents.

(a) The execution, delivery and performance by each Borrower Party of each Financing Document to which it is or will be a party, and the transactions contemplated by the Financing Documents: (i) have been duly authorized by all necessary limited liability company action (including any necessary member action); (ii) will not breach, contravene, violate, conflict with or constitute a default under (A) any of its Charter Documents, (B) any applicable Law or (C) any contract, loan, agreement, indenture, mortgage, lease or other instrument to which it is a party or by which it or any of its Properties may be bound or affected, including all Permits and the Transaction Documents; and (iii) except for the Liens created by the Security Documents, will not result in or require the creation or imposition of any Lien upon or with respect to any of the Properties of the Borrower.

(b) Each Financing Document (i) has been duly executed and delivered by each Borrower Party and (ii) when executed and delivered by each of the other parties thereto will be the legal, valid and binding obligation of each such Borrower Party, enforceable against each Borrower Party, as the case may be, in accordance with its terms, except as the enforceability thereof may be limited by (A) applicable bankruptcy, insolvency, moratorium or other similar Laws affecting the enforcement of creditors' rights generally and (B) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(c) Except for the authorizations, consents, approvals, notices and filings listed on Schedule 5.2 or as contemplated under Section 4.6(c), no authorization, consent or approval of, or notice to or filing with, any Governmental Authority or any other Person has been, is or will be required to be obtained or made (i) for the due execution, delivery, recordation, filing or performance by each Borrower Party of any of the Financing Documents to which it is a party or any transaction contemplated by the Financing Documents, (ii) for the grant by each Borrower Party, or the perfection and maintenance, of the Liens contemplated by the Security Documents (including the first priority nature thereof) or (iii) for the exercise by the Collateral Agent or any other Secured Party of any of its rights under any Financing Document or any remedies in respect of the Collateral pursuant to the Security Documents, except for the authorizations, consents, approvals, notices and filings listed on Schedule 5.2, all of which have been duly obtained, taken, given or made, have been (where applicable) validly issued, are in full force and effect, are final and not subject to modification or appeal and all appeal periods applicable thereto have expired.

5.3 Capitalization; Indebtedness; Investments.

(a) Schedule 5.3 contains a true and complete list of all of the authorized and outstanding Equity Interests of each Borrower Party by class, all commitments by the Pledgor to

make capital contributions to the Borrower and all capital contributions previously made by the Pledgor to the Borrower. All of the Equity Interests of each Borrower Party have been duly authorized and validly issued and are fully paid and nonassessable. None of such Equity Interests have been issued in violation of any applicable Law. Except as set forth in Schedule 5.3, no Borrower Party is a party or subject to, has outstanding and is bound by, any subscriptions, options, warrants, calls, agreements, preemptive rights, acquisition rights, redemption rights or any other rights or claims of any character that restrict the transfer of, require the issuance of, or otherwise relate to any shares of its Equity Interests. The Equity Interests of each Borrower Party are owned beneficially and of record by the Persons set forth in Schedule 5.3. Except for the Liens created by the Pledge Agreements, there is no Lien on any of the Equity Interests of any Borrower Party, and no Borrower Party has been notified of the assignment of all or any part of (x) the Pledgor's Investments in the Borrower other than the assignment in favor of the Collateral Agent pursuant to the Pledgor Pledge Agreement and (y) the Borrower's investments in each of the Procurement Sub and the Project Owner other than the assignment in favor of the Collateral Agent pursuant to the Borrower Pledge Agreement.

(b) As of the Closing Date, (i) none of the Borrower Parties has Indebtedness of any nature, whether due or to become due, absolute, contingent or otherwise (other than Permitted Indebtedness set forth on Schedule 5.3), and (ii) none of the Borrower Parties holds Investments other than Investments permitted by Section 7.7.

5.4 Financial Condition.

(a) Each of the financial statements of the Borrower Parties and the Pledgor delivered in accordance with Sections 4.1(n), 6.1(a) and 6.1(b) fairly present the financial condition of such Person as at the relevant dates specified and (if applicable) the results of its operations for the periods ended on such dates, subject, in the case of interim statements, to normal year-end audit adjustments. Such financial statements have been prepared in accordance with U.S. GAAP consistently applied.

(b) None of the Borrower Parties or the Pledgor has outstanding obligations or liabilities, fixed or contingent, except as disclosed in the financial statements described in Section 5.4(a) above. Since the date of the last financial statements described in 5.4(a) above, no event, condition or circumstance exists or has occurred which has resulted in or could reasonably be expected have a Material Adverse Effect.

5.5 Litigation; Labor Disputes. Except as set forth in Schedule 5.5, there is no action, suit, other legal proceeding, arbitral proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened, by or before any Governmental Authority or in any arbitral or other forum, nor any order, decree or judgment in effect, pending, or, to the Borrower's knowledge, threatened, (a) against or affecting any Borrower Party or any of its Properties or rights or (b) to the Borrower's knowledge, against or affecting any Project Participant or any of its Properties or rights, that, in the case of this clause (b), (i) relates to the Project, any of the Transaction Documents or any of the transactions contemplated thereby or (ii) has, or if adversely determined, could reasonably be

expected to have, either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it

is a party. There are no ongoing, or, to the knowledge of the Borrower, currently threatened, strikes, slowdowns or work stoppages by the employees of any Borrower Party, any EPC Contractor or any Operator.

5.6 Material Permits.

(a) As of the date hereof, to the knowledge of the Borrower, (i) all Material Permits are set forth in Schedule 5.6 hereto and (ii) the Material Permits set forth in Part B of Schedule 5.6 hereto are not currently required by the applicable Governmental Authorities but will be required at a later stage of the acquisition, importation, ownership, construction, installation, operation, insurance or maintenance of the Project.

(b) The Project Owner, the Procurement Sub (prior to the Merger) and the Affiliated Project Parties and, to the knowledge of the Borrower, each other Material Project Participant holds each Material Permit required to be held by it for the current stage of the acquisition, importation, ownership, construction, installation, operation, insurance or maintenance of the Project. Each such Material Permit held by Project Owner, the Procurement Sub (prior to the Merger) and the Affiliated Project Parties and, to the knowledge of the Borrower, each other Material Project Participant has been duly obtained or made, was validly issued, is in full force and effect, is final and not subject to modification or appeal and all appeal periods applicable thereto have expired, is held in the name of such Person and is free from conditions or requirements the compliance with which could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party. No event has occurred that could reasonably be expected to (A) result in the reversal, rescission, revocation, termination or adverse modification of any such Material Permit held by the Project Owner, the Procurement Sub (prior to the Merger) or the Affiliated Project Parties or, to the knowledge of the Borrower, each other Material Project Participant or (B) adversely affect any rights of the Project Owner, the Procurement Sub (prior to the Merger) or the Affiliated Project Parties or, to the knowledge of the Borrower, each other Material Project Participant under any such Material Permit.

(c) The Borrower has no reason to believe that any Material Permits which are not required to have been obtained as of the date of this Credit Agreement, but which will be required in the future (including those set forth in Part B of Schedule 5.6), will not be granted in due course prior to the time needed free from conditions or requirements which the Borrower does not reasonably expect the relevant Person to be able to satisfy or compliance with which could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(d) The information set forth in each application submitted by or on behalf of the Project Owner, the Procurement Sub (prior to the Merger) or the Affiliated Project Parties or, to the knowledge of the Borrower, each other relevant Person in connection with each Material Permit held by such Person and in all correspondence sent by or on behalf of any such Person in respect of each such application is accurate and complete in all material respects.

(e) The Project, if imported, installed, constructed, owned and operated in accordance with the Plans and Specifications and the Transaction Documents, will conform to and comply in all material respects with all covenants, conditions, restrictions and requirements in all Material Permits, in the Transaction Documents applicable thereto and under all zoning, environmental, land use and other Laws applicable thereto.

5.7 Material Project Documents.

(a) As of the date hereof (i) all Material Project Documents are set forth in Schedule 5.7 hereto, (ii) all Project Documents that have been entered into by the Borrower, the Project Owner, or the Procurement Sub (prior to the Merger) or the Affiliated Project Parties but are not Material Project Documents are set forth in Part B of Schedule 5.7 and (iii) each of the Affiliated Project Documents are denoted on Schedule 5.7 with an "*". Each of the Project Documents set forth in Schedule 5.7 consist only of the original document (including appendices, exhibits, schedules and disclosure letters) and any amendments, waivers or supplements thereto expressly described in the relevant definitions appearing in Schedule 5.7 hereto, and there are no other amendments, waivers or supplements, written or oral, with respect thereto. The Financing Parties have received a true and complete copy of each Project Document set forth in Schedule 5.7, including all appendices, exhibits, schedules, disclosure letters, amendments, waivers or supplements referred to therein or delivered pursuant thereto, if any.

(b) Each Material Project Document entered into by the Borrower, the Project Owner, or the Procurement Sub (prior to the Merger) or the Affiliated Project Parties has been duly authorized, executed and delivered by such Person, is in full force and effect and constitutes the legal, valid and binding obligation of such Person, enforceable against such Person (and, to the knowledge of the Borrower, each other Material Project Participant) in accordance with its terms, except as the enforceability thereof may be limited by (A) applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (B) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity). Each of the Borrower, the Project Owner, and the Procurement Sub (prior to the Merger) and the Affiliated Project Parties, and to the knowledge of the Borrower, each other Material Project Participant, is in compliance in all material respects with the terms and conditions of the Material Project Documents to which it is a party, and no event has occurred that could reasonably be expected to (x) result in a default under, or a material breach of, any Material Project Document, (y) result in the revocation, termination or adverse modification of any Material Project Document or (z) adversely affect the rights of any Borrower Party under any Material Project Document.

(c) All representations and warranties of the Borrower, the Project Owner, and the Procurement Sub (prior to the Merger) and the Affiliated Project Parties and, to the Borrower's knowledge, the other parties thereto, contained in the Material Project Documents are true and correct in all material respects (except to the extent that any such representation or warranty is expressed to be made only as of an earlier date, in which case such representation or warranty was true and correct in all material respects on and as of such earlier date).

(d) All conditions precedent to the obligations of the respective parties under the Material Project Documents have been satisfied, except for such conditions precedent which by their terms cannot be (and are not required to be) met until a later stage in the construction or operation of the Project, and

the Borrower has no reason to believe that any such conditions precedent cannot be satisfied prior to the time when such conditions are required to be met pursuant to the applicable Project Document.

5.8 Use of Proceeds.

(a) The proceeds of the Loans will be used in accordance with Section 7.27.

(b) None of the Borrower Parties is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock and no part of the proceeds of any Loan will be used to purchase or carry any Margin Stock.

(c) Neither the making of any Loan nor the use of the proceeds thereof will violate or be inconsistent with the provisions of Regulation U or Regulation X.

(d) Since the date of this Agreement, no Project Costs have been paid except from the proceeds of Construction Loans in accordance with Construction Requisitions properly issued in accordance with the Accounts Agreement.

5.9 ERISA.

(a) Each Pension Plan is in compliance in form and operation with its terms and with ERISA and the Code and all other applicable laws and regulations, except where any failure to comply would not reasonably be expected to have a Material Adverse Effect. No ERISA Event has occurred, or is reasonably expected to occur, other than as would not, individually or in the aggregate, have a Material Adverse Effect.

(b) There exists no Unfunded Pension Liability with respect to any Pension Plan, except as would not reasonably be expected to have a Material Adverse Effect.

(c) No Multiemployer Plan is insolvent or in reorganization and no member of the ERISA Group has incurred a complete or partial withdrawal from any Multiemployer Plan, except, in each case, as would not reasonably be expected to have a Material Adverse Effect. If each member of the ERISA Group were to withdraw in a complete withdrawal from all Multiemployer Plans as of the date this assurance is given, the aggregate withdrawal liability that would be incurred would not reasonably be expected to have a Material Adverse Effect.

(d) Except as would not reasonably be expected, either singly or in the aggregate, to have a Material Adverse Effect, there are no actions, suits or claims pending against or involving a Pension Plan (other than routine claims for benefits) or, to the knowledge of any member of the ERISA Group, which would reasonably be expected to be asserted successfully against any Pension Plan.

(e) All members of the ERISA Group have made all contributions to or under each Pension Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Pension Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Pension Plan or Multiemployer Plan, save in each case where any failure to comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(f) Except as would not reasonably be expected to have a Material Adverse Effect, (i) no Pension Plan which is subject to Section 412 of the Code or Section 302 of ERISA has applied for or received an extension of any amortization period, within the meaning of Section 412 of the Code or Section 302 or 304 of ERISA; (ii) no member of the ERISA Group has ceased operations at a facility so as to become subject to the provisions of Section 4062(e) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA or ceased making contributions to any Pension Plan subject to Section 4064(a) of ERISA to which it made contributions; (iii) no member of the ERISA Group has incurred or reasonably expects to incur any liability to the PBGC save for any liability for premiums in the ordinary course; (iv) no lien imposed under the Code or ERISA on the assets of any member of the ERISA Group exists or is likely to arise on account of any Pension Plan; and (v) no member of the ERISA Group has any liability under Section 4069 or 4212(c) of ERISA.

(g) Each Foreign Pension Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, except as would not reasonably be expected to result in a Material Adverse Effect. Except as would not reasonably be expected to result in a Material Adverse Effect, (i) all contributions required to be made with respect to a Foreign Pension Plan have been timely made, and (ii) neither the Borrower nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan. Except as would not reasonably be expected to result in a Material Adverse Effect, the present value of the accrued benefits liabilities (whether or not vested) under each Foreign Pension Plan, determined as of the end of the Borrower's most recently ended fiscal year, did not exceed the current value of the assets of such Foreign Pension Plan allocable to such benefit liabilities.

5.10 Taxes.

(a) Each Borrower Party has timely filed with the appropriate taxing authority all federal and material state, county and municipal income tax returns, and all other material tax and informational returns which are required to be filed by or with respect to the income, Properties or operations of the relevant Borrower Party. Each Borrower Party has paid all material taxes due pursuant to such returns or otherwise payable by the relevant Borrower Party, except such taxes, if any, as are being contested in good faith and by proper proceedings and as to which adequate reserves have been provided or the failure to pay which could not reasonably be expected to have a Material Adverse Effect. There is no action, suit, proceeding, investigation, audit, or claim now pending or, to the knowledge of the Borrower, threatened by any authority regarding any material taxes relating to any Borrower Party. The Base Case Projections accurately reflect all material taxes that, under present Law, will be due and payable

by the Borrower Parties assuming that such Borrower Parties have the income and expenses reflected in the Base Case Projections.

(b) No material liability for any tax will be incurred by any Borrower Party as a result of the execution, delivery or performance of this Credit Agreement or any other Transaction Document or the consummation of the transactions contemplated hereby or thereby.

5.11 Investment Company Act. None of the Borrower Parties is an "investment company," or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company," as such terms are defined in the Investment Company Act of 1940, as amended. Neither the making of any Disbursement, nor the application of the proceeds or repayment thereof by the Borrower or any other Borrower Party, nor the consummation of the other transactions contemplated hereby will violate any provisions of such act or any rule, regulation or order of the U.S. Securities and Exchange Commission promulgated thereunder or pursuant thereto.

5.12 Regulation.

(a) The Borrower Parties, their respective Affiliates, and any Affiliate that is a holding company as such term is defined in the Public Utility Holding Company Act of 2005 and the rules and regulations promulgated thereunder (as amended, "PUHCA"), are exempt in accordance with 18 CFR § 366.3 from the accounting, record-retention and reporting requirements of PUHCA or, to the extent an Affiliate of the Borrower Party is not exempt, the requirements of PUHCA could not reasonably be expected to result in a Material Adverse Effect.

(b) Other than the Project Owner, no Borrower Party is or will be subject to, or is or will not be exempt from, regulation as a "public utility" under the Federal Power Act (the "Federal Power Act") as such term is defined therein.

(c) None of the Borrowing Parties or Affiliates thereof, is subject to any state laws or state regulations respecting rates or the financial or organizational regulation of utilities, other than (i) with respect to those that are QFs, such state regulations contemplated by 18 C.F.R. Section 292.602(c)(2), (ii) "lightened regulation" by the New York State Public Service Commission (the "NYPSC") of the type described in the NYPSC's order issued on September 23, 2004 in Case 04-E-0884, and (iii) with respect to Affiliates of the Borrower Parties that are Texas retail electric providers, regulations issued by the Public Utility Commission of Texas ("PUCT") and (iv) such state laws and state regulations which, if not satisfied, would not be expected to result in a Material Adverse Effect. No approval is required to be obtained in connection with this transaction from the FERC, or any other state or federal Governmental Authority.

(d) Prior to placing test power onto the grid, the Project Owner will obtain an order from FERC accepting for filing pursuant to Section 205 of the Federal Power Act and the rules and regulations promulgated thereunder a market based rate schedule for sale at wholesale of electric energy, capacity and ancillary services to be offered by the Project Owner and that are regulated under the Federal Power Act and authorizing the Project Owner to sell at wholesale electric energy, capacity and ancillary services at market based rates, and granting to the Project

Owner all of the waivers and blanket authorizations customarily granted to wholesale power sellers with market based rate authority (the "Market Rate Authorization"). The information to be submitted in connection with the application for the Market Rate Authorization will be accurate and complete. The Project Owner will comply with all requirements imposed by FERC as a holder of a Market Rate Authorization, including filing of electric quarterly reports and tariff amendments.

(e) Prior to placing test power onto the grid, the Project Owner will be an exempt wholesale generator ("EWG") pursuant to PUHCA. The Project Owner will file with FERC a notice of self-certification as an EWG. Any information submitted in connection with the notice of self-certification will be accurate and complete. The Project Owner shall comply with any and all requirements necessary to maintain EWG status.

(f) The Project Owner will obtain authorization from FERC to issue securities and assume liabilities under Section 204 of the Federal Power Act and Part 34 of FERC's regulations prior to placing test power onto the grid.

(g) The (i) Project Owner, as owner of the Project, (ii) O&M Operator, as operator of the Project and (iii) Energy Marketer, as seller of power, shall register with the North American Electric Reliability Corporation ("NERC"), to the extent required by law, in connection with such ownership of the Project, operation of the Project and/or sale of power generated by the Project, and neither the Project Owner nor to its knowledge the O&M Operator or the Energy Marketer is in receipt of any notice of violation of, and the Project is not the subject of any pending proceeding relating to a violation of, any reliability requirement promulgated by NERC, except as could not reasonably be expected to result in a Material Adverse Effect.

(h) There is no action, suit, proceeding, pending notice of investigation or alleged violation or investigation at law or in equity or by or before any court, arbitrator or governmental agency or authority pursuant to any applicable Law which may result in: (i) denial of (A) the Market Rate Authorization or (B) the status of the Project Owner as an EWG (except, in each case, applications associated with acquiring such regulatory approvals as contemplated in this Credit Agreement which the Borrower expects to receive in the ordinary course); or (ii) the assessment of any criminal or civil penalties against any Borrower Party; and to the Borrower's knowledge, no such action, suit, proceeding or investigation is threatened.

(i) The Project is not subject to, or is exempt from, the Power Plant & Industrial Fuel Use Act, 42 USC Section 8301, *et seq*.

5.13 Title; Security Documents.

(a) The applicable Borrower Party will, upon payment of the amounts payable by it under the BOP Contract, the Equipment Purchase Agreement and the Equipment Services Agreement, own and have good and marketable title to the Project and, upon payment of the amounts payable by it under the Site Agreements and due registration of the relevant public deed in respect of the Site, own and have a good and marketable leasehold interest in the Site, in each case free and clear of all Liens other than (A) Permitted Priority Liens and (B) other Permitted

Liens to the extent junior to the Liens granted for the benefit of the Collateral Agent (on behalf of the Secured Parties) pursuant to the Security Documents.

(b) Each Borrower Party has good and marketable title to all of the Property purported to be owned by it, free and clear of all Liens, other than (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Collateral Agent (on behalf of the Secured Parties) pursuant to the Security Documents and holds such title and all of such Property in its own name and not in the name of any nominee or other Person. The Project Owner is lawfully possessed of a valid and subsisting leasehold estate in and to all Property which it purports to lease, free and clear of all Liens, other than (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Collateral Agent (on behalf of the Secured Parties) pursuant to the Security Documents. The Project Owner holds such leasehold estates in its own name and not in the name of any

nominee or other Person. No Borrower Party has created nor is contractually bound to create any Lien on or with respect to any of its assets, Properties, rights or revenues, except for (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Collateral Agent (on behalf of the Secured Parties) pursuant to the Security Documents, and, except (x) for this Credit Agreement, in the case of the Borrower, and (y) for the relevant Guaranty, in the case of the Project Owner and the Procurement Sub and (z) the Collateral Documents, no Borrower Party is restricted by contract, law or otherwise from creating Liens on any of its Properties.

(c) Except as set forth on Schedule 5.12(a), all Property owned, leased or otherwise used by any Borrower Party is located in the State of California.

(d) The provisions of the Security Documents are effective to create, in favor of the Collateral Agent, for the benefit of the Secured Parties, legal, valid and enforceable Liens on or in all of the Collateral intended to be covered thereby, and all necessary recordings and filings have been made in all necessary public offices and all other necessary and appropriate action has been taken so that the Liens created by each Security Document constitute perfected Liens on or in the Collateral intended to be covered thereby, prior and superior to all other Liens other than Permitted Priority Liens, and all necessary consents to the creation, effectiveness, priority and perfection of each such Lien have been obtained. No mortgage or financing statement or other instrument or recordation covering all or any part of the Collateral is on file in any recording office, except such as may have been filed in favor of the Secured Parties or in respect of (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Collateral Agent (on behalf of the Secured Parties) pursuant to the Security Documents.

5.14 Environmental Matters.

(a) Except as set forth in the materials listed on Schedule 5.14, copies of which have been made available to the Administrative Agent, each Borrower Party has complied and is now complying in all respects with (i) all Environmental Laws applicable to the Project or such Borrower Party and (ii) the requirements of any Permits issued under such Environmental Laws with respect to the Project, including Federal and State Clean Air Act and South Coast Air Quality Management District air quality permitting requirements applicable to the Project,

including but not limited to, as and if necessary, the United States Environmental Protection Agency's Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, except in each case for non-compliance that would not reasonably be expected either individually or in the aggregate to have a Material Adverse Effect.

(b) Except as set forth in the materials listed on Schedule 5.14, copies of which have been made available to the Administrative Agent, there are no facts, circumstances, conditions or occurrences regarding the Project that, to the knowledge of the Borrower, (i) form or could reasonably be anticipated to form the basis of an Environmental Claim against the Project, any Borrower Party, any Site Owner, any EPC Contractor or any Operator or any other Person occupying or conducting operations on or about the Site, (ii) could reasonably be anticipated to cause the Site to be subject to any restrictions on its ownership, occupancy, use or transferability under any Environmental Law or (iii) could reasonably be anticipated to require the filing or recording of any notice, registration, permit or disclosure document under any Environmental Law (other than filings or recordings described in Schedule 5.6 hereto), in each case which if adversely determined could reasonably be expected either individually or in the aggregate to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(c) Except as set forth in the materials listed on Schedule 5.14, copies of which have been made available to the Administrative Agent, there are no pending, or, to the knowledge of the Borrower, any past or threatened, Environmental Claims against (i) any Borrower Party or the Project or (ii) any Site Owner, any EPC Contractor or any Operator or any other Person occupying, using, or conducting operations on or about the Site, which could reasonably be expected either individually or in the aggregate to have a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(d) Except as set forth in the materials listed on Schedule 5.14, copies of which have been made available to the Administrative Agent, Hazardous Materials have not at any time been generated, used, treated, recycled, stored on, or transported to or from, or Released, deposited or disposed of on all or any portion of the Site by the Borrower Parties, the Affiliate Project Participants or, to the knowledge of the Borrower, any other Project Participant, other than in compliance at all times with all applicable Environmental Laws, except as would not reasonably be expected either individually or in the aggregate to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(e) Except as set forth in the materials listed on Schedule 5.14, copies of which have been made available to the Administrative Agent, to the knowledge of the Borrower, there are not now and never have been any underground storage tanks located on the Site, there is no asbestos contained in, forming part of, or contaminating any part of the Project, and no polychlorinated biphenyls (PCBs) are used, stored, located at or contaminate any part of the Project.

(f) Except as set forth in the materials listed on Schedule 5.14, copies of which have been made available to the Administrative Agent, the Borrower does not have knowledge of any groundwater contamination or pollution at, on, under, or migrating from the Site.

(g) The Borrower has delivered or otherwise made available to the Administrative Agent copies of each "Phase 1 Environmental Site Assessment" delivered pursuant to Section 4.1(p) and the RCRA Facility Investigation Work Plan. As of the Closing Date, the Borrower has no knowledge of any other environmental studies that contain any environmental information material to the Project and/or the Site that are not addressed in substance in the documents referenced in the immediately preceding sentence.

(h) The Borrower is in material compliance with all normative requirements of the Equator Principles applicable to it and the Project as and to the extent specifically required in writing by any Lender.

5.15 Subsidiaries. Except to the extent constituting Permitted Investments, (a) the Borrower does not beneficially own any Equity Interests or other ownership interest of any other Person other than the Pledged Equity Interests of the Project Owner and (prior to the Merger) of the Procurement Sub; (b) the

Borrower has no Subsidiaries other than the Project Owner and (prior to the Merger) the Procurement Sub; and (c) neither the Project Owner nor the Procurement Sub beneficially owns any Equity Interests of any Person or has any Subsidiaries.

5.16 Intellectual Property. The Borrower Parties (prior to the Merger) together have, and the Project Owner (on and after the Merger) alone has, the right to use all patents, trademarks, permits, service marks, trade names, copyrights, franchises, formulas, licenses and other intellectual property rights of whatsoever nature and has obtained assignment of all licenses and other intellectual property rights of whatsoever nature, in each case as necessary for the ownership and operation of the Project as contemplated by the Transaction Documents, without any conflict with the rights of others. The Borrower Parties do not own any patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses or other intellectual property rights of whatsoever nature. No product, process, method, substance, part or other material sold or employed or presently contemplated to be sold or employed by any Borrower Party or the Affiliated Project Parties in connection with the ownership and operation of the Project as contemplated by the Transaction Documents infringes or will infringe any patent, trademark, permit, service mark, trade name, copyright, franchise, formula, license or other intellectual property right, except for any such infringement that could not reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

5.17 No Default. No Default or Event of Default has occurred and is continuing.

5.18 Compliance with Laws. None of the Borrower Parties or the Affiliated Project Parties is in violation of any Law, Permit, order, writ, injunction or decree or its Charter

Documents, except for any violation of any Law, Permit, order, writ, injunction or decree that could not reasonably be expected to have a Material Adverse Effect.

5.19 Disclosure.

(a) All documents, reports or other written information pertaining to any Borrower Party, the Affiliated Project Parties or the Project that have been furnished to any Financing Party by or on behalf of any such party (including (i) any application to any Lender for the extensions of credit provided for in the Financing Documents, (ii) in connection with the preparation, negotiation and/or execution of the Financing Documents, including the appendices, exhibits and schedules attached thereto, (iii) all other information relating to any Borrower Party or the Project provided by any such party to any Financing Party and (iv) any such documents, reports or other written information provided by the Pledgor, any Sponsor or any Affiliate thereof, but excluding the Base Case Projections, the Construction Budget and other forecasts and projections), taken as a whole, are true and correct in all material respects and do not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained herein or therein not materially misleading. There is no fact, event or circumstance known to the Borrower that has not been disclosed to the Administrative Agent in writing, the existence of which could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(b) The Construction Budget specifies in all material respects all costs and expenses incurred as of the date thereof, and the Borrower's best estimate of all costs and expenses anticipated by the Borrower to be incurred after the date thereof and prior to the Date Certain, in each case in connection with the acquisition, importation, installation, construction, financing and implementation of the Project in the manner contemplated by the Transaction Documents. The Construction Budget and the Base Case Projections (i) are, as of the Closing Date, based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, (ii) are, as of the Closing Date, consistent with the provisions of the Transaction Documents in all material respects, (iii) have been prepared in good faith and with due care and (iv) fairly represent the Borrower's reasonable expectations as to the matters covered thereby as of the date thereof. All projections and budgets to be furnished to the Lenders by or on behalf of the Borrower after the Closing Date (A) will be based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, (B) will be consistent with the provisions of the Transaction Documents in all material respects, (C) will be prepared in good faith and with due care and (D) will fairly represent the Borrower's reasonable expectations as to the matters covered thereby as of the respective dates thereof.

5.20 Utilities, etc. All utility services, means of transportation, facilities and other materials necessary for the acquisition, importation, installation, construction, operation and maintenance of the Project (including gas, electrical, potable and raw water supply, storm, telephone and sewage services and facilities, as necessary) are or will be available to the Project (in the case of utility services, at the boundaries of the Site) when necessary for construction, operations testing and start-up of the Project and arrangements have been or will, when necessary, be made on commercially reasonable terms for such services, means of transportation,

facilities and other materials, in each case on terms consistent with those reflected in the Construction Budget and the Base Case Projections.

5.21 Transactions with Affiliates. As of the date hereof, other than the Affiliated Project Documents set forth on Schedule 5.7, none of the Borrower Parties has engaged or agreed to engage in any transactions (including any transactions relating to the buying or selling of any Properties or any products of the Project or involving the receipt of money as payment for goods or services) with any Affiliate of such Borrower Party.

5.22 Project Completion Date; Project Costs.

(a) As of the date hereof, the Borrower estimates, in good faith, that the Project Completion Date will occur no later than the Date Certain and that the aggregate proceeds of the Construction Loans will be sufficient to achieve the Project Completion Date.

(b) As of the date hereof, except as set forth on Schedule 5.22, no Change Order has been proposed and no Change Order is being contemplated for proposal in the future by the Borrower Parties, or, to the knowledge of the Borrower, by any EPC Contractor.

5.23 Single-Purpose Entity. None of the Borrower Parties has engaged in any business other than acquisition, importation, installation, construction, operation or maintenance of the Project and other activities incidental thereto. The Pledgor has not engaged in any business other than directly owning the Pledged Ownership Interests in the Borrower which constitute 100.00% of the Equity Interests of the Borrower. Each Borrower Party has established offices in the State of California, and does not have a principal place of business or chief executive office at any other location.

5.24 Ranking. The Secured Obligations of the Borrower constitute unconditional and unsubordinated Indebtedness of the Borrower Parties and rank at least *pari passu* in priority of payment with all other present and future unsubordinated Indebtedness of the Borrower Parties (other than obligations preferred by statute or by operation of Law).

5.25 Anti-Terrorism Laws. No Borrower Party nor any Affiliate of any such Borrower Party is in violation of any Anti-Terrorism Laws. The use of the proceeds of the Loans by the Borrower will not violate any Anti-Terrorism Laws.

5.26 Collateral Not in Flood Zone. None of the Collateral located on the Site is located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards or in which flood insurance is required and has been made available under the National Flood Insurance Act of 1968, unless the Borrower has provided the Administrative Agent with proof of appropriate flood insurance with respect thereto.

5.27 Accounts. None of the Borrower Parties has opened or holds any bank account other than the Accounts.

5.28 Taking; Event of Loss. No Taking or Event of Loss has occurred.

ARTICLE VI

COMPLIANCE COVENANTS

The Borrower covenants and agrees with each of the Lenders that, so long as any Commitment remains in effect, any Specified Letter of Credit remains outstanding, any Loan or other amount is owing to any Lender or the Administrative Agent hereunder, and until payment in full of all amounts payable by any Borrower Party under the Financing Documents to which they are a party:

6.1 Annual and Quarterly Information Covenants; Financial Statements. The Borrower shall, and shall cause each other Borrower Party to, deliver or cause to be delivered to the Administrative Agent at the times and covering the periods set forth below:

(a) Annual Financial Statements. As soon as available and in any event within 120 days after the end of each fiscal year of the Borrower Parties, a copy of the complete audited, and consolidated statements of income, retained earnings and cash flow of the Borrower Parties, and the related audited, and consolidated balance sheet of the Borrower Parties as at the end of such year and any related audit letter, in each case with footnotes, if any, and setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, and accompanied by an unqualified opinion thereon (but subject to any explanatory provisions) of KPMG, or such other firm of independent certified public accountants of recognized national standing as may be acceptable to the Requisite Financing Parties, which opinion shall state that said financial statements fairly present the financial condition and results of operations of the relevant Person as at the end of, and for, such fiscal year in accordance with U.S. GAAP, and a certificate of such accountants stating that, in making the examination necessary for their opinion, they obtained no knowledge, except as specifically stated, of any Default or Event of Default.

(b) Quarterly Financial Statements. As soon as available and in any event within ninety days after the end of each quarterly fiscal period of the Borrower Parties, a copy of the complete unaudited, and consolidated statements of income, retained earnings and cash flow of the Borrower Parties, and the related unaudited, and consolidated balance sheet of the Borrower Parties as at the end of such period, setting forth in each case in comparative form the corresponding figures for the corresponding period in the preceding fiscal year, if any, accompanied by a certificate of an Authorized Officer of the relevant Person, which certificate shall state that said financial statements fairly present the financial condition and results of operations of the relevant Person, in accordance with U.S. GAAP, consistently applied, as at the end of, and for, such periods (subject to normal year-end audit adjustments).

(c) Officer's Certificate. At the time it furnishes each set of financial statements pursuant to Section 6.1(a) or 6.1(b) above, an Officer's Certificate from each Borrower Party to the effect that no Default or Event of Default has occurred and is continuing (or, if any Default or Event of Default has occurred and is continuing,

describing the same in reasonable detail and describing what action the Borrower has taken and proposes to take with respect thereto).

(d) DSCR Certificates. Within fifteen Business Days after each Semi-Annual Date, an Officer's Certificate from the Borrower setting forth the calculation of the Historical DSCR for the DSCR Calculation Period ending on such Semi-Annual Date. Each such Officer's Certificate shall set forth, in reasonable detail, the inputs or assumptions, as applicable, upon which the relevant calculations were based and in the form set forth on Exhibit 16 hereto (each, a "DSCR Certificate"). The Historical DSCR set forth in each DSCR Certificate shall become effective for purposes of the Financing Documents on the fifth Business Day following delivery of the relevant Officer's Certificate to the Administrative Agent unless the Administrative Agent notifies the Borrower that the methodology or any input or assumption employed by the Borrower in making such calculation is not satisfactory to the Administrative Agent in any respect.

(e) Operating Reports. As soon as available and in any event within thirty days after the end of each fiscal quarter following the First Unit Operation Date, an operating report in the form set forth on Exhibit 17 hereto with respect to the Project for such quarterly period and for the portion of the Operating Year then ended, which report shall (i) correspond to the items and classifications and periods set forth in the applicable Operating Budget, (ii) show all Project Revenues, all O&M Expenses, the Operating Performance of the Project and a reasonably detailed accounting of the use of any amounts transferred from the Operating Account, (iii) be certified as complete and correct by an Authorized Officer of the Borrower, which certification shall also state that the O&M Expenses reflected therein complied with the requirements contained in Section 7.25 hereof, or, if any such certifications cannot be given, shall state in detail any necessary qualifications to such certifications and (iv) be in substantially the form of the *pro forma* Operating Report delivered in accordance with Section 4.1(s).

(f) Environmental Report. Within 45 days after the end of each year, a report summarizing the environmental performance of the Project during such year, which report shall include narrative summaries in reasonable detail of (i) the results of any environmental monitoring or sampling

activity, (ii) accidents having an impact on the environment or resulting in the loss of life, (iii) environmental deficiencies identified by any Governmental Authority, and (iv) any non-compliance with any Environmental Law and any remedial actions taken with respect thereto.

(g) Insurance Report and Certificates. Within 45 days after the end of each year, a report of an independent broker, signed by an Authorized Officer of such independent broker, stating that in the opinion of such broker, the insurance then carried or to be renewed complies with the terms of the Collateral Agreement. The Borrower shall deliver to the Administrative Agent, within ten Business Days after each annual policy renewal date for each policy, (1) certificates of insurance or binders, in form and substance reasonably satisfactory to the Administrative Agent in consultation with the Insurance Consultant, evidencing all of the insurance required by the Collateral Agreement. Such certificates of insurance/binders shall be executed by an Authorized Officer of each insurer where it is not practical for such insurer to execute the certificate

itself. Such certificates of insurance/binders shall identify underwriters, the type of insurance, the insurance limits and the policy term and shall specifically list the special provisions enumerated for such insurance required by the Collateral Agreement. Upon request, the Borrower will promptly furnish the Administrative Agent with copies of all insurance policies (except in the case of corporate insurance programs where detailed insurance summaries shall be acceptable), binders and cover notes or other evidence of such insurance relating to the insurance required to be maintained by the Borrower Parties. The schedule of insurance shall include the name of the insurance company, policy number, type of insurance, major limits of liability and expiration date of the insurance policies.

6.2 Monthly Construction Reporting. The Borrower shall deliver or cause to be delivered to the Administrative Agent, promptly upon receipt, but in any event not later than five Business Days after receipt thereof, each IE Construction Report, Monthly Progress Report (as defined in the BOP Contract), each Monthly Report (as defined in the Construction Management Agreement), each Monthly Progress Report (as defined in the Equipment Services Agreement) and each Monthly Progress Report (as defined in the Equipment Purchase Agreement).

6.3 Further Distribution of Operational Notices. The Borrower shall promptly, but in any event not later than five Business Days after delivery or receipt of any of the following communications, deliver or cause to be delivered to the Administrative Agent:

(a) Governmental Authorities. A copy of each material notice, demand or other communication given to a Governmental Authority by or on behalf of any Borrower Party or received by any Borrower Party from a Governmental Authority or from any Person on behalf of a Governmental Authority.

(b) Material Project Participants. A copy of each material notice, demand or other communication given or received by or on behalf of any Borrower Party to or from a Material Project Participant pursuant to or relating to any of the Material Project Documents (including all requests for assignments, amendments or waivers thereto).

(c) Change Orders; Amendments to Construction Budget. A copy of any Change Order entered into in accordance Section 7.15 or any revision to the Construction Budget as provided in Section 7.28.

(d) Management Letters; Accountant Communications. A copy of any “management letter” or other similar communication received by any Borrower Party from the such Borrower Party’s accountants relating to such Borrower Party’s financial, accounting and other systems, management or accounts.

(e) Environmental Studies. A copy of each environmental study regarding the Project or the Site that (i) is or has been prepared by or under the direction of Affiliates of the Sponsor (including the Remediation Work Plan and all updates thereto) or (ii) is or has been prepared by or under the direction of Persons other than Affiliates of the Sponsor and is in the possession of the Borrower (it being understood that the Borrower

shall use commercially reasonable efforts to obtain possession of such environmental studies prepared by or under the direction of Persons other than Affiliates of the Sponsor upon attaining knowledge thereof).

6.4 Notice of Certain Events and Circumstances. The Borrower shall promptly, but in any event not later than five Business Days after obtaining knowledge of any of the following events or circumstances, deliver or cause to be delivered to the Administrative Agent:

(a) Material Permits. Copies of any Material Permits issued after the date hereof that are held in the name of any Borrower Party or Affiliate Project Participant and any Material Permits held in the name of any other Material Project Participant received by any Borrower Party or Affiliated Project Participant (it being understood that the Borrower shall use commercially reasonable efforts to obtain possession of such Material Permits upon attaining knowledge thereof) and notice of any pending or threatened application or proceeding by or before any Governmental Authority for the purpose of reversing, revoking, rescinding, terminating, withdrawing, suspending, modifying or withholding any Material Permit.

(b) Dispositions. Notice of any Disposition in excess of $500,000 for any one Disposition or $1,500,000 in the aggregate in any calendar year.

(c) Takings, Loss Events, Etc. Notice of any (i) Taking or (ii) Event of Loss or other casualty, damage or loss to any Property of any Borrower Party, whether or not the relevant Property is insured, through fire, theft, other hazard or casualty, that could reasonably be expected to result in Loss Proceeds (or if uninsured would have reasonably been expected to result in Loss Proceeds if insured) in excess of $500,000 for any one casualty or loss or $1,500,000 in the aggregate in any calendar year.

(d) Disputes. Notice of any litigation, investigation, arbitration or other contentious proceeding or dispute that is pending or threatened against any Borrower Party, the Pledgor or the Project in which the amount involved could reasonably be expected to exceed $500,000 or in which injunctive, declaratory or similar relief is requested or any litigation, investigation, arbitration or other contentious proceeding affecting any Material Project Participant which if adversely determined could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(e) Environmental Matters.

(i) Notice of (A) any fact, circumstance, condition, occurrence or Release at, on, under or from the Project or the Site that results or could reasonably be expected to result in noncompliance with any Environmental Law applicable to the Project or the Site, (B) any Release at, on, under or from the Project or the Site that has resulted or could reasonably be expected to result in personal injury or material property damage or an Environmental Claim or that

otherwise has or could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party or (C) any pending Environmental Claim or any Environmental Claim threatened in writing against or affecting any Borrower Party or any other Persons occupying or conducting operations at the Project or the Site that could, if adversely determined, be reasonably expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party;

(ii) copies of all material communications with any Governmental Authority relating to any Environmental Law or any Environmental Claim promptly after the giving or receiving of any such communications (including any such communications in respect of each EPA Letter); and

(iii) such other information concerning any Environmental Claim relating to the Project or the Site as may be reasonably requested by the Administrative Agent.

(f) Force Majeure. Notice of any event constituting *force majeure* under any of the Project Documents or any claim by any Project Participant alleging that a *force majeure* event thereunder has occurred.

(g) Delay. Notice of any delay for any reason in the construction of the Project beyond the Major Milestone Dates.

(h) Cessation; Suspension. Any actual, proposed or threatened (in writing) cessation or suspension of the Work for any reason by any EPC Contractor for a period in excess of three consecutive Business Days or any unscheduled shutdown or reduction in operation of the Project, or any substantial labor dispute which could lead to such a shutdown or reduction.

(i) Material Adverse Effect. Any event, circumstance, development or condition which could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(j) Bankruptcy Events. The occurrence of any Bankruptcy Event suffered by the Pledgor, the Borrower, the Project Owner, the Procurement Sub or any other Material Project Participant.

(k) Defaults. Without limiting the foregoing, the occurrence of any Default or Event of Default.

(l) ERISA. To the extent that any of the following events, individually or in the aggregate, would reasonably be expected to result in a liability to a Borrower Party of greater than $1,500,000: (i) the occurrence of any ERISA Event and the filing of any notice with the PBGC or the IRS pertaining to such ERISA Event or the receipt of any notice by any member of the ERISA Group from the PBGC or any other governmental agency with respect thereto, but only to the extent that such ERISA Event, individually or in the aggregate, would reasonably be expected to result in a liability to a Borrower Party of greater than $1,500,000; (ii) a material increase in Unfunded Pension Liabilities (taking into account only Pension Plans with positive Unfunded Pension Liabilities) since the date the representations hereunder are given, or from any prior notice, as applicable; (iii) the existence of potential withdrawal liability under Section 4201 of ERISA, if any member of the ERISA Group were to withdraw completely from any and all Multiemployer Plans; (iv) the adoption of, or the commencement of contributions to, any Pension Plan subject to Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA by any member of the ERISA Group; or (v) the adoption of any amendment to a Pension Plan subject to Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA.

Each notice delivered pursuant to this Section 6.4 shall be accompanied by a statement signed by an Authorized Officer of the Borrower setting forth a description in reasonable detail of the occurrence referred to therein and stating what action the Borrower proposes to take with respect thereto.

6.5 Further Information. From time-to-time, the Borrower shall provide the Administrative Agent with such other information regarding the financial condition, operations, business or prospects of any Borrower Party or the Project or, to the extent obtainable by the Borrower upon the exercise of its commercially reasonable efforts, any Project Participant, as may be reasonably requested by the Administrative Agent.

6.6 Operating Budget.

(a) On or prior to the thirtieth day prior to the First Unit Operation Date, the Borrower shall deliver to the Administrative Agent a proposed Operating Budget in substantially the form of the *pro forma* Operating Budget delivered in accordance with Section 4.1(s) for the period commencing on such First Unit Operation Date and ending on the next succeeding December 31 (or, if such First Unit Operation Date is projected to occur on or after September 30, on the second succeeding December 31).

(b) On or prior to the thirtieth day prior to the beginning of each Operating Year, the Borrower shall deliver to the Administrative Agent a proposed Operating Budget in substantially the form of the Operating Budget delivered in accordance with Section 6.6(a) for the period commencing on January 1 of such Operating Year and ending on the next succeeding December 31.

(c) Each proposed Operating Budget shall set forth the Borrower's reasonable projection of the anticipated amount of O&M Expenses for each month covered thereby. Such O&M Expenses shall be itemized in the Operating Budget in accordance with U.S. GAAP using

substantively the same line items as set forth in the *pro forma* Operating Budget delivered in accordance with Section 6.6(a). Any O&M Expenses that cannot be (or should not be in accordance with U.S. GAAP) itemized in accordance with the immediately preceding sentence shall be set forth as separate line items, shall be clearly described and shall be denoted as extraordinary O&M Expenses ("Extraordinary O&M Expenses"). The aggregate annual, aggregate monthly, and monthly line-item amounts of O&M Expenses set forth in the proposed Operating Budget shall be compared against each of the following (expressed as a percentage thereof): (i) the amount of such O&M Expenses set forth in the Base Case Model; (ii) the amount of such O&M Expenses set forth in the then-current Operating Budget (unless the proposed Operating Budget is delivered in accordance with Section 6.6(a)); and (iii) the amount of such O&M Expenses actually incurred by the Borrower in the then-current Operating Year, as set forth in the latest Operating Report delivered in accordance with Section 6.1(e) (unless the proposed Operating Budget is delivered in accordance with Section 6.6(a)). In addition, each Operating Budget shall attach, in narrative form, a description in reasonable detail of: (A) the maintenance and overhaul schedule (including any major maintenance or overhauls which are projected for the relevant Operating Year); (B) anticipated staffing plans; (C) mobilization schedules; (D) capital expenditure requirements; (E) equipment acquisitions; (F) spare parts and consumable inventories; (G) administrative activities and (H) any other material underlying assumptions in connection with the proposed Operating Budget.

(d) If no OB Approval Threshold is exceeded or triggered in respect of a proposed Operating Budget, then no consent of the Administrative Agent or any other Person shall be required and such Operating Budget shall be deemed adopted as of the first day of the relevant Operating Year (or, in the case of the proposed Operating Budget referred to in Section 6.6(a), as of the First Unit Operation Date), unless the Administrative Agent notifies the Borrower in writing prior to such day that any OB Approval Threshold has been exceeded or triggered.

(e) If any OB Approval Threshold is exceeded or triggered in respect of a proposed Operating Budget, then such proposed Operating Budget shall be subject to the prior written approval of the Administrative Agent (acting, if applicable, at the direction of the Requisite Financing Parties). If such prior written approval is not obtained prior to the first day of the Operating Year to which such proposed Operating Budget relates (or, in the case of the proposed Operating Budget referred to in Section 6.6(a), prior to the First Unit Operation Date), then the Borrower shall cause the Project Owner to operate the Project in accordance with an interim Operating Budget that does not exceed or trigger any OB Approval Threshold and is delivered to the Administrative Agent prior to the first day of such Operating Year, the First Unit Operation Date, until such time as a final Operating Budget is adopted in accordance with Section 6.6(c) or this Section 6.6(e).

(f) The Borrower may at any time (or, in the case of Section 7.25, shall) propose to amend the Operating Budget for the remainder of the then current Operating Year by not less than thirty days prior written notice to the Administrative Agent. Sections 6.6(c), 6.6(d) and 6.6(e) shall apply *mutatis mutandis* to the form, scope, substance and approval of any proposed amended Operating Budget.

6.7 Inspection.

(a) The Borrower shall permit, shall cause each Borrower Party and the Affiliated Project Parties to permit, and shall use commercially reasonable efforts to cause the EPC Contractors to permit, in accordance with the terms of the applicable Transaction Documents, at the expense of the Borrower, representatives of the Administrative Agent, the Independent Engineer and during the continuance of an Event of Default, the Lenders, with reasonable advance notice, during normal business hours and at such intervals as such Person shall reasonably request, to visit and inspect the Project and to witness and verify the Completion Tests, to examine, copy and make extracts from its (and their) books and records relating to the Project, to inspect its Properties, and to discuss its (and their) business and affairs related to the Project with its (and their) officers and engineers, all to the extent reasonably requested by the Administrative Agent, the Independent Engineer or, during the continuance of an Event of Default, the Lenders (as the case may be). The Borrower will, and will cause each other Borrower Party to, authorize its auditors (whose fees and expenses shall be for the account of the Borrower) to communicate directly with the officers and designated representatives of the Administrative Agent and, if reasonably necessary, the Independent Engineer, in each case with reasonable cause at any reasonable time and upon prior written notice to the Borrower, regarding its accounts and operations; provided, that any written correspondence shall be made with a concurrent copy delivered to the Borrower Parties; and provided, further, that only two communications shall be made outside the presence of the Borrower in a given fiscal year (other than such communications made during the continuance of a Default or Event of Default).

(b) The Borrower shall permit, and shall cause each other Borrower Party to permit, the Administrative Agent, the Independent Engineer and, to the extent reasonably necessary, any other Independent Consultant to review (i) all Plans and Specifications, (ii) any quality control data and performance test data, and (iii) any other data relating to the Project or to the progress of construction as may be reasonably requested by the Administrative Agent, the Independent Engineer or such other Independent Consultant. Further, the Borrower shall permit, and shall cause each other Borrower Party to permit, the Administrative Agent, the Independent Engineer and, to the extent reasonably necessary, any other Independent Consultant to monitor, witness and review the Work.

(c) The Borrower shall give timely notice of and permit, and shall cause each other Borrower Party, and use commercially reasonable efforts to cause the EPC Contractors, to give timely notice of and permit, the Administrative Agent, the Independent Engineer, and, to the extent reasonably necessary, any other Independent Consultant to attend, (i) all Project construction progress review meetings held by any such Person or its agents or representatives and (ii) any and all Completion Tests or other performance tests of the Project or any component thereof (whether any such test is to be conducted on or off the Site).

ARTICLE VII

RESTRICTIVE COVENANTS

The Borrower covenants and agrees that, so long as any Commitment or any Loan or any other Secured Obligation is outstanding and until payment in full of all amounts payable

by the Borrower under the Financing Documents, the Borrower shall (or shall cause the relevant Borrower Party to) comply with the following covenants:

7.1 Maintenance of Existence; Conduct of Business. Each Borrower Party shall (a) preserve and maintain its legal existence as a limited liability company under the laws of Delaware, and all of its material licenses, rights, privileges and franchises necessary for the maintenance of its limited liability company existence, and comply, in all material respects, with its Charter Documents, (b) engage solely in the business of constructing, owning, operating and maintaining the Project and performing its obligations pursuant to the Transaction Documents to which it is a party or (c) not cancel, terminate, permit the cancellation or termination of, amend, modify or change any material terms or conditions of, or grant any material consent, waiver or approval under, or take or fail to take any other material action the result of which would impair the value of the interest or impair the rights of any Borrower Party under, any of its Charter Documents.

7.2 Compliance with Laws. Each Borrower Party shall conduct its business in compliance with all applicable requirements of Law, including all relevant Permits and Environmental Laws, except where any failure to comply could not individually or in the aggregate have a Material Adverse Effect, and except that the relevant Borrower Party may, at its expense, contest by appropriate proceedings conducted in good faith the validity or application of any such requirement of Law, so long as (a) none of the Secured Parties or the relevant Borrower Party would be subject to any criminal liability for failure to comply therewith, (b) all proceedings to enforce such requirement of Law against the Secured Parties, the relevant Borrower Party, the Project or any part thereof shall have been duly stayed and (c) such contest does not involve any risk of the sale, forfeiture or loss of any of the Collateral.

7.3 Accounting and Financial Management. Each Borrower Party shall (a) maintain adequate management information and cost control systems and (b) maintain a system of accounting in which full and correct entries shall be made of all financial transactions and the assets and business of the relevant Borrower Party in accordance with U.S. GAAP. In the event that any Borrower Party replaces its existing auditors for any reason, the relevant Borrower Party shall appoint and maintain as auditors another firm of independent public accountants, which firm shall be internationally recognized and approved by the Requisite Financing Parties.

7.4 Tax Elections, Payment of Taxes, etc.

(a) The Borrower shall not, and shall ensure that the Borrower Parties shall not, take any action or fail to take any action (including electing to be treated as a corporation for Federal income tax purposes) that would cause any Borrower Party to be subject to (i) any material taxes other than as set forth in the Base Case Model or (ii) any material obligations under any agreements or arrangements with respect to any taxes.

(b) Each Borrower Party shall duly pay and discharge before they become overdue (i) all material taxes, assessments and other governmental charges or levies imposed upon it or any of its Property, income or profits, (b) all material utility and other governmental charges incurred in connection with the ownership, operation, maintenance, use, occupancy and upkeep of its business and (c) all lawful claims and obligations that, if unpaid, could result in the

imposition of a Lien upon any of its Property; provided, that the relevant Borrower Party may contest in good faith any such tax, assessment, charge, levy, claim or obligation and, in such event, may permit the tax, assessment, charge, levy, claim or obligation to remain unpaid during any period, including any period during which an appeal is pending, when the relevant Borrower Party is in good faith contesting the same by proper proceedings, so long as (i) adequate reserves shall have been established with respect to any such tax, assessment, charge, levy, claim or obligation, accrued interest thereon and potential penalties or other costs relating thereto, or other adequate provision for payment thereof shall have been made, (ii) such contest does not involve any risk of the sale, forfeiture or loss of any of the Collateral and (iii) enforcement of the contested item shall be effectively stayed.

7.5 Borrower's Equity Interests. None of the Borrower Parties shall (a) permit or consent to the transfer (by assignment, sale or otherwise) of the Pledged Equity Interests (other than by way of the Merger in accordance with Section 7.33) or (b) issue any new Equity Interests.

7.6 Merger; Etc. The Borrower shall not merge into or consolidate with any other Person, or liquidate or dissolve itself (or suffer any liquidation or dissolution), or sell, lease, transfer, or otherwise dispose of all or substantially all of its assets. Neither the Project Owner nor the Procurement Sub shall merge or consolidate with any other Person, or liquidate or dissolve itself (or suffer any liquidation or dissolution), or sell, lease, transfer, or otherwise dispose of all or substantially all of its assets, except for the Merger in accordance with Section 7.33.

7.7 Investments; Subsidiaries. None of the Borrower Parties shall make or permit to remain outstanding any Investments except Permitted Investments. None of the Borrower Parties shall establish, create or acquire any Subsidiary (other than, with respect to the Borrower, the Procurement Sub (prior to the Merger) and the Project Owner).

7.8 Transactions with Affiliates. Except as provided in the Affiliate Project Documents or the Intercompany Notes and in the Accounts Agreement, none of the Borrower Parties shall directly or indirectly (a) make any payment to an Affiliate of any Borrower Party, (b) transfer, sell, lease, assign or otherwise dispose of any Property to an Affiliate of any Borrower Party, (c) purchase or acquire Property from an Affiliate of any Borrower Party or (d) enter into any other transaction or arrangement directly or indirectly with or for the benefit of an Affiliate of any Borrower Party.

7.9 Distributions; Restricted Payments.

(a) Except as set forth in Sections 7.9(b), 7.9(c) and 7.9(d), none of the Borrower Parties shall (i) make any distributions to Pledgor or to any other Person (other than, with respect to the Procurement Sub (prior to the Merger) and the Project Owner, to the Borrower) in respect of its Equity Interests or any other ownership interest in such Borrower Party, whether in cash or other Property, or redeem, purchase or otherwise acquire any interest of Pledgor in such Borrower Party, or permit Pledgor to withdraw any capital from such Borrower Party (all of the foregoing being referred to as "Distributions") or (ii) make any payment of any Affiliate O&M Fees to any Affiliate of

such Borrower Party (each such Distribution or payment of Affiliate O&M Fees, a "Restricted Payment").

(b) Unless a Default or Event of Default shall have occurred and be continuing, the Borrower may pay Affiliate O&M Fees when due and payable under the Affiliated Project Documents pursuant to and in accordance therewith and with the Accounts Agreement.

(c) Amounts constituting True-Up Drawings may be Distributed by the Borrower as directed by it in its sole discretion (the "True-Up Distributions"), notwithstanding any other provision of the Financing Documents to the contrary; provided, that (x) no Default or Event of Default shall have occurred and be continuing as of such Distribution, (y) the Debt-To-Equity Ratio (after giving *pro forma* effect to the relevant True-Up Distribution) will be no greater than 80:20 and (z) the Projected DSCR on the date of such True-Up Distribution is equal to or greater than 1.40x (calculated using the Base Case Model delivered in accordance with Section 4.2(m), updated in respect of any True-Up Distribution to occur more than thirty days after the date of the initial Borrowing to take account of any Operating Budget delivered in accordance with Section 6.6(a) and the projected Operating Performance of the Project in light of the results of any Completion Tests, and using an initial DSCR Calculation Period ending on the first Semi-Annual Date following the one-year anniversary of (x) the Projected Completion Date, in respect of any True Up Distribution to occur prior to the Term Conversion Date or (y) the Term Conversion Date, in respect of any True Up Distribution to occur on the Term Conversion Date).

(d) Amounts on deposit in the Distribution Reserve Account as of any Semi-Annual Date may be transferred to the Distribution Account by the Borrower in accordance with the Collateral Agreement and the Accounts Agreement, so long as each of the Distribution Conditions is satisfied on such Semi-Annual Date.

(e) Amounts on deposit in the Distribution Account may be distributed to Pledgor as Distributions and/or Restricted Payments or to any other Person for any other purpose at any time and from time-to-time.

7.10 Separateness. The Borrower Parties shall:

(a) maintain separate bank accounts and separate books of account from the Pledgor and any Affiliate (other than the Borrower Parties) of the Pledgor;

(b) cause the liabilities of the Borrower Parties to be readily distinguishable from the liabilities of the Pledgor and any Affiliate (other than the Borrower Parties) of the Pledgor;

(c) conduct their business solely in their own names in a manner not misleading to other Persons as to its identity, including by ensuring that oral and written communications (including letters, invoices, purchase orders, contracts, statements, and applications) shall be made in the name of such Borrower Party;

(d) comply with the provisions set forth on Appendix H;

(e) in the case of the Borrower, comply with the separateness covenants set forth in the Borrower Pledge Agreement; and

(f) cause the Pledgor and each permitted successor or assignee of the Pledgor to comply with the separateness covenants set forth in the Pledgor Pledge Agreement;

it being understood and agreed by the parties that *de minimis* breaches of this Section 7.10 that (i) are not, in the aggregate, misleading as to the identity of the relevant Borrower Party or the Pledgor (as applicable), (ii) do not call into question the corporate separateness of the Borrower Party or the Pledgor (as applicable) from their respective Affiliates and (iii) otherwise do not materially adversely undermine the purpose intended to be served by the provisions of this Section 7.10 shall not be deemed a breach of this Section 7.10.

7.11 Chief Place of Business; etc. The place of business or, if it has more than one place of business, the chief executive office of each Borrower Party and the place where the records of the Borrower Parties concerning the Collateral are kept is at 5790 Fleet Street, Suite 200, Carlsbad, CA 92008. The originals of all documents evidencing the Collateral and the only original books of account and records of the Borrower Parties relating thereto are, and will continue to be, kept at such place of business or chief executive office, or at such new location as the Borrower may establish in accordance with this Credit Agreement. Each Borrower Party's jurisdiction of organization and "location" for the purposes of Section 9-307 of the Uniform Commercial Code is Delaware. The exact legal name of the Borrower is as set forth on the signature pages hereto. The Borrower shall not (a) establish a new "location" for the purposes of Section 9-307 of the Uniform Commercial Code, (b) change its chief executive office or its jurisdiction of organization, (c) change its name or (d) do business under any name other than the name set forth on the signature pages hereto until (i) it shall have given to the Administrative Agent not less than thirty days' prior written notice of its intention so to do, clearly describing such new location, jurisdiction and/or name and providing such other information in connection therewith as the Administrative Agent may reasonably request and (ii) with respect to such new location, jurisdiction and/or name, it shall have taken all action, satisfactory to the Administrative Agent, to maintain the Liens in the Collateral granted for the benefit of one or more of the Secured Parties pursuant to the Security Documents at all times fully perfected and in full force and effect.

7.12 Permits. Each Borrower Party shall (i) from time-to-time obtain and maintain, and comply with, or cause the applicable Material Project Participant to maintain and comply with, all Material Permits to which such Borrower Party or Material Project Participant (as applicable) is a party as shall now or hereafter be required under applicable Laws, (ii) cause the Project to be duly constructed, completed, operated and maintained in all material respects in accordance with all applicable Laws, and (iii) intervene in and contest or cause the applicable Material Project Participant to intervene in and contest any proceeding which seeks or may reasonably be expected, to rescind, terminate, modify or suspend any Material Permit and, if reasonably requested by the Administrative Agent on the recommendation of the Independent Engineer, appeal or cause the applicable Material Project Participant to appeal any such rescission, termination, modification or suspension in the manner and to the fullest extent

permitted by applicable Law; provided, that the obligations of the Borrower Parties under this Section 7.12 shall not in any way limit or impair the rights or remedies of the Secured Parties under any Financing Document directly or indirectly arising as a result of any such rescission, termination, modification or suspension.

7.13 Security Documents.

(a) Each Borrower Party shall take all actions necessary or requested by the Administrative Agent or the Collateral Agent to maintain each Security Document in full force and effect and enforceable in accordance with its terms and to maintain and preserve the Liens created by the Security Documents and the priority thereof in accordance with the Collateral Agreement. In furtherance of the foregoing, (A) the Borrower shall ensure that all Property acquired by

any Borrower Party shall become subject to the Lien of the Security Documents having the priority contemplated thereby promptly following the acquisition thereof and (B) none of the Borrower Parties shall open or maintain any bank account (other than the Accounts).

(b) Each Borrower Party shall take all action necessary to cause each Additional Project Document to be or become subject to the Liens of the Security Documents (whether by amendment to any Security Document, execution of a new Security Document or otherwise) in favor of the Collateral Agent, and shall deliver or cause to be delivered to the Administrative Agent such legal opinions of counsel to such Borrower Party, certificates of such Borrower Party or other documents with respect to each such Additional Material Project Document as the Administrative Agent may reasonably request. The Borrower shall cause each Material Project Participant that is a party to an Additional Material Project Document to execute and deliver a Consent Agreement in the form attached to the relevant Security Agreement or otherwise reasonably satisfactory to the Administrative Agent and the related opinion with respect to such Additional Material Project Document specified therein.

7.14 Material Project Documents.

(a) Each Borrower Party shall perform and observe all of its covenants and agreements contained in any of the Material Project Documents to which it is or becomes a party.

(b) Each Borrower Party shall take any and all action as may be reasonably necessary to promptly enforce its rights and to promptly collect any and all sums due to it under the Material Project Documents to which it is or becomes a party and shall not waive any default under or breach of any Material Project Document to which it is or becomes a party or waive, fail to enforce, forgive or release any right, interest or entitlement, howsoever arising, under or in respect of any such Material Project Document (except to the extent the Administrative Agent, in consultation with the Independent Engineer, has determined in writing that the failure to comply with this Section 7.14(b) is in the best interest of the Project).

(c) Each Borrower Party shall take all necessary action to prevent the cancelation, suspension or termination of any Material Project Document to which it is or becomes a party in accordance with the terms thereof or otherwise and shall not permit a Material Project Participant to cancel, suspend or terminate any Material Project Document to

which it is or becomes a party or petition, request or take any other legal or administrative action that seeks, or may be expected, to cancel, suspend or terminate any Material Project Document to which it is or becomes a party or amend or modify all or any part thereof. Prior to, concurrently with, or promptly after the expiration of each SoCalGas Transportation Contract, the Borrower will cause the Project Owner to enter into a new SoCalGas Transportation Contract and will use commercially reasonable efforts to cause such SoCalGas Transportation Contract to provide for Firm Priority Service.

(d) Each Borrower Party shall not sell, assign (other than pursuant to the Security Documents) or otherwise dispose of (by operation of law or otherwise) any part of its interest in any Material Project Document to which it is or becomes a party.

(e) Each Borrower Party shall not agree to or permit the assignment of any rights or the delegation of any obligations of any Material Project Participant under any Material Project Document to which it is or becomes a party except (i) as permitted without the consent of the Borrower by the terms of such Material Project Document or (ii) with the prior written consent of the Administrative Agent (acting, in respect of the Tolling Agreement, upon the instructions of the Requisite Financing Parties).

(f) Except as provided in Section 7.15, no Borrower Party shall amend, supplement, modify or give any consent under any Material Project Document or exercise any material option thereunder (except to the extent the Administrative Agent, in consultation with the Independent Engineer, has determined in writing that such amendment, supplement, modification, consent or exercise is in the best interest of the Project).

(g) No Borrower Party shall enter into any Additional Material Project Document other than (i) upon the prior written consent of the Administrative Agent (acting upon the instructions of the Requisite Financing Parties) or (ii) in accordance with Section 8.8(e).

(h) The Borrower Parties shall instruct all Project Participants to make all payments payable to any of the Borrower Parties to the Account Bank for deposit in the appropriate Account in accordance with the Accounts Agreement.

(i) Each of the Borrower Parties shall, on the date hereof and on the date it enters into any Material Project Document after the date hereof, (i) enter into a Consent Agreement in accordance with the Collateral Agreement and (ii) deliver to the Collateral Agent a fully-executed version of each such Consent Agreement and (unless otherwise agreed by the Administrative Agent) the related opinion required to be delivered to the Collateral Agent in accordance therewith.

(j) Prior to the Term Conversion Date, no Borrower Party shall enter into any Material Project Document or execute any Change Order in accordance with Section 7.15 unless (A) 100% of all Project Costs to be incurred thereunder are set forth in the Construction Budget and (B) after giving *pro forma* effect to the execution of such Material Project Document or Change Order, the Borrower Parties have Available Construction Funds at their disposal that are equal to or greater than the aggregate amount of unpaid Project Costs set forth in the

Construction Budget. The Borrower shall provide the Administrative Agent with prompt notice of its consent to any subcontractor granted under any EPC Contractor.

7.15 Change Orders. Notwithstanding the provisions of Section 7.14(f) (but without limiting Section 7.14(j)), the Borrower may permit the Project Owner, upon five Business Days' prior notice to the Independent Engineer and the Administrative Agent, to enter into any Change Order if (a) such Change Order does not change the Plans and Specifications, (b) the CO Cost of such Change Order does not exceed $5,000,000 or cause the aggregate CO Cost of all Change Orders theretofore made, together with the CO Cost of such Change Order, to exceed $15,000,000, (c) such Change Order does not result in an extension of any Major Milestone Date beyond the applicable date set forth on Appendix J, (d) such Change Order does not result in any change to, or amendment of, the Completion Tests, the Delay Liquidated Damages, the Buy-down Proceeds, the Performance Guarantees or the conditions pursuant to which payment of any such damages is required to be made, either directly or indirectly and (e) such Change Order could not otherwise reasonably be expected to have either a

Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

7.16 Certain Agreements. No Borrower Party shall enter into any agreement or undertaking (except for the Financing Documents and except pursuant to any agreement approved by the Requisite Financing Parties for the refinancing of any of the Loans) restricting, or purporting to restrict, the ability of any Borrower Party to (a) amend this Credit Agreement or any other Financing Document, (b) sell any of its assets, (c) create Liens, (d) create or incur Indebtedness or (e) make any Restricted Payment.

7.17 Insurance Requirements. Each Borrower Party shall maintain or cause to be maintained in full force and effect all insurance coverages for the Project set forth in the Collateral Agreement.

7.18 Events of Loss. If an Event of Loss shall occur with respect to any Collateral, then the relevant Borrower Party shall (a) diligently pursue all its rights to compensation against any Person with respect to such Event of Loss, (b) cause all Loss Proceeds to be deposited in the Proceeds Account pursuant to the Accounts Agreement, (c) cause all Business Interruption Proceeds to be deposited in the Business Interruption Proceeds Account pursuant to the Accounts Agreement and (d) cause all Loss Proceeds and any Business Interruption Proceeds to be applied in accordance with the Collateral Agreement, the Accounts Agreement and Section 3.17 hereof.

7.19 Asset Acquisitions. No Borrower Party shall purchase or acquire any assets or Property other than (a) assets reasonably required for the completion of the Project in accordance with the Construction Budget, (b) assets in consideration of O&M Expenses expended in accordance with Section 7.25, (c) assets acquired in connection with any Restoration of the Project in accordance with the Collateral Agreement and the Accounts Agreement and (iv) Permitted Investments.

7.20 Asset Dispositions. No Borrower Party shall make any Disposition other than: (a) sales of electrical energy, capacity, ancillary services and other products pursuant to the Revenue Contracts; (b) subject to the requirements of Sections 3.17(a)(ii) and 6.4(b), Dispositions having a value of equal to or less than $3,000,000 per asset or $5,000,000 in the aggregate in any year by all Borrower Parties since the date hereof, and otherwise determined by the relevant Borrower Party (in its reasonable opinion) to be obsolete, redundant, no longer best in class, or otherwise no longer used by or useful to the relevant Borrower Party for the operation or maintenance of the Project; (c) sales of Permitted Investments prior to the maturity thereof; and (d) Distributions, Restricted Payments or other payments in accordance with Section 7.9.

7.21 Indebtedness. No Borrower Party shall create, incur, suffer to exist or otherwise become liable for any Indebtedness except for the following ("Permitted Indebtedness"):

(a) Indebtedness arising under the Financing Documents;

(b) Indebtedness arising under the Rate Swap Transactions entered into and maintained in accordance with Section 7.26;

(c) Capital Lease Obligations incurred in the ordinary course of business that do not at any time exceed $500,000;

(d) trade accounts payable (other than Indebtedness for borrowed money) arising, and accrued expenses incurred, in the ordinary course of the relevant Borrower Party's business so long as such trade accounts payable are payable within 60 days of the date the respective goods are delivered or the respective services are rendered and are not more than 60 days past due;

(e) unsecured Indebtedness owed by any Borrower Party to the Borrower or owed by the Borrower to the Pledgor, provided, that such Indebtedness is subordinated to the Secured Obligations, is collaterally assigned by the Pledgor or the Borrower (as applicable) to the Collateral Agent in accordance with the terms specified in the relevant Pledge Agreement and is issued pursuant to the subordination and other terms required by such Pledge Agreement;

(f) purchase money obligations to the extent incurred in the ordinary course of business to finance equipment (and Indebtedness incurred to finance any such obligations); provided, that (A) if such obligations are secured, they are secured only by Liens upon the equipment being financed and (B) the aggregate principal amount and the capitalized portion of such obligations by all Borrower Parties do not at any time exceed $2,000,000; and

(g) additional unsecured Indebtedness owed by any Borrower Party in an aggregate principal amount (for all Borrower Parties and including all capitalized interest) not to exceed $5,000,000 at any time.

7.22 Leases. No Borrower Party shall enter into any agreement, or be or become liable as lessee under any agreement, for the lease, hire or use of any real or personal

Property, except for (i) the Site Agreements, (ii) the Real Property Agreements and (iii) operating leases of personal Property to the extent that (a) no such operating lease constitutes a Capital Lease Obligation, (b) each such operating lease is provided for in the then current Operating Budget, (c) the relevant personal Property is not affixed to the Project, (d) the relevant personal Property does not constitute "fixtures" under applicable Law, (e) the relevant personal Property is composed of standard, non-customized items; and (f) the aggregate payment obligations of all Borrower Parties under all such leases of personal Property does not exceed $1,000,000 in any year.

7.23 Limitation on Liens. No Borrower Party shall create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for Permitted Liens.

7.24 Operation and Maintenance.

(a) Each Borrower Party shall maintain and preserve the Project, the Facility, the Site and all of its other Properties necessary or useful in or to the proper conduct of its business in good working order and in such condition that the Project will have the capacity and functional ability to perform, on a

continuing basis (ordinary wear and tear excepted), in normal commercial operation, the functions for which it was specifically designed in accordance with the EPC Contracts at substantially the levels contemplated thereby. The Borrower shall, and shall cause the other Borrower Parties to, cause the Project, the Facility and the Site to be operated, serviced, maintained and repaired so that the condition and Operating Performance thereof will be maintained and preserved (ordinary wear and tear excepted) in all material respects in accordance and compliance with (i) Good Utility Practices, (ii) such operating standards as shall be required to enforce any material warranty claims against dealers, manufacturers, vendors, contractors, and sub-contractors, (iii) the terms and conditions of all insurance policies maintained with respect to the Project at any time, (iv) all requirements of Law and all Material Permits applicable to the Project, and (v) the terms of the Project Documents.

(b) No Borrower Party shall alter, remodel, add to, reconstruct, improve or demolish any part of the Project, the Facility, the Site or any other Collateral after the Project Completion Date, except in accordance with any Restoration of the Project in accordance with the Collateral Agreement and the Accounts Agreement.

(c) No Borrower Party shall appoint or allow the appointment of any replacement Operator without the prior written consent of the Administrative Agent (acting at the direction of the Requisite Financing Parties).

7.25 O&M Expenses. No Borrower Party shall expend any amount for O&M Expenses during any month if such expenditure would exceed any OB Approval Threshold without the prior written consent of the Administrative Agent (acting, if applicable, at the direction of the Requisite Financing Parties), unless such O&M Expense could not reasonably be anticipated and failure to make such expenditure would create an abnormal risk of personal injury to employees or significant physical damage to the Project and, in any such event, the Borrower shall immediately advise the Administrative Agent of such excess expenditure and,

within fifteen days of the making of any such excess expenditure, prepare and file with the Administrative Agent an amended Operating Budget that reflects such expenditure in accordance with Section 6.6(f).

7.26 Rate Swap Transactions. The Borrower shall execute, on the same Business Day as the initial Borrowing of the Construction Loans, and thereafter maintain in full force and effect one or more Rate Swap Transactions with Rate Swap Counterparties which effectively protect the Borrower against the risk of LIBO Rate fluctuations above the weighted average of the fixed rates set forth in the Base Case Model delivered in accordance with Section 4.2(m) and have an aggregate notional amount with respect to each Semi-Annual Date to occur after the Rate Swap Commencement Date equal to not less than 75.00% and not more than 105.00% of the Notional Loan Amount in respect of such Semi-Annual Date. For purposes of the foregoing, the "Notional Loan Amount" in respect of each Semi-Annual Date shall be (x) if determined prior to the Term Conversion Date (1) with respect to each Semi-Annual Date to occur prior to the last projected Disbursement on the Notional Disbursement Schedule, the aggregate principal amount of the Construction Loans that are projected to be outstanding on the immediately preceding Semi-Annual Date based on the Notional Disbursement Schedule and (2) with respect to each Semi-Annual Date to occur on or after the last projected Disbursement on the Notional Disbursement Schedule, the aggregate principal amount of the Construction Loans then-outstanding *plus* the aggregate undrawn Construction Loan Commitments *minus* the aggregate amount of Notional Amortization projected prior to such Semi-Annual Date, as set forth on the Projected Amortization Schedule and (y) if determined on and after the Conversion Date, the aggregate principal amount of the Term Loans outstanding as of the date of such determination *minus* the aggregate amount of scheduled principal payments projected to be made on the Term Loans prior to such Semi-Annual Date in accordance with the Amortization Schedules (in each case, after giving full effect to the application of prepayments of the Construction Loans or the Term Loans, as applicable, in accordance with Section 3.16 or 3.17(c)).

7.27 Use of Proceeds. The Borrower will use the proceeds of the Loans solely for the purposes set forth in Article II.

7.28 Construction Budget. The Borrower shall not amend, revise or modify the Construction Budget to increase or decrease or otherwise change the number or type of Construction Budget categories, allocate or reallocate the Contingency to any Construction Budget category, or request any Construction Loans for the purpose of funding any Project Costs in excess of the amount contained in the Construction Budget for such category of Project Costs; except, (x) to the extent no CB Approval Threshold is triggered or exceeded or (y) if a CB Approval Threshold is triggered or exceeded upon obtaining the prior written approval specified on Appendix E. The Borrower shall promptly deliver to the Administrative Agent a copy of any revisions to the Construction Budget effected without the consent of the Administrative Agent pursuant to this Section 7.28.

7.29 Engineering, Procurement and Construction. Each Borrower Party shall cause the Project to be duly engineered and constructed and all equipment procured in accordance with the Construction Budget, the EPC Contracts and Good Utility Practices and shall cause the Project Completion Date and the Term Conversion Date to occur on or before the

Date Certain. The Borrower shall not, and shall not permit the other Borrower Parties to, directly or indirectly, make or commit to make any expenditure in respect of the purchase or other acquisition of fixed or capital assets prior to the Project Completion Date, other than expenditures contemplated by the Construction Budget.

7.30 Completion; Completion Tests.

(a) No Borrower Party shall, without the prior written consent of the Administrative Agent (after consultation with the Independent Engineer), (i) take any action or fail to take any action (other than the execution of a Change Order in accordance with Section 7.15(c)) which could extend, or which could permit an extension of, any guaranteed completion or acceptance date (including the Mechanical Completion Guaranteed Dates (as such term is defined in the BOP Contract), Substantial Completion Guaranteed Date and the Final Completion Guaranteed Date (as each such term is defined in the Equipment Services Agreement) under the EPC Contracts, (ii) accept or confirm that the Project or any Generating Unit, as the case may be, has achieved Mechanical Completion (as such term is defined in the BOP Contract), Substantial Completion (as such term is defined in the Equipment Services Agreement), Final Completion (as such term is defined in the Equipment Services Agreement) or fail to advise the Construction Manager, the BOP Contractor, the Equipment Supplier and the Equipment Servicer of any defects, deficiencies or discrepancies in the Work of which such Borrower Party has knowledge, (iii) notify the Equipment Servicer that it accepts the Final Punchlist (as such term is defined in the Equipment Services Agreement), (iv) notify the BOP Contractor and that it accepts the Final Completion Punch List (as such term is defined in the BOP Contract), (iv) issue, approve or execute any acceptance or completion certificate or otherwise confirm acceptance or completion of the Project or any portion or phase thereof, (v) waive, defer or reduce any of the requirements of any of the Completion Tests or Performance Guarantees, (vi) accept or confirm that the Project has satisfied any of the Completion Tests or met any of the Performance

Guarantees, (vii) reject the Project or (viii) deliver any written direction to pay all or any portion of the Retainage Balance (as defined in the Retainage Escrow Agreement).

(b) No Borrower Party shall schedule or agree or permit to the scheduling of any Completion Tests without at providing at least five Business Days' prior written notice to the Administrative Agent and the Independent Engineer; provided, that if any such Completion Test is canceled or fails and a new Completion Test is scheduled within 72 hours of the originally scheduled Completion Test, then the relevant Borrower Party shall be required to promptly notify the Administrative Agent and Independent Engineer of its intent to run or rerun such Completion Test within such 72-hour period and shall give the Administrative Agent and the Independent Engineer reasonable advance notice prior to the conduct of such Completion Test within such 72-hour period.

7.31 Payment of Project Costs; Project Revenues.

(a) Any Project Revenues (other than proceeds of any Delay Liquidated Damages) received prior to the Term Conversion Date shall be deposited into the Construction Account and applied, in accordance with the Accounts Agreement, to the payment of Project Costs.

(b) Any proceeds of any Delay Liquidated Damages received prior to the Term Conversion Date shall be deposited into the Proceeds Account and applied, in accordance with the Accounts Agreement, to the mandatory prepayment of Loans in accordance with Section 3.17(a)(iii).

7.32 EWG Status, etc. The Project Owner shall, prior to placing test power onto the grid, and at all times thereafter, (i) maintain its status as an EWG, (ii) be exempt in accordance with 18 CFR § 366.3 from the accounting, record-retention and reporting requirements of PUHCA, (iii) be authorized by FERC pursuant to the Market Rate Authorization to sell electric energy, capacity and ancillary services at negotiated rates under a market-based rate tariff and be in compliance with all requirements and regulations imposed by FERC in connection with such authorization and all waivers of regulation and blanket authorizations granted by FERC in connection with such authorization and (iv) be exempt from or not subject to, the Power Plant & Industrial Fuel Use Act set forth in 42 USC § 8301, *et. seq*.

7.33 Merger. On or prior to the Term Conversion Date, the Borrower shall cause the Merger to occur on terms and conditions satisfactory to the Requisite Financing Parties. Prior to effecting the Merger, the Borrower shall deliver to the Administrative Agent a plan of merger setting out each of the actions necessary to accomplish the Merger and attaching all documents required to be executed, delivered or filed to effect the Merger, including all such documents under the Delaware Limited Liability Company Act. The Merger shall not be effected without the prior written consent of the Administrative Agent (in consultation with White & Case LLP), such approval not to be unreasonably delayed. Promptly upon effecting the Merger, the Borrower shall deliver to the Administrative Agent evidence thereof, including duly executed, delivered and filed copies of each of the documents referred to in the immediately preceding sentence.

7.34 Equipment. On the Business Day immediately following the Closing Date, the Borrower shall contribute, transfer, convey and deliver to the Procurement Sub, and the Procurement Sub shall accept from the Borrower, all of the Borrower's right, title and interest in any Equipment (as defined in the Equipment Purchase Agreement), including the Generating Units, in which the Borrower has title as of the Closing Date, free and clear of all Liens, other than (i) Permitted Priority Liens and (ii) other Permitted Liens to the extent junior to the Liens granted to the Collateral Agent under the Security Documents.

7.35 Further Assurances. Each Borrower Party shall make commercially reasonable efforts to promptly and duly execute and deliver to the Administrative Agent such documents and assurances to take such further action as the Administrative Agent may from time-to-time reasonably request in order to carry out more effectively the intent and purpose of the Financing Documents and to establish, protect and perfect the rights and remedies created or intended to be created in favor of the Secured Parties pursuant to the Financing Documents.

ARTICLE VIII

EVENTS OF DEFAULT

The occurrence of any of the following events or circumstances shall constitute an "Event of Default" hereunder:

8.1 Failure to Make Payments. (a) The Borrower shall fail to pay, in accordance with the terms of this Credit Agreement, any principal on any Loan on the date that such sum is due; (b) the Borrower shall fail to pay, in accordance with the terms of this Credit Agreement, any interest or fees on any Loan or Specified Letter of Credit within three Business Days after the date that such sum is due; or (c) the Borrower shall fail to pay, in accordance with the terms of this Credit Agreement, any cost, charge or other amount payable under any Financing Document (other than principal of, or interest or fees on, the Loans or any Specified Letter of Credit) within ten Business Days after the due date thereof, including amounts in respect of any required Liquidation Costs.

8.2 Certain Other Fundamental Breaches. (a) The Borrower shall fail (or shall fail to cause any Borrower Party) to perform, comply with or observe any covenant or agreement set forth in Sections 3.28(a), 3.28(b), 7.1, 7.5, 7.6, 7.7, 7.9, 7.11, 7.14(d), 7.14(e), 7.14(f) or 7.14(g), 7.17, 7.19, 7.20, 7.21, 7.23, 7.27, 7.30, 7.33 and 7.34; (b) Borrower shall fail (or shall fail to cause any Borrower Party) to perform, comply with or observe any covenant or agreement set forth in Article VI; or (c) any Borrower Party shall fail (or Borrower shall fail to cause any Borrower Party) to perform, comply with or observe any covenant or agreement set forth in any other Financing Document within the cure period therein specified (to the extent such cure period is therein specified).

8.3 Breach of Covenant. The Borrower shall fail to perform or observe (including by failing to cause any Borrower Party to fail to perform or observe) any covenant or agreement to be performed or observed by it hereunder or under any other Financing Document and not otherwise specifically provided for in Section 8.1 or 8.2 and such failure shall continue unremedied for a period of thirty days after any Borrower Party has knowledge of the circumstances giving rise to such failure; provided that, if (a) such failure cannot be cured within such thirty-day period, (b) such failure is susceptible to cure within an additional sixty days, (c) the Borrower and any other relevant Borrower Party are proceeding with diligence and in good faith to cure such failure, (d) the existence of such failure does not impair the Liens on the Collateral and cannot reasonably be expected within the next succeeding sixty days to impair the Liens on the Collateral, (e) the existence of such failure has not had and cannot be reasonably expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party within the next sixty days and (f) prior to the expiration of the initial thirty-day cure period specified above, the Administrative Agent shall have received an Officer's Certificate certifying to the matters set forth in clauses (a), (b), (c), (d) and (e) above and stating what actions the Borrower and any other relevant

Borrower Party are taking to cure such failure, then no Event of Default shall occur under this Section 8.3 until the earlier of (i) the date that the Borrower or any other relevant Borrower Party are no longer

diligently and in good faith attempting to cure such failure and (ii) the sixtieth day following the last day of the initial thirty-day cure period specified above.

8.4 Breach of Representation or Warranty. Any representation or warranty made by the Borrower herein or in any other Financing Document or in any certificate delivered by or on behalf of the Borrower in accordance with any Financing Document to the Administrative Agent or any Secured Party shall contain in any material respect an untrue or misleading statement of a material fact as of the date such representation or warranty is made (or, if expressly made as of an earlier date, as of such earlier date); provided, that if (a) the circumstances that rendered such representation, warranty or certification untrue or misleading are reasonably susceptible of being removed, reversed or remedied within sixty days, (b) the Borrower and any other relevant Borrower Party are proceeding with diligence and in good faith to remove, reverse or remedy such circumstances, (c) the existence of such circumstances does not impair the Liens on the Collateral and cannot reasonably be expected within the next succeeding sixty days to impair the Liens on the Collateral, (d) the existence of such circumstances has not had and cannot be reasonably expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party within the next sixty days and (e) the Administrative Agent shall have received an Officer's Certificate certifying to the matters set forth in clauses (a), (b), (c) and (d) above and stating what actions the Borrower and any other relevant Borrower Party are taking to remove, reverse or remedy such circumstances, then no Event of Default shall occur under this Section 8.4 until the earlier of (i) the date that the Borrower or any other relevant Borrower Party are no longer diligently and in good faith attempting to remove, reverse or remedy such circumstances and (ii) the ninetieth day following the date that any Borrower Party has knowledge of such circumstances.

8.5 Breach of Financing Documents by Borrower Affiliates. (a) The Pledgor, the Procurement Sub, the Project Owner or any other Affiliate of the Borrower that is a party to a Financing Document (if any) shall fail to perform or observe any covenant or agreement to be performed or observed by it thereunder; (b) any representation or warranty made by the Pledgor, the Procurement Sub, the Project Owner or any other Affiliate of the Borrower that is a party to a Financing Document (if any) in any Financing Document or in any certificate delivered by or on behalf of such Person in accordance with any Financing Document to the Administrative Agent or any Secured Party shall contain in any material respect an untrue or misleading statement of a material fact as of the date such representation or warranty is made (or, if expressly made as of an earlier date, as of such earlier date); or (c) any other "default" or "event of default" (or event of substantively the same import) shall occur under any Financing Document and the Pledgor, the Procurement Sub, the Project Owner or any other Affiliate of the Borrower that is a party to such Financing Document is the defaulting party; and, in each such case, all applicable cure periods under such Financing Document have expired.

8.6 Loss of Financing Documents. Any of the Financing Documents shall fail (a) to be in full force and effect, (b) to be enforceable or (c) to provide the Lenders, the Administrative Agent, the Collateral Agent, the Account Bank or any other Financing Party or their respective trustees, agents or other representatives with the material rights, titles, interest, remedies, powers or privileges intended to be created thereby (if any).

8.7 Actual or Prospective Failure of Security.

(a) The Collateral Agent shall fail to have a first-priority perfected Lien in any portion of the Collateral (on behalf of the Financing Parties as Secured Parties), subject only to (i) Permitted Priority Liens and (ii) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Collateral (on behalf of the Financing Parties as Secured Parties) under the Security Documents.

(b) The validity of any Security Document or the applicability thereof to the Loans, any Notes, any Specified Letter of Credit or any other obligations purported to be secured or guaranteed thereby or any part thereof shall be disaffirmed by or on behalf of the Borrower or any other party thereto.

8.8 Breach or Loss of Material Project Documents.

(a) Any MPD Termination Event shall have occurred and be continuing under any Material Project Document.

(b) Any Material Project Participant that is a party to a Revenue Contract or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement shall breach or be in default under any material term, condition, provision or covenant contained in such Revenue Contract, Equipment Purchase Agreement or Equipment Services Agreement (other than to the extent constituting a Bankruptcy Event) and such breach or default shall remain unremedied for the relevant cure period specified therein *plus* thirty days.

(c) Any Material Project Participant (other than in respect of a Revenue Contract or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement) shall breach or be in default under any material term, condition, provision or covenant contained in any Material Project Document (other than to the extent constituting a Bankruptcy Event) and such breach or default shall remain unremedied for the relevant cure period specified in such Material Project Document; unless, within ninety days after the last day of such cure period (x) the relevant Borrower Party terminates such Material Project Document in accordance with its terms and (y) the relevant Borrower Party has entered into a replacement Material Project Document with a new counterparty in accordance with Section 8.8(e).

(d) Any Revenue Contract or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement shall cease for any reason to be in full force and effect.

(e) Any Material Project Document (other than a Revenue Contract or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement) shall cease for any reason to be in full force and effect unless terminated in accordance with its terms and not as a result of a default of the relevant Borrower Party thereunder; unless such other Material Project Document has been replaced by a replacement Material Project Document on substantively the same terms, subject to substantively the same conditions, and with a counterparty that is reasonably acceptable to the Administrative Agent within ninety days after the earliest of (x) the last day of any cure period afforded to the relevant

Material Project Participant if terminated as a result of the breach of or default affecting such Material Project Participant (including a Bankruptcy Event), (y) the occurrence of such termination and (z) the failure to be in full force and effect.

8.9 Voluntary Bankruptcy Events.

(a) The Borrower, the Procurement Sub, the Project Owner, any Affiliated Project Party or any Material Project Participant that is a party to a Revenue Contract, or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement shall suffer a Voluntary Bankruptcy Event.

(b) Any Material Project Participant that is not an Affiliated Project Party, a party to a Revenue Contract, or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement shall suffer a Voluntary Bankruptcy Event; unless (i) such Material Project Participant has been replaced as the counterparty under the relevant Material Project Document within ninety days of such Voluntary Bankruptcy Event by another Person reasonably acceptable to the Administrative Agent, (ii) the Material Project Participant has assumed such Material Project Document in accordance with the Bankruptcy Code and the Borrower has confirmed to the reasonable satisfaction of the Administrative Agent that such Material Project Participant is performing its post-petition obligations under, and has not rejected, such Material Project Document or (iii) both (A) such Material Project Document is rejected in bankruptcy or the Borrower terminates such Material Project Document in accordance with its terms and (B) the Borrower enters into a replacement Material Project Document with a new counterparty in accordance with Section 8.8(e) within the time period therein specified.

8.10 Involuntary Bankruptcy Events. The Borrower, the Procurement Sub, the Project Owner or any Material Project Participant shall suffer an Involuntary Bankruptcy Event; provided, that it shall not be an Event of Default under this Section 8.10 if:

(a) within sixty days after the occurrence of the relevant Involuntary Bankruptcy Event, such Involuntary Bankruptcy Event shall have been cured by: (i) the lifting by the relevant Governmental Authority of the relevant suspension of payments, moratorium or similar arrangement; or (ii) the dismissal by the relevant court of the relevant petition commencing an involuntary case under applicable Debtor Relief Law or the relevant complaint or other action commencing any similar proceeding under any other applicable federal, state or other Law;

(b) within ninety days after the occurrence of the relevant Involuntary Bankruptcy Event, with respect solely to an Involuntary Bankruptcy Event suffered by a Material Project Participant that is not an Affiliated Project Party, a party to a Revenue Contract, or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement, such Material Project Participant has been replaced as the counterparty under the relevant Material Project Document by another Person reasonably acceptable to the Administrative Agent; or

(c) within ninety days after the occurrence of the relevant Involuntary Bankruptcy Event, with respect solely to an Involuntary Bankruptcy Event suffered by a

Material Project Participant that is not an Affiliated Project Party, a party to a Revenue Contract, or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement either (i) the Material Project Participant has affirmed such Material Project Document in accordance with the Bankruptcy Code and the Borrower has confirmed to the reasonable satisfaction of the Administrative Agent that such Material Project Participant is performing its obligations under such Material Project Document or (ii) both (A) such Material Project Document is rejected in bankruptcy or the relevant Borrower Party terminates such Material Project Document in accordance with its terms and (B) the relevant Borrower Party enters into a replacement Material Project Document with a new counterparty in accordance with Section 8.8(e).

8.11 Judgments. A final judgment or final judgments that is or are not covered by available insurance, as acknowledged in writing by the provider of such insurance or as certified to the Administrative Agent by the Insurance Consultant, or that is or are not otherwise covered by an indemnity in favor of the relevant Borrower Party, shall be entered against any Borrower Party in the aggregate amount of $7,000,000 or more and remains or remain unstayed or unsatisfied, or no bond is posted in respect of such judgment or judgments, for more than 45 consecutive days after entry of the relevant judgment or judgments..

8.12 Loss of Material Permits. Any Material Permit shall be modified in a materially adverse manner, reversed, rescinded, revoked, terminated, withdrawn, suspended or cancelled or the Borrower shall fail (or fail to cause the relevant other Borrower Party or Material Project Participant) to obtain or renew any Material Permit when required by applicable Law, unless, in each such case, such Material Permit is reinstated, renewed or obtained (as applicable) within fifteen days after the expiration of any grace period in such Material Permit or under applicable Law in respect of such modification, reversal, rescission, revocation, termination, withdrawal, suspension, cancellation, lapse, or non-renewal or failure to obtain when required.

8.13 Loss of Collateral. Any material portion of any of the Borrower Parties' respective Property is Taken without fair value being paid therefor such as to allow replacement of such Property and/or prepayment in full of all Secured Obligations (other than indemnities) in each case, unless such Taking allows the relevant Borrower Party, in the Administrative Agent's reasonable judgment, to continue satisfying its obligations hereunder and under the other Transaction Documents notwithstanding the same.

8.14 Abandonment of Project. Any Borrower Party, any EPC Contractor or the O&M Operator shall have abandoned the construction or operation of the Project for fifteen consecutive days.

8.15 Environmental Claim.

(a) Any Environmental Claim shall have been asserted against any Borrower Party or any Project Participant; unless, any of the following apply (i) such Environmental Claim is adjudicated or otherwise resolved and the amount payable by the Borrower Parties thereunder is equal to or less than $7,000,000, (ii) the Independent Engineer confirms in writing at such times and from time-to-time as requested by the

Administrative Agent that, if adversely determined, such Environmental Claim could not reasonably be expected to exceed $7,000,000 or otherwise have a Material Adverse Effect or (iii) such Environmental Claim has remained unadjudicated or unresolved for less than 365 days and the relevant Borrower

Party or Project Participant confirms in writing at such times and from time-to-time as requested by the Administrative Agent that, in its reasonable determination, based on consultation with reputable counsel, such Environmental Claim has no reasonable likelihood of success.

(b) Any Release, emission, discharge or disposal of any Hazardous Materials shall have occurred in violation of any Environmental Law; unless, such event could not reasonably be expected to have a Material Adverse Effect.

8.16 Change in Control. A Change in Control shall have occurred.

8.17 Term Conversion. The Term Conversion Date shall not have occurred by the Date Certain.

8.18 Cross-Default. Any Secured Party that is not a Financing Party issues a Default Notice as defined in and in accordance with the Collateral Agreement in respect of an Event of Default (as defined therein). The occurrence or existence of either (a) a default, event of default or other similar condition or event (however described) in respect of any Borrower Party under one or more agreements or instruments relating to Permitted Indebtedness (other than the Secured Obligations) of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (b) below, is not less than $5,000,000 which has resulted in such Permitted Indebtedness becoming due and payable under such agreements or instruments before it would otherwise have been due and payable or (b) a default by any Borrower Party (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (a) above, of not less than $5,000,000.

8.19 ERISA. Both (a) any of the following shall occur: (i) one or more ERISA Events shall have occurred; (ii) there is or arises an Unfunded Pension Liability (taking into account only Pension Plans with positive Unfunded Pension Liability); or (iii) there is or arises any potential withdrawal liability under Section 4201 of ERISA, if any member of the ERISA Group were to withdraw completely from any and all Multiemployer Plans; and (b) there shall result from any such event or events described in clause (a) of this Section 8.19 the imposition of any Liens and such Liens, individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect.

ARTICLE IX

REMEDIES

9.1 Acceleration.

(a) If any Event of Default specified in Section 8.9 or Section 8.10 shall occur with respect to the Borrower, any other Borrower Party or the Pledgor, then automatically all Commitments shall immediately terminate and all Loans (with accrued and unpaid interest thereon) and all other amounts owing to the Secured Parties under the Financing Documents shall immediately become due and payable.

(b) If any Event of Default (other than an Event of Default referred to in Section 9.1(a)) shall occur, then the Administrative Agent (acting at the direction of the Requisite Financing Parties) may by notice to the Borrower (i) declare the Commitments to be terminated, whereupon all Commitments shall immediately terminate and/or (ii) declare the Loans, all accrued and unpaid interest thereon and all other amounts owing to the Secured Parties under the Financing Documents to be due and payable, whereupon the same shall become immediately due and payable.

(c) Except as expressly provided above in this Section 9.1, presentment, demand, protest and all other notices and other formalities of any kind are hereby expressly waived by the Borrower.

9.2 Letters of Credit.

(a) With respect to all Specified Letters of Credit for which presentment for honor shall not have occurred at the time of an acceleration of the Loans pursuant to Section 9.1, the Borrower shall at such time deposit in a cash collateral account opened by the Administrative Agent an amount (without duplicating any amounts on deposit in accordance with Section 3.28) equal to the aggregate then undrawn and unexpired amount of such Specified Letters of Credit.

(b) Amounts held in such cash collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Specified Letters of Credit, and the unused portion thereof after all such Specified Letters of Credit shall have expired or been fully drawn upon, all LC Loans shall have been paid in full and all other obligations of the Borrower hereunder and the Borrower Parties under the other Financing Documents shall have been paid in full, the balance, if any in such cash collateral account shall be returned to the Borrower (or such other Person as may be lawfully entitled thereto).

9.3 Other Remedies. Upon the occurrence and during the continuation of an Event of Default:

(a) The Administrative Agent may (and if instructed by the Requisite Financing Parties shall) direct the Collateral Agent, in accordance with the Collateral Agreement, to exercise any or all rights and remedies at law or in equity (in any combination or order that the Administrative Agent may elect to direct), including,

without prejudice to the Collateral Agent's other rights and remedies, any and all rights and remedies available under any of the Collateral Documents.

(b) The Administrative Agent may (and if instructed by the Requisite Financing Parties shall) direct the EPC Contractors or any subcontractor to submit invoices to the account of the Borrower or any Borrower Party to the Administrative Agent, and the Lenders may, in their respective sole discretion, elect to make payments directly to the EPC Contractors, such subcontractor or any other Person.

(c) Any funds of any Lender or the Administrative Agent (including the proceeds of any Loans) used for any purpose referred to in this Section 9.3, whether or not in excess of the relevant Commitments (without obligating any Lender to fund any Loans in excess of such Commitments)

shall (i) be governed hereby, (ii) constitute part of the Secured Obligations secured by the Security Documents, (iii) bear interest at the Default Rate and (iv) be payable upon demand by such Lender or the Administrative Agent, as applicable.

ARTICLE X

THE AGENTS; VOTING

10.1 Appointment and Authorization.

(a) Each Financing Party hereby irrevocably (subject to Section 10.9) appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Credit Agreement and each other Financing Document to which it is a party and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Credit Agreement or any such other Financing Document, together with such powers as are reasonably incidental thereto.

(b) Each Financing Party hereby irrevocably consents to (i) the appointment by the Administrative Agent of Credit Agricole Corporate and Investment Bank as Collateral Agent under the Collateral Agreement, and (ii) the appointment by the Collateral Agent of Union Bank, N.A. as Account Bank under the Accounts Agreement (each such person, together with the Administrative Agent, an "Agent").

(c) Each of the Financing Parties authorizes the Administrative Agent to execute, deliver and perform (and authorizes the Administrative Agent to direct each other Agent to execute, deliver and perform) each of the Financing Documents to which the Administrative Agent (or such other Agent) is or is intended to be a party and each Financing Party agrees to be bound by all of the agreements of the Administrative Agent (and each such other Agent) contained in the Financing Documents. Each of the Financing Parties agrees that upon execution of the Collateral Agreement such Financing Party will be bound by the provisions thereof in accordance therewith as a Secured Creditor (as defined therein) to the same extent as if such Financing Party were a party thereto.

(d) Notwithstanding any provision to the contrary contained elsewhere in this Credit Agreement or in any other Financing Document, none of the Agents shall have any duties

or responsibilities except those expressly set forth herein and in the other Financing Documents, nor shall any of the Agents have or be deemed to have any fiduciary relationship with any Financing Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Credit Agreement or any other Financing Document or otherwise exist against any of the Agents. Without limiting the generality of the foregoing sentence, the use of the terms "Administrative Agent", "Collateral Agent" or "Account Bank" in this Credit Agreement with reference to the Administrative Agent, or the Collateral Agent or the Account Bank is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such terms are used merely as a matter of market custom, and are intended to create or reflect only a relationship between independent contracting parties.

10.2 Delegation of Duties. The Administrative Agent may execute any of its duties under this Credit Agreement or any other Financing Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible to the Financing Parties or the Borrower for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

10.3 Liability of the Administrative Agent. The Administrative Agent shall not (a) be liable for any action taken or omitted to be taken by it under or in connection with this Credit Agreement or any other Transaction Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable decision) or (b) be responsible in any manner to any of the Financing Parties or any other Person for any recital, statement, representation or warranty made by the Borrower or any Affiliate of the Borrower, or any officer thereof, contained in this Credit Agreement or in any other Transaction Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Credit Agreement or any other Transaction Document, or for the value of or title to any Collateral, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Credit Agreement or any other Transaction Document, or for any failure of the Borrower or any other party to any Transaction Document to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Secured Party to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Credit Agreement or any other Transaction Document, or to inspect the Properties, books or records of the Borrower or any Affiliate of the Borrower.

10.4 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Credit Agreement or any other Transaction Document (a) if such action would, in the opinion of the Administrative Agent (upon consultation with legal counsel), be contrary to applicable Law or the terms of any Financing Document, (b) if such action is not

specifically provided for in the Financing Documents to which the Administrative Agent is a party, and it shall not have received advice as provided in the foregoing sentence approving or concurring in any such action or the approval of the Requisite Financing Parties, as it deems appropriate or (c) unless, if it so requests, the Administrative Agent shall first be indemnified to its satisfaction by the Financing Parties against any and all liabilities and expenses which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Credit Agreement or any other Transaction Document in accordance with a request or consent of the Requisite Financing Parties and such request or consent and any action taken or failure to act pursuant thereto shall be binding upon all of the Financing Parties.

10.5 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Financing Parties, unless the Administrative Agent shall have received written notice from a Financing Party or the Borrower referring to this Credit Agreement, describing such Default or Event of Default and stating that such notice is a "Notice of Default." If the Administrative Agent receives any such notice of the occurrence of a Default or an Event of Default from the Borrower, it shall give notice thereof to the Financing Parties. The Administrative Agent shall take

such action with respect to such Default or Event of Default as may be requested by the Requisite Financing Parties in accordance with this Article X; provided, that unless and until the Administrative Agent has received any such request, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Financing Parties.

10.6 Credit Decision. Each Financing Party acknowledges that none of the Agents or the Agent-Related Persons, any Joint Bookrunner or any Mandated Lead Arranger (collectively, the "Applicable Group") has made any representation or warranty to it, and that no act by any member of the Applicable Agent hereafter taken, including any review of the Project or of the affairs of any Borrower Party, shall be deemed to constitute any representation or warranty by any member of the Applicable Group to any Financing Party. Each Financing Party represents to each member of the Applicable Group that it has, independently and without reliance upon any member of the Applicable Group and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, Property, financial and other condition and creditworthiness of each Borrower Party, the Pledgor, the Project, the value of and title to any Collateral, and all applicable bank regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Credit Agreement and to extend credit to the Borrower hereunder. Each Financing Party also represents that it will, independently and without reliance upon any member of the Applicable Group and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Credit Agreement and the other Transaction Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, Property, financial or other condition and creditworthiness of each Borrower Party, the Pledgor, the Project, the value of and title to any Collateral, and all applicable bank regulatory Laws relating to the transaction contemplated hereby. Except for

notices, reports and other documents expressly required pursuant to any Financing Document to be furnished to the Financing Parties by the Agents, no member of the Applicable Group shall have any duty or responsibility to provide any Financing Party with any credit or other information concerning the business, prospects, operations, Property, financial and other condition or creditworthiness of the Project, the Borrower Parties or the Pledgor, the value of and title to any Collateral, and all applicable bank regulatory Laws relating to the transaction s contemplated hereby which may come into the possession of any Agent or any member of the Applicable Group.

10.7 Indemnification of Administrative Agent.

(a) Whether or not the transactions contemplated hereby are consummated, the Financing Parties shall indemnify upon demand the Administrative Agent (to the extent not reimbursed by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), *pro rata* in accordance with the aggregate principal amount of the Loans held or committed by such Financing Party, from and against any and all Indemnified Liabilities; provided, that (i) such Indemnified Liabilities were incurred by or asserted against the Administrative Agent (or the relevant Indemnified Person) in its capacity as such and (ii) no Financing Party shall be liable for the payment to the Administrative Agent of any portion of such Indemnified Liabilities resulting solely from the gross negligence or willful misconduct of the relevant Indemnified Person (as determined by a court of competent jurisdiction in a final and non-appealable decision).

(b) Without limiting the foregoing, each Financing Party shall reimburse the Administrative Agent upon demand for its ratable share as provided above of any costs and out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Credit Agreement, any other Transaction Document or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower; provided, that such costs and out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent were incurred by it in its capacity as such.

(c) The undertakings of the Financing Parties in this Section 10.7 shall survive the payment of all Secured Obligations hereunder and the resignation or replacement of the Administrative Agent.

10.8 Individual Capacity. The Administrative Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrower or its Affiliates as though it were not the Administrative Agent hereunder and without notice to or consent of the Financing Parties. The Financing Parties acknowledge that, pursuant to such activities, the Administrative Agent or any of its Affiliates may receive information regarding the Borrower or its Affiliates (including information that may be subject to confidentiality obligations in favor of the Borrower or such Affiliates) and acknowledge that the Administrative Agent shall be under no obligation to

provide such information to them. The Administrative Agent, in its capacity as Financing Party, shall have the same rights and powers under this Credit Agreement as any other Financing Party and may exercise the same as though it were not an agent, and the terms "Financing Party" and "Financing Parties" shall include the Administrative Agent in its individual capacity.

10.9 Successor Agent.

(a) Subject to the appointment and acceptance of a successor as provided below, (i) the Administrative Agent may resign at any time by giving thirty days prior written notice thereof to the other Agents, the Financing Parties and the Borrower and (ii) the Administrative Agent may be removed at any time with or without cause by the Requisite Financing Parties (excluding, for purposes of the determination thereof, the Commitments and Loans held by the Administrative Agent). Upon any such resignation or removal, the Requisite Financing Parties (in consultation with the Borrower unless an Event of Default has occurred and is continuing) shall have the right to appoint a successor to the Administrative Agent. If no successor Administrative Agent shall have been appointed by the Requisite Financing Parties and shall have accepted such appointment within thirty days after the giving of notice by the Administrative Agent of its resignation or the giving of notice by the Requisite Financing Parties of their removal of the Administrative Agent, then the resigning or removed Administrative Agent may appoint a successor satisfactory to the Requisite Financing Parties. Upon the acceptance of its appointment as a successor Administrative Agent hereunder, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of such resigning or removed Administrative Agent, and such resigning or removed Administrative Agent shall be discharged from its duties and obligations hereunder.

(b) The Administrative Agent shall, on the instructions of the Requisite Financing Parties, vote to cause the removal and replacement of any other Agent in accordance with the relevant Financing Documents.

(c) After the Administrative Agent's resignation or removal, the provisions of this Article X and of Sections 11.1 and 11.2 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent.

10.10 Registry. The Borrower hereby designates the Administrative Agent, and the Administrative Agent agrees, to serve as the Borrower's agent, solely for purposes of this Section 10.10, to maintain a register at one of its offices in New York, New York (the "Register") on which it will record the Commitments from time-to-time of each of the Financing Parties, the Loans made by each of the Financing Parties and each repayment in respect of the principal amount of the Loans of each Financing Party. Failure to make any such recordation, or any error in such recordation shall not affect the Borrower's obligations in respect of such Loans. With respect to any Financing Party, the transfer of the Commitments of such Financing Party and the rights to the principal of, and interest on, any Loan made pursuant to such Commitments shall not be effective until such transfer is recorded on the Register with respect to ownership of such Commitments and Loans, and prior to such recordation all amounts owing to the transferor with respect to such Commitments and Loans shall remain owing to the transferor. The registration of an assignment or transfer of all or part of any Commitments and Loans shall be recorded by the Administrative Agent on the Register only upon the acceptance by the

Administrative Agent of a properly executed and delivered Assignment and Acceptance pursuant to Section 11.11.

10.11 Voting.

(a) Whenever the Administrative Agent, pursuant to any provision of this Credit Agreement or any other Financing Document, is requested or required to or may act at the direction or with the approval or consent of the Requisite Financing Parties, an affirmative vote of the Requisite Financing Parties shall be required to give such direction, approval or consent, which vote shall be taken in accordance herewith. The Administrative Agent may at any time solicit direction from the Requisite Financing Parties as to any action that it may be requested or required to take, or which it may propose to take, in the performance of its obligations under this Credit Agreement and the other Financing Documents, and shall be fully justified in failing or refusing to act whether under this Credit Agreement or any other Financing Document until it shall have received such direction.

(b) Notwithstanding the foregoing, no waiver, amendment, supplement or modification to this Credit Agreement or any other Financing Document shall (i) increase the Commitment of any Financing Party (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in any Commitment, shall not constitute an increase of any Commitment of any Financing Party), without the prior written consent of such Financing Party, (ii) postpone or delay the scheduled Maturity Date of any Loan, without the prior written consent of each affected Financing Party, or postpone or delay any date fixed by this Credit Agreement or any other Financing Document for any payment of principal, interest or Fees due to any Financing Party hereunder or under any other Financing Document, without the prior written consent of such Financing Party, (iii) reduce the principal of, or the rate of interest specified in any Financing Document on, any Loan of any Financing Party, without the prior written consent of such Financing Party, (iv) direct the Administrative Agent to direct or permit any other Agent to release all or substantially all of the Collateral except as shall be otherwise provided in any Security Document or other Financing Document or consent to the assignment or transfer by the Borrower of any of its respective obligations under this Credit Agreement or any other Financing Document, without the prior written consent of each Financing Party, (v) amend, modify or waive any provision of this Section 10.11 or Sections 11.1 or 11.2, without the prior written consent of each Financing Party, (vi) reduce the percentage specified in or otherwise amend the definition of Requisite Financing Parties, without the prior written consent of each Financing Party (it being understood that, with the consent of the Requisite Financing Parties (determined before giving effect to the additional extensions of credit), extensions of credit pursuant to this Credit Agreement in addition to those set forth in or contemplated by this Credit Agreement on the Closing Date may be included for the purposes of the definition of the term "Requisite Financing Parties" on substantially the same basis as the extensions of Loans and Commitments are included on the Closing Date) or (vii) amend, modify or waive any provision of Section 3.22 or direct the Administrative Agent to vote in favor of the amendment, modification or waiver of Sections 7.1, 7.7 or 7.8 of the Collateral Agreement or the definitions of Secured Debt or Secured Obligations set forth therein, without the prior written consent of each Financing Party.

(c) If any Affiliate of the Borrower Parties is a Financing Party, then the amount of Loans and Commitments held by such Affiliate of the Borrower Parties shall be disregarded for purposes of calculating the aggregate Loans and Commitments underlying the definitions of Majority Lenders, Requisite Financing Parties, Requisite Revolver Lenders, Requisite TALC Participating Banks, Requisite Tranche A Lenders, Requisite Tranche B Lenders, Requisite Term Lenders and for all other voting provisions hereunder.

(d) The Administrative Agent shall act under the Collateral Agreement (including, without limitation, in connection with any actions pursuant to Sections 5.4 and 6.1 of the Collateral Agreement) in accordance with the provisions of this Credit Agreement and such actions by the Administrative Agent shall be subject to the rights of the Financing Parties set forth in Section 10.11(b) hereof.

10.12 Acknowledgement of Collateral Agreement. Notwithstanding anything herein to the contrary, the Liens granted to the Collateral Agent for the benefit of the Secured Parties pursuant to this Credit Agreement and the exercise of any right or remedy by the Collateral Agent for the benefit of the Secured Parties hereunder are subject to the provisions of the Collateral Agreement. In the event of any conflict between the terms of the Collateral Agreement and this Credit Agreement, the terms of the Collateral Agreement shall govern and control.

ARTICLE XI

MISCELLANEOUS

11.1 Costs, Expenses and Attorneys' Fees. On the Closing Date, the Borrower shall pay to the Administrative Agent, the other Agents, the Joint Bookrunners, the Lead Arrangers, the Lenders and the Issuing Bank all reasonable costs and expenses of each such party and their respective Affiliates in connection with the preparation, issuance, delivery, filing, recording and administration of this Credit Agreement, the other Transaction Documents, and any other documents which may be delivered in connection herewith or therewith, including the reasonable and documented fees, expenses and disbursements of White & Case LLP, Sheppard Mullin Richter and Hampton LLP, and each Independent Consultant. In addition, from and after the Closing Date, the Borrower shall pay to the Administrative Agent all of its reasonable out-of-pocket costs and expenses in connection with the costs of administering this Credit Agreement, the Loans or Commitments or any Specified Letter of Credit, and any other documents contemplated hereby (including any amendments, waivers or consents thereof or thereto,

whether or not granted), including, without duplication, (a) the reasonable and documented fees, expenses and disbursements of White & Case LLP, one other counsel in respect of each specialty or jurisdiction not within the competency of White & Case LLP, (b) the reasonable and documented fees, expenses and disbursements of the Independent Consultants incurred in connection with such administration of this Credit Agreement or the Loans or Commitments or any Specified Letter of Credit and any other documents contemplated hereby and (c) the reasonable out-of-pocket travel, telecommunication, filing and recording, due diligence, computer, duplication, messenger, appraisal, Intralinks or similar services, audit costs, and other expenses incurred by the Administrative Agent in connection with the administration of this Credit Agreement; provided, that the Borrower shall be responsible only for the cost of two visits

to the Site per calendar year by the Administrative Agent prior to the Term Conversion Date and one visit to the Site per calendar year by the Administrative Agent after the Term Conversion Date (in each case, unless an Event of Default has occurred and is continuing). The Borrower shall reimburse the Administrative Agent, the Lenders and the Issuing Banks for all costs and expenses, including attorneys' fees, expended or incurred by the Administrative Agent, any Lender and/or the Issuing Banks in enforcing this Credit Agreement or the other Financing Documents in connection with any Event of Default or Default (including any Bankruptcy Event suffered by the Borrower), or in connection with preservation of their rights hereunder or thereunder or in connection with any refinancing, any restructuring or similar work-out negotiations with the Borrower in respect of this Credit Agreement, in actions for declaratory relief in any way related to this Credit Agreement, in collecting any sum which becomes due to the Administrative Agent, any Lender and/or the Issuing Banks on the Notes or any Specified Letter of Credit or under any Financing Document. All undisputed amounts payable pursuant to this Section 11.1 after the Closing Date shall be payable within thirty days following the date of receipt by the Borrower of written notice thereof (together with reasonable supporting documentation in respect thereof); provided, that if a Default or Event of Default has occurred and is continuing, then such amounts shall be payable within five days following receipt by the Borrower of written notice thereof.

11.2 Indemnity. Whether or not the transactions contemplated hereby are consummated:

(a) The Borrower shall, and shall cause each other Borrower Party to, defend, protect, indemnify, save and hold the Administrative Agent and each Secured Party, Joint Bookrunners and Mandated Lead Arranger and each of their respective officers, directors, employees, counsel, agents, attorneys-in-fact and Affiliates (each, an "Indemnified Person") harmless from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, charges, expenses or disbursements (including Attorney Costs and consultants' fees and disbursements) of any kind or nature whatsoever which may at any time (including at any time following repayment of the Loans, the termination, resignation or replacement of the Administrative Agent or the replacement of any Financing Party) be imposed on, incurred by or asserted against any such Person in any way relating to or arising out of this Credit Agreement or any other Transaction Document, including the Security Documents and any other document or instrument contemplated by or referred to herein or therein, or the transactions contemplated hereby and thereby, or any action taken or omitted by any such Person under or in connection with any of the foregoing, including with respect to the exercise by any Secured Party of any of its respective rights or remedies under any of the Financing Documents, and any investigation, litigation or proceeding (including any bankruptcy, insolvency, reorganization or other similar proceeding or appellate proceeding) related to this Credit Agreement or any other Transaction Document or the Loans, or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"); provided, that no Borrower Party shall have an obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities arising from the gross negligence or willful misconduct of such Indemnified Person (as determined by a court of competent jurisdiction in a final and non-appealable decision).

(b) Environmental Indemnity.

(i) Without in any way limiting the generality of the other provisions contained in this Section 11.2, the Borrower agrees, and shall cause each other Borrower Party, to defend, protect, indemnify, save and hold harmless each Indemnified Person, whether as beneficiary of any of the Security Documents, as a mortgagee in possession, as successor-in-interest to the Borrower or any other Borrower Party by foreclosure deed or deed in lieu of foreclosure or otherwise, from and against any and all liabilities, obligations, losses, damages (including foreseeable and unforeseeable consequential damages and punitive claims), penalties, claims, actions, judgments, suits, costs, fees, charges, expenses or disbursements (including Attorney Costs and consultants' fees and disbursements) and expenses (collectively, "Losses") of any kind or nature whatsoever that may at any time be incurred by, imposed on, asserted or awarded against any such Indemnified Person directly or indirectly based on, or arising out of or resulting from: (A) the actual or alleged presence of Hazardous Materials on, in, under or affecting all or any portion of the Site whether or not the same originates or emanates from the Site or any property adjoining or adjacent to the Site or from properties at which any Hazardous Materials generated, stored or handled by the Borrower were Released or disposed of; (B) any Environmental Claim relating to the Site or the Project; or (C) the exercise of any Secured Party's rights under any of the provisions of the Security Documents (the "Indemnified Matters"), whether any of the Indemnified Matters arise before or after foreclosure of any of the Liens or other taking of title to all or any portion of the Collateral by any Secured Party, including: (x) the costs of removal of any and all Hazardous Materials from all or any portion of the Site or any Property adjoining or adjacent to the Site; (y) costs required to take reasonable precautions to protect against the Release of Hazardous Materials at or from the Site into the air, any body of water, any other public domain or any surrounding areas; and (z) costs incurred to comply, in connection with all or any portion of the Site or, to the extent actually or potentially affected by Hazardous Materials at or from the Site, any surrounding areas, with all applicable Environmental Laws with respect to Hazardous Materials, except to the extent that any such Indemnified Matter arises from the gross negligence or willful misconduct of such Indemnified Person (as determined by a court of competent jurisdiction in a final and non-appealable decision).

(ii) In no event shall any Site visit, observation or testing by any Indemnified Person (or any representative of any such Indemnified Person) be deemed to be a representation or warranty that Hazardous Materials are or are not present in, on, or under the Site, or that there has been or shall be compliance with any Environmental Law. Except to the extent provided in a reliance letter, neither the Borrower nor any other Person is entitled to rely on any Site visit, observation or testing by any Indemnified Person. No Indemnified Person owes any duty of care to protect the Borrower or any other Person against, or to inform the Borrower or any other Person of, any Hazardous Materials or any other adverse condition affecting the Site or the Project, except and only to the extent such Hazardous Materials were actually Released or such adverse condition was actually caused by the negligent actions of such Indemnified Person or its representatives in connection with a Site visit or invasive testing at the Site. No Indemnified Person shall be obligated to disclose to the Borrower or any other Person any report or findings made as a result of, or in connection with, any Site visit, observation or testing by any Indemnified Person.

(c) Survival; Defense. The obligations in this Section 11.2 shall survive repayment in full of the Loans and payment of all other Secured Obligations. At the election of any Indemnified Person, the Borrower's indemnification obligations under this Section 11.2 shall include the obligation to defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person, at the sole cost and expense of the Borrower. All amounts owing under this Section 11.2 shall be paid within thirty days after written demand therefore.

(d) Contribution. To the extent that any undertaking in the preceding paragraphs of this Section 11.2 may be unenforceable because it is violative of any Law or public policy, the Borrower will contribute the maximum portion that it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of such undertaking.

(e) Settlement. So long as the Borrower is in compliance with its obligations under this Section 11.2, the Borrower shall not be liable to any Indemnified Person under this Section 11.2 for any settlement made by such Indemnified Person without the Borrower's consent.

11.3 Notices.

(a) All notices, requests and other communications provided for hereunder shall be in writing and shall be faxed, sent or delivered to the physical or e-mail address or facsimile number specified on Appendix G or to such other physical or e-mail address or facsimile number as shall be designated by such party in a written notice to the other parties hereto.

(b) All such notices, requests and communications (i) sent by express courier will be effective upon delivery to or refusal to accept delivery by the addressee, (ii) transmitted by facsimile will be effective when sent and facsimile confirmation is received, (iii) on the date on which such notice or other communication has been made generally available on an Approved Electronic Platform, Internet website or similar telecommunication device to the class of Person(s) being notified (regardless of whether any such Person must accomplish, and whether or not any such Person shall have accomplished, any action prior to obtaining access to such items, including registration, disclosure of contact information, compliance with a standard user agreement or undertaking a duty of confidentiality) and such Person has been notified in respect of such posting that a communication has been posted to such Approved Electronic Platform, Internet website or similar telecommunication device if delivered by posting to such Approved Electronic Platform, Internet website or similar telecommunication device requiring that a user have prior access to such Approved Electronic Platform, Internet website or similar telecommunication device and (iv) sent by e-mail will be effective when sent and electronic confirmation of receipt is received, except that (x) all notices and other communications to the Administrative Agent shall not be effective until actually received during normal business hours and (y) any communications transmitted by the Borrower by facsimile or e-mail shall be immediately confirmed by a telephone call to the recipient at the number specified on Appendix G and shall be followed promptly by a hard copy original thereof by express courier.

(c) Notwithstanding Sections 11.3(a) and 11.3(b) (unless the Administrative Agent requests that the provisions of Sections 11.3(a) and 11.3(b) be followed) and any other

provision in this Credit Agreement or any other Financing Document providing for the delivery of any Approved Electronic Communication by any other means, the Borrower, the other Borrower Parties and the Pledgor, as the case may be, shall deliver all Approved Electronic Communications to the Administrative Agent by properly transmitting such Approved Electronic Communications in an electronic/soft medium in a format acceptable to the Administrative Agent to lindsay.scully@ca-cib.com or such other electronic mail address (or similar means of electronic delivery) as the Administrative Agent may notify to the Borrower. Nothing in this Section 11.3(c) shall prejudice the right of the Administrative Agent or any Lender to deliver any Approved Electronic Communication to any Secured Party in any manner authorized in this Credit Agreement or to request that the relevant Borrower Parties or the Pledgor effect delivery in such manner.

(d) Posting of Approved Electronic Communications.

(i) The Borrower and each Lender agree that the Administrative Agent may, but shall not be obligated to, make the Approved Electronic Communications available to the Lenders by posting such Approved Electronic Communications on IntraLinks™ or a substantially similar electronic platform chosen by the Administrative Agent to be its electronic transmission system (the "Approved Electronic Platform").

(ii) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the date of this Credit Agreement, a dual firewall and a User ID/Password Authorization System) and the Approved Electronic Platform is secured through a single-user-per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each Lender and each Secured Party acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In consideration for the convenience and other benefits afforded by such distribution and for the other consideration provided hereunder, the receipt and sufficiency of which is hereby acknowledged, each Lender and each Secured Party hereby approves distribution of the Approved Electronic Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

(e) THE APPROVED ELECTRONIC PLATFORM AND THE APPROVED ELECTRONIC COMMUNICATIONS ARE PROVIDED "AS IS" AND "AS AVAILABLE". NONE OF THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES WARRANT THE ACCURACY, ADEQUACY OR COMPLETENESS OF THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM AND EACH EXPRESSLY DISCLAIMS ANY LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR

FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS AFFILIATES IN CONNECTION WITH THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM.

(f) Each Lender agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Approved Electronic Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally-applicable

document retention procedures and policies.

(g) The Borrower acknowledges and agrees, and shall cause each other Borrower Party to acknowledge and agree, that any agreement of the Lenders to receive certain notices by telephone, Approved Electronic Platform, e-mail or facsimile is solely for the convenience and at the request of the Borrower Parties and the Pledgor. The Lenders shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Borrower to give such notice and the Lenders shall not have any liability to the Borrower or other Person on account of any action taken or not taken by any of the Secured Parties in reliance upon such telephonic, e-mail or facsimile notice.

(h) Notwithstanding any other provision of this Section 11.3 to the contrary, any communication in respect of the Borrower Parties and their Affiliates which is transmitted through the Approved Electronic Platform shall be subject to any confidentiality agreements entered into between any Borrower Party and any Lender or Agent or Issuing Bank in respect of this Credit Agreement, the other Financing Documents and Transaction Documents and the transactions contemplated.

11.4 Benefit of Agreement. This Credit Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto. The Borrower may not assign or otherwise transfer any of its rights or obligations under this Credit Agreement or any of the other Financing Documents.

11.5 No Waiver; Remedies Cumulative. No failure or delay on the part of any of the Secured Parties or the holder of any Note in exercising any right, power or privilege hereunder or under any other Financing Document and no course of dealing between the Borrower and any Secured Party or the holder of any Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Financing Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Secured Party or the holder of any Note to take any other or further action in any circumstances without notice or demand. All remedies, either under this Credit Agreement or any other Financing Document or pursuant to any applicable Law or otherwise afforded to any Secured Party or the holder of any Note shall be cumulative and not alternative or exclusive in nature.

11.6 Third Party Beneficiaries. (a) The agreement of each Lender to make extensions of credit to the Borrower and each Issuing Bank to issue any Specified Letter of

Credit on the terms and conditions set forth in this Credit Agreement and the other Financing Documents is solely for the benefit of the Borrower and the other Borrower Parties, and no other Person (including any other Project Participant, or any contractor, sub-contractor, supplier, worker, carrier, warehouseman, materialman or vendor furnishing supplies, goods or services to or for the benefit of the Borrower, any other Borrower Party or the Project or receiving services from the Project) shall have any rights hereunder against any Secured Party with respect to the Loans, the Specified Letters of Credit, the proceeds thereof or otherwise.

(b) Each Indemnified Person is an intended third party beneficiary of Section 11.2 hereof.

11.7 Reinstatement. To the extent that any Secured Party receives any payment by or on behalf of the Borrower, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to the Borrower or to its estate, trustee, receiver, custodian or any other party under any Debtor Relief Law or otherwise, then to the extent of the amount so required to be repaid, the obligation or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the Secured Obligations as of the date such initial payment, reduction or satisfaction occurred.

11.8 No Immunity. To the extent that the Borrower may be entitled, in any jurisdiction in which judicial proceedings may at any time be commenced with respect to this Credit Agreement or any other Financing Document, to claim for itself or its revenues, assets or Properties any immunity from suit, the jurisdiction of any court, attachment prior to judgment, attachment in aid of execution of judgment, set-off, execution of a judgment or any other legal process, and to the extent that in any such jurisdiction there may be attributed to such Person such an immunity (whether or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the fullest extent permitted by the Law of the applicable jurisdiction.

11.9 Counterparts. This Credit Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart to this Credit Agreement by facsimile or electronic transmission in ".pdf" format shall be as effective as delivery of a manually signed original.

11.10 Amendment or Waiver. No provision of this Credit Agreement may be amended, supplemented, modified or waived, except by a written instrument signed by the Administrative Agent (acting in accordance with Section 10.11) and the Borrower. Any waiver and any amendment, supplement or modification made or entered into in accordance with this Section 11.10 shall be binding upon each of the Lenders.

11.11 Assignments, Participations, etc.

(a) Subject to first obtaining any prior approvals set forth in Section 11.11(b) and otherwise complying with this Section 11.11, each Financing Party may assign to one or

more Eligible Assignees all or any part of any Loan, Commitment, Specified Letter of Credit, TALC Percentage or TALC Participating Amount and the other rights and obligations of such Lender or Issuing Bank hereunder and under the other Financing Documents; provided, that (A) each such assignment by a Lender of Construction Loans, Construction Notes, and Construction Loan Commitments shall only be assigned contemporaneously with a corresponding portion of Term Loan Commitments; (B) in the case of an assignment of any part of a Loan or Commitment to any Eligible Assignee, such assignment shall not be for an amount less than (x) $1,000,000 in respect of any Eligible Assignee that is a Financing Party prior to giving effect to such assignment or (y) $5,000,000 in respect of any Eligible Assignee that is not a Financing Party prior to giving effect to such assignment, (or a higher integral multiple of 1,000,000 in excess thereof) in each instance; and (C) the Borrower and the Administrative Agent may continue to deal solely and directly with the assigning Lender or Issuing Bank in connection

with the interest so assigned until (1) written notice of such assignment, together with payment instructions, addresses and related information with respect to the Eligible Assignee, shall have been given to the Borrower and the Administrative Agent by such assigning Lender or Issuing Bank and the Eligible Assignee, (2) the assigning Lender, Issuing Bank or Eligible Assignee has paid to the Administrative Agent a processing fee in the amount of $3,500 and (3) the assigning Lender or Issuing Bank shall have delivered to the Borrower and the Administrative Agent an Assignment and Acceptance substantially in the form of Exhibit 13 hereto (an "Assignment and Acceptance") with respect to such assignment from the assigning Lender or Issuing Bank; provided, further, that, if the Eligible Assignee is an Affiliated Lender, then (A) such Affiliated Lender (whether as a direct purchaser of the Loans or as the ultimate purchaser of the Loans through a broker or other intermediary) shall ensure that its identity as an Affiliate of the Borrower is known to the assigning Lender and the Administrative Agent and (B) at the time of such assignment and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing.

(b) Prior to making any assignment of Loan, Commitment, Specified Letter of Credit, TALC Percentage or TALC Participating Amount hereunder, the assigning Lender or Issuing Bank (or the Borrower if the Borrower is proceeding in accordance with Section 3.26) shall obtain the written consent of (i) the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), (ii) except upon the occurrence and continuance of a Default or Event of Default, the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) and (iii) if constituting an assignment of a TALC Percentage or a TALC Participating Amount, the TALC Issuing Bank (which consent may be granted or withheld in the TALC Issuing Bank's sole discretion); provided, that no written consent of the Administrative Agent or Borrower shall be required in connection with any such assignment by a Lender to (i) an Eligible Assignee that is an Affiliate of such Lender or (ii) to another Lender that is an Eligible Assignee.

(c) Subject to Section 10.10, from and after the date that the Administrative Agent notifies the assigning Lender and the Borrower that it has received (and, where required in accordance with Section 11.11(a), provided its consent with respect to) an executed Assignment and Acceptance and payment of the above-referenced processing fee, (i) the Eligible Assignee under such Assignment and Acceptance shall be a party hereto and, to the extent that rights and obligations hereunder and under the other Financing Documents have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender

hereunder and under the other Financing Documents, and this Credit Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Eligible Assignee, and any reference to the assigning Lender hereunder or under the other Financing Documents shall thereafter refer to such Lender and to the Eligible Assignee to the extent of their respective interests and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Financing Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations hereunder and under the other Financing Documents; provided, that any Lender that assigns all of its Commitments and Loans hereunder in accordance with Section 11.11(a) shall continue to have the benefit of any indemnification provisions under this Credit Agreement (including Sections 3.10, 3.24, 11.1 and 11.2) and under the other Financing Documents (to the extent having arisen prior to such assignment), which shall survive such assignment as to such assigning Lender. At the time of each assignment pursuant to Section 11.11(a) to a Person which is not already a Lender hereunder, the relevant Eligible Assignee shall provide to the Borrower and the Administrative Agent the appropriate Internal Revenue Service Forms (and, if applicable, an Applicable Tax Certificate) described in Section 3.24(b) to the extent such forms would provide a complete exemption from or reduction in United States withholding tax. To the extent that an assignment of all or any portion of a Lender's Commitments and related outstanding Obligations pursuant to this Section 11.11 would, at the time of such assignment, result in increased costs under Section 3.24 from those being charged by the respective assigning Lender prior to such assignment, then the Borrower shall not be obligated to pay such increased costs (although the Borrower, in accordance with and pursuant to the other provisions of this Credit Agreement, shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective assignment).

(d) Promptly after the Borrower receives notice from the Administrative Agent that the Administrative Agent has received an executed Assignment and Acceptance and payment of the above-referenced processing fee, upon the request of the Eligible Assignee, the Borrower shall execute and deliver to the Administrative Agent new Notes evidencing the Eligible Assignee's assigned Commitments and Loans and, upon the request of the assigning Lender, if the assigning Lender has retained a portion of its Loans, the Borrower shall execute and deliver to the Administrative Agent replacement Notes reflecting the Commitments and Loans retained by the assigning Lender (such Notes to be in exchange for, but not in payment of, the Notes, if any, held by such Lender).

(e) Any Lender (the "Originating Lender") may at any time sell to one or more commercial banks or other Persons not Affiliates of the Borrower (a "Participating Bank") participating interests in any Loans; provided, that (i) the Originating Lender's obligations under this Credit Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) the Borrower and the Administrative Agent shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Credit Agreement and the other Financing Documents and (iv) no Lender shall transfer or grant any participating interest under which the Participating Bank shall have rights to approve any amendment or modification to, or give any consent or waiver with respect to, this Credit Agreement or any other Transaction Document, except to the extent such amendment, modification, consent or waiver would require unanimous consent of the Lenders as described in Section 11.10. In the case of any such

participation, the Participating Bank shall not have any rights under this Credit Agreement or any of the other Financing Documents (the Participating Bank's rights against the Originating Lender in respect of such Participation to be those set forth in the agreement executed by the Originating Lender in favor of the Participating Bank relating thereto) and all amounts payable by the Borrower hereunder shall be determined as if such Lender had not sold such participation.

(f) Notwithstanding any other provision contained in this Credit Agreement or any other Transaction Document to the contrary, any Lender may assign all or any portion of the Loans or Notes held by it as collateral security; provided, that any payment in respect of such assigned Loans or Notes made by the Borrower to or for the account of the assigning or pledging Lender in accordance with the terms of this Credit Agreement shall satisfy the Borrower's obligations hereunder in respect to such assigned Loans or Notes to the extent of such payment. No such assignment shall release the assigning Lender from its obligations hereunder.

(g) Notwithstanding any other provision contained in this Credit Agreement or any other Transaction Document to the contrary, no Affiliated Lender shall have any right to (i) attend (including by telephone or electronic means) any meeting or discussions (or portion thereof) among the Administrative Agent or any Financing Party to which representatives of the Borrower Parties are not invited or (ii) receive any information or material prepared by the Administrative Agent or any other Financing Party or any communication by or among the Administrative Agent and one or more other Financing Parties or have access to Intralinks or such other Electronic Platform used to distribute information to the other Financing Parties, except to the extent such information or materials have been made available to any Borrower Party or its representatives.

(h) Each Affiliated Lender agrees that it (i) shall not disclose any information it receives in its capacity as a Lender to the Borrower Parties and (ii) shall not have any right to make or bring (or participate in, other than as a passive participant in or recipient of its *pro rata* benefits of) any claim, in its capacity as a Lender, against the Agents or any Financing Party with respect to any duties or obligations or alleged duties or obligations of such Agent or any other such Financing Party under the Financing Documents, except with respect to any claims that any such Agent or any other such Financing Party is treating such Affiliated Lender, in its capacity as a Lender, in a disproportionate manner relative to the other Financing Parties (other than as expressly provided herein or in any other Financing Document).

(i) Notwithstanding anything in this Section 11.11 or the definition of "Required Financing Parties" to the contrary, for purposes of determining whether the Required Financing Parties, all affected Financing Parties or all Financing Parties have (A) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Financing Document or any departure by any Financing Party therefrom, (B) otherwise acted on any matter related to any Financing Document, or (C) directed or required the Administrative Agent, the Collateral Agent or any Financing Party to undertake any action (or refrain from taking any action) with respect to or under any Financing Document, each Affiliated Lender shall be deemed to have voted its interest as a Financing Party without its discretion in the same proportion as the allocation of voting with respect to such matter by Financing Parties who are not Affiliated Lenders; provided, that no amendment, modification, waiver, consent or other action with respect to any Financing Document shall deprive any

Affiliated Lender of its *pro rata* share of any payments to which such Affiliated Lender is entitled under the Financing Documents without such Affiliated Lender providing its consent; and in furtherance of the foregoing, (x) each Affiliated Lender agrees to execute and deliver to the Administrative Agent any instrument reasonably requested by the Administrative Agent to evidence the voting of its interest as a Lender in accordance with the provisions of this Section 11.11 (provided, that if such Affiliated Lender fails to promptly execute such instrument such failure shall in no way prejudice any of the Administrative Agent's rights under this paragraph) and (y) the Administrative Agent is hereby appointed (such appointment being coupled with an interest) by such Affiliated Lender as such Affiliated Lender's attorney-in-fact, with full authority in the place and stead of such Affiliated Lender and in the name of such Affiliated Lender from time to time in the Administrative Agent's discretion to take any action and to execute any instrument that the Administrative Agent may deem reasonably necessary to carry out the provisions of this Section 11.11.

(j) Each Affiliated Lender, solely in its capacity as a Lender, hereby agrees, and each Assignment and Acceptance shall provide a confirmation that, if any Borrower Party or any of their assets shall be subject to any voluntary or involuntary proceeding commenced under the Bankruptcy Code ("Bankruptcy Proceedings"), (i) such Affiliated Lender shall not take any step or action in such Bankruptcy Proceeding to object to, materially impede, or materially delay the exercise of any right or the taking of any action by the Administrative Agent (or the taking of any action by a third party that is supported by the Administrative Agent) in relation to such Affiliated Lender 's claim with respect to its Loans (an "Affiliated Lender Claim") (including objecting to any debtor in possession financing, use of cash collateral, grant of adequate protection, sale or disposition, compromise, or plan of reorganization) so long as such Affiliated Lender is treated in connection with such exercise or action on the same or better terms as the other Lenders and (ii) with respect to any matter requiring the vote of Financing Parties during the pendency of a Bankruptcy Proceeding (including voting on any plan of reorganization), the Loans held by such Affiliated Lender (and any Affiliated Lender Claim with respect thereto) shall be deemed to be voted in accordance with this Section 11.11(j), so long as such Affiliated Lender is treated in connection with the exercise of such right or taking of such action on the same or better terms as the other Financing Parties. For the avoidance of doubt, each Affiliated Lender and the other Financing Parties agree and acknowledge that the provisions set forth in this Section 11.11(j), and the related provisions set forth in the Assignment and Acceptance, constitute a "subordination agreement" as such term is contemplated by, and utilized in, Section 510(a) of the Bankruptcy Code, and, as such, would be enforceable for all purposes in any case where a Borrower Party has filed for protection under the Bankruptcy Code.

11.12 Survival. All indemnification and expense reimbursement provisions set forth herein, including those set forth in Sections 11.1 and 11.2, shall survive the execution and delivery of this Credit Agreement and the Notes and the making and repayment of the Loans. In addition, each representation and warranty made or deemed to be made pursuant hereto shall survive the making of such representation and warranty, and no Lender shall be deemed to have waived, by reason of making any extension of credit, any Default or Event of Default which may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that such Lender may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time such extension of credit was made.

11.13 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS CREDIT AGREEMENT, THE NOTES OR ANY OTHER FINANCING DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE FINANCING PARTIES TO ENTER INTO THIS CREDIT AGREEMENT.

11.14 Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Bank, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by such Lender, such Issuing Bank or any such Affiliate, to or for the credit or the account of the Borrower or any other Borrower Party against any and all of the obligations of the Borrower or such Borrower Party now or hereafter existing under this Credit Agreement or any other Financing Document to such Lender or such Issuing Bank or their respective Affiliates, irrespective of whether or not such Lender, Issuing Bank or Affiliate shall have made any demand under this Credit Agreement or any other Loan Document and although such obligations of the Borrower or such Borrower Party may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or such Issuing Bank different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 3.27 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Bank or their respective Affiliates may have. Each Lender and Issuing Bank agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided, that the failure to give such notice shall not affect the validity of such setoff and application.

11.15 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of any provision in any other jurisdiction.

11.16 Domicile of Loans. Each Lender may transfer and carry its Loans at, to or for the account of any office, Subsidiary or Affiliate of such Lender.

11.17 Limitation of Recourse. There shall be full recourse to the Borrower and to all of its assets for the liabilities of the Borrower under this Credit Agreement and the other Financing Documents and its other Secured Obligations, but in no event shall any of the Financing Parties have any claims with respect to the Transactions contemplated under the Transaction Documents against the Sponsor, the Pledgor or any of the Sponsor's or Pledgor's Affiliates (other than any Borrower Party), or in either case any of their respective shareholders, officers, directors, employees, representatives or agents (collectively, the "Non-Recourse Parties"), provided, that the foregoing shall not: (a) constitute a waiver, release or discharge (or otherwise impair the enforceability) of any of the Secured Obligations, or of any of the terms, covenants, conditions, or provisions of this Credit Agreement or any other Financing Document and the same shall continue (but without personal liability of the Non-Recourse Parties) until fully paid, discharged, observed, or performed; (b) constitute a waiver, release or discharge of any Lien purported to be created pursuant to any Security Document (or otherwise impair the ability of any Secured Party to realize or foreclose upon any Collateral); (c) limit or restrict the right of the Administrative Agent, the Collateral Agent or any other Secured Party (or any assignee, beneficiary or successor to any of them) to name any Borrower Party or any other person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Credit Agreement or any other Financing Document, or for injunction or specific performance, so long as no judgment in the nature of a deficiency judgment shall be enforced against any Non-Recourse Party, except as set forth in other provisions of this Section 11.17; (d) in any way limit or restrict any right or remedy of the Administrative Agent, the Collateral Agent or any other Financing Party (or any assignee or beneficiary thereof or successor thereto) with respect to, and each Non-Recourse Party shall remain fully liable to the extent that it would otherwise be liable for its own actions with respect to, any fraud (which shall not include innocent or negligent misrepresentation), wilful misrepresentation, or misappropriation of revenues, profits of or proceeds from each of the Project or any Collateral, that should or would have been paid as provided herein or paid or delivered to the Administrative Agent, the Collateral Agent or any other Financing Party (or any assignee or beneficiary thereof or successor thereto) towards any payment required under this Credit Agreement or any other Financing Document; or (e) affect or diminish in any way or constitute a waiver, release or discharge of any specific written obligation, covenant, or agreement made by any of the Non-Recourse Parties (or any security granted by the Non-Recourse Parties in support of the obligations of any person) under any Financing Document (including the Pledge Agreements) or as security for the Secured Obligations. The limitations on recourse set forth in this Section 11.17 shall survive the termination of this Credit Agreement, the termination of all Commitments and the full payment and performance of the Secured Obligations under this Credit Agreement and the other Financing Documents.

11.18 Governing Law; Submission to Jurisdiction.

(a) THIS CREDIT AGREEMENT AND EACH OF THE OTHER FINANCING DOCUMENTS (UNLESS ANY SUCH DOCUMENT EXPRESSLY STATES OTHERWISE THEREIN) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW RULES THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(b) The Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York State court sitting in New York City for the purposes of all legal actions and proceedings arising out of or relating to this Credit Agreement, any other Financing Document or the transactions contemplated hereby or thereby. The Borrower hereby irrevocably waives, to the fullest extent permitted by applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such action or proceeding brought in such a court and any claim that any such action or proceeding brought in such a court has been brought in an inconvenient forum. Nothing herein shall affect the right to serve process in any other manner permitted by applicable Law or any right to bring any legal action or proceeding in any other competent jurisdiction, including judicial or non-judicial foreclosure of real property interests which are part of the Collateral. The Borrower further agrees that the aforesaid courts of the State of New York and of the United States for the Southern District of New York shall have exclusive jurisdiction with respect to any claim or counterclaim of the Borrower based upon the assertion that the rate of interest charged by or under this Credit Agreement or under the other Financing Documents is usurious. To the extent permitted by applicable Law, the Borrower further irrevocably agrees to the service of process of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by certified mail, postage prepaid, return receipt requested, to the Borrower at the address referenced in Section 11.3, such service to be effective upon the date indicated on the postal receipt returned from the Borrower.

11.19 Complete Agreement. THIS CREDIT AGREEMENT AND THE OTHER FINANCING DOCUMENTS REPRESENT THE FINAL AND COMPLETE AGREEMENT OF THE PARTIES HERETO, AND ALL PRIOR NEGOTIATIONS, REPRESENTATIONS, UNDERSTANDINGS, WRITINGS AND STATEMENTS OF ANY NATURE ARE HEREBY SUPERSEDED IN THEIR ENTIRETY BY THE TERMS OF THIS CREDIT AGREEMENT AND THE OTHER FINANCING DOCUMENTS.

* * *

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Credit Agreement as of the date first above written.

NRG WEST HOLDINGS LLC,
as Borrower

By: /s/ Scott Valentino

Name: Scott Valentino
Title: President

MIZUHO CORPORATE BANK, LTD.,
as Lender, Issuing Bank, Mandated Lead Arranger and Joint Bookrunner

By: /s/ Takuma Kanai

Name: TAKUMA KANAI
Title: DEPUTY GENERAL MANAGER

RBS SECURITIES INC.,
as Mandated Lead Arranger and Joint Bookrunner

By: /s/ Matthew Wade

Name: Matthew Wade
Title: Director

THE ROYAL BANK OF SCOTLAND PLC,
as Lender and Issuing Bank

By: /s/ Matthew Wade
Authorised Signatory

Name: Matthew Wade
Title: Director

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,
as Lender, Issuing Bank, Mandated Lead Arranger, Joint Bookrunner and Administrative Agent

By: /s/ Evan S. Levy

Name: **Evan S. Levy**
Title: Managing Director

By: /s/ James Guidera

Name: **James Guidera**
Title: Managing Director

ING CAPITAL LLC,
as Lender, Issuing Bank and Mandated Lead Arranger

By: /s/ Stephen E. Fischer

Name: STEPHEN E. FISCHER
Title: MANAGING DIRECTOR

By: /s/ Sven Wellock

Name: SVEN WELLOCK
Title: DIRECTOR

UNION BANK, N.A.,
as Lender and Mandated Lead Arranger

By: /s/ Jeff Fesenmaier

Name: Jeff Fesenmaier
Title: Vice President

SIEMENS FINANCIAL SERVICES, INC.,
as Lender

By: /s/ Douglas Maher

Name: Douglas Maher
Title: Vice President

By: /s/ Kirk H. Edelman

Name: Kirk H. Edelman
Title: President and CEO
Siemens Financial Services, Inc

COBANK, ACB,
as Lender

By: /s/ Lori A. Kepner

Name: Lori A. Kepner
Title: Vice President

DNB NOR BANK ASA,
as Lender

By: /s/ Giacomo Landi

Name: Giacomo Landi
Title: Senior Vice President

By: /s/ Cathleen Buckley

Name: **Cathleen Buckley**
Title: Senior Vice President

LANDESBANK HESSEN THÜRINGEN GIROZENTRALE, NEW YORK BRANCH,
as Lender

By: /s/ Erica Egan

Name: Erica Egan
Title: Senior Vice President
Corporate Finance Division

By: /s/ Karl Strombom
Name: Karl Strombom
Title: Vice President
Corporate Finance

SOCIETE GENERALE,
as Lender

By: /s/ Daniel Mallo

Name: Daniel Mallo
Title: Managing Director

LLOYDS TSB BANK PLC,
as Lender

By: /s/ Julia R. Franklin

Name: Julia R. Franklin
Title: Assistant Vice President
F014

By: /s/ Karen Weich

Name: Karen Weich
Title: Vice President
W011

SUMITOMO MITSUI BANKING CORPORATION,
as Lender

By: /s/ Hiroshi Higuma

Name: Hiroshi Higuma
Title: Joint General Manager
Specialized Finance Dept.

SOVEREIGN BANK,
as Lender

By: /s/ Daniela Hofer-Gautschi

Name: Daniela Hofer-Gautschi
Title: VP

THE BANK OF NOVA SCOTIA,
as Lender

By: /s/ Pamela McDougall

Name: PAMELA McDOUGALL
Title: MANAGING DIRECTOR

CIT CAPITAL USA INC.,
as Lender

By: /s/ [ILLEGIBLE]

Name: [ILLEGIBLE]
Title: Director

CIT BANK,
as Lender

By: /s/ Benjamin Haslam

Name: Benjamin Haslam
Title: Authorized Signatory

ASSOCIATED BANK, N.A.,
as Lender

By: /s/ Kristin Isleib

Name: Kristin Isleib
Title: Senior Vice President

CREDIT INDUSTRIEL ET COMMERCIAL,
as Lender

By: /s/ Bordes Patrick

Name: **BORDES Patrick**
Title:

By: /s/ Mark D. Palin

Name: **Mark D. PALIN**
Title: Vice President

LANDESBANK BADEN-WUERTTEMBERG, NEW YORK BRANCH,
as Lender

By: /s/ [ILLEGIBLE]

Name: [ILLEGIBLE]
Title: CONSULTANT

By: /s/ Leonard J. Crann

Name: **Leonard J. Crann**
Title: **General Manager**

DEKABANK DEUTSCHE GIROZENTRALE,
as Lender

By: /s/ Peter Bahn

Name: Peter Bahn
Title: Executive Director

By: /s/ Achim Grobosch

Name: Achim Grobosch
Title: Vice President

Appendix A
to
Credit Agreement

DEFINED TERMS AND RULES OF INTERPRETATION

1. Defined Terms.

"AA Disbursement Account" means the account of the Administrative Agent so-designated on Appendix G to this Credit Agreement or such other account as so-designated by the Administrative Agent by notice to the Lenders.

"AA Payment Account" means the account of the Administrative Agent so-designated on Appendix G to this Credit Agreement or such other account as so-designated by the Administrative Agent by notice to the Lenders.

"Accounts" has the meaning set forth in the Accounts Agreement and shall include any other accounts or sub-accounts established pursuant to the Accounts Agreement.

"Accounts Agreement" means the Accounts Agreement, dated the date hereof, among the Borrower, the Project Owner, the Procurement Sub, the Collateral Agent and the Account Bank.

"Account Bank" means the institution appointed as such in accordance with the Accounts Agreement or any successor institution so-appointed pursuant to the Accounts Agreement.

"Additional Material Project Document" means any Additional Project Document that is a Material Project Document.

"Additional Project Document" means any Project Document entered into by any Borrower Party with any other Person subsequent to the date of this Credit Agreement (including Project Documents entered into in substitution for any Project Document that has been terminated in accordance with its terms or otherwise).

"Adjusted LIBO Rate" means, for any LIBOR Loan for any Interest Period therefor, the rate *per annum* (rounded upwards, if necessary, to the nearest 1/100 of 1%) determined by the Administrative Agent to be equal to the quotient obtained by dividing (a) the LIBO Rate for such LIBOR Loan for such Interest Period by (b) 1 *minus* the Reserve Requirement for such LIBOR Loan for such Interest Period.

"Administrative Agent" means Credit Agricole Corporate and Investment Bank, acting in its capacity as agent for the Lenders pursuant to this Credit Agreement, or any successor Administrative Agent appointed in accordance with Section 10.9 of this Credit Agreement.

"Affiliate" means, as to any Person, any Subsidiary of such Person and any other Person which, directly or indirectly, controls or is controlled by or is under direct or indirect common control with such specified Person. For the purposes of this definition and any obligation to cause another Person to take or refrain from taking any action, "control", when

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used with respect to any Person, shall mean the possession of the power to direct or cause the direction of management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract, management agreement, common directors, officers or trustees or otherwise. The terms "controlling" and "controlled" shall have correlative meanings.

"Affiliate O&M Fee" means all amounts, whether fees or otherwise, payable by the Borrower or any other Borrower Party to any Affiliated Project Party pursuant to any Affiliated Project Document, other than (x) in the case of the O&M Agreement, Reimbursable Expenses (as such term is defined in the O&M Agreement) and (y) in the case of the Project Administration Agreement, Reimbursable Expenses (as such term is defined in the Project Administration Agreement).

"Affiliated Lender" means each Lender that is an Affiliate of the Borrower Parties (other than the Borrower Parties).

"Affiliated Project Documents" means any Project Document with any Affiliated Project Party.

"Affiliated Project Party" means each Affiliate of the Sponsor (other than the Borrower or any other Borrower Party) that is a party to a Project Document.

"Agent" has the meaning set forth in Section 10.1(b) of this Credit Agreement.

"Agent-Related Persons" means, with respect to the Administrative Agent, its officers, directors, employees, representatives, attorneys, agents and Affiliates.

"ALTA" means the American Land Title Association.

"Amortization Schedule" has the meaning set forth in Section 3.15.

"Anti-Terrorism Laws" means (i) the anti-money laundering provisions of the U.S.A. Patriot Act, (ii) any of the foreign asset control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto and (iii) Executive Order No. 13,224 Fed. Reg. 49,079 (2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism).

"Applicable Group" has the meaning set forth Section 10.6 of this Credit Agreement

"Applicable Lending Office" means, for each Lender and for each Type of Loan, the "*Lending Office*" of such Lender (or of an Affiliate thereof) designated for such Type of Loan in Appendix G or such other office of such Lender (or its Affiliate) as such Lender may from time-to-time specify to the Administrative Agent and the Borrower by written notice in accordance with the terms hereof as the office by which its Loans of such Type are to be made and maintained.

"Applicable Margin" means, with respect to any Tranche and any period, the percentage set forth below such Tranche and opposite such period on Appendix B.

"Applicable Taxes" has the meaning set forth in Section 3.24 of this Credit Agreement.

"Applicable Tax Certificate" has the meaning set forth in Section 3.24 of this Credit Agreement.

"Approved Electronic Communications" means each Communication that the Borrower, any other Borrowing Party or the Pledgor is obligated to, or otherwise chooses to, provide to the Administrative Agent, the Collateral Agent or the Account Bank pursuant to any Financing Document or the transactions contemplated therein, including any financial statement, financial and other report, notice, request, certificate and other information material; provided, that, solely with respect to delivery of any such Communication by any of the Borrower, any other Borrowing Party or the Pledgor to any such Agent and without limiting or otherwise affecting either the Administrative Agent's right to effect delivery of such Communication by posting such Communication to the Approved Electronic Platform or the protections afforded hereby to the Administrative Agent in connection with any such posting, "Approved Electronic Communication" shall exclude (i) any Borrowing Request or Specified Letter of Credit, notice of conversion or continuation, and any other notice, demand, communication, information, document and other material relating to a request for a new, or a conversion of an existing, Borrowing, (ii) any notice pursuant to Sections 3.16 and 3.17 and any other notice relating to the payment of any principal or other amount due under any Financing Document prior to the scheduled date therefor, (iii) all notices of any Default or Event of Default and (iv) any notice, demand, communication, information, document and other material required to be delivered to satisfy any of the conditions set forth in Article IV or any other condition to any Borrowing or other extension

"Approved Electronic Platform" has the meaning set forth in Section 11.3(a) to this Credit Agreement.

"Assignment and Acceptance" has the meaning set forth in Section 11.11 of this Credit Agreement.

"Assignment of Project Labor Agreement" means the Assignment of Project Labor Agreement, dated January 3, 2001, by El Segundo Power II LLC to the Project Owner.

"Assumed Interest Expense" means, with respect to any period, the aggregate of (x) the amount of interest projected to be payable during such period hereunder (based on the actual rate established hereunder during any current Interest Period or a reasonable published or third party proprietary forward rate in respect of any future Interest Period) *plus* or *minus* (y) the aggregate amount payable by or to the Borrower in accordance with each Rate Swap Transaction entered into in accordance with Section 7.26 of this Credit Agreement during such period.

"Attorney Costs" means all reasonable and invoiced fees and disbursements of any law firm or other external counsel, the reasonable allocated cost of internal legal services and all reasonable disbursements of internal counsel; provided, that the Administrative Agent shall

not be required to establish the reasonability of fees or the allocated cost of internal legal services in respect of or relating to: any alleged, potential or actual Defaults or Events of Default; the prospective or actual exercise of remedies hereunder; the preservation of any rights or remedies hereunder or under any Collateral Document; or any claim for indemnification hereunder.

"Authorized Officer" means (i) with respect to any Person that is a corporation, the chairman, president, chief executive officer, any vice president or secretary of such Person, (ii) with respect to any Person that is a manager-managed limited liability company, any such manager, (iii) with respect to any Person that is a member-managed limited liability company, such member (or if such member is not a natural Person, the Authorized Officer of such member), (iv) with respect to any Person that is a partnership, the general partner or managing partner of such Person (or if such general partner or managing partner is not a natural Person, the Authorized Officer of such general partner or managing partner) and (v) any Person that has been duly and specifically authorized by all necessary and appropriate corporate, limited liability company or partnership action (as applicable) to take the relevant action, as evidenced by a duly executed and delivered certificate of a Person who is an Authorized Officer of the relevant Person in accordance with subparts (i), (ii), (iii) or (iv) of this definition that has theretofore been delivered to the Administrative Agent setting forth the name, title and specimen signature of such duly and specifically authorized Person.

"Available Construction Funds" means, as of any day, the sum of (x) the aggregate amount of proceeds from the Construction Loans on deposit in or credited to the Construction Account on such day, without giving effect to any withdrawals therefrom on such day, *plus* (y) the aggregate amount of the Construction Loan Commitments on such day (other than the Construction Loan Commitment of any Defaulting Lender), without giving effect to any Disbursement of Construction Loans on such day.

"Bankruptcy Code" means the United States Federal Bankruptcy Code of 1978, 11 U.S.C. § 101 et seq.

"Bankruptcy Event" means a Voluntary Bankruptcy Event or an Involuntary Bankruptcy Event.

"Base Case Model" means the Microsoft Excel file entitled "CLOSING MODEL ESEC 0818 Syndication" posted to www.intralinks.com on August 19, 2011, as modified in accordance with Sections 4.2(m) and 7.9(c).

"Base Case Projections" means a projection of operating results for the Project over a period ending no sooner than December 31, 2030, showing the Borrower's reasonable good faith estimates, as of the Closing Date, of projected Project Costs, projected Project Revenues, projected O&M Expenses, Assumed Interest Expense, all Fees payable hereunder, and scheduled principal payments in respect of the Loans over the forecast period.

"Base Rate" means, for any day, means the rate *per annum* equal to the highest of (a) the Federal Funds Rate for such day *plus* 0.50%, (b) the Prime Rate for such day and (c) unless Section 3.9 applies in respect of the one-month LIBO Rate, the LIBO Rate for one month commencing on such day. Any changes in the Base Rate due to a change in the Prime Rate or

the Federal Funds Rate shall be effective on the effective date of such change in the Prime Rate or Federal Funds Rate.

"Base Rate Loans" means Loans which bear interest based upon the Base Rate.

"BOP Contract" means the Amended and Restated Construction Agreement, dated June 6, 2011, between the BOP Contractor and the Project Owner.

"BOP Contractor" means ARB, Inc., a California corporation.

"BOP Guarantor" means Primoris Services Corporation, a Delaware corporation.

"BOP Guaranty" means the Parent Guaranty, dated as of May 31, 2011, by the BOP Guarantor in favor of the Project Owner.

"Borrower" has the meaning set forth in the Preamble of this Credit Agreement.

"Borrower Closing Certificate" means the certificate, substantially in the form of Exhibit 11 to this Credit Agreement, dated the Closing Date, duly completed and signed by an Authorized Officer of the Borrower.

"Borrower Completion Certificate" means a certificate, substantially in the form of Exhibit 14 to the Credit Agreement, dated the Term Conversion Date, duly completed and signed by an Authorized Officer of the Borrower.

"Borrower Parties" means each of the Borrower, the Project Owner and the Procurement Sub.

"Borrower Pledge Agreement" means the Pledge Agreement dated the date hereof between the Borrower and the Collateral Agent in respect of, *inter alia*, the Equity Interests of the Project Owner and the Procurement Sub.

"Borrowing" means a borrowing of Loans of one Type from the Lenders on a given date (or the Conversion of a Loan or Loans of a Lender or Lenders on a given date) having, in the case of LIBOR Loans, the same Interest Period.

"Borrowing Minimum" means the amount set forth opposite the heading "*Borrowing Minimum*" on Appendix B.

"Borrowing Multiple" means the amount set forth opposite the heading "*Borrowing Multiple*" on Appendix B.

"Borrowing Request" means a request for Loans in substantially the form set forth as Exhibit 1, appropriately completed and duly executed by an Authorized Officer of the Borrower.

"Business Day" means (i) with respect to any payment to be made by the Borrower or any Borrower Party, a "Business Day" as defined in the Accounts Agreement, (ii)

with respect to any other action to be taken by the Borrower or any other Person, any day except Saturday, Sunday and any day which shall be in the location where such action is to be taken, a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close in any such location and (iii) without limiting the foregoing, with respect to all notices and determinations in connection with, and payments of principal and interest on, LIBOR Loans, any day which is a Business Day described in clause (i) above and which is also a day for trading by and between banks in the London interbank eurodollar market.

"Business Interruption Proceeds" has the meaning set forth in the Collateral Agreement.

"Buy-down Proceeds" has the meaning set forth in the Collateral Agreement.

"CAISO" means the California Independent System Operator Corporation.

"Capital Adequacy Regulation" means any rule, regulation, order, guideline, directive or request of any central bank or other Governmental Authority (whether or not having the force of Law), or any other Law, in each case regarding the capital adequacy of any bank or of any corporation controlling a bank.

"Capital Lease Obligations" means, for any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real or personal Property which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under U.S. GAAP (including Statement of Financial Accounting Standards No. 13 of the Financial Accounting Standards Board (for the purposes hereof, "Statement No. 13")) and, for purposes of this Credit Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with U.S. GAAP (including such Statement No. 13).

"Cash Collateralize" means, to deposit in a Controlled Account or to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the TALC Issuing Bank, as collateral for TALC Participations, cash or deposit account balances or, if the Administrative Agent and the TALC Issuing Bank shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the TALC Issuing Bank. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"CB Approval Threshold" means each threshold set forth on Appendix E under the heading "*CB Approval Threshold*".

"CFADS" means, in respect of any DSCR Calculation Period, the sum of (i) the aggregate amount deposited (or, as applicable, projected to be deposited) in the Operating Account (other than transfers from any other Secured Account to the Operating Account or the proceeds of any Indebtedness or Equity Contributions deposited therein) during such DSCR Calculation Period *minus* (ii) the aggregate amount transferred (or, as applicable, projected to be transferred) from the Operating Account to the O&M Expense Account during such DSCR Calculation Period.

"Change in Control" means any event as a result of which (i) on or prior to the Term Conversion Date, the Sponsor ceases to directly or indirectly own at least 50.1% of each class of Equity Interests of the Borrower, (ii) after the Term Conversion Date, the Sponsor ceases to directly or indirectly own at least 35% of each class of Equity Interests of the Borrower, (iii) after the Term Conversion Date, 50.1% of all Equity Interests of the Borrower cease to be owned by the Sponsor or (iv) the Sponsor ceases to have the unilateral power to direct or cause the direction of the management and policy of the Borrower, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise (other than with respect to customary significant and enumerated matters requiring the approval of minority equity holders).

"Change in Law" means the occurrence, after the date of the Credit Agreement, of any of the following: (a) the adoption or taking effect of any applicable Law, (b) any change in any applicable Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) without limiting the foregoing, the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"Change Order" means, as applicable, Change Orders (as defined in each of the BOP Contract, the Equipment Purchase Agreement or the Equipment Services Agreement) and change orders described in Section 4.5 of the Construction Management Agreement.

"Charter Documents" means, with respect to any Person and as applicable to such Person, (i) the articles of incorporation, limited liability company agreement, partnership agreement, or other similar organizational document of such Person, (ii) the by-laws or other similar document of such Person, (iii) any certificate of designation or instrument relating to the rights of preferred shareholders or other holders of Equity Interests of such Person, and (iv) any shareholder rights agreement or other similar agreement.

"Closing" has the meaning set forth in Section 4.1 of this Credit Agreement.

"Closing Certificate" means each of the Borrower Closing Certificate and the Pledgor Closing Certificate.

"Closing Date" means the date upon which the conditions precedent set forth in Section 4.1 of this Credit Agreement have been satisfied (or waived by the Financing Parties).

"CO Cost" means, in respect of any Change Order, the aggregate sum of (i) all costs incurred or to be incurred by any Borrower Party in respect thereof *plus* (ii) any Assumed Interest Expense, fees or other costs attributable to a delay in any Major Milestone Date as a

result of such Change Order *plus* (iii) any other cost incurred by any Borrower Party directly or indirectly as a result of such Change Order.

"Code" shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"Collateral" has the meaning set forth in the Collateral Agreement.

"Collateral Agent" means the institution appointed as such in accordance with the Collateral Agreement or any successor institution so-appointed pursuant to the Collateral Agreement.

"Collateral Agreement" means the Collateral Agreement dated the date hereof among the Borrower, the Procurement Sub, the Project Owner, the Pledgor, the Administrative Agent (on behalf of the Financing Parties) and the Collateral Agent.

"Collateral Documents" has the meaning set forth in the Collateral Agreement.

"Collateral Proceeds" has the meaning set forth in the Collateral Agreement.

"Commercial Operation Date" means the first date on which both Generating Units have achieved the Initial Delivery Date.

"Commitment Fee" has the meaning set forth in Section 3.13(a) of this Credit Agreement.

"Commitments" means, as applicable, the Tranche A Construction Loan Commitments, the Tranche B Construction Loan Commitments, the Term Commitments, the Revolving Commitments, the DSR Commitments and the TALC Commitments.

"Communications" means each notice, demand, communication, information, document and other material provided for hereunder or under any other Financing Document or otherwise transmitted between the parties hereto relating this Credit Agreement, the other Financing Documents, the Borrower, the other Borrower Parties or the Pledgor, or any of their respective Affiliates, or the transactions contemplated by this Credit Agreement or the other Financing Documents including all Approved Electronic Communications.

"Completion Tests" means, for each Generating Unit and for the Project, (i) each "Acceptance Test" (as such term is defined in the Equipment Services Agreement), (ii) each emissions, source or other acceptance or final test required to be performed by any Borrower Party in connection with the issuance to any such Borrower Party by the South Coast Air Quality Management District of a final permit to operate the Project and (iii) each test required by Article Seven of the Tolling Agreement.

"Consent Agreement" has the meaning set forth in the Collateral Agreement.

"Construction Account" has the meaning set forth in the Accounts Agreement.

"Construction Budget" means the construction budget dated the Closing Date, setting forth all Project Costs theretofore incurred and thereafter expected to be incurred by the Borrower Parties on or prior to the Term Conversion Date, as the same may be amended from time-to-time in accordance with Section 7.28 of this Credit Agreement.

"Construction Coordination Agreement" means the Construction Coordination Agreement, dated March 21, 2011, among the Project Owner, the Procurement Sub, the Equipment Servicer and the BOP Contractor.

"Construction Facilities" has the meaning set forth in Section 2.1(b) of this Credit Agreement.

"Construction Lender" means each Lender that has a Construction Loan Commitment or Construction Loans.

"Construction Loan Commitments" means the Tranche A Construction Loan Commitments and the Tranche B Construction Loan Commitments.

"Construction Loans" has the meaning set forth in Section 2.1(c) of this Credit Agreement.

"Construction Management Agreement" means the Construction Management Agreement, dated as of March 31, 2011 between the Project Owner and the Construction Manager.

"Construction Manager" means NRG Construction LLC, a Delaware limited liability company.

"Construction Notes" means each Note issued as evidence of one or more Construction Loans.

"Construction Requisition" has the meaning set forth in the Accounts Agreement.

"Contingency" means the amount so-specified in the Construction Budget.

"Contingent Obligation" means, as to any Person, any obligation of such Person guaranteeing or intending to guarantee any Indebtedness, leases, dividends or other obligations (for the purposes hereof, "primary obligations") of any other Person (for the purposes hereof, the "primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefore, (ii) to advance or supply funds (a) for the purchase or payment of any such primary obligation or (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of such primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the

primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"Contracted Amortization Amount" has the meaning set forth in Section 3.14(a).

"Controlled Account" means each deposit account that is established for holding Cash Collateral and is subject to a deposit account control agreement in form and substance satisfactory to the Administrative Agent and the TALC Issuing Bank.

"Conversion" means the conversion of one Type of Loan into another Type of Loan in accordance with Section 3.5 of this Credit Agreement. The term "Convert" shall have a correlative meaning.

"Conversion Request" means a request for the Conversion of one or more Tranches of Loans in substantially the form set forth as Exhibit 2.

"Credit Agreement" means the Credit Agreement to which this Appendix A is attached.

"Credit Facility" means the Tranche A Construction Facility, the Tranche B Construction Facility, the Tranche A Term Facility, the Tranche B Term Facility, the Revolving Facility, the DSR LC Facility or the TALC Facility.

"Date Certain" has the meaning set forth in Section 3.15(a) of this Credit Agreement.

"Debt-to-Equity Ratio" means, as at any date, the ratio of (x) the aggregate outstanding principal amount of all Loans to (y) the aggregate amount of Equity Contributions made by the Pledgor to the Borrower *minus* the aggregate amount of Distributions made in accordance herewith.

"Debt Service Reserve Account" has the meaning set forth in the Accounts Agreement.

"Debtor Relief Law" means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

"Default" means any event or circumstance which with notice or lapse of time or both would become an Event of Default.

"Default Rate" means a *per annum* rate equal to the Base Rate *plus* the Applicable Margin *plus* (ii) 2%.

"Defaulting Lender" shall mean, subject to Section 3.27(f), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such

Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied or (ii) pay to the Administrative Agent, the TALC Issuing Bank or any other Lender any other amount required to be paid by it hereunder (including in respect of its TALC Participation, if any) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or, if a TALC Participating Bank, the TALC Issuing Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (A) become the subject of a proceeding under any Debtor Relief Law, or (B) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity (provided that a Lender shall not be a Defaulting Lender pursuant to this clause (d) solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of

judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender). Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 3.27(f)) upon delivery of written notice of such determination to such Defaulting Lender, the Borrower, the TALC Issuing Bank and each other Lender.

"Deferred Principal Amount" has the meaning set forth in Section 3.15(c).

"Delay Liquidated Damages" means all liquidated damages payable under Section 13.1 of the BOP Contract and Section 15.2 and 15.3 of the Equipment Services Agreement.

"Disbursement" means any disbursement of a Loan pursuant hereto.

"Disbursement Date" means (i) prior to the Disbursement of any Loans, the date specified in a Borrowing Request as the date on which Disbursements of such Loans are requested by the Borrower and (ii) after the Disbursement of any Loans, the date such Loans are actually Disbursed.

"Disposition" has the meaning set forth in the Collateral Agreement.

"Disposition Proceeds" has the meaning set forth in the Collateral Agreement.

"Distribution" has the meaning set forth in Section 7.9 of this Credit Agreement.

"Distribution Account" has the meaning set forth in the Accounts Agreement.

"Distribution Conditions" means, as of any date, each of the following conditions: (i) the Term Conversion Date shall have occurred; (ii) no LC Loans (other than LC Loans that are Revolving Loans as a result of a draw on the LGIA Letters of Credit) are then-outstanding; (iii) no Deferred Principal Amount is then-outstanding; (iv) no Default or Event of Default has occurred and is continuing or would result from the making of such Distribution or other payment; (v) no Event of Loss has occurred unless the Project has been Restored in accordance with this Credit Agreement and the other Financing Documents; (vi) the Historical DSCR for the most recently ending DSCR Calculation Period was at least 1.20x, as confirmed by the most recent DSCR Certificate delivered by the Borrower in accordance with Section 6.1(d); and (vii) the Debt Service Reserve Account has been funded up to the DSR Required Balance.

"Distribution Reserve Account" has the meaning set forth in the Accounts Agreement.

"Distribution Sweep Proceeds" has the meaning set forth in the Collateral Agreement.

"Dollars" and the sign "$" shall each mean freely transferable, lawful money of the United States.

"DSCR Calculation Period" means in respect of each Semi-Annual Date, the four consecutive quarterly periods preceding such Semi-Annual Date.

"DSCR Certificate" has the meaning set forth in Section 6.1(d) of this Credit Agreement.

"DSR Availability Period" means the period commencing on the Term Conversion Date and ending on the seventh anniversary of the Closing Date.

"DSR Commitments" means, as to any Issuing Bank, the applicable percentage set forth opposite such Issuing Bank's name in Appendix F to this Credit Agreement under the heading "*DSR Commitment*" *multiplied by* the DSR LC Facility Amount.

"DSR Issuing Banks" means each Financing Party with a DSR Commitment.

"DSR LC Facility" has the meaning set forth in Section 2.5(a) of this Credit Agreement.

"DSR LC Facility Amount" has the meaning set forth in Section 2.5(a) of this Credit Agreement.

"DSR Letters of Credit" has the meaning set forth in Section 2.5(b) of this Credit Agreement.

"DSR Maturity Date" has the meaning set forth in Section 2.5(d) of this Credit Agreement.

"DSR Required Balance" has the meaning set forth in the Collateral Agreement.

"Eligible Assignee" means (a) with respect to any assignment, (i) a commercial bank or other financial institution having a combined capital and surplus of at least $1,000,000,000, (ii) a Person that is primarily engaged in the business of commercial banking and that is a Lender or an Affiliate of a Lender and (iii) the United States Federal Reserve, (b) with respect to each assignment of an Issuing Bank of its obligation to issue a TA Letter of Credit under the TALC Facility, a Person that fulfills the requirements set forth in the definition of "Letter of Credit" in the Tolling Agreement, (c) with respect to each assignment of an Issuing Bank of its obligation to issue an LGIA Letter of Credit under the Revolving Facility, a Person that fulfills the requirements set forth in Section 11.5 of the LGIA, (d) with respect to each assignment of an Issuing Bank of its obligation to issue an DSR Letter of Credit under the DSR Facility, a Person that fulfills the requirements set forth in Section 3.6(b) of the Collateral Agreement and (e) with respect to only to an assignment of Construction Loans or Term Loans, any Affiliate of the Borrower Parties (other than the Borrower Parties).

"Energy Marketing Agreement" means the Energy Marketing Services Agreement, dated March 31, 2011, between the Energy Marketer and the Project Owner.

"Energy Marketer" means NRG Power Marketing LLC, a Delaware limited liability company.

"Environmental Claim" has the meaning set forth in the Collateral Agreement.

"Environmental Indemnity" means the Environmental Indemnity Agreement, dated the date hereof, between NRG Energy, Inc. and the Project Owner.

"Environmental Laws" has the meaning set forth in the Collateral Agreement.

"Environmental Remediation Contractor" means AECOM or any other environmental remediation contractor reasonably acceptable to the Administraitve Agent (in consultation with the Independent Engineer) that is retained to develop the Remediation Work Plan.

"EPA Letters" means, collectively, (i) the conditional approval letter from the USEPA, dated April 1, 2011, approving El Segundo Power, LLC's letter of notification, dated March 2, 2011, (ii) the second conditional approval letter from the USEPA, dated June 6, 2011, modifying the April 1, 2011 letter referred to in subpart (i) above, (iii) the third conditional approval letter from the USEPA, dated July 15, 2011, further modifying the April 1, 2011 letter referred to in subpart (i) above, (iv) the fourth conditional approval letter from the USEPA, dated August 4, 2011, addressing the groundwater issue at the Site as it relates to polychlorinated biphenyls contamination, and (v) any other correspondence received from the USEPA or any

other relevant Governmental Authority in respect of remediation of the contamination by polychlorinated biphenyls in concrete foundations below ground surface, soils, and groundwater at, on and under the Site.

"EPC Contracts" means the BOP Contract, the BOP Guaranty, the Construction Management Agreement, the Equipment Purchase Agreement, the Equipment Supplier Guaranty, the Equipment Services Agreement, the Equipment Servicer Guaranty, the Construction Coordination Agreement, the Project Labor Agreement and the Assignment of Project Labor Agreement or any other Project Document providing for construction services on, or delivery of any equipment or materials to, the Site.

"EPC Contractors" means the BOP Contractor, the Equipment Supplier, the Equipment Supplier Guarantor, the Equipment Servicer, the Equipment Servicer Guarantor, the Construction Manager and each other counterparty to an EPC Contract.

"Equator Principles" "Equator Principles" means those principles so entitled and described in "The 'Equator Principles' — A financial industry benchmark for determining, assessing and managing social and environmental risk in project financing" (July 2006) and available at: http://www.equator-principles.com/documents/Equator_Principles.pdf, as adopted in such form by certain financial institutions.

"Equipment Purchase Agreement" means the Equipment Purchase Agreement, dated as of July 15, 2010, between the Borrower and the Equipment Supplier.

"Equipment Services Agreement" means the Services Agreement, dated as of July 19, 2010, between the Equipment Servicer and the Procurement Sub.

"Equipment Servicer" means Siemens Energy, Inc., a Delaware corporation.

"Equipment Servicer Guaranty" means the Guaranty, dated November 2, 2010, by the Equipment Servicer Guarantor for the benefit of the Procurement Sub and the Borrower.

"Equipment Servicer Guarantor" means Siemens Corporation, a Delaware corporation.

"Equipment Supplier" means Siemens Energy, Inc., a Delaware corporation.

"Equipment Supplier Guaranty" means the Guaranty, dated November 2, 2010, by the Equipment Supplier Guarantor for the benefit of the Procurement Sub and the Borrower.

"Equipment Supplier Guarantor" means Siemens Corporation, a Delaware corporation.

"Equity Contributions" means equity contributions made in cash or in-kind by the Pledgor to the Borrower; provided, that for purposes of Sections 2.1(e), 4.1(e) and 7.9(c) of the Agreement and the definition of "Debt-to-Equity Ratio", the amount of Equity Contributions deemed contributed in-kind by the Pledgor shall not exceed 105% of the amount of Project Costs

that have been validated by the Independent Engineer as being properly incurred by Affiliates of the Borrower and contributed in-kind (directly or indirectly) to the Borrower.

"Equity Interests" means (i) as to any Person organized as a limited liability company or a partnership, any and all shares of the profits and losses of such Person, any and all rights to receive distributions of such Person's assets, and any and all rights, benefits or privileges pertaining to any of the foregoing, including voting rights and the right to participate in management, (ii) as to any Person organized as a corporation, any ordinary shares, preferential shares, convertible shares, warrants or other securities representing or convertible into any of the foregoing and (iii) as to any other Person (other than a natural Person), any equity interests of any kind in such Person whether or not analogous to the foregoing.

"ERISA" means the U.S. Employee Retirement Income Security Act of 1974 and the regulations promulgated and rulings issued thereunder or pursuant thereto.

"ERISA Affiliate" means each person (as defined in Section 3(9) of ERISA) which, together with the Borrower or any Subsidiary of the Borrower, would be deemed to be a "single employer" (i) within the meaning of Section 414(b), (c), (m) or (o) of the Internal Revenue Code or (ii) as a result of the Borrower or any Subsidiary of the Borrower being or having been a general partner of such person.

"ERISA Event" means (a) any reportable event, as defined in Section 4043 of ERISA, with respect to a Pension Plan, as to which the PBGC has not waived the requirement of Section 4043(a) of ERISA that it be notified of such event, (b) the filing of a notice of intent to terminate any Pension Plan, if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA, the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Pension Plan, or the termination of any Pension Plan under Section 4041(c) of ERISA, (c) the institution of proceedings by the PBGC under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, (d) the failure to make a required contribution to any Pension Plan that would result in the imposition of a Lien or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a Lien, (e) the failure to satisfy the minimum funding standard under Section 412 of the Code or Section 302 of ERISA, whether or not waived, or the filing of any request for or receipt of a minimum funding waiver under Section 412 of the Code with respect to any Pension Plan or Multiemployer Plan or a determination that any Pension Plan is considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA, (f) engaging in a non-exempt prohibited transaction within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to a Pension Plan, (g) the complete or partial withdrawal of any member of the ERISA Group from a Multiemployer Plan if there is any potential liability therefor, the reorganization or insolvency under Title IV of ERISA of any Multiemployer Plan or the receipt by any member of the ERISA Group of any notice, or the receipt by any Multiemployer Plan from any member of the ERISA Group of any notice that a Multiemployer Plan is in endangered or critical status under Section 432 of the Code or Section 305 of ERISA or (h) any Borrower Party incurring any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA).

"ERISA Group" means the Borrower Parties and their ERISA Affiliates.

"Event of Default" has the meaning set forth in Article VIII of this Credit Agreement.

"Event of Loss" has the meaning set forth in the Collateral Agreement.

"EWG" has the meaning set forth in Section 5.12 of this Credit Agreement.

"EWG Order" has the meaning set forth in Section 5.12 of this Credit Agreement.

"Excess Fuel Consumption Liquidated Damages" has the meaning set forth in the Equipment Services Agreement.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, or by any jurisdiction as a result of a present or former connection between such recipient and the jurisdiction imposing such tax (or any political subdivision thereof), other than any such connection arising solely from such recipient having executed, delivered or performed its obligations or received a payment under, or enforced, this Credit Agreement or any other Financing Document, (b) any branch profits taxes imposed by the United States, (c) any backup withholding tax that is required by the Code to be withheld from amounts payable to a Lender, and (d) in the case of a Lender described in Section 3.24(b)(i) (other than an assignee pursuant to a request by the Borrower under Section 11.11 and Section 3.26), any United States withholding tax that is required to be imposed on amounts payable to such Lender pursuant to the Laws in force at the time such Lender becomes a party hereto (or designates a new Lending Office) except to the extent that such Lender (or its assignor, if any) was entitled, at the time of the designation of a new lending office (or assignment) to receive additional amounts from any Borrower with respect to such withholding tax pursuant to Section 3.24 or (ii) is imposed with respect to the requirements of FATCA.

"Expected Initial Delivery Date" means 12:01 a.m. on August 1, 2013.

"Expropriation Event" means (i) any condemnation, nationalization, seizure or expropriation by a Governmental Authority of all or a substantial portion of the Project or the Property or the assets of any Borrower Party or of its Equity Interests, (ii) any assumption by a Governmental Authority of control of the Property, assets, business or operations of any Borrower Party or of its Equity Interests, (iii) any taking of any action by a Governmental Authority for the dissolution or disestablishment of any Borrower Party or (iv) any taking of any action by a Governmental Authority that would prevent any Borrower Party from carrying on its business or operations or a substantial part thereof.

"Extraordinary O&M Expenses" has the meaning set forth in Section 6.6(c).

"Facility" means, collectively, the two Generating Units to be located on the Site and all associated facilities (including all associated electrical, gas, steam and water interconnection, transmission, storage and treatment facilities, to the extent owned by any Borrower Party) designed to generate approximately 550MW of electrical energy.

"FATCA" means sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Credit Agreement (or any amended or successor version of FATCA that is substantively comparable and not materially more onerous to comply with), and any current or future regulations or official interpretations thereof.

"Federal Funds Rate" means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (i) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (ii) if such rate is not so published for any day, the Federal Funds Rate for such day shall be the average rate charged to the Administrative Agent (in its individual capacity) on such day on such transactions as determined by the Administrative Agent.

"Federal Power Act" has the meaning set forth in Section 5.12 of this Credit Agreement.

"Fees" means all amounts payable pursuant to or referred to in Section 3.13 of this Credit Agreement.

"FERC" means the Federal Energy Regulatory Commission of the United States or any successor agency thereto.

"Financing Documents" means, collectively, (i) this Credit Agreement, the Guaranties, the Collateral Agreement, the Title Indemnity and each Security Document, (ii) each other document that is specified to be a Financing Document either in such document or in any of the documents referred to in clause (i) and (iii) each amendment, consent or waiver granted in respect of or pursuant to any of the documents referred to in clauses (i) and (ii) (whether or not such amendment, consent or waiver specifies therein that such amendment, consent or waiver is a Financing Document).

"Financing Parties" means the Lenders, the TALC Issuing Bank, the LGIA Issuing Banks, the DSR Issuing Banks and the TALC Participating Banks.

"Firm Priority Service" has the meaning set forth in the Tolling Agreement.

"First Unit Operation Date" means the Substantial Completion Date (as defined in the Equipment Services Agreement) of the first Unit (as defined in the Equipment Services Agreement).

"Foreign Pension Plan" means shall mean any plan, fund (including any superannuation fund) or other similar program established or maintained outside the United States by the Borrower or any one or more of its Subsidiaries primarily for the benefit of employees of the Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

"Fronting Exposure" means, at any time there is a Defaulting Lender that is a TALC Participating Bank, such Defaulting Lender's TALC Participation *minus* the amount thereof that has been reallocated to other TALC Participating Banks or Cash Collateralized in accordance with the terms hereof.

"Generating Units" means the gas-fired combined cycle combustion turbines to be procured, installed and constructed in accordance with the EPC Contracts and located at the Site.

"Good Utility Practices" means the professional practices, methods, equipment, specifications and safety and output standards and industry codes of the electrical generation industry for projects of the same approximate type, location and capacity as the Project, with respect to the design, installation, operation, maintenance and use thereof, all of the above in compliance with applicable standards of safety, output, dependability, efficiency and economy, including recommended practice, of a good, safe, prudent and workman-like character and in compliance with all applicable Laws. Good Utility Practices are not intended to be limited to the optimum or minimum practice or method to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices and methods as practiced in the electrical generation industry.

"Governmental Authority" means any government, governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, domestic or foreign, federal, state or local having jurisdiction over the matter or matters in question, including those of the State of California, the State of New York, and the United States.

"Guaranties" has the meaning set forth in the Collateral Agreement.

"Hazardous Material" has the meaning set forth in the Collateral Agreement.

"Hedging Agreement" means any agreement in respect of any interest rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of the foregoing transactions) or any combination of the foregoing transactions entered into by any Person.

"Historical DSCR" means, in respect of any DSCR Calculation Period, the ratio of (i) CFADS for such DSCR Calculation Period to (ii) the Scheduled Debt Service for such DSCR Calculation Period.

"IE Construction Report" means, in respect of any month, a construction report of the Independent Engineer for such month in substantially the form set forth as Exhibit 19.

"Indebtedness" of any Person means (i) all indebtedness of such Person for borrowed money, (ii) the deferred purchase price of assets or services which in accordance with U.S. GAAP would be shown on the liability side of the balance sheet of such Person, (iii) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder, (iv) all Indebtedness of a second Person secured by any Lien on any Property owned by such first Person, whether or not such Indebtedness has been assumed, (v) all Capital Lease Obligations of such Person, (vi) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted (*i.e.*, take-or-pay and similar obligations), (vii) all net obligations of such Person under Hedging Agreements and (viii) all Contingent Obligations of such Person; provided, that Indebtedness shall not include trade payables arising in the ordinary course of business so long as such trade payables are payable within ninety days of the date the respective goods are delivered or the respective services are rendered and are not overdue.

"Indemnified Liabilities" has the meaning set forth in Section 11.2(a) of this Credit Agreement.

"Indemnified Matters" has the meaning set forth in Section 11.2(b)(i) of this Credit Agreement.

"Indemnified Person" has the meaning set forth in Section 11.2(a) of this Credit Agreement.

"Independent Consultant" means each of the Independent Engineer and the Insurance Consultant.

"Independent Engineer" means SAIC Energy, Environment & Infrastructure, LLC or any other Person from time-to-time appointed by the Requisite Financing Parties to act as Independent Engineer for the purposes of this Credit Agreement.

"Independent Engineer Completion Certificate" means the certificate of the Independent Engineer in the form attached hereto as Exhibit 15.

"Inflation Factor" means, in respect of any payment in any year, the sum of 1 *plus* the positive difference (if any) between (x) the Inflation Index for the immediately preceding year, expressed as a percentage of the base year thereof, *minus* (y) the Inflation Index for the year in which the Closing Date occurs, expressed as a percentage of the base year thereof.

"Inflation Index" means the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers, reported monthly by the Bureau of Labor Statistics of the US Department of Labor (unrevised) (Series Id: CUUR0000SA0) (Base Period: 1982-1984 = 100), and as published on Bloomberg page CPURNSA; provided, that if the base year of such index changes, the Inflation Index shall be such index converted in accordance with the relevant conversion factor published by the US Department of Labor.

"Initial Delivery Date" has the meaning set forth in Section 2.04 of the Tolling Agreement.

"Insurance Consultant" means Moore McNeil, LLC or any other Person from time-to-time appointed by the Required Creditors to act as Insurance Consultant for the purposes of this Credit Agreement.

"Intercompany Notes" means, collectively, the Intercompany Subordinated Note, dated as of the date hereof, issued by the Project Owner for the benefit of the Borrower, the Intercompany Subordinated Note, dated as of the date hereof, issued by the Procurement Sub for the benefit of the Borrower and the Intercompany Subordinated Note, dated as of the date hereof, issued by the Borrower for the benefit of the Pledgor, in each case, evidencing Indebtedness extended in accordance with Section 7.21(e).(1)

"Interest Determination Date" means, with respect to any LIBOR Loan, the second Business Day prior to the commencement of any Interest Period relating to such LIBOR Loan.

"Interest Period" has the meaning set forth in Section 3.7 of this Credit Agreement.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time-to-time, and the regulations promulgated and rulings issued thereunder.

"Investment" in any Person means, without duplication: (a) the acquisition (whether for cash, securities, other Property, services or otherwise) or holding of capital stock, bonds, notes, debentures, partnership or other ownership interests or other securities of such Person, or any agreement to make any such acquisition or to make any capital contribution to such Person; or (b) the making of any deposit with, or advance, loan or other extension of credit to, such Person.

"Involuntary Bankruptcy Event" means, with respect to any Person, (i) the declaration by a Governmental Authority of a generally applicable suspension of payments, moratorium or any similar arrangement in respect of the Indebtedness of such Person or (ii) the commencement of an involuntary case against such Person seeking the liquidation or reorganization of such Person under Debtor Relief Law or any similar proceeding under any other applicable federal, state or other applicable Law.

"Issuance Date" means (i) prior to the issuance of any Specified Letter of Credit, the date specified in an LC Request as the date on which such Specified Letter of Credit is requested by the Borrower to be issued and (ii) after the issuance of any Specified Letter of Credit, the date such Specified Letter of Credit was actually issued.

"Issuing Banks" means, as the context may require, (i) each DSR Issuing Bank, (ii) the TALC Issuing Bank and (iii) each LGIA Issuing Bank.

(1) NOTE TO NRG: Please confirm dates.

"Joint Bookrunner" means each of the financial institutions designated as such in the Preamble of this Credit Agreement.

"Large Generator Interconnection Agreement" means the Large Generator Interconnection Agreement among El Segundo Power II LLC, the Offtaker and CAISO, with an effective date of March 9, 2007, as amended by the first amendment with an effective date of December 1, 2007, the second amendment with an effective date of July 24, 2009 and the third amendment, dated March 14, 2011.

"Law" means, with respect to any Person (i) any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, treaty, or other governmental restriction or any interpretation or administration of any of the foregoing by any Governmental Authority (including Permits) and (ii) any directive, guideline, policy, requirement or any similar form of decision of or determination by any Governmental Authority which is binding on such Person, in each case, whether now or hereafter in effect (including, in each case, any Environmental Law).

"LC Disbursement" means any payment to the beneficiary of any Specified Letter of Credit in accordance therewith.

"LC Facilities" means the Revolving Facility (in respect solely of the LGIA Letters of Credit), the TALC Facility and the DSR LC Facility.

"LC Loan" has the meaning set forth in Section 3.25(f).

"LC Request" means a request for a Specified Letter of Credit in substantially the form set out as Exhibit 10.

"LGIA Availability Period" means the period commencing on the Closing Date and ending on the Term Conversion Date.

"LGIA Issuing Banks" means each of the Revolver Lenders.

"LGIA Letter of Credit" has the meaning set forth in 2.3(b).

"Lender" means each Lender named on Appendix G and any Assignee thereof pursuant to Section 11.11 of this Credit Agreement.

"Letters of Credit Fees" has the meaning set forth in 3.13(c).

"LIBOR Loan" means Loans which bear interest based on the Adjusted LIBOR Rate.

"LIBO Rate" means, with respect to any Interest Period for any LIBOR Loan, the rate *per annum* (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters LIBOR01 Page (or any successor page, or any substitute for such page, providing rate quotations comparable to those currently provided on such page or such pages, as determined by the Administrative Agent from time-to-time for purpose of providing quotations or interest rates

applicable to deposits in Dollars in the London interbank market) as the London interbank offered rate for overnight deposits in Dollars at approximately 11:00 a.m. (London time) on the second Business Day prior to the first day of such Interest Period. If for any reason the Reuters LIBOR01 Page (or any such agreed page or any successor or substitute page is not available), the term "LIBO Rate" means, with respect to any Interest Period for any LIBOR Loan, the rate determined by taking the average (rounded upward to the nearest whole multiple of 1/16 of 1% *per annum*, if such average is not a multiple) of the rates *per annum* at which overnight deposits in Dollars in an amount equal to $5,000,000 are offered by the principal office of each of the Reference Banks to prime banks in the London interbank market at approximately 11:00 a.m. (London time) on such day.

"Lien" means, with respect to any Property of any Person, any mortgage, lien, deed of trust, hypothecation, fiduciary transfer of title, assignment by way of security, pledge, charge, lease, sale and lease-back arrangement, easement, servitude, trust arrangement, security interest or encumbrance of any kind in respect of such Property, or any preferential arrangement having the practical effect of constituting a security interest with respect to the payment of any obligation with, or from the proceeds of, any Property of any kind (and a Person shall be deemed to own subject to a Lien any Property that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, any agreement in respect of Capital Lease Obligations or other title retention agreement relating to such Property).

"Lien Waiver Report" means, in respect of any proposed Borrowing, a lien waiver report of the Borrower in substantially the form set forth as Exhibit 20.

"Liquidation Costs" has the meaning set forth in Section 3.12 of this Credit Agreement.

"Loan" means any loan made by any Lender pursuant to this Credit Agreement, including any Construction Loan, Term Loan, Revolving Loan or LC Loan.

"Losses" has the meaning set forth in Section 11.2(b)(i) of this Credit Agreement.

"Loss Proceeds" has the meaning set forth in the Collateral Agreement.

"M&M Contract" means any EPC Contract and any other Project Document under which the Title Insurance Companies require Lien waivers as conditions to the issuance of the 32-06 Endorsement or any 33-06 Endorsement.

"M&M Party" means (i) any EPC Contractor, (ii) any subcontractor, supplier or vendor of any EPC Contractor of any tier, or any other Project Participant party to any other M&M Contract, in each case, if and to the extent that any of the foregoing Persons has or may reasonably be expected to have mechanics' lien rights in respect of the Project and (iii) any other Person from whom the Title Insurance Companies require Lien waivers as conditions to the issuance of the 32-06 Endorsement or any 33-06 Endorsement.

"Major Milestone Dates" means each of the milestones so designated under the heading "Major Milestone Dates" on Appendix J.

"Majority Lenders" means Lenders whose aggregate remaining Commitments *plus* aggregate outstanding principal amount of funded Loans exceeds 50.0% of the total aggregate remaining Commitments *plus* the total aggregate principal amount of funded Loans of all Lenders.

"Mandated Lead Arrangers" means each of the financial institutions designated as such in the Preamble of this Credit Agreement.

"Mandatory Prepayment Portion" has the meaning set forth in the Collateral Agreement.

"Margin Stock" means margin stock within the meaning of Regulation U and Regulation X.

"Market Rate Authorization" has the meaning set forth in Section 5.12 of this Credit Agreement.

"Material Adverse Effect" has the meaning set forth in the Collateral Agreement.

"Material Permit" means (i) each Permit that is or will be required by any Governmental Authority to be held by any Borrower Party or an Affiliated Project Party to acquire, import, own, construct, install, operate, insure or maintain the Project or any material portion of the Project, (ii) each Permit in respect of the Project or any material portion of the Project that is or will be required by any Governmental Authority to be held by a Material Project Participant

(whether or not required to be held on behalf of or for the benefit of any Borrower Party) in order for such Material Project Participant to (as applicable) acquire, import, construct, install, operate, insure or maintain the Project or any material portion of the Project in accordance with each Material Project Document to which it is a party, (iii) each Permit that is or will be required by any Governmental Authority to be held by any Borrower Party or any relevant Material Project Participant to duly execute, deliver or perform any Material Project Document, (iv) each Permit that is or will be required by any Governmental Authority to be held in the name of any Borrower Party or any Affiliated Project Party to cause any Material Project Document to be the legal, valid and binding obligation of such Person or of the Material Project Participant that is a party to any such Material Project Document and (v) each Permit that is or will be required by any Governmental Authority to be held in the name of any Borrower Party or an Affiliated Project Party in order to conduct its business generally or to maintain its existence.

"Material Project Document" means (i) each Project Document that is or will be necessary or advisable for the Borrower Parties to enter into in order to acquire, import, own, construct, install, operate, insure or maintain the Project or any material portion of the Project (other than services, materials or rights that can reasonably be expected to be readily available on commercially reasonable terms), (ii) each Project Document that is or will be necessary or advisable for the Borrower Parties to enter into in order for such Borrower Party to obtain, maintain in full force and effect or comply with any other Material Project Document, any Material Permit or any material applicable Law, (iii) each Project Document that is or will be necessary or advisable for the Borrower Parties to enter into in order to maintain their respective business generally or to maintain their respective existence, (iv) without limiting the foregoing

(other than the parenthetical set forth in subclause (i) of this definition), each Project Document where (A) the aggregate cost or value of goods and services to be acquired by any Borrower Party pursuant thereto could reasonably be expected to exceed $2,000,000 or the equivalent in any other currency in any year, (B) the aggregate amount of termination fees or liquidated damages which could be incurred by any Borrower Party in respect of such Additional Project Document in any single year could reasonably be expected to exceed $2,000,000 or the equivalent in any other currency or (C) such Project Document provides for the sale of any goods, services, capacity, or other right, title or interest in any Property of any Borrower Party (other than Dispositions permitted in accordance with Section 7.20) and (v) without limiting the foregoing, any and all EPC Contracts and the Environmental Indemnity.

"Material Project Participant" means each party to a Material Project Document (other than the Borrower Parties).

"Maturity Date" means, as applicable, to the relevant Tranche of Loans, the Date Certain, the Term Maturity Date, the Revolver Maturity Date, the TALC Maturity Date or the DSR Maturity Date.

"Merger" has the meaning set forth in the Collateral Agreement.

"Minimum Collateral Amount" means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 100% of the Fronting Exposure of the TALC Issuing Bank with respect to TA Letters of Credit issued and outstanding at such time and (ii) otherwise, an amount determined by the TALC Issuing Bank in its sole discretion.

"Modified Business Day Convention" has the meaning set forth in the Swap Definitions.

"Monthly Period" means a period commencing on the day succeeding a Monthly Transfer Date and ending on the next succeeding Monthly Transfer Date.

"Monthly Transfer Date" means the last Business Day of each calendar month commencing on the first such day occurring on or after the Term Conversion Date.

"Moody's" shall mean Moody's Investors Service, Inc.

"Mortgage" has the meaning set forth in the Collateral Agreement.

"Mortgaged Property" has the meaning set forth in the Collateral Agreement.

"MPD Termination Event" means, with respect to any Material Project Document, any event or condition that would, either immediately or with the giving of notice, entitle the relevant Material Project Participant to terminate or suspend its obligations thereunder (and shall include, in any event, the occurrence of any "Termination Event" or other analogous event as defined in the Consent Agreement entered into in respect of such Material Project Document).

"Multiemployer Plan" means an employee pension benefit plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding five plan years made or accrued obligations to make contributions.

"NERC" has the meaning set forth in Section 5.12 of this Credit Agreement.

"Non-Consenting Creditor" means any Lender or Issuing Bank that does not approve any consent, waiver or amendment that (a) requires the approval of all affected Financing Parties in accordance with Section 10.11 and has been approved by all other affected Financing Parties in accordance with Section 10.11 and (b) has been approved by the Requisite Financing Parties.

"Non-Recourse Parties" has the meaning set forth in Section 11.7 of this Credit Agreement.

"Note" means, with respect to any Tranche of Loans, each promissory note delivered in respect of such Tranche of Loans to a Lender hereunder, in substantially the form set out as Exhibit 4, Exhibit 5, Exhibit 6, Exhibit 7 or Exhibit 8 (as applicable).

"Notice of Merger Certificate" has the meaning set forth in Section 7.33 of this Credit Agreement.

"Notice Office" means the office of the Administrative Agent set forth on Appendix G or such other office as the Administrative Agent may hereafter designate in writing as such to the Borrower and each Lender.

"Notional Amortization" means, in respect of any Semi-Annual Date, the notional principal amount projected to be payable on such Semi-Annual Date, as set forth under the heading "Tranche A $" or "Tranche B $" on the Projected Amortization Schedule, as applicable.

"Notional Disbursement Schedule" has the meaning set forth in Section 3.14(b).

"Notional Loan Amount" has the meaning set forth in Section 7.26 of this Credit Agreement.

"NYPSC" has the meaning set forth in Section 5.12(c) of this Credit Agreement.

"O&M Agreement" means the Operation and Maintenance Management Agreement, dated as of March 31, 2011, between the Project Owner and the O&M Operator, as amended by the first amendment to the O&M Agreement, dated June 1, 2011.

"O&M Operator" means NRG El Segundo Operations Inc., a Delaware corporation.

"O&M Expenses" means, collectively, without duplication, all (i) expenses of administering and operating the Project and of maintaining it in accordance with Good Utility Practices incurred by the Borrower Parties (including any items properly chargeable by U.S.

GAAP to fixed capital accounts or that are or should be classified as capital expenditures), (ii) fuel procurement and transportation costs payable by the Borrower Parties, (iii) direct operating and maintenance costs of the Project payable by the Borrower Parties, (iv) insurance premiums payable by the Borrower Parties (including construction insurance premiums paid for coverage obtained prior to the Project Completion Date), (v) property, sales, value-added and excise taxes payable by the Borrower Parties (other than taxes imposed on or measured by income or receipts), (vi) costs and fees incurred by the Borrower Parties in connection with obtaining and maintaining in effect the Permits required in connection with the Project, (vii) legal, engineering, accounting, construction, management and other professional fees incurred in the ordinary course of business in connection with the Project payable by the Borrower Parties (viii) "Reimbursable Expenses" as defined in the O&M Agreement and the Project Administration Agreement, respectively; provided, that "O&M Expenses" shall not include payments into the Debt Service Reserve Account.

"OB Approval Threshold" means each threshold set forth on Appendix E under the heading "*OB Approval Threshold*".

"Officer's Certificate" means, with respect to each Borrower Party, an officer's certificate signed by an Authorized Officer of such Borrower Party in respect of such Borrower Party.

"Offtaker" means Southern California Edison Company, a California corporation.

"Operating Account" has the meaning set forth in the Accounts Agreement.

"Operating Agreements" means the O&M Agreement, the Energy Marketing Agreement, the Spare Parts Agreement and the Project Administration Agreement.

"Operating Budget" means, for, any Operating Year, the operating and O&M Expense budget forecasts for the Project showing the costs and expenses necessary to operate, service, maintain and repair the Project, which includes (i) a detailed line item breakdown of the total costs of the Project at a level of detail satisfactory to Administrative Agent, (ii) a detailed description of the methodology and all material assumptions used to produce such estimates and the Base Case Projections.

"Operating Performance" means the operating and performance parameters of the Project, including power production, fuel consumption and efficiency, heat rate information, availability, capacity, maintenance performed, outages, changes in operating status, inspections and any other significant events relating to the operation of the Project, including each Generating Unit.

"Operating Report" means an operations report prepared quarterly by the Borrower in accordance with Section 6.1(e).

"Operating Year" means each calendar year (or portion thereof) occurring after the First Unit Operation Date and prior to the Term Maturity Date.

"Operators" means the O&M Operator, the Energy Marketer, the Spare Parts Supplier and the Project Administrator.

"Optional True-Up Date" has the meaning set forth in Section 2.1(e) of this Credit Agreement.

"Originating Lender" has the meaning set forth in Section 11.11(d) of this Credit Agreement.

"Participating Bank" has the meaning set forth in Section 11.11(d) of this Credit Agreement.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"Pension Plan" means an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either is, or at any time within the preceding five years has been, maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group.

"Performance Guarantees" has the meaning set forth in the Equipment Services Agreement.

"Permit" means any authorization, consent, approval, license, ruling, permit, tariff, rate, certification, exemption, filing, variance, claim, order, judgment, decree, publication, notice to, declaration of or with, or registration by or with, any Governmental Authority.

"Permitted Indebtedness" has the meaning set forth in Section 7.21 of this Credit Agreement.

"Permitted Investments" has the meaning set forth in the Accounts Agreement.

"Permitted Lien" has the meaning set forth in the Collateral Agreement.

"Permitted Priority Liens" has the meaning set forth in the Collateral Agreement.

"Person" means any individual, corporation, limited liability company, company, voluntary association, partnership, joint venture, trust, or other enterprise or unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

"Plans and Specifications" means the plans and specifications relating to the Project as set forth in or contemplated by the EPC Contracts.

"Pledge Agreements" means each of the Pledgor Pledge Agreement and the Borrower Pledge Agreement.

"Pledged Equity Interests" means the Equity Interests pledged pursuant to the relevant Pledge Agreement.

"Pledgor" means Natural Gas Repowering LLC, a limited liability company duly organized and existing under the laws of Delaware.

"Pledgor Closing Certificate" means a certificate, substantially in the form of Exhibit 12, dated the Closing Date, appropriately completed and duly executed by an Authorized Officer of the Pledgor.

"Pledgor Pledge Agreement" means the Pledge Agreement dated the date hereof between the Pledgor and the Collateral Agent in respect of, *inter alia*, the Equity Interests of the Borrower.

"Prime Rate" means the *per annum* rate of interest established from time-to-time by the Administrative Agent as its prime rate, which rate may not be the lowest rate of interest charged by the Administrative Agent to its customers.

"Principal Payment Date" means each date on which principal of the Loans is due in accordance with the Amortization Schedule.

"Proceeds Account" has the meaning set forth in the Accounts Agreement.

"Procurement Sub" means NRG West Procurement Company LLC, Delaware limited liability company and a wholly-owned Subsidiary of the Borrower.

"Project" means the engineering, construction, procurement, installation, testing, commissioning, operation, maintenance and ownership of the Facility to be located at the Site, including all buildings, structures and improvements erected on the Site, all alterations thereto or replacements thereof, all fixtures, attachments, equipment, machinery, parts and other articles which may from time-to-time be incorporated or installed in or attached thereto, all associated facilities (including all associated electrical, gas, steam and water interconnection, transmission, storage and treatment facilities), and all easements, leasehold interests, licenses, permits, contract rights and other real and personal property interests, in each case, now owned or hereafter acquired by the Borrower Parties or in which the Borrower Parties have any rights.

"Project Administration Agreement" means the Project Administration Services Agreement, dated as of March 31, 2011, among the Borrower, the Project Owner and the Project Administrator.

"Project Administrator" means NRG West Coast LLC, a Delaware limited liability company.

"Project Completion Date" means the date upon which all of the following events shall have occurred:

(i) Unit Mechanical Completion (as defined in the BOP Contract) of each Unit (as defined in the BOP Contract) shall have occurred;

(ii) the Project shall have been started up and operated, and Final Completion (as such term is defined in the Equipment Services Agreement) of each Unit (as such term is defined in the Equipment Services Agreement) shall have occurred;

(iii) the Work (except for the Final Completion Punch List (as such term is defined in the BOP Contract) and the Final Punchlist (as such term is defined in the Equipment Services Contract)) items the total cost of which to complete shall not exceed $250,000) shall have been completed in accordance with the BOP Contract and the Equipment Services Contract, as the case may be, and in compliance with all applicable Laws and Permits, and all clearing, landscaping, lighting and paving of the Project site, and all ancillary construction, upgrades and improvements necessary for the operation of the Project as contemplated by the Transaction Documents, including the interconnection and transmission facilities contemplated by the Revenue Contracts, the Large Generator Interconnection Agreement and the SoCalGas Transportation Contract, shall have been completed;

(iv) issuance to the Project Owner of a final permit to operate the Project by the South Coast Air Quality Management District;

(v) the Borrower shall have delivered the Borrower Completion Certificate to the Administrative Agent;

(vi) the Administrative Agent shall have received an executed counterpart of the Independent Engineer Completion Certificate; and

(vii) the Commercial Operation Date.

"Project Costs" means (a) all costs and expenses incurred or to be incurred by the Borrower Parties to develop, finance, complete and start-up the Project and achieve the Project Completion Date (and complete all Punch List items) in the manner contemplated by the Transaction Documents, including all amounts payable to third parties under the Project Documents and other contracts for the supply of equipment or services relating to the construction of the Facility, all costs and expenses incurred in connection with the negotiation and preparation of the Transaction Documents, and all other expenses required for the financing, development, design, engineering, construction, equipment procurement, installation, start-up and initial operation of the Project that are properly capitalized or expensed in accordance with U.S. GAAP, (b) all Fees and interest payable on the Secured Obligations prior to the Term Conversion Date and (c) all O&M Expenses payable prior to the Term Conversion Date. "Project Costs" shall not include (a) payments of principal of any Indebtedness, (b) any indemnification payments to any Secured Party or (c) any payments of any kind to any Borrower Party or any Affiliate thereof other than (x) the letter of credit fees set forth in the First Amended Intercompany Note, dated as of July 1, 2010, issued by the Project Owner for the benefit of the Sponsor and the Third Amended and Restated Credit Agreement, dated as of June 30, 2010, among, *inter alia*, the Sponsor, as borrower, Citicorp North Amercia Inc., as administrative agent and collateral agent, and the lenders party thereto from time to time, and (y) other amounts payable pursuant to the Affiliated Project Documents.

"Project Documents" means all contracts, agreements, side letters, leases, powers of attorney or other instruments or documents entered into or to be entered into by any Borrower Party in connection with the Project that are not Financing Documents.

"Project Labor Agreement" means the Project Labor Agreement, dated as of 2001, among El Segundo Power II LLC, the State Building and Construction Trades Council of California and its affiliated local unions who have executed the Project Labor Agreement.

"Project Owner" means El Segundo Energy Center LLC, a Delaware limited liability company and a wholly-owned Subsidiary of the Borrower.

"Project Participants" means each party (other than the Borrower) to any Project Document.

"Project Revenues" means, for any period, without duplication, the aggregate of (i) payments to the Borrower Parties under the Revenue Contracts *plus* (ii) interest accrued on, and other income derived from, the balance outstanding during such period in the Secured Accounts *plus* (iii) Business Interruption Proceeds *plus* (iv) the proceeds of any Delay Liquidated Damages *plus* (v) the proceeds of any Excess Fuel Consumption Liquidated Damages. For the avoidance of doubt, Project Revenues shall exclude (a) net amounts payable to the Borrower under any Hedging Agreements, (b) proceeds payable in respect of any insurance (other than business interruption insurance), (c) the proceeds of any Buy-down Proceeds and any liquidated damages payable to the Borrower Parties under any Operating Agreement in respect of performance deficiencies and (d) warranty or indemnity payments or damages payable to the Borrower Parties under any Project Document.

"Project Schedules" means, collectively, each project schedule attached to each EPC Contract on the date hereof.

"Projected Amortization Schedule" means the percentage and notional amortization schedule attached hereto as Appendix C, as updated in accordance with Section 3.15 and 3.18(a).

"Projected Completion Date" means August 1, 2013 *plus* the number of days (if any) that the Substantial Completion Guaranteed Date (as defined in the Equipment Services Agreement) has been extended pursuant to a Change Order entered into in accordance with Section 7.15.

"Projected DSCR" means, for any applicable period, the ratio of (i) the expected CFADS for such period, to (ii) the Scheduled Debt Service for such period (including scheduled principal payments in respect of the Loans required to be paid during such period but excluding mandatory prepayments in respect of the Loans payable during such period pursuant to the Financing Documents) and the Assumed Interest Expense in respect of the Loans required to be paid during such period.

"Property" means any property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, and any right or interest therein.

"PUHCA" has the meaning set forth in Section 5.12 of this Credit Agreement.

"Punch List" has the meaning set forth in the BOP Contract.

"Punch List Amount" has the meaning set forth in the Accounts Agreement.

"Rate Swap Agreement" has the meaning set forth in the Collateral Agreement.

"Rate Swap Commencement Date" means the first Semi-Annual Date to occur after January 1, 2012.

"Rate Swap Confirmation" has the meaning set forth in the Collateral Agreement.

"Rate Swap Counterparty" has the meaning set forth in the Collateral Agreement.

"Rate Swap Transaction" has the meaning set forth in the Collateral Agreement.

"RCRA Facility Investigation Work Plan" means the RCRA Facility Investigation Work Plan, dated August 2007 (as revised June 23, 2008 and October 19, 2010, and as further revised, amended, supplemented or otherwise modified from time to time) prepared by Shaw Environmental, Inc. for El Segundo Power II LLC.

"Real Property Agreements" has the meaning set forth in the Collateral Agreement.

"Reference Banks" means those reference banks selected from time-to-time by the British Bankers Association as the panel of banks that contribute to the fixing of US Dollar bbalibor, as set forth as of the date hereof at http://www.bbalibor.com/panels/usd.

"Register" has the meaning set forth in Section 10.10 of this Credit Agreement.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System (or any successor).

"Regulation U" means Regulation U of the Board of Governors of the Federal Reserve System (or any successor).

"Regulation X" means Regulation X of the Board of Governors of the Federal Reserve System (or any successor).

"Reissued Title Policy" has the meaning set forth in Section 4.6(h)(i).

"Release" has the meaning set forth in the Collateral Agreement.

"Relevant Work Date" means, with respect to any amount to be paid to any M&M Party from proceeds of the Construction Loans, the date reasonably determined by Borrower in good faith and set forth on the Lien Waiver Report that the milestone or similar event entitling the M&M Party to such payment was achieved, the goods entitling such M&M Party to such payment were delivered to the site, the services entitling such M&M Party to such payment were performed at the site, or the work entitling such M&M Party to such payment was otherwise performed, as applicable.

"Remediation Work Plan" means the work plan agreed to among the Project Owner, El Segundo Power, LLC and the Environmental Remediation Contractor setting forth all corrective actions necessary or appropriate to satisfy the conditions and other requirements set forth in the EPA Letters.

"Required Equity Contribution" means the greater of (x) the positive difference between the aggregate amount of historical and projected Project Costs (including the Contingency) set forth in the then-applicable Construction Budget minus the sum of the Tranche A Loan Amount and the Tranche B Loan Amount and (y) 20% of the aggregate amount of historical and projected Project Costs (including the Contingency) set forth in the then-applicable Construction Budget.

"Requisite Financing Parties" means, at any time, Lenders holding at least:

(i) 50.1% of the sum of (A) the Tranche A Construction Commitment (or after the termination thereof, outstanding Tranche A Construction Loans or the Tranche A Term Loans, as applicable), (B) the Revolving Loan Commitments (or after the termination thereof, outstanding Revolving Loans), (C) the DSR Commitments (or after the termination thereof, outstanding LC Loans in respect of any draws on the DSR Letters of Credit) and (D) the TALC Commitments (or after the termination thereof, outstanding LC Loans in respect of any draw on the TA Letters of Credit);

(ii) 50.1% of the Tranche B Construction Commitment (or after termination thereof, outstanding Tranche B Construction Loans or Tranche B Term Loans, as applicable); and

(iii) 66.6% of the sum of (A) the Tranche A Construction Commitment (or after the termination thereof, outstanding Tranche A Construction Loans or the Tranche A Term Loans, as applicable), (B) Tranche B Construction Commitment (or after termination thereof, outstanding Tranche B Construction Loans or Tranche B Term Loans, as applicable); (C) Revolving Loan Commitments (or after the termination thereof, outstanding Revolving Loans), (D) the DSR Commitments (or after the termination thereof, outstanding LC Loans in respect of any draws on the DSR Letters of Credit) and (E) the TALC Commitments (or after the termination thereof, outstanding LC Loans in respect of any draw on the TA Letters of Credit).

"Requisite Revolver Lenders" means Revolver Lenders holding at least 50.1% of the aggregate outstanding principal amount of the Revolving Loans or, if no Revolving Loans have been made, at least 50.1% of the aggregate Revolving Loan Commitments of all Revolver Lenders.

"Requisite TALC Participating Banks" means TALC Participating Banks holding at least 50.1% of the aggregate outstanding principal amount of the LC Loans resulting from a drawing on the TALC Letters of Credit or, if no LC Loans have been made, at least 50.1% of the aggregate LC Loan Commitments of all TALC Participating Banks.

"Requisite Tranche A Lenders" means Tranche A Lenders holding at least 50.1% of the aggregate outstanding principal amount of the Tranche A Construction Loans or the Tranche A Loans, as applicable, or, if no Tranche A Construction Loans have been made, at least 50.1% of the aggregate Tranche A Construction Loan Commitments of all Tranche A Lenders.

"Requisite Tranche B Lenders" means Tranche B Lenders holding at least 50.1% of the aggregate outstanding principal amount of the Tranche B Construction Loans or the Tranche B Term Loans, as applicable, or, if no Tranche B Construction Loans have been made, at least 50.1% of the aggregate Tranche B Construction Loan Commitments of all Tranche B Lenders.

"Requisite Term Lenders" means each of the Requisite Tranche A Lenders and the Requisite Tranche B Lenders.

"Requisition Date" has the meaning set forth in the Accounts Agreement.

"Reserve Requirement" means, at any time, the maximum rate at which reserves (including any marginal, special, supplemental, or emergency reserves) are required to be maintained under regulations issued from time-to-time by the Board of Governors of the Federal Reserve System (or any successor) by member banks of the Federal Reserve System against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities

which includes deposits by reference to which the Adjusted LIBO Rate is to be determined, and (ii) any category of extensions of credit or other assets which include LIBOR Loans. The Adjusted LIBO Rate shall be adjusted automatically on and as of the effective date of any change in the Reserve Requirement.

"Restore" has the meaning set forth in the Collateral Agreement.

"Restricted Payment" has the meaning set forth in Section 7.9 of this Credit Agreement.

"Retainage Escrow Agreement" means the Escrow Agreement dated May 18, 2011 among the Project Owner, the BOP Contractor and California Bank & Trust.

"Revenue Contracts" means (i) the Tolling Agreement and (ii) at all times after the execution thereof, each Additional Material Project Document specified in subpart (iii) of the definition thereof.

"Revolver Availability Period" means the period commencing on the Closing Date and ending on the earlier to occur of (i) the termination of the Revolving Commitment pursuant to the provisions of this Credit Agreement, and (ii) the seventh anniversary of the Closing Date.

"Revolver Lender" means each Lender that has a Revolving Commitment or Revolving Loans.

"Revolver Maturity Date" has the meaning set forth in Section 2.3(f) of this Credit Agreement.

"Revolving Amount" has the meaning set forth in Section 2.3(a) of this Credit Agreement.

"Revolving Commitment" means, as to any Lender, the applicable percentage set forth opposite such Lender's name in Appendix F to this Credit Agreement under the heading "*Revolving Commitment*" *multiplied by* the Revolving Amount.

"Revolving Facility" has the meaning set forth in Section 2.3(a) of this Credit Agreement.

"Revolving Loans" has the meaning set forth in Section 2.3(b) of this Credit Agreement.

"Scheduled Debt Service" means, in respect of any DSCR Calculation Period, the sum of (i) the aggregate amount of interest paid during such DSCR Calculation Period (or, as applicable, the Assumed Interest Expense for such DSCR Calculation Period) *plus* (ii) the aggregate amount of Fees paid (or, as applicable, projected to be paid) during such DSCR Calculation Period *plus* (iii) the aggregate amount of amortized principal of the Loans paid (or, as applicable, required to be paid) during such DSCR Calculation Period.

"Secured Accounts" has the meaning set forth in the Collateral Agreement.

"Secured Parties" has the meaning set forth in the Collateral Agreement.

"Secured Obligations" has the meaning set forth in the Collateral Agreement.

"Security Agreements" means (a) the Security Agreement dated the date hereof between the Borrower and the Collateral Agent, (b) the Security Agreement dated the date hereof between the Procurement Sub and the Collateral Agent and (c) the Security Agreement dated the date hereof between the Project Owner and the Collateral Agent.

"Security Documents" has the meaning set forth in the Collateral Agreement.

"Semi-Annual Dates" means the last day of each of August and February; provided, that if a payment is required to be made on a Semi-Annual Date and such last day is not a Business Day, then such payment shall be made in accordance with the Modified Business Day Convention.

"Site" means the site upon which the Project will be installed, together with any fixtures and civil works constructed thereon and any other easements, licenses and other real property rights and interests required for the installation and operation of the Project, including the land referred to in the Site Agreements and the Real Property Agreements.

"Site Agreements" means , collectively, (i) the Amended and Restated Ground Lease and Easement Agreement, dated as of July 15, 2011, by and between El Segundo Power LLC and Project Owner, a memorandum of which was recorded on August 19, 2011, in the Los Angeles County Recorder's Office as document number 20111121480, (ii) the Amended and Restated Easement Agreement , dated as of July 15, 2011, by and between El Segundo Power II LLC and the Project Owner, which was recorded on August 19, 2011, in the Los Angeles County Recorder's Office as document number 20111121480, (iii) the Land Lease, dated as of July 1, 2010, as amended by the First Amendment to Land Lease, dated as of September 22, 2010, by and between First Industrial, L.P. and the Project Owner, (iv) the License Agreement, dated April 27, 2011, by and between Chevron Products Company and the Project Owner, and (v) the License Agreement, dated as of March 31, 2011, by and between Long Beach Generation LLC and the Project Owner.

"Site Owners" means, collectively, (i) El Segundo Power LLC and (ii) El Segundo Power II LLC.

"SoCalGas Transportation Contract" has the meaning set forth in the Tolling Agreement.

"Spare Parts Agreement" means the Program Parts, Miscellaneous Hardware, Program Management Services and Scheduled Outage Services Contract, dated February 11, 2011, between the Project Owner and the Spare Parts Supplier.

"Spare Parts Supplier" means Siemens Energy, Inc., a Delaware corporation.

"Specified Letter of Credit" means each LGIA Letter of Credit, DSR Letter of Credit and the TA Letter of Credit.

"Sponsor" means NRG Energy, Inc. or any Person into whom the Sponsor is merged, amalgamated or otherwise combined to the extent that NRG Energy, Inc. is not the surviving entity.

"Stop Notice" has the meaning provided under California Civil Code Section 3103.

"Subsidiary" means, for any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other persons

performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

"Substantial Completion" has the meaning set forth in the Services Agreement.

"Swap Definitions" means the 2006 ISDA® Definitions, as published by the International Rate Swaps and Derivatives Association, Inc.

"Taking" means any circumstance or event, or series of circumstances or events (including an Expropriation Event), in consequence of which the Project or any portion thereof is condemned, nationalized, seized, compulsorily acquired or otherwise expropriated by any Governmental Authority under power of eminent domain or otherwise. The term "Taken" shall have a correlative meaning.

"TALC Availability Period" means the period commencing on the Closing Date and ending on the seventh anniversary of the Closing Date.

"TALC Commitment" means, as to any TALC Participating Bank, the applicable percentage set forth opposite such Participating Bank's name in Appendix F to this Credit Agreement under the heading "*TALC Percentage*" *multiplied by* the TALC Facility Amount.

"TALC Issuing Bank" means The Royal Bank of Scotland plc.

"TALC Facility" has the meaning set forth in 2.4(a) of this Credit Agreement.

"TALC Facility Amount" has the meaning set forth in 2.4(a) of this Credit Agreement.

"TALC Maturity Date" has the meaning set forth in Section 2.4(e) of this Credit Agreement.

"TALC Participating Amount" has the meaning set forth in Section 3.25(g) of this Credit Agreement.

"TALC Participating Bank" means each Lender having a TALC Percentage.

"TALC Participation" means, in respect of any TALC Participating Bank as of any day, the aggregate face amount of all TA Letters of Credit *multiplied by* such TALC Participating Bank's TALC Percentage.

"TALC Percentage" means, in respect of each TALC Participating Bank, the percentage set forth under the heading "*TALC Percentage*" and opposite such TALC Participating Bank's name on Appendix F.

"TA Letters of Credit" has the meaning set forth in 2.4(b) of this Credit Agreement.

"Term Conversion" means the conversion of the Construction Loans into Term Loans on the Term Conversion Date.

"Term Conversion Date" means the date on which the conditions precedent set forth in Section 4.6 of this Credit Agreement are satisfied and Term Conversion occurs.

"Term Facility" has the meaning set forth in Section 2.2(c) of this Credit Agreement.

"Term Lender" means each Lender that has a Term Loan Commitment or Term Loans.

"Term Loans" has the meaning set forth in Section 2.2(c) of this Credit Agreement.

"Term Loan Commitment" means, as to any Lender, an amount equal to the aggregate amount of Construction Loans of such Lender as of the Term Conversion Date (after giving effect to any Borrowing of Construction Loans on such date in accordance with Section 2.1 of this Credit Agreement and any prepayment of Construction Loans on such date in accordance with 3.16 or 3.17 of this Credit Agreement).

"Term Maturity Date" has the meaning set forth in Section 2.2(e) of this Credit Agreement.

"Term Note" means each Note issued as evidence of one or more Term Loans.

"Termination Amount" means, in respect of any Rate Swap Transaction, the amount payable pursuant to Section 6(e) of the 1992 ISDA® Master Agreement or 2002 ISDA® Master Agreement (as applicable).

"33-06 Endorsement" means the ALTA Form 33-06 title insurance endorsement in the form attached to and made a part of the Title Policy.

"32-06 Endorsement" means means the ALTA Form 32-06 title insurance endorsement in the form attached to and made a part of the Title Policy.

"Title Indemnity" means the Title Indemnity and Guaranty Agreement, dated the date hereof, by Natural Gas Repowering LLC in favor of the Collateral Agent.

"Title Insurance Company" has the meaning set forth in the Collateral Agreement.

"Title Policy" has the meaning set forth in the Collateral Agreement.

"Title Policy Amount" has the meaning set forth in the Collateral Agreement.

"Tolling Agreement" means the Amended and Restated Power Purchase Tolling Agreement, dated August 24, 2010, between the Offtaker and the Project Owner, as amended by the Amendment No. 1 thereto dated on or about the date hereof.

"Tranche" means the tranche of Loan determined with regard to the credit facility under which such Loan was issued, *i.e*., whether a Tranche A Construction Loan, Tranche B Construction Loan, Tranche A Term Loan, Tranche B Term Loan, Revolving Loan or LC Loan.

"Tranche A Construction Facility" has the meaning set forth in Section 2.1(a) of this Credit Agreement.

"Tranche A Construction Loan Availability Period" means the period commencing on the Closing Date and ending on the earliest to occur of (i) the full utilization of the Tranche A Construction Loan Commitments of the Tranche A Lenders, (ii) the Date Certain, (iii) the Term Conversion Date and (iv) the termination of the Tranche A Construction Loan Commitments pursuant to the provisions of this Credit Agreement.

"Tranche A Construction Loan Commitment" means, as to any Lender, the applicable percentage set forth opposite such Lenders' name in Appendix F to this Credit Agreement under the heading "*Tranche A Construction Loan Commitment*" *multiplied* by the (a) at all times prior to the date of the initial Borrowing of the Construction Loans, $480,000,000 and (b) at all times on and after the initial Borrowing of the Construction Loans, the lesser of (x) $480,000,000 and (y) the Tranche A Loan Amount.

"Tranche A Construction Loans" has the meaning set forth in Section 2.1(c) of this Credit Agreement.

"Tranche A Deferred Principal Amount" has the meaning set forth in Section 3.15(c) of this Credit Agreement.

"Tranche A Lender" means each Lender that has a Tranche A Construction Loan Commitment or that holds a Tranche A Construction Loan or a Tranche A Term Loan.

"Tranche A Loan Amount" has the meaning set forth in Section 3.14(a).

"Tranche A Notional Amortization" has the meaning set forth in Section 3.14(a).

"Tranche A Percentage Amortization" has the meaning set forth in Section 3.14(c).

"Tranche A Term Facility" has the meaning set forth in Section 2.2(a) of this Credit Agreement.

"Tranche A Term Loans" has the meaning set forth in Section 2.2(c) of this Credit Agreement.

"Tranche B Construction Facility" has the meaning set forth in Section 2.1(b) of this Credit Agreement.

"Tranche B Construction Loan Availability Period" means the period commencing on the Closing Date and ending on the earliest to occur of (i) the full utilization of the Tranche B Construction Loan Commitments of the Tranche B Lenders, (ii) the Date Certain, (iii) the Term Conversion Date and (iv) the termination of the Tranche B Construction Loan Commitments pursuant to the provisions of this Credit Agreement.

"Tranche B Construction Loan Commitment" means, as to any Lender, the applicable percentage set forth opposite such Lenders' name in Appendix F to this Credit Agreement under the heading "*Tranche B Construction Loan Commitment*" *multiplied* by the Tranche B Loan Amount.

"Tranche B Construction Loans" has the meaning set forth in Section 2.1(c) of this Credit Agreement.

"Tranche B Deferred Principal Amount" has the meaning set forth in Section 3.15(c) of this Credit Agreement.

"Tranche B Lender" means each Lender that has a Tranche B Construction Loan Commitment or that holds a Tranche B Construction Loan or a Tranche B Term Loan.

"Tranche B Loan Amount" has the meaning set forth in Section 2.1(b) of this Credit Agreement.

"Tranche B Term Facility" has the meaning set forth in Section 2.2(b) of this Credit Agreement.

"Tranche B Term Loans" has the meaning set forth in Section 2.2(c) of this Credit Agreement.

"Transaction Documents" means, collectively, the Project Documents and the Financing Documents.

"Transfer Date Certificate" means has the meaning set forth in the Accounts Agreement.

"True-Up Distributions" has the meaning set forth in Section 7.9(c) of this Credit Agreement.

"True-Up Drawings" has the meaning set forth in Section 2.1(e) of this Credit Agreement.

"Type" means the type of Loan determined with regard to the interest option applicable thereto, *i.e.*, a Base Rate Loan or a LIBOR Loan.

"Unavailable Commitment" means, at any time and in respect of any Credit Facility and any Financing Party, the aggregate Commitment of such Financing Party under such Credit Facility that is not available at such time as a result solely of the fact that the Term Conversion Date or the Initial Delivery Date has not theretofore occurred.

"Unfunded Pension Liability" of any Pension Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan, determined on a plan termination basis, exceeds the fair market value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

"Uniform Commercial Code" means the Uniform Commercial Code as adopted in any applicable jurisdiction.

"United States" and "U.S." shall each mean the United States of America.

"Unutilized Commitment" means, in respect of any Credit Facility and any Financing Party, the aggregate Commitment of such Financing Party *less* the Unavailable Commitment of such Financing Party in respect of such Credit Facility *less* the aggregate principal amount of all Loans or the aggregate (or, in the case of the TALC Facility, the relevant TALC Participating Bank's pro rata share of the aggregate) stated amount of all Specified Letters of Credit made or issued by (or, in the case of the TALC Facility, purchased by) such Financing Party under such Credit Facility (as applicable).

"USEPA" means the United States Environmental Protection Agency.

"U.S. GAAP" means generally accepted accounting principles applied on a consistent basis in the United States (except to the extent approved or required by the independent public accountants certifying such statements and disclosed therein).

"U.S.A. Patriot Act" means the U.S.A. PATRIOT Improvement and Reauthorization Act, Title III of Pub. L. 109-177 (signed into law March 9, 2009).

"Voluntary Bankruptcy Event" means, with respect to any Person, (i) the institution by such Person of a voluntary case seeking liquidation or reorganization under any Debtor Relief Law, (ii) the consent by such Person to the institution of an involuntary case against it under any Debtor Relief Law, (iii) the application by such Person for, or the consent or acquiescence of such Person to, the appointment of a receiver, liquidator, sequestrator, trustee or other officer with similar powers, (iv) the making by such Person of an assignment of its assets for the benefit of creditors or (v) the admission of such Person in writing of its inability to pay its debts generally as they become due.

"Work" has the respective meanings provided in the EPC Contracts.

2. Rules of Interpretation. In each Financing Document, unless otherwise indicated:

(a) each reference to, and the definition of, any document (including any Financing Document) shall be deemed to refer to such document as it may be amended, supplemented, revised or modified from time-to-time in accordance with its terms and, to the extent applicable, the terms of this Credit Agreement;

(b) each reference to a Law or Permit shall be deemed to refer to such Law or Permit as the same may be amended, supplemented or otherwise modified from time-to-time;

(c) any reference to a Person in any capacity includes a reference to its permitted successors and assigns in such capacity and, in the case of any Governmental Authority, any Person succeeding to any of its functions and capacities;

(d) references to days shall refer to calendar days unless Business Days are specified; references to weeks, months or years shall be to calendar weeks, months or years, respectively;

(e) all references to the "Preamble", "Recitals", a "Section," an "Appendix," a "Schedule" or an "Exhibit" in a Financing Document are to the preamble, recitals or relevant section of such Financing Document or to the relevant appendix, schedule or exhibit attached thereto;

(f) the table of contents and Section headings and other captions therein are for the purpose of reference only and do not affect the interpretation of such Financing Document;

(g) defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders;

(h) the words "hereof," "herein" and "hereunder," and words of similar import, when used in any Financing Document, shall refer to such Financing Document as a whole and not to any particular provision of such Financing Document;

(i) the words “include,” “includes” and “including” are deemed to be followed by the phrase “without limitation”;

(j) where the terms of any Financing Document require that the approval, opinion, consent or other input of any Secured Party be obtained, such requirement shall be deemed satisfied only where the requisite approval, opinion, consent or other input is given by or on behalf of the relevant party in writing;

(k) where the terms of any Financing Document require or permit any action to be taken by the Collateral Agent, such action shall be taken strictly in accordance with the applicable provisions of the relevant Financing Documents; and

(l) any reference to a document shall be deemed to include all exhibits, annexes, appendices and schedules thereto.

Exhibit 10.8

EXECUTION COPY

LOAN GUARANTEE AGREEMENT

dated as of September 30, 2011

among

HIGH PLAINS RANCH II, LLC,
as Borrower,

U.S. DEPARTMENT OF ENERGY,
as Guarantor,

and

U.S. DEPARTMENT OF ENERGY,
as Loan Servicer

California Valley Solar Ranch Project
San Luis Obispo County, California

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LOAN GUARANTEE AGREEMENT

This LOAN GUARANTEE AGREEMENT, dated as of September 30, 2011, is by and among (i) High Plains Ranch II, LLC, a limited liability company organized and existing under the laws of the State of Delaware, as borrower (the "Borrower"); (ii) the U.S. DEPARTMENT OF ENERGY, acting by and through the Secretary of Energy (or appropriate authorized representative thereof), for itself as guarantor of the Advances (as defined herein) (in such capacity, "DOE" or the "Guarantor"); and (iii) the U.S. DEPARTMENT OF ENERGY, acting by and through the Secretary of Energy (or appropriate authorized representative thereof), as the loan servicer (in such capacity, the "Loan Servicer").

WHEREAS, SunPower Corporation, Systems, a Delaware corporation ("SunPower"), has, through the Borrower, developed the Project pursuant to that certain Development Services Agreement;

WHEREAS, the Sponsor and SunPower have entered into that certain Purchase and Sale Agreement pursuant to which SunPower agreed to sell to the Sponsor 100% of the Equity Interests in the Borrower;

WHEREAS, HPR III has merged into the Borrower, pursuant to those certain Merger Documents, with the Borrower as a surviving entity;

WHEREAS, the Sponsor assigned its rights and obligations under the Purchase and Sale Agreement to NRG Solar CVSR Holdings LLC (the "Holding Company");

WHEREAS, immediately after such assignment, the Holding Company purchased 100% of the Equity Interests of the Borrower and became the direct owner of 100% of the Equity Interests of the Borrower;

WHEREAS, NRG Solar Sunrise LLC directly owns 100% of the Equity Interests of the Holding Company; the Sponsor directly owns 100% of the Equity Interests of NRG Solar Sunrise LLC; NRG Repowering Holdings LLC (the "Intermediate Parent Company"), directly owns 100% of the Equity Interests of the Sponsor, and the Ultimate Parent directly owns 100% of the Equity Interests of the Intermediate Parent Company;

WHEREAS, subject to the terms and conditions of the Equity Funding Agreement, the Sponsor has agreed to make, or procure the making of, Equity Contributions to the Borrower;

WHEREAS, the Borrower, in furtherance of its obligations with respect to the Project has requested that:

(i) FFB (a) make Term Loan Advances and Cash Grant Bridge Loan Advances pursuant to the FFB Documents in the aggregate principal amount not exceeding the

Guaranteed Term Loan Amount and Guaranteed Cash Grant Bridge Loan Amount, respectively, and (b) capitalize interest on the outstanding amount of the Advances as contemplated by Section 7(b) of the applicable FFB Promissory Note in an aggregate amount not to exceed the maximum capitalized interest amount for the Term Loan Advances or the Cash Grant Bridge Loan Advances, respectively; and

(ii) DOE guarantee the repayment of the Guaranteed Loans by the Borrower to FFB pursuant to the DOE Guarantee; and

WHEREAS, the execution of this Loan Guarantee Agreement is a condition precedent to the obligations of DOE and FFB under this Loan Guarantee Agreement and the FFB Documents, as applicable.

NOW, THEREFORE, in consideration of the foregoing and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, the parties hereby agree as follows:

ARTICLE 1
DEFINITIONS; RULES OF INTERPRETATION

SECTION 1.1. Definitions.

Except as otherwise expressly provided herein, capitalized terms used in this Loan Guarantee Agreement and its exhibits and schedules have the meanings given in Exhibit A.

SECTION 1.2. Rules of Interpretation.

Except as otherwise expressly provided herein, the rules of interpretation set forth in Exhibit B shall apply to this Loan Guarantee Agreement.

SECTION 1.3. Conflict with FFB Documents.

Except as otherwise expressly provided herein, in the case of any conflict between the terms of this Loan Guarantee Agreement and the terms of any FFB Document, the terms of this Loan Guarantee Agreement, as between the Borrower and DOE, shall control.

ARTICLE 2
FUNDING

SECTION 2.1. Availability of Advances.

2.1.1. Availability. Subject to the satisfaction (or waiver by DOE or FFB, as applicable, in writing) of each applicable condition precedent set forth in this Loan Guarantee Agreement and in the FFB Documents, Term Loan Advances shall be made during the Term Loan Availability Period and each of the Cash Grant Bridge Loan Advances shall be made during their respective Cash Grant Bridge Loan Availability Periods.

2.1.2. FFB Commitment Reductions and Cancellations. The Borrower may, on not less than ten (10) Business Days prior written notice to DOE and upon the satisfaction of any consent requirement or other applicable provisions of the FFB Documents, permanently reduce the unutilized portions of the FFB Commitment, in whole or in part, but only if:

(a) each partial reduction is in an amount permitted under the FFB Documents;

(b) DOE is satisfied, in its sole discretion, that such cancellation or reduction will not impair achievement of Project Completion on or prior to the Guaranteed Project Completion Date;

(c) after taking into account the proposed reduction, Total Funding Available equals or exceeds the amount of Total Project Costs projected by the Borrower and agreed by DOE as of the date of such reduction; and

(d) upon such cancellation or reduction, the Borrower pays all fees, Periodic Expenses and other amounts then due with respect to such cancellation or reduction under the FFB Documents.

Once reduced or canceled, the FFB Commitment shall not be increased or reinstated.

2.1.3. DOE Commitment Reductions and Cancellations. If the first Advance has not occurred by the Cutoff Date (or such later date as agreed by DOE), DOE shall be entitled to cancel the DOE Guarantee and terminate this Loan Guarantee Agreement upon written notice to the Borrower. Once cancelled or terminated, the DOE Guarantee and this Loan Guarantee Agreement, as the case may be, may not be reinstated without the written consent of DOE.

SECTION 2.2. Mechanics for Requesting Advances.

2.2.1. Master Advance Notice.

(a) The Borrower may request an Advance of either Guaranteed Loan by delivering to DOE and the Loan Servicer, with a copy to the Independent Engineer, within three (3) months following any Quarterly Approval Date or the First Advance Date but not less than ten (10) Business Days prior to the Requested Advance Date, a completed Master Advance Notice for such Advance.

(b) No more than once per calendar month the Borrower may deliver a Master Advance Notice requesting (x) a Term Loan Advance during the Term Loan Availability Period, (y) a Cash Grant Bridge Loan Advance during the applicable Cash Grant Bridge Loan Availability Period or (z) contemporaneously, both a Term Loan Advance and one or more Cash Grant Bridge Loan Advances during the Term Loan Availability Period and applicable Cash Grant Bridge Loan Availability Period, respectively; provided that in any three consecutive calendar month period during the Term Loan Availability Period the Borrower may deliver one (1) additional Master Advance Notice requesting Advances as described in the foregoing clauses (x) through (z).

(c) Each Master Advance Notice shall be in the form set forth in Exhibit G and otherwise in form and substance acceptable to DOE.

SECTION 2.3. Mechanics for Funding Advances.

2.3.1. Satisfaction of Conditions Precedent.

(a) Promptly after receipt of each Master Advance Notice, the Loan Servicer shall review such Master Advance Notice and other applicable documentation submitted to the Loan Servicer pursuant to this Agreement to determine whether the requirements of Section 4.4 (and in the case of the first Advance, Section 4.2) have been satisfied.

(b) If the Loan Servicer determines that (i) the Master Advance Notice has been satisfactorily completed, (ii) all applicable conditions precedent set forth in Section 4.4 (and, in the case of the first Advance, Section 4.2) for the requested Advance have been satisfied (or waived) and (iii) the FFB Advance Request and all other certificates and documentation required under the FFB Documents in respect of the requested Advance have been provided and are satisfactory (or have been waived), then DOE shall sign and forward the FFB Advance Request Approval Notice attached to the FFB Advance Request to FFB, with a copy to the Borrower, the Collateral Agent and the Independent Engineer.

(c) If the Loan Servicer disapproves any Master Advance Notice, the Loan Servicer shall promptly notify the Borrower of such documentation, identifying all deficiencies with reasonable specificity and any necessary change to the Master Advance Notice, FFB Advance Request and other certificates and documentation required under this Agreement and the FFB Documents in respect of the requested Advance.

2.3.2. Notices of Cancellation.

(a) Issuance. At any time after the Loan Servicer forwards an FFB Advance Request Approval Notice and before FFB makes the Advance referred to therein, the Loan Servicer may deliver a notice of withdrawal or cancellation of the FFB Advance Request Approval Notice (a "Notice of Cancellation") to FFB pursuant to Section 7.4(d) of the FFB Note Purchase Agreement or otherwise pursuant to the FFB Documents if the Loan Servicer determines that the applicable conditions in Section 4.4 (and, in the case of the first Advance, Section 4.2) for such Advance are not met or, having been met, are no longer met.

(b) Costs. The Borrower shall pay all expenses incurred by DOE, FFB, the Loan Servicer or the Collateral Agent in respect of any Advance that is not made due to the issuance of a Notice of Cancellation.

2.3.3. No Liability. Without limiting the generality of Section 9.6 hereunder, none of DOE, the Loan Servicer or the Collateral Agent has any liability to the Borrower or any Borrower Affiliate or to any other Person arising from the issuance of, or failure to issue, any FFB Advance Request Approval Notice, Notice of Cancellation, or any other notice contemplated by this Section 2.3.

SECTION 2.4. Advance Requirements under the FFB Documents.

The Borrower shall comply with all disbursement requirements set forth in the FFB Documents. Unless otherwise specified in the FFB Documents, all determinations in relation to Advances under this Loan Guarantee Agreement and the FFB Documents (except as expressly reserved for FFB in the FFB Documents) shall be made by the Loan Servicer.

SECTION 2.5. No Approval of Work.

The approval of any Advance under the Financing Documents shall not be deemed to be an approval or acceptance by the Loan Servicer of any work, labor, supplies, materials or equipment furnished or supplied with respect to the Project.

ARTICLE 3
PAYMENTS; PREPAYMENTS

SECTION 3.1. Place and Manner of Payments.

3.1.1. Repayment of Guaranteed Loan. The Borrower shall repay each Guaranteed Loan, including all fees and interest (whether taking the form of a Capitalized Interest Amount or otherwise) accrued thereon, in accordance with the FFB Documents. All payments due under the FFB Documents shall be made by the Borrower pursuant to the terms of the FFB Documents and the Accounts Agreement. Each payment shall be applied by the Collateral Agent in accordance with the Accounts Agreement; provided, however, that, notwithstanding any instructions to the contrary in the applicable FFB Promissory Note, for purposes of administering payments to FFB, the Borrower shall remit such payments directly to an account designated by the Loan Servicer for payment to FFB. The Borrower may not reborrow any amount of the Guaranteed Loan (whether in the form of an Advance or Capitalized Interest Amount) that is repaid.

3.1.2. Net of Tax, Etc.

(a) Tax. Any and all payments to any Secured Party by the Borrower hereunder or under any other Financing Document shall be made free and clear of, and without deduction for, any and all Taxes, excluding (i) Taxes imposed on or measured by the net income (however denominated) of such Secured Party by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a present or former connection between such Secured Party and such jurisdiction or political subdivision (other than any connection arising as a result of the transactions contemplated by the Financing Documents) and (ii) any withholding Taxes or other Tax based on gross income imposed by the United States of America except any such Taxes arising as a result of a Change of Law (all such non-excluded Taxes, "Covered Taxes"). If the Borrower is required by law to withhold or deduct any Covered Taxes from or in respect of any sum payable hereunder or under any other Financing Document to any Secured Party, (A) the sum payable shall be increased as may be necessary so that after making all such required deductions (including deductions applicable to additional sums payable under this Section 3.1.2), such Secured Party receives an amount equal to the sum it would have received had no such deductions been made, (B) the Borrower shall make such deductions and (C) the Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with all Applicable Laws; provided, however, that the Borrower shall not be

required to increase any such amounts payable to any Secured Party with respect to any Covered Taxes to the extent such Covered Taxes (x) are withholding Taxes imposed as a result of any Secured Party voluntarily designating a different lending office on or after the date hereof, (y) would not have been imposed but for a failure by the Secured Party, by any direct or indirect owner of the Secured Party, or by any financial institution through which any payment is made to such Secured Party or to any of its direct or indirect owners, to comply with the applicable requirements of Sections 1471 through 1474 of the Internal Revenue Code and any published administrative or similar guidance implementing such Sections, or (z) are withholding Taxes imposed on amounts payable to such Secured Party at the time such Secured Party becomes a party to this Loan Guarantee Agreement, except to the extent that such Secured Party's assignor (if any) was entitled (or would have been so entitled if such assignor were a domestic corporation within the meaning of Section 7701(a)(30) of the Internal Revenue Code), at the time of the assignment, to receive additional amounts from the Borrower with respect to such Covered Taxes pursuant to this Section 3.1.2(a). If the Borrower makes any payment with respect to Covered Taxes under this Section 3.1.2(a) to or for the benefit of any Secured Party and if such Secured Party claims any credit or deduction for such Covered Taxes against any other Taxes payable by such Secured Party that are not Covered Taxes, then such Secured Party shall pay to the Borrower an amount equal to the amount the Secured Party determines, in good faith and absent manifest error, is the amount by which such other Taxes are actually reduced; provided that the aggregate amount payable by such Secured Party pursuant to this sentence shall not exceed the aggregate amount previously paid by the Borrower with respect to such Covered Taxes, and no such amount shall be payable while a Potential Event of Default or Event of Default is continuing.

(b) Indemnity. The Borrower hereby indemnifies each Secured Party for the full amount of Covered Taxes (including any Taxes imposed by any jurisdiction on amounts payable under this Section 3.1.2) paid by any Secured Party, whether or not such Covered Taxes were correctly or legally asserted. Each Secured Party shall give notice to the Borrower of the assertion of any claim against such Secured Party relating to such Secured Party's Covered Taxes as promptly as is practicable after being notified of such assertion; provided that any failure to notify the Borrower promptly of such assertion shall not relieve the Borrower of its obligation under this Section 3.1.2, except to the extent the Borrower is actually and materially prejudiced by such failure with respect to any such notice given by a Secured Party and only if such notice was given by a Secured Party more than sixty (60) days after such Secured Party has notice or knowledge of such claim. Payments by the Borrower pursuant to this indemnification shall be made within thirty (30) Business Days after the date such Secured Party makes written demand therefor, which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. Each Secured Party agrees to repay to the Borrower any refund (including that portion of any interest that was included as part of such refund with respect to Covered Taxes paid by the Borrower pursuant to this Section 3.1.2(b) for the period following such Borrower payment) received by such Secured Party for Covered Taxes that were paid by the Borrower pursuant to this Section 3.1.2(b) and to provide reasonable assistance to the Borrower (at the expense of the Borrower) to contest any such Covered Taxes that such Secured Party or the Borrower reasonably believes not to have been lawfully or properly assessed. For the avoidance of doubt, unless an Event of Default or a potential Event of Default has occurred and is continuing at the time the Borrower would (if this Section 3.1.2(b) were applicable, without regard to this final sentence thereof) be required to make a payment under this Section

3.1.2(b), the indemnification obligation contained in this Section 3.1.2(b) shall not extend to Taxes imposed for which the Secured Party with respect to whom the obligation would otherwise exist would not have been eligible to receive payment of additional amounts under Section 3.1.2(a), or to the extent that such Secured Party received additional amounts with respect to such payments.

(c) Notice. Within ten (10) Business Days after the date of any payment of Covered Taxes by the Borrower, the Borrower shall furnish to the Loan Servicer and each affected Secured Party the original or a certified copy of a receipt evidencing such payment or, if the relevant tax authority has not provided the Borrower with such a receipt, shall furnish such other evidence of such payment as may be available to the Borrower (in which case the Borrower shall promptly request a receipt from the relevant tax authority and so furnish the original or a certified copy thereof promptly upon receipt thereof). The Borrower shall compensate each Secured Party for all reasonable losses and expenses sustained by such Secured Party as a result of any failure by the Borrower to so furnish such copy of such evidence or, if available, such receipt.

(d) Survival of Obligations. The obligations of the Borrower under this Section 3.1.2 shall survive the termination of this Loan Guarantee Agreement and the repayment of the Secured Obligations.

(e) Documentation. Each Secured Party shall deliver to each of the Borrower and the Collateral Agent either (A) if such Secured Party is a "United States Person" as defined in Section 7701(a)(30) of the Internal Revenue Code (a "U.S. Lender"), two copies of a U.S. Internal Revenue Service Form W-9 or any successor form, properly completed and duly executed by such U.S. Lender, certifying such U.S. Lender's complete exemption from "backup withholding" Tax on all payments made by the Borrower under this Agreement and the other Financing Documents; or (B) if such Secured Party is not a U.S.

Lender, two copies of either U.S. Internal Revenue Service Form W-8BEN, Form W-8IMY or Form W-8ECI, as appropriate. Such forms shall be delivered by each Secured Party on or before the date it becomes a party to this Loan Guarantee Agreement (or, in the case of any participant, on or before the date such participant purchases the related participation).

(i) Each Secured Party shall deliver the appropriate form referred to in this Section 3.1.2(e) promptly upon the obsolescence or invalidity of any form previously delivered by such Secured Party, and shall deliver extensions or renewals thereof as may reasonably be requested by the Borrower or the Collateral Agent.

(ii) Each Secured Party shall promptly notify the Borrower at any time it determines that it is no longer in a position to provide any previously delivered certificate to the Borrower (or any other form of certification adopted by the U.S. taxing authorities for such purpose).

(iii) Notwithstanding any other provision of this paragraph, a Secured Party shall not be required to deliver any form pursuant to this Section 3.1.2(e) that such Person is not legally able to deliver.

(f) Treaty Exemption or Reduction. A Secured Party that is entitled to an exemption from or reduction of non-U.S. withholding Tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Loan Guarantee Agreement shall deliver to the Borrower (with a copy to the Collateral Agent), at the time or times prescribed by Applicable Law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by Applicable Law as will permit such payments to be made without withholding or at a reduced rate, provided that such Secured Party is legally entitled to complete, execute and deliver such documentation and in such Secured Party's judgment such completion, execution or submission would not materially prejudice the legal position of such Secured Party.

SECTION 3.2. Interest Provisions Relating to All Advances.

3.2.1. Interest Account and Interest Computations. Interest shall accrue on the unpaid principal amount of each Advance and any related Capitalized Interest Amount from (x) in the case of the principal amount of any Advance, the date such Advance is disbursed or deemed disbursed pursuant to the FFB Documents and (y) in the case of any related Capitalized Interest Amount, the Payment Date on which such Capitalized Interest Amount was capitalized in accordance with Section 7(b) of the applicable FFB Promissory Note, to the date such Advance and any related Capitalized Interest Amount is paid in full, at a rate per annum specified in the FFB Documents. The Borrower hereby authorizes the Loan Servicer to record in an account or accounts maintained by the Loan Servicer on behalf of DOE (a) the interest rates applicable to all Term Loan Advances and Cash Grant Bridge Loan Advances and related Capitalized Interest Amounts, (b) each Capitalized Interest Amount in respect of any Advance, (c) the date and amount of each payment on the applicable Guaranteed Loan (including whether such payment is a payment in respect of the outstanding principal amount of an Advance, a payment in respect of any Capitalized Interest Amounts or a payment of cash interest) outstanding and (d) such other information as DOE or the Loan Servicer may determine is necessary for the computation of interest payable by the Borrower hereunder. All computations of interest shall be made as set forth in the relevant FFB Documents.

3.2.2. Interest Payment Dates.

(a) Interest shall accrue from the date of the first Advance and be payable in cash, in arrears on each Payment Date, commencing on the First Payment Date or earlier, as set forth in the FFB Promissory Notes. Interest will be capitalized as set forth in the FFB Promissory Notes. After that, interest shall be due and payable on each Payment Date.

(b) Subject to the terms of the FFB Documents, the Borrower shall pay accrued interest on the outstanding principal amount of each Advance and any related Capitalized Interest Amounts on each Payment Date, on prepayment (to the extent thereof) and at maturity (whether by acceleration or otherwise).

SECTION 3.3. FFB Note Transfer.

Upon any FFB Note Transfer or receipt by the Borrower, the Loan Servicer or DOE of notice of FFB's intention to make any FFB Note Transfer in accordance with the FFB Note Purchase Agreement, the Borrower, DOE and the Loan Servicer shall cooperate with the transferee of the applicable FFB Promissory Note to amend this Loan Guarantee Agreement and any other Financing Documents to incorporate customary terms and conditions reasonably satisfactory to such transferee with respect to:

(a) any Change of Law that makes it unlawful or impossible for any transferee Lender to make, hold or maintain the applicable Guaranteed Loan;

(b) any Change of Law that subjects such transferee Lender to any tax, duty or other charge with respect to the applicable Guaranteed Loan; and

(c) such transferee Lender designating an alternative lending office for its Guaranteed Loan to mitigate costs or to avoid any circumstances that might make it unlawful or impossible for such transferee Lender to maintain a Guaranteed Loan.

SECTION 3.4. Prepayments.

3.4.1. Terms of all Prepayments.

(a) With respect to any prepayment of all or any portion of either Guaranteed Loan, whether such prepayment is voluntary or mandatory and including a prepayment upon acceleration, the Borrower shall comply with all applicable terms and provisions of the FFB Documents.

(b) All prepayments of the Guaranteed Loans shall be applied in accordance with the FFB Documents.

(c) The Borrower may not reborrow any amount of either Guaranteed Loan (whether in the form of an Advance or Capitalized Interest Amount) that is prepaid.

(d) At the Borrower's election, on one or more dates selected by the Borrower, the Borrower may prepay in full or in part one or more Advances selected by the Borrower, and any such partial prepayment shall be applied to installments of principal in the inverse order of maturity.

3.4.2. Voluntary Prepayments.

(a) Prior to the end of the Term Loan Availability Period and without the consent of DOE, except as required by Section 3.4.3, the Borrower may not prepay the Guaranteed Term Loan unless the Borrower simultaneously cancels the outstanding FFB Term Loan Commitment and fully repays the Guaranteed Term Loan. After the end of the Term Loan Availability Period, the Borrower may prepay the Guaranteed Term Loan in part or in full in accordance with the FFB Documents upon at least five (5) Business Days prior written notice submitted by the Borrower to DOE (with a copy to the Collateral Agent). Voluntary prepayments of the Guaranteed Term Loan may be subject to make whole premiums or discounts as are set forth in the FFB Documents.

(b) Prior to the end of the applicable Cash Grant Bridge Loan Availability Period and without the consent of DOE, except as required by Section 3.4.3, the Borrower may not prepay any Guaranteed Cash Grant Bridge Loan unless the Borrower simultaneously cancels the applicable outstanding FFB Cash Grant Bridge Loan Commitment and fully repays such Guaranteed Cash Grant Bridge Loan. After the end of the applicable Cash Grant Bridge Loan Availability Period, the Borrower may prepay such Guaranteed Cash Grant Bridge Loan in part or in full in accordance with the FFB Documents upon at least five (5) Business Days prior written notice submitted by the Borrower to DOE (with a copy to the Collateral Agent). Voluntary prepayments of each Guaranteed Cash Grant Bridge Loan may be subject to make whole premiums or discounts as are set forth in the FFB Documents.

3.4.3. Mandatory Prepayments. The Borrower shall be required to make or cause to be made, as applicable, mandatory prepayments of the applicable Guaranteed Loan on the dates and in the amounts set forth in this Section 3.4.3:

(a) of the Guaranteed Term Loan, upon the receipt by the Borrower of any Performance Liquidated Damages (as that term is defined in the EPC Contract) or amounts paid to the Borrower pursuant to section 11.09(a) of the Purchase and Sale Agreement, in each case, that are not, with DOE's consent, used to pay to construct, repair or restore the Project, to be applied as a Full Advance Prepayment;

(b) of the Guaranteed Term Loan, upon the receipt by the Borrower of Loss Proceeds, any such amount paid that exceeds the amount of such Loss Proceeds used or to be used to repair, replace or rebuild the Project in accordance with Section 6.22, to be applied at DOE's election, as (i) a Full Advance Prepayment or (ii) to the extent the remaining useful life of the Project will, according to a written determination of the Independent Engineer, following the use of such Loss Proceeds to repair, replace or rebuild the Project, end prior to the Term Loan Maturity Date, a prepayment of Advances in inverse order of maturity;

(c) of the Guaranteed Term Loan, in an amount equal to all cash in the Restricted Payment Account to the extent any cash has been on deposit in the Restricted Payment Account, beginning from the Project Completion Date, for eight (8) consecutive calendar quarters due to the failure of the Borrower to satisfy the conditions set forth in Section 7.10(a), to be applied as a Full Advance Prepayment; provided, however, that, if DOE's prior written consent has been obtained, the money on deposit in the Restricted Payment Account may be reinvested into the Project as directed by the Borrower;

(d) of the Guaranteed Term Loan, upon any sale (which must be a Permitted Disposition) of any assets no longer used or useful in the operation of the Project Facility, in an amount equal to the proceeds of such sale, net of the prior, concurrent or prospective application of such proceeds to the acquisition of replacement assets, if such amount exceeds (or will exceed) $50,000, to be applied as a prepayment of Advances in inverse order of maturity; provided that, if such proceeds are not applied in accordance with clause (d) of the definition of "Permitted Disposition" then, to the extent such proceeds exceeded $50,000, an amount equal to 100% of such proceeds shall be applied to the Guaranteed Term Loan, as a prepayment of Advances in inverse order of maturity;

(e) of the Guaranteed Term Loan, if (i) the HPR II Delivery Term for Phase 3 commences before October 31, 2013, or (ii) the HPR III Delivery Term commences before October 31, 2012, in each case, on each Monthly Transfer Date, a prepayment from cash available at payment priority Sixth in Section 4.03(b)(ii) of the Accounts Agreement, to be applied as a prepayment of Advances in inverse order of maturity until the projected date of full amortization of the Guaranteed Loans is not later than the date that is (x) 23 years after commencement of the HPR II Delivery Term for Phase 3 or (y) 24 years after commencement of the HPR III Delivery Term;

(f) of the Guaranteed Term Loan, in an amount equal to Excess Major Project Document Breach Damages or Excess Major Project Document Termination Damages, immediately upon the determination that any such damages exist, to be applied as DOE shall direct; or

(g) of a Guaranteed Cash Grant Bridge Loan, one (1) Business Day following the receipt of the Cash Grant for a Phase associated with such Guaranteed Cash Grant Bridge Loan, the Borrower shall, if immediate prepayment of the applicable Guaranteed Cash Grant Bridge Loan would:

(i) result in no prepayment premium, first, to prepay such Guaranteed Cash Grant Bridge Loan in full together with all fees and interest accrued thereon, and second, to fund the Cash Grant Proceeds Account; or

(ii) result in a prepayment premium, deposit such proceeds into the Cash Grant Proceeds Account and, at any time on or prior to the applicable Guaranteed Cash Grant Bridge Loan Maturity Date, direct disbursement of all or any portion of the funds in the Cash Grant Proceeds Account to satisfy the applicable Guaranteed Cash Grant Bridge Loan until it has been, together with all fees and interest accrued thereon, fully repaid.

If on the date of receipt of the Cash Grant for a Phase (or, with respect to the Cash Grants for Phase 2 or Phase 4, the later of the receipt of (x) the Cash Grant for Phase 2 and (y) the Cash Grant for Phase 4) the amount of Cash Grant proceeds is, together with amounts on deposit in the Cash Grant Proceeds Account and the Restricted Payment Account, insufficient to repay the applicable Guaranteed Cash Grant Bridge Loan, the DOE shall direct the Collateral Agent to make demand on the NRG Cash Grant Shortfall Security and/or draw on the SunPower Cash Grant Shortfall Security in (A) amounts necessary to ensure there are sufficient funds for repayment of the applicable Guaranteed Cash Grant Bridge Loan and (B) proportions determined by DOE in its sole discretion, and the proceeds of such draws and demands will be applied consistent with this Section 3.4.3(g). Notwithstanding anything in this clause (g) to the contrary, each Guaranteed Cash Grant Bridge Loan becomes due and payable at its applicable Guaranteed Cash Grant Bridge Loan Maturity Date; and

(h) of the Guaranteed Term Loan, in the event that, as of the Project Completion Date, the Projected Debt Service Coverage Ratio is less than the Minimum DSCR for any Payment Period, prepayment from cash available at the payment priority specified in section 4.03(b)(ii) of the Accounts Agreement until the Projected Debt Service Coverage Ratio for each Payment

Period is equal to or greater than the Minimum DSCR, to be applied as a Full Advance Prepayment; provided that any prepayment under this Section 3.4.3(h) will not exceed the DSCR Restoration Cap Amount; and

(i) of the Guaranteed Term Loan, in the event that the Borrower receives Interest Rate Swaption Proceeds after the Project Completion Date and all Project Costs incurred during the Construction Period have been paid in full, in an amount equal to (A) 100% of such Interest Rate Swaption Proceeds multiplied by (B) the percentage equal to (x) the Guaranteed Loan component of the Debt to Equity Ratio divided by (y) the sum of the Guaranteed Loan component of the Debt to Equity Ratio and the Equity Contribution component of the Debt to Equity Ratio.

For the avoidance of doubt, nothing in this Section 3.4 shall be interpreted to require the Borrower to make a prepayment without giving adequate notice to FFB, if any is required under the FFB Documents.

SECTION 3.5. Payment of Guaranteed Loan Fees.

(a) The Borrower shall pay to DOE, not later than the Guarantee Agreement Date and before the issuance of the DOE Guarantee, a loan facility fee in an aggregate amount equal to $1,625,000 plus 0.50% of the Guaranteed Loan Amount. DOE acknowledges that it received a portion of such facility fee in the amount of $1,512,101.50 on April 15, 2011.

(b) The Borrower shall pay annually in advance to DOE, for its own account, the DOE Maintenance Fee. The Borrower shall pay the initial DOE Maintenance Fee not later than the Guarantee Agreement Date (but in any event before the issuance of the DOE Guarantee) and each subsequent DOE Maintenance Fee on January 1 of each calendar year after the Guarantee Agreement Date (provided that the initial DOE Maintenance Fee shall be pro-rated on a daily basis for the number of days starting with the Guarantee Agreement Date and ending on December 31, 2011).

(c) The Borrower shall pay to FFB the fees payable to FFB from time to time in accordance with the FFB Documents.

(d) The Borrower shall pay to DOE a DOE Modification Fee, if any, in the amount(s) and at the time(s) reasonably determined by DOE.

(e) All Guaranteed Loan Fees and Periodic Expenses shall be paid on the dates due, in immediately available funds in Dollars, to DOE or FFB, as applicable. Once paid, the Guaranteed Loan Fees and Periodic Expenses shall not be refundable under any circumstances.

(f) All amounts payable to DOE under this Section 3.5 shall be paid by wire transfer to the following account, or to such other account as may be specified by DOE from time to time.

U.S. Treasury Department
ABA No. 0210-3000-4 TREASNYC/CTR/BNF = D89000001
OBI = LGPO Loan No. 1229

SECTION 3.6. Evidence of Debt.

(a) The Loan Servicer shall maintain, in accordance with its usual practice, internal records evidencing the amounts from time to time (i) advanced by FFB under the FFB Note Purchase Agreement, (ii) paid by DOE with respect to the DOE Guarantee and (iii) principal and interest amounts paid by the Borrower with respect to the foregoing.

(b) In the event of any conflict among the records of the Loan Servicer and FFB, the records of FFB shall prevail.

ARTICLE 4
CONDITIONS PRECEDENT

SECTION 4.1. Conditions Precedent to Guarantee Agreement Date.

The obligation of DOE to issue the DOE Guarantee to FFB is subject to the prior satisfaction (or waiver), as determined by DOE, in its sole discretion, of each of the following conditions precedent (and of any deliverable, as to its form and substance) as of the Guarantee Agreement Date (or such other date specified in this Section 4.1).

4.1.1. Transaction Documents.

(a) Financing Documents. DOE has received fully executed originals in sufficient counterparts for each party to each of the following documents, each of which is in full force and effect and without amendment (other than those amendments previously disclosed by the Borrower and consented to by DOE), as certified by the Borrower (or, in the case of Section 4.1.1(a)(iii), certified by the relevant Borrower Entity):

(i) Loan Guarantee Agreement. This Loan Guarantee Agreement.

(ii) FFB Documents. The FFB Documents.

(iii) Equity Documents. Each of the following documents and all other contracts and documents required in connection with the Equity Commitments (the "Equity Documents"):

(A) the Equity Funding Agreement;

(B) the Equity Letter(s) of Credit;

(C) the Cash Collateral Security Agreement;

(D) the Cash Collateral Accounts Control Agreement;

(E) if required by DOE in a writing delivered to Borrower prior to the Guarantee Agreement Date, an agreement between the Sponsor and DOE providing for various matters, such as management and support obligations for the Borrower

and continuing ownership of the Borrower's equity and control of management of the Borrower;

(F) if required by DOE in a writing delivered to Borrower prior to the Guarantee Agreement Date, an agreement between SunPower and DOE providing for various matters, including support obligations for warranties and other obligations under the EPC Contract and other Project Documents; and

(iv) any other documents, certificates or instruments required to be delivered in connection with the foregoing.

(b) Security Documents. Each of the following documents (the "Security Documents"):

(i) the Deed of Trust;

(ii) the Security Agreement;

(iii) the Accounts Agreement;

(iv) the Accounts Control Agreement;

(v) the Equity Pledge Agreement;

(vi) the Direct Agreements;

(vii) the Cash Collateral Security Agreement;

(viii) the Cash Collateral Accounts Control Agreement;

(ix) the HPR I Assignment;

(x) any other contract or document entered into on or prior to the Guarantee Agreement Date that provides any Lien, charge or security interest to the Secured Parties (or any of them); and

(xi) any other documents, certificates or instruments required to be delivered in connection with the foregoing.

(c) Project Documents. DOE has received fully executed copies of each of the following documents (together with a fully executed consent to assignment related to each of the following documents), each certified by the Borrower that (x) such copy is a true, correct and complete copy of such document (including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters), (y) such document has been duly executed and delivered by the parties thereto and is in full force and effect and (z) to the

Borrower's Knowledge, no party to such document is or, but for the passage of time or giving of notice or both, will be in breach of any obligation thereunder:

(i) the Land Lease Agreement;

(ii) each other contract or other document evidencing the Borrower's ownership or control of land and rights to land for the Project, all easements, licenses, and covenants, conditions and restrictions in connection with the Project Site and any and all other documents (including estoppel certificates from landlords) affecting an interest in or right to use the Project Site;

(iii) the Construction Contracts and all consulting, engineering, equipment supply and construction agreements;

(iv) the Power Purchase Agreements;

(v) the Large Generator Interconnection Agreement and all ancillary transmission and interconnection agreements;

(vi) each other contract that is required for construction management, project administration and operation and maintenance of the Project;

(vii) intellectual property documents evidencing the Borrower's right to use the intellectual property required to construct, operate and use the Project;

(viii) the Delivery Term Security Maintenance Agreement;

(ix) the Mitigation Land Acquisition Agreement;

(x) the Purchase and Sale Agreement;

(xi) the Development Services Agreement;

(xii) the O&M Agreement;

(xiii) the Master Services Agreement;

(xiv) the Escrow Agreement;

(xv) other supply agreements, including all agreements relating to materials, utilities, engineering services, equipment supplies, transportation of raw materials, commodities, and other supplies required to operate the Project and the transmission of the output from the Project; and

(xvi) any other documents or agreements including real property agreements, labor agreements, management services agreements, professional services agreements, and such other agreements reasonably required to construct, own, operate and maintain the Project, certificates or instruments required to be delivered in connection with any of the foregoing that have been entered into by the Borrower in connection with the Project

prior to the Guarantee Agreement Date, in each case that DOE has designated as a "Project Document" in a writing delivered to the Borrower prior to the Guarantee Agreement Date.

(d) Organizational Documents. The Organizational Documents of each Borrower Compliance Entity, accompanied, in each case, by the appropriate Officer's Certificates, Secretary's Certificates, good standing certificates, incumbency certificates, resolutions and any other documents as DOE reasonably requests (each effective as of the Guarantee Agreement Date), with respect to, inter alia, approval of (i) each such Borrower Compliance Entity's participation in the Project, (ii) the financing therefor (including the Guaranteed Loans) and the granting of Liens and (iii) the execution, delivery and performance by each such Borrower Compliance Entity of the Transaction Documents to which it is party.

(e) Merger Documents. The Merger Documents.

(f) Other Documents. Any other documents and agreements as may be required under the Program Requirements or as otherwise required by DOE, including the Monitoring Table, substantially in the form attached hereto as Exhibit Q.

4.1.2. Plans and Projections.

(a) DOE has received, not later than the Ratings Package Delivery Date, the following items (which items will be certified on the Guarantee Agreement Date by an Officer's Certificate of the Borrower substantially in the form of Exhibit C-1 and by the Independent Engineer on a certificate substantially in the form of Exhibit E), as to the Borrower's best estimate of the information contained therein as of the Ratings Package Delivery Date:

(i) Construction Budget. A construction budget, setting forth, on a monthly basis, all Project Costs necessary to design, develop, construct and start-up the Project through the Project Completion Date (including the amount of any Project Costs previously funded by any Borrower Entity), which construction budget shall specify on an aggregate basis for all Project Costs: (I) the portions of any Project Costs that constitute Eligible Project Costs; and (II) the amount of contingencies, which Construction Budget shall have been reviewed by the Independent Engineer;

(ii) Project Plans. The detailed project plans for the design, development, financing, construction, implementation, operation and management of the Project, including updates and supplements to information submitted in response to "Attachment B" to the instructions for Application for a DOE Guarantee, approved by the Independent Engineer as being satisfactory and in form and substance acceptable to DOE and including, without limitation: (i) procurement strategy, supply chain management plan, vendor database, long-lead procurement plan and schedule of domestic content of purchased items; (ii) quality control plan, quality assurance flow-down requirements for major subcontractors and quality assurance plan for operations and maintenance; (iii) risk management plan and risk register; (iv) safety plan; and (v) operations and maintenance plan;

(iii) Financial Plan. A financial plan setting forth all sources and uses of funds needed to pay Project Costs, as reviewed by the Independent Engineer;

(iv) Project Costs Report. A detailed description, with supporting documents as reasonably requested by DOE, (A) of Project Costs (including all development costs) incurred and paid to third parties prior to the Ratings Package Delivery Date prepared by the Borrower and reviewed by the Independent Engineer and (B) specifying those Project Costs for which the Borrower, the Sponsors or any Affiliate thereof seeks credit to be applied toward Base Equity and certifying that such amounts are Eligible Project Costs and have been applied in accordance with the Construction Budget;

(v) Advance Schedule. A schedule detailing the expected dates and amounts of proposed Advances and Equity Contributions to fund Eligible Project Costs consistent with the Project Plans, the Financial Plan, the Construction Budget and the Project Milestone Schedule, prepared by the Borrower and reviewed by the Independent Engineer;

(vi) Project Milestone Schedule. A schedule of significant development, construction and completion milestones for the Project provided by the Borrower and reviewed by the Independent Engineer, in form and substance acceptable to DOE, prepared by the EPC Contractor with respect to the EPC Contract; which will: (x) be prepared by the EPC Contractor with respect to the EPC Contract as a level 3 integrated Project schedule using Primavera 6 software; (y) reflect interdependencies among all project design, permitting, procurement and construction activities; and (z) be integrated with the Project work breakdown structure. The Project Milestone Schedule shall include, without limitation: (i) all design, procurement and construction activities, including subcontracted activities; (ii) interconnection activities, including activities related to the interim tap into PG&E's transmission system; (iii) cost and resource loading information; (iv) major Power Purchase Agreements dates and requirements; (v) phased commissioning and start-up activities and (vi) a critical path analysis;

(vii) Base Case Projections. A hard copy of, and a computer disk, CDROM or other customary computer storage media, containing projections of operating results reviewed by the Independent Engineer and DOE (which shall be finished in Excel file format) and the underlying models and assumptions and explanations thereto, on no less frequently than a semi-annual basis for the Project covering the period from the Ratings Package Delivery Date to a date falling no sooner than twelve months after the Maturity Date, showing, on a basis consistent with the Project Plans and the Transaction Documents, the Borrower's good faith projections based on assumptions that are believed by the Borrower to be a reasonable operating forecast of revenues, expenses, cash flow, and sources and uses of revenues over the forecast period, which projections shall provide for a Projected Debt Service Coverage Ratio for each Payment Period that is equal to or greater than the Minimum DSCR;

(viii) Initial Operating Budget. An Initial Operating Budget beginning on the Guaranteed Project Completion Date through the first anniversary of the Operational

Completion Date (the "Initial Operating Budget"), approved by the Independent Engineer;

(ix) Employment Projections. Projections for jobs created and maintained in the U.S. as a result of the Project for each calendar year occurring during the term of the Guaranteed Loans;

(x) Modified Tracker Components Data. Information with respect to modified elements of the tracker design utilized for the Project, including the torque-tube module-mounting saddles and torque-tube bearings (the "Modified Tracker Components"), including: (x) finite element analysis; and (y) a report including results of qualification testing of the Modified Tracker Components, which shall (i) confirm durability of the Modified Tracker Components sufficient for a 25-year lifetime, (ii) confirm adequacy of bearing design, and (iii) include seismic and wind qualification of the tracker system, including the Modified Tracker Components, approved by the Independent Engineer;

(xi) Project Design Package. A complete design package for the Project, in form and substance satisfactory to DOE, including, without limitation: (i) approved design basis documents; (ii) structural analysis for all major systems; (iii) specifications and data sheets for all major components; (iv) general plant arrangements and layout drawings; and (v) integrated design for the supervisory control and data acquisition system and the tracking monitoring and control systems, reviewed by the Independent Engineer; and

(xii) Risk Evaluation Documents. Copies of certain Project Documents and Financing Documents (if any) to be identified by DOE in a writing delivered to the Borrower prior to the Guarantee Agreement Date (the "Risk Evaluation Documents").

(b) On the Guarantee Agreement Date, DOE shall receive an Officer's Certificate of the Borrower certifying that, as of the Guarantee Agreement Date, each of the items delivered pursuant to Section 4.1.2(a) has not changed in any material respect since the date of its delivery to DOE, excluding (i) with respect to item (iv) (Project Costs Report), costs incurred since the date of delivery of that item to DOE and (ii) any other changes as approved by DOE.

4.1.3. Financial Statements. On or prior to the Guarantee Agreement Date, DOE has received (i) annual unaudited Financial Statements for the previous year and unaudited quarterly Financial Statements for the year to date of the Borrower; (ii) consolidated annual audited Financial Statements for the previous year and unaudited quarterly Financial Statements for the year to date of the Ultimate Parent; and (iii) the most recently available consolidated annual audited Financial Statements and unaudited quarterly Financial Statements for the year to date of SunPower Corporation and, as determined by DOE, each other Person whose credit is material to the making of the Guaranteed Loans; in each case together with an Officer's Certificate in the form of Exhibit I-1 or Exhibit 1-2, as applicable, confirming that such Financial Statements fairly present the financial conditions of such Person.

4.1.4. Credit Rating. The Project has received a credit rating from Fitch dated at least thirty (30) Business Days prior to the Guarantee Agreement Date.

4.1.5. Environmental. DOE has received a copy of (i) a "Phase I" environmental site assessment for the Project Site that conforms to applicable industry and regulatory standards, and any additional or follow-up site investigation or compliance-related audits or assessments (including, but not limited to, any "Phase II" environmental site assessments, compliance audits, or environmental site characterization studies), (ii) a Final Environmental Assessment and Finding of No Significant Impact with respect to the Project Site in accordance with the National Environmental Policy Act, and (iii) evidence of satisfaction of any additional environmental requirements (including, but not limited to, wetlands approvals, biological opinions, required mitigations, or other requirements) in accordance with applicable Environmental Laws, including all required National Environmental Policy Act documentation.

4.1.6. Permits and Approvals.

(a) All Required Approvals required for the Project as of the Guarantee Agreement Date are listed on Part I of Schedule 4.1.6, and DOE has received fully executed copies of each of the Required Approvals listed on Part I of such schedule, together with an Officer's Certificate of the Borrower to the effect that: (i) the copies of such Required Approvals delivered pursuant to this Section 4.1.6 are true, correct and complete copies of such Required Approvals (including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters); (ii) no term or condition of any of such Required Approvals delivered pursuant to this Section 4.1.6 has been amended from the form thereof delivered pursuant to this Section 4.1.6; (iii) each such Required Approval delivered pursuant to this Section 4.1.6 has been validly issued, is in full force and effect and Non-Appealable; (iv) all conditions precedent to the effectiveness of such Required Approval delivered pursuant to this Section 4.1.6 have been satisfied (other than conditions not required to be satisfied as of the Guarantee Agreement Date that do not require the discretionary approval of a third party); (v) the Borrower has no reason to believe that any of such Required Approvals delivered pursuant to this Section 4.1.6 shall be revoked.

(b) All Required Approvals not required for the Project as of the Guarantee Agreement Date are listed on Part II of Schedule 4.1.6, and DOE has received an Officer's Certificate of the Borrower to the effect that the Borrower has no reason to believe that it or any other Borrower Entity or, to the Borrower's Knowledge, any Major Project Participant (as applicable) shall fail to obtain the Required Approvals set forth on Part II of Schedule 4.1.6 in the ordinary course free of any unduly burdensome conditions or requirements at such time or times as may be required under the Transaction Documents or as is otherwise necessary to avoid any material delay in, or impairment to, the performance of the transactions as contemplated by the Transaction Documents.

4.1.7. Receipt of Evidence. Each of the following conditions have occurred and DOE has determined (in its sole discretion) that it has received satisfactory evidence of such occurrence:

(a) Lobbying Certification. The Borrower has provided to DOE a Standard Form-LLL "Disclosure Form to Report Lobbying".

(b) Commencement of Construction. Commencement of Construction has occurred.

(c) Cash Grant Eligibility. DOE shall have received:

(i) A cost eligibility study report from the Borrower's Accountant, dated as of the Guarantee Agreement Date and in form and substance reasonably satisfactory to DOE, certifying the projected Project Costs that more likely than not will be included in the cost basis of the Project for purposes of determining the Cash Grant to be received in respect of the Project (determined in accordance with the Cash Grant Guidance, Cash Grant Terms and Conditions and other regulations or guidance issued with respect to the Cash Grant); provided, however, that such cost eligibility study report shall in no event be reasonably satisfactory to DOE unless Borrower's tax counsel shall have reviewed the material legal assumptions used in creating such report and determined that such legal assumptions should be correct a matter of law.

(ii) An Officer's Certificate from the Sponsor dated as of the Guarantee Agreement Date and certifying (A) that the Project should be eligible for Cash Grants in accordance with Exhibit T, (B) that the commencement of construction within the meaning of the requirements of Section 1603 of Recovery Act with respect to the Project has occurred or will occur prior to the applicable deadline under such Section, (C) as to those factual matters (other than factual matters described in Section 4.1.7(c)(ii)(D) hereof) as to which the Sponsor is required to make a representation under the cash grant opinion required to be provided pursuant to Section 4.1.12 hereof, and which will be relied upon in such opinion, and (D) in reliance upon the cost eligibility study report provided by the Borrower's Accountant pursuant to Section 4.1.7(c)(i) hereof, as to the aggregate amount of the projected Project Costs that should be included in the cost basis of the Project for purposes of determining the Cash Grant to be received in respect of the Project (such aggregate amount, the "Projected Cash Grant Basis") and confirming that such Projected Cash Grant Basis has been determined pursuant to a methodology consistent with the Cash Grant Guidance, Cash Grant Terms and Conditions and other regulations or guidance issued with respect to the Cash Grant.

(iii) An Officer's Certificate from SunPower dated as of the Guarantee Agreement Date and certifying as to factual matters as to which SunPower is required to make a representation under the cash grant opinion required to be provided pursuant to Section 4.1.12 hereof, and which will be relied upon in such opinion.

(iv) An Officer's Certificate from the Borrower dated as of the Guarantee Agreement Date and certifying as to factual matters as to which the Borrower is required to make a representation under the cash grant opinion required to be provided pursuant to Section 4.1.12 hereof, and which will be relied upon in such opinion.

(d) Guaranteed Loan Fees. Receipt of payment of all Guaranteed Loan Fees from funds other than Advances.

(e) Fee Arrangements for Independent Consultants. The Periodic Expenses of any Independent Consultants incurred and invoiced prior to the Guarantee Agreement Date (i) have been paid in full or (ii) are to be paid by other arrangements satisfactory to DOE.

(f) Prohibited Persons. No Borrower Entity or Borrower Entity Controlling Person or any Person that Controls any Borrower Entity or Borrower Entity Controlling Person is a Prohibited Person.

(g) Davis-Bacon Requirements. DOE shall have received a certificate from the Borrower, dated as of the Guarantee Agreement Date, certifying that the Borrower has complied with all Davis-Bacon Requirements including any retroactive compliance. The Borrower has included, in each of its Davis-Bacon Act Covered Contracts, the Davis-Bacon Requirements.

4.1.8. Update of Conditional Commitment. DOE has determined that there are no material changes to the terms and conditions contained in the Term Sheet, other than any changes that have been agreed by DOE prior to the Guarantee Agreement Date.

4.1.9. No Judgment Liens. DOE has (a) received an Officer's Certificate from the Borrower certifying that the Borrower does not have a judgment Lien against any of its Property for any Indebtedness owed to the U.S. or any other creditor; and (b) independently verified, to its satisfaction, the absence of any judgment Lien, as certified by the Borrower.

4.1.10. DOE Requirements.

(a) Program Requirements. All Program Requirements required to have been satisfied as of the Guarantee Agreement Date have been satisfied.

(b) Central Contractor Registration. The Borrower has registered in the CCR database.

(c) Patriot Act. Each of DOE and FFB have received all documentation and other information required by regulatory authorities under the applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, customarily delivered to financial institutions in connection with a transaction such as the issuance of the Guaranteed Loans.

4.1.11. Legal Opinions. DOE and the Collateral Agent have received legal opinions dated the Guarantee Agreement Date from legal counsel reasonably satisfactory to DOE, with respect to the laws of the jurisdictions governing any of the Transaction Documents required to be delivered as a condition to the Guarantee Agreement Date and the laws of the jurisdiction of organization of each Borrower Entity that is a party to a Transaction Document, which legal opinions shall address the following: (a) due authorization, execution, delivery and enforceability of the Transaction Documents to which each such Borrower Entity is a party; (b) creation and perfection of security interests under the Security Documents; (c) receipt and Non-

Appealability of all Required Approvals then necessary; (d) absence of conflicts with law, agreements or Organizational Documents; (e) absence of material litigation; and (f) such other matters that DOE requests.

4.1.12. Cash Grant Opinion. DOE shall have received a cash grant opinion dated as of the Guarantee Agreement Date from tax counsel reasonably satisfactory to DOE, in form and substance reasonably satisfactory to DOE, relying solely upon, with respect to factual matters, (a) the Transaction Documents, (b) the Merger Documents, (c) the Independent Engineer Report, and (d) the items delivered to DOE pursuant to Sections 4.1.7(c)(i), 4.1.7(c)(ii)(C), 4.1.7(c)(ii)(D), 4.1.7(c)(iii), and 4.1.7(c)(iv) hereof, and subject to qualifications, assumptions, representations and exceptions reasonably satisfactory to DOE, that the Project should qualify for Cash Grants in amounts not less than, and by the dates, set forth in Exhibit T.

4.1.13. Events of Default. No Event of Default or Potential Event of Default has occurred or is continuing.

4.1.14. Guarantee Agreement Date Certificates and Reports. DOE has received:

(a) Borrower Certificate. An Officer's Certificate of the Borrower substantially in the form of Exhibit C-1 and otherwise regarding the matters required to be certified by it as set forth in Section 4.1 and such other matters that DOE requests.

(b) Borrower Accounting Systems Certification. A certification by a Financial Officer of the Borrower stating that the Borrower's accounting systems, controls and management information systems and are satisfactory for purposes of providing information necessary for financial reporting in accordance with GAAP.

(c) Sponsor Certificate. An Officer's Certificate of the Sponsor, substantially in the form of Exhibit U, and addressing such other matters that DOE requests including that (i) the Borrower intends to treat the Guaranteed Loans as debt for federal income tax purposes and (ii) the Borrower is not and has not ever been a member of an affiliated or consolidated group for federal or state tax purposes.

(d) Independent Engineer Certificate and Report. A certificate of the Independent Engineer substantially in the form of Exhibit E regarding the matters required to be certified by it in this Section 4.1 and such other matters that DOE requests, including a confirmation of the reasonableness and appropriateness of:

(i) the Construction Budget;

(ii) the Project Plans;

(iii) the Financial Plans;

(iv) the Project Costs Report;

(v) the Initial Operating Budget;

(vi) the Advance Schedule;

(vii) the Project Milestone Schedule;

(viii) the items described in Section 4.1.2(a)(x) and Section 4.1.2(a)(xi);

(ix) the Base Case Projections (and all the underlying operating assumptions); and

(x) certification of Commencement of Construction;

together with the Independent Engineer Report addressing such matters that DOE reasonably requests.

(e) Insurance Advisor Certificate and Report. A report from the Insurance Advisor in respect of the Project and the proposed insurance for the Project (including the insurance required to be obtained by each Major Project Participant under the Major Project Documents) and such other related matters as DOE shall reasonably request, which report shall be in form and substance reasonably satisfactory to DOE, accompanied by an Officer's Certificate of the Insurance Advisor substantially in the form of Exhibit F regarding the matters specified in Section 4.2.7(f) and addressing such other matters that DOE reasonably requests.

(f) Accountant Letter. A certificate from the Borrower's Accountant confirming the tax assumptions in the Base Case Projections, in form and substance satisfactory to the DOE.

4.1.15. DOE Approvals. DOE has received each of the following:

(a) Action Memorandum. The action memorandum duly executed and delivered by the Secretary of Energy, authorizing the execution by DOE of the Financing Documents to which it is a party and the apportionment of the Credit Subsidy Cost.

(b) Calculation of Credit Subsidy. Evidence that OMB has reviewed and approved DOE's calculation of the Credit Subsidy Cost.

(c) Apportionment. Evidence that the Form SF132 Apportionment Request has been approved by OMB and the apportionment has occurred.

4.1.16. Additional Documents. Receipt of such other documents (including, for the avoidance of doubt, all consents to assignment to the Major Project Documents), certifications, consents, or other items relating to the Project, any Borrower Entity, any Major Project Participant, or the

matters contemplated by the Transaction Documents as DOE reasonably requests. In particular, the consent and agreement between DOE and PG&E in respect of the HPR II PPA shall state, or PG&E shall otherwise affirm in writing, (i) that PG&E acknowledges that the milestone dates have been extended as per Annex 2 of the Developmental Delay Notice, (ii) that Section 3.9(c)(iii)(A)(I) thereof should be read to apply to time extensions of the Guaranteed Construction Start Date of each of Phase 1, Phase 2 and Phase 3, and (iii) that PG&E acknowledges that the requirements of each of Section 11.1(b) and Section 11.1(c) thereof have been met or waived in writing.

4.1.17. NRG Equity Immediately prior to the effectiveness of this Loan Guarantee Agreement, the Sponsor shall (directly or indirectly) acquire 100% of Equity Interests in the Borrower from SunPower under the Purchase and Sale Agreement on terms and conditions set forth in the Purchase and Sale Agreement.

4.1.18. Litigation. Except as may be set forth on Schedule 4.1.18, there is no pending or, to the Borrower's Knowledge, threatened Action (in writing) (i) that relates to the Project or to any transaction contemplated by any of the Transaction Documents, (ii) that relates to the legality, validity or enforceability of any of the Transaction Documents, or (iii) to which any Borrower Entity (other than any Action contemplated under clause (i) or clause (ii) above) or, to the Borrower's Knowledge, any other Major Project Participant is a party, that (in the case of this clause (iii) only), either singly or in the aggregate, has, or could reasonably be expected to have, a Material Adverse Effect.

4.1.19. Due Diligence Review. DOE has completed, to its satisfaction, its due diligence review of the Project and all other matters related thereto as DOE deems necessary for purposes of the execution of the FFB Documents to be executed and delivered on the Guarantee Agreement Date.

4.1.20. Notice to Proceed. The Borrower (or, in the case of the EPC Subcontract, SunPower) has issued a "Full Notice to Proceed" (as such term is defined in the EPC Contract and the EPC Subcontract, as applicable) under the EPC Contract and the EPC Subcontract.

4.1.21. SunPower's Certification. A certificate from the chief financial officer of SunPower (i) confirming that the EPC Contract, the Master Services Agreement, the Materials and Equipment Supply Agreement, the Purchase and Sale Agreement, potential revenue from a sale of the fee interest in real property subject to the Land Lease Agreement and the Land Lease Agreement are the only sources of revenue for SunPower in the Project and (ii) setting forth the gross profit margin expected to be received by SunPower from the Project as of the Guarantee Agreement Date.

4.1.22. Quality Assurance Plan. The Borrower has submitted the quality assurance plan.

4.1.23. No Prejudice. The Borrower has provided an acknowledgement in an Officer's Certificate, acknowledging on behalf of itself and each Borrower Entity, that the issuance of the DOE Guarantee, including the determination by DOE and the Loan Servicer as to whether Project Costs are Eligible Project Costs, shall not prejudice or otherwise have any binding effect with regard to any determination by the Internal Revenue Service, the U.S. Department of the Treasury, or a court of law as to the tax basis of the

Project or any part thereof under the Internal Revenue Code and under Section 1603 of the American Recovery and Reinvestment Act of 2009.

4.1.24. Letters of Credit and Surety Bonds. DOE shall have received evidence that the Development Security, the Delivery Term Security, the EPC Contract Security, the Mitigation Land Security and the LGIA Surety Bonds shall have been posted in the form of Letters of Credit, in each case, in form and substance reasonably satisfactory to DOE.

4.1.25. CEQA Litigation Support Instruments. DOE shall have received final forms of the CEQA Letter of Credit and the Total Guarantee, each in form and substance reasonably satisfactory to DOE.

4.1.26. Cash Grant Shortfall Security. DOE shall have received (a) the NRG Cash Grant Shortfall Security and the SunPower Cash Grant Shortfall Security, each in form and substance reasonably satisfactory to DOE and (b) a legal opinion, in form and substance satisfactory to DOE, regarding the due execution, authorization, delivery and enforceability of the NRG Cash Grant Shortfall Security.

SECTION 4.2. Conditions Precedent to First Advance.

The obligation of DOE to approve the first Advance is subject to the prior satisfaction (or waiver), as determined by DOE, of each of the following conditions precedent (and of any deliverable, as to its form and substance) as of the date of Master Advance Notice delivered with respect to the first Advance (or such other date specified in this Section 4.2).

4.2.1. Financing Documents. DOE has received fully executed originals in sufficient counterparts for each party to each of the following Financing Documents, each of which is in full force and effect and without amendment, as certified by the Borrower (or, in the case of Section 4.1.1(a)(iii), certified by the relevant Borrower Entity or Major Project Participant, as the case may be), other than any such amendments permitted under the terms of the Financing Documents and previously disclosed to DOE in writing:

(a) Master Advance Notice. An executed Master Advance Notice together with all certificates and documentation required under this Section 4.2;

(b) Other Financing Documents. The DOE Guarantee, the FFB Documents and any other documents or agreements designated as "Financing Documents" by DOE in a writing delivered to the Borrower prior to the Guarantee Agreement Date, to the extent not delivered pursuant to Section 4.1.1.

4.2.2. Other Documents. DOE has received the following items, certified by the Borrower:

(a) Borrower Compliance Entity Organizational Documents. Updated certified Organizational Documents of each Borrower Compliance Entity, to the extent any such document has been modified since the Guarantee Agreement Date, accompanied, in each case,

by Officer's Certificates, Secretary's Certificates, good standing certificates, incumbency certificates, resolutions and any other documents as DOE reasonably requests, with respect to, inter alia, approval of (i) each such Borrower Compliance Entity's participation in the Project, (ii) the financing therefor (including the Guaranteed Loans) and the granting of Liens and (iii) the execution, delivery and performance by each such Borrower Compliance Entity of the Transaction Documents to which it is party.

(b) Other Transaction Documents. Transaction Documents to the extent not delivered pursuant to Section 4.1.1.

(c) Other Documents. Such other documents as DOE reasonably requests in a writing delivered to the Borrower prior to the Guarantee Agreement Date.

4.2.3. Plans and Projections.

DOE has received an update, if any, of each of the documents delivered pursuant to Section 4.1.2 or certification from the Borrower that no such update is required because such document has not changed since the date of its delivery to DOE.

4.2.4. Financial Statements.

DOE has received the most recent annual audited (if available) and unaudited quarterly Financial Statements of the Borrower, the Ultimate Parent and SunPower Corporation to the extent not delivered pursuant to Section 4.1.3 (whether it was then unavailable or otherwise), together in each case with an Officer's Certificate from a Financial Officer of each of the Borrower, the Sponsor, or SunPower as applicable.

4.2.5. Permits and Approvals.

(a) All Required Approvals required for the Project as of the First Advance Date are listed on Part I of Schedule 4.2.5 (as may have been amended by the Borrower since the Guarantee Agreement Date), and DOE has received fully executed copies of each of the Required Approvals listed on Part I of such schedule (as may have been amended by the Borrower since the Guarantee Agreement Date), together with an Officer's Certificate of the Borrower to the effect that: (i) the copies of such Required Approvals delivered pursuant to this Section 4.2.5 are true, correct and complete copies of such Required Approvals (including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters); (ii) no term or condition of any of such Required Approvals delivered pursuant to this Section 4.2.5 has been amended from the form thereof delivered pursuant to this Section 4.2.5; (iii) each such Required Approval delivered pursuant to this Section 4.2.5 has been validly issued, is in full force and effect and Non-Appealable; (iv) all conditions precedent to the effectiveness of any such Required Approval delivered pursuant to this Section 4.2.5 have been satisfied (other than conditions not required to be satisfied as of the First Advance Date that do not require the discretionary approval of a third party); (v) the Borrower has no reason to believe that any of such Required Approvals delivered pursuant to this Section 4.2.5 shall be revoked; and (vi) the Required Approvals described in Part I of Schedule 4.2.5 (as may have been amended by the Borrower since the Guarantee Agreement Date) are all of the Required Approvals that are necessary or required to be obtained as of the First Advance Date under

Applicable Law or any agreement applicable to, or binding on, any Borrower Entity or any of their respective Properties or, to the Borrower's Knowledge, any Project Participant or any of their respective Properties.

(b) All Required Approvals not then required for the Project are listed on Part II of Schedule 4.2.5 (as may have been amended by the Borrower since the Guarantee Agreement Date), and DOE has received an Officer's Certificate of the Borrower to the effect that the Borrower has no reason to believe that it or any other Borrower Entity or, to the Borrower's Knowledge, any Major Project Participant (as applicable) shall fail to obtain the Required Approvals set forth on Part II of Schedule 4.2.5 (as may have been amended by the Borrower since the Guarantee Agreement Date) in the ordinary course free of any unduly burdensome conditions or requirements at such time or times as may be required under the Transaction Documents or as is otherwise necessary to avoid any material delay in, or impairment to, the performance of the transactions as contemplated by the Transaction Documents.

4.2.6. Advisors' Certificates and Reports.

DOE has received bringdown certificates respectively from the Independent Engineer, Insurance Advisor and Borrower's Accountant, each dated the date of the Master Advance Notice delivered with respect to the first Advance, of the reports delivered pursuant to Section 4.1.14(d), Section 4.1.14(e) and Section 4.1.14(f) and each confirming that the initially delivered report is true and correct in all material respects as of such date:

(a) Independent Engineer Certificate. A certificate from the Independent Engineer, (i) confirming that its certificate and Independent Engineer Report delivered pursuant to Section 4.1.14(d) are true and correct in all material respects as of the date of the Master Advance Notice delivered with respect to the first Advance and, if any matter covered by such certificate or report has been updated since the Guarantee Agreement Date, confirming the reasonableness and appropriateness of any such update and (ii) providing an updated report addressing such matters as DOE reasonably requests.

(b) Insurance Advisor Certificate. An Officer's Certificate from the DOE Insurance Advisor, (i) confirming that its certificate and report delivered pursuant to Section 4.1.14(e) are true and correct in all material respects as of the date of the Master Advance Notice delivered with respect to the first Advance and, if any matter covered by such certificate or report has been updated since the Guarantee Agreement Date, confirming the reasonableness and appropriateness of any such update, (ii) addressing each of the matters contemplated by Section 4.2.7(f) and (iii) providing an updated report addressing such matters as DOE reasonably requests.

(c) Accountant Letter. A certificate from the Borrower's Accountant confirming that its certificate delivered pursuant to Section 4.1.14(f) is true and correct in all material respects as of the date of the Master Advance Notice delivered with respect to the first Advance or, if any matter covered by such certificate has been updated since the Guarantee Agreement Date, confirming the reasonableness and appropriateness of any such update.

(d) Pre-Closing Project Costs Report. An update to the report delivered pursuant to Section 4.1.2(a)(iv) which shall be a detailed description, with supporting documents as reasonably requested by DOE, (A) of Project Costs (including all development costs) incurred and paid to third parties prior to the date of the Master Advance Notice delivered with respect to the first Advance prepared by the Borrower and reviewed by the Independent Engineer for costs of a technical nature and (B) specifying those Project Costs for which the Borrower, the Sponsors or any Affiliate thereof seeks credit to be applied toward Base Equity and certifying that such amounts are Eligible Project Costs and have been applied in accordance with the Construction Budget.

4.2.7. Receipt of Evidence.

Each of the following conditions has occurred and DOE has received satisfactory evidence of such occurrence:

(a) [Reserved.]

(b) Project Accounts. Each of the Project Accounts has been established in

accordance with the provisions of the Accounts Agreement.

(c) Security Interests.

(i) All security interests intended to be created by the Security Documents have been validly created and, where appropriate, have been registered or otherwise perfected to create a first priority perfected security interest and Lien, subject only to Permitted Liens, over the Collateral in favor of the Secured Parties.

(ii) Each of the Security Documents has been duly filed and registered or recorded in every jurisdiction in which such filing and registration or recording is necessary or advisable to make valid and effective the Liens intended to be created thereby and the rights of the Secured Parties thereunder and all fees and duties in connection with such filing, registration or recording have been paid in full.

(d) Borrower Bankruptcy Remote. The Borrower's Organizational Documents include bankruptcy remote provisions (including, but not limited to, a certificate of formation, which limits the organizational purpose to construction, operation, development, financing and maintenance of the Project and requires that, notwithstanding anything included therein or by any provision of law, the Borrower will not, without 100% approval by the outstanding membership interests, dissolve, liquidate, consolidate or merge into another entity or convey or transfer properties and assets or institute proceedings to be adjudicated in bankruptcy or insolvency or seek consent to reorganize or liquidate) and an independent director (who has not been, in the last five years, (i) a direct or indirect legal or beneficial owner of the Borrower, any Borrower Affiliate or SunPower, (ii) a creditor, supplier, employee, officer, director, family member, manager or contractor of the Borrower, any Borrower Affiliate or SunPower or (iii) a person who controls the Borrower, any Borrower Affiliate or SunPower or any creditor, supplier, employee, officer, director, family member, manager or contractor of the Borrower or any Borrower Affiliate or SunPower) has been appointed to the board (or equivalent governing body) of the Borrower.

(e) Taxes; Costs and Periodic Expenses. All Taxes and all other costs, fees and Periodic Expenses due in connection with the execution, delivery, filing, registration, recordation or performance of the Transaction Documents or the perfection of the security interests in the Collateral (i) have been paid in full, (ii) are to be paid with the proceeds of the requested Advance or (iii) are to be paid by other arrangements satisfactory to DOE.

(f) Insurance. (i) All Required Insurance is in place, in good standing and in full force and effect without default and all premiums due thereon (A) have been paid in full, (B) are to be paid with the proceeds of the first Advance or (C) are to be paid by other arrangements satisfactory to DOE and (ii) the Loan Servicer has received certificates or policies with respect to such Required Insurance, designating the Collateral Agent as loss payee and the Secured Parties as additional insureds, as appropriate, certified by the Borrower and the DOE Insurance Advisor as being true, correct and complete.

(g) Land Acquisition; Title to Project Site. (i) The Borrower owns or has procured such fee, leasehold, easement and other real property interests (subject only to Permitted Liens) in and to the Project Site as is necessary for the development, construction, ownership, operation and maintenance of the Project thereon, (ii) the ALTA Survey has been issued to the Borrower and to the DOE and (iii) the Title Policy has been issued to the DOE (or the Title Companies are irrevocably committed to issue such Title Policy upon recordation of the Deed of Trust and payment of the Title Companies' premiums and charges).

(h) Base Equity Commitment. (i) The Base Equity Commitment obligation has been fully funded, or the Base Equity Commitment Collateral for the remaining amount of the Base Equity Commitment has been provided as set forth in the Equity Funding Agreement and (ii) funding of the Base Equity Commitment was, or will be, applied towards Project Costs in accordance with the Equity Funding Agreement.

(i) Intellectual Property. The Borrower owns or holds (or has available to it on commercially reasonable terms) a valid and enforceable license or right to use all Technology and Intellectual Property Rights necessary for the construction and operation of the Project through the Maturity Date (which includes all Intellectual Property Rights granted or conferred under the EPC Contract) subject to Bankruptcy Laws and general principles of equity regardless of whether enforcement is considered in a proceeding at law or in equity.

(j) Payment and Performance Bonds. Any Support Instruments (including payment and performance bonds) required to be issued in respect of any Project Document have been delivered and are in full force and effect.

(k) Debt Repayment. Any existing Indebtedness of the Borrower has been indefeasibly repaid in full in cash and any associated Liens encumbering any Collateral have been irrevocably released, other than Permitted Indebtedness and Permitted Liens.

(1) Fees. Receipt of payment of all Guaranteed Loan Fees and fees of Independent Consultants then due from funds other than Advances.

(m) Davis-Bacon Requirements. Each of the representations and warranties made by the Borrower in Section 5.25(a) are true and correct.

4.2.8. Non-disturbance Agreements.

With respect to any portion of the Project Site consisting of a leasehold or easement interest, DOE and the Collateral Agent have received customary non-disturbance agreements from each applicable lessor or owner of the burdened parcel, and each of their respective mortgagees, each in form and substance satisfactory to DOE.

4.2.9. Program Requirements.

All Program Requirements required to have been satisfied as of the Guarantee Agreement Date have been satisfied.

4.2.10. Conditions Precedent in FFB Documents.

Each condition precedent to the first Advance under the FFB Documents has been satisfied in the sole determination of FFB and DOE, as applicable.

4.2.11. Conditions Precedent in Transaction Documents.

All conditions precedent to the obligations of any party under any Transaction Document to be performed as of the First Advance Date have been satisfied or waived.

4.2.12. Legal Opinions.

To the extent that (a) DOE and the Collateral Agent have not received legal opinions governing one or more of the Transaction Documents or (b) there have been any material amendments or changes to the Transaction Documents since the Guarantee Agreement Date, DOE and the Collateral Agent have received legal opinions dated the First Advance Date and from legal counsel satisfactory to DOE, with respect to the laws of the jurisdictions governing such Transaction Documents to which each Borrower Entity and each other Major Project Participant is a party and the laws of the jurisdictions of organization of each Borrower Entity and each other Major Project Participant that is a party to such Transaction Documents. Such legal opinions shall include the following: (i) due authorization, execution, delivery and enforceability of such Transaction Documents to which each such Borrower Entity and other Major Project Participant is a party; (ii) creation and perfection of security interests under the Security Documents (if applicable and solely with respect to such Transaction Documents); (iii) receipt and Non-Appealability of all Required Approvals necessary (if applicable and solely with respect to such Transaction Documents); (iv) absence of conflicts with law, agreements or Organizational Documents (solely with respect to such Transaction Documents); (v) absence of material litigation (solely with respect to such Transaction Documents); and (vi) such other matters that DOE reasonably requests.

4.2.13. No Judgment Liens.

DOE has received confirmation that the Borrower does not have a judgment Lien against any of its Property for any Indebtedness owed to the U.S. or any other creditor.

4.2.14. Representations and Warranties.

As of the First Advance Date, each of the representations and warranties made (or deemed made) by any Major Project Participant in any Financing Document (including any Direct Agreement) in effect as of the First Advance Date is true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by "materiality," "Material Adverse Effect" or any similar qualifier, in which case, it shall be true and correct in all respects) as of such date except to the extent such representation or warranty is made only as of a specific date or time (in which event such representation or warranty shall be true and correct as of such date or time).

4.2.15. Transmission.

DOE has received evidence that there are adequate rights to firm transmission service for power generated by the Project in the amounts and during the periods required under the Power Purchase Agreements.

4.2.16. Due Diligence Review.

DOE has completed, to its satisfaction, its due diligence review of the Project and all other matters related thereto.

4.2.17. Litigation.

There is no pending or, to the Borrower's Knowledge, threatened Action (a) that relates to the Project or to any transaction contemplated by any of the Transaction Documents or (b) that relates to the legality, validity or enforceability of any of the Transaction Documents or (c) to which any Borrower Entity (other than any Action contemplated under clause (a) above) or, to the Borrower's Knowledge, any other Major Project Participant is a party, that (in the case of clauses (a) and (c) only) the Guarantor has determined has, or is reasonably expected to have, a Material Adverse Effect or may otherwise materially adversely affect the interests of the Guarantor, including in its capacity as an agency of the United States Government.

4.2.18. No Changes to Terms and Conditions of Risk Evaluation Documents.

Except as DOE may have approved, there shall have been no material changes to the terms and conditions of the Risk Evaluation Documents from and after the date such documents were delivered pursuant to Section 4.1.2(a)(xii).

4.2.19. First Advance Date Certificates.

DOE has received:

(a) Borrower Certificate. An Officer's Certificate, substantially in the form of Exhibit C-2, containing certifications of the Borrower regarding the matters required to be certified by it as set forth in this Section 4.2 and other matters that DOE reasonably requests.

(b) Sponsor Certificate. An Officer's Certificate of the Sponsor substantially in the form of Exhibit H addressing such other matters that DOE reasonably requests.

(c) Major Project Participant Certificates. A certificate from each Major Project Participant (other than PG&E, the California Independent System Operator, any Borrower Compliance Entity that is delivering the relevant certificate under other sections of this Loan Guarantee Agreement, Escrow Associates, LLC and any Person that is a Major Project Participant solely because it provides a Support Instrument in connection with a Major Project Document) substantially in the form of Exhibit K and addressing such other matters that DOE requests.

4.2.20. Contractor Subordination. DOE has received a subordination agreement from each of the contractors and suppliers identified on Schedule 4.2.20, pursuant to which such party subordinates its interest under the applicable contract identified on Schedule 4.2.20 to the lien of the Deed of Trust, which subordination agreement shall be in the form of Exhibit P or such other form as may be reasonably acceptable to DOE.

4.2.21. Additional Documents. DOE has received such other documents, certifications, or consents relating to the Project, any Borrower Entity, any Major Project Participant, or the matters contemplated by the Transaction Documents as DOE reasonably requests.

SECTION 4.3. Quarterly Conditions Precedent to Advances.

The obligation of DOE to approve each Advance (other than the first Advance to the extent the First Advance Date occurs on or prior to the three (3) month anniversary of the Guarantee Agreement Date) is subject to the prior satisfaction (or waiver), as determined by DOE of each of the following conditions precedent (and of any deliverable, as to its form and substance) (the "Quarterly Conditions Precedent") as of the most recent Quarterly Approval Date:

4.3.1. Construction Progress Report; Construction Budget.

DOE has received an Officer's Certificate from each of the Borrower and the Independent Engineer certifying that as of such Quarterly Approval Date:

(a) there is no reason to believe that anything is incorrect or misleading in any material respect in the most recent Construction Progress Report;

(b) there have been no changes to the Construction Budget since (i) the Guarantee Agreement Date in respect of the first Quarterly Approval Date or (ii) the previous Quarterly Approval Date in respect of any succeeding Quarterly Approval Date, except for Approved Construction Changes;

(c) construction of the Project is proceeding in accordance with the Project Plans, the Construction Budget, the Financial Plan and the Project Milestone Schedule, and the Project is expected to achieve Operational Completion by the Anticipated Operational Completion Date;

(d) the Project is expected to achieve Project Completion by the Guaranteed Project Completion Date;

(e) nothing has occurred since the date of the most recent Construction Progress Report or the date of the Independent Engineer's most recent site visit, whichever is later, that could reasonably be expected to prevent construction of the Project in accordance with the Project Milestone Schedule and the Construction Budget; and

(f) the Borrower has achieved the targets projected in the Project Milestone Schedule to occur prior to such Quarterly Approval Date.

4.3.2. Base Case Projections.

DOE has received either (i) certification from the Borrower that there are no changes to the Base Case Projections that have had, or could reasonably be expected to have, a Material Adverse Effect and that there are no material changes to the assumptions therein or (ii) certified updated Base Case Projections that are acceptable to DOE.

4.3.3. Permits and Approvals.

(a) All Required Approvals required for the Project as of the applicable Quarterly Approval Date are listed on Part I of Schedule 4.3.3 (as may have been amended by the Borrower since the previous Quarterly Approval Date), and DOE has received fully executed copies of each of the Required Approvals listed on Part I of such schedule (as may have been amended by the Borrower since the previous Quarterly Approval Date), together with an Officer's Certificate of the Borrower to the effect that: (i) the copies of such Required Approvals delivered pursuant to this Section 4.3.3 are true, correct and complete copies of such Required Approvals (including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters); (ii) no term or condition of any of such Required Approvals delivered pursuant to this Section 4.3.3 has been amended from the form thereof delivered pursuant to this Section 4.3.3; (iii) each such Required Approval delivered pursuant to this Section 4.3.3 has been validly issued, is in full force and effect and Non-Appealable; (iv) all conditions precedent to the effectiveness of any such Required Approval delivered pursuant to this Section 4.3.3 have been satisfied (other than conditions not required to be satisfied as of the applicable Quarterly Approval Date that do not require the discretionary approval of a third party); (v) the Borrower has no reason to believe that any of such Required Approvals delivered pursuant to this Section 4.3.3 shall be revoked; and (vi) the Required Approvals described in Part I of Schedule 4.3.3 (as may have been amended by the Borrower since the previous Quarterly Approval Date) are all of the Required Approvals that are necessary or required to be obtained as of the applicable Quarterly Approval Date under Applicable Law or any agreement applicable to, or binding on, any Borrower Entity or any of their respective Properties or, to the Borrower's Knowledge, any Project Participant or any of their respective Properties.

(b) All Required Approvals not required for the Project as of the applicable Quarterly Approval Date are listed on Part II of Schedule 4.3.3 (as may have been amended by the Borrower since the previous Quarterly Approval Date), and DOE has received an Officer's Certificate of the Borrower to the effect that the Borrower has no reason to believe that it or any other Borrower Entity or, to the Borrower's Knowledge, any Major Project Participant (as applicable) shall fail to obtain the Required Approvals set forth on Part II of Schedule 4.3.3 (as may have been amended by the Borrower since the previous Quarterly Approval Date) in the

ordinary course free of any unduly burdensome conditions or requirements at such time or times as may be required under the Transaction Documents or as is otherwise necessary to avoid any material delay in, or impairment to, the performance of the transactions as contemplated by the Transaction Documents.

4.3.4. Proceedings and Other Documents.

DOE has received (i) certification from the Borrower that all corporate and similar proceedings concluded since the last Quarterly Approval Date are in proper form and substance, (ii) original counterparts or copies certified by the Borrower of all Additional Project Documents entered into since the last Quarterly Approval Date and (iii) such other evidence as DOE reasonably requests in order to evidence the consummation of the transactions contemplated thereby and compliance with the Quarterly Conditions Precedent.

4.3.5. Cash Grant Eligibility. DOE shall have received:

(a) An Officer's Certificate from the Sponsor dated as of such Quarterly Advance Date and certifying (i) as to those factual matters (other than factual matters described in Section 4.3.5(a)(ii) hereof) as to which the Sponsor is required to make a representation under the cash grant opinion required to be provided pursuant to Section 4.3.6 hereof, and which will be relied upon in such opinion, substantially in the form of the corresponding certificate delivered on the Guarantee Agreement Date except to the extent that (A) counsel to the Sponsor reasonably requests changes; (B) the relevant facts or law (including administrative interpretations thereof) have, in the good faith opinion of DOE or DOE's counsel, changed; (C) DOE or DOE's counsel requests in good faith reasonable changes to correct errors or omissions in the corresponding certificate delivered on the Guarantee Agreement Date, determined in their reasonable judgment; (D) the scope of the conclusions in the cash grant opinion to be delivered differ from those of the corresponding opinion on the Guarantee Agreement Date (taking into account all of the requirements as to reasonableness and otherwise with respect to such opinion in Section 4.3.6); or (E) as the Sponsor, DOE and their respective counsel shall agree, and (ii) that the Projected Cash Grant Basis is not materially less than described in the cost eligibility study report delivered pursuant to Section 4.1.7(c)(i) hereof.

(b) An Officer's Certificate from SunPower dated as of such Quarterly Advance Date and certifying as to factual matters as to which SunPower is required to make a representation under the cash grant opinion required to be provided pursuant to Section 4.3.6 hereof, and which will be relied upon in such opinion, substantially in the form of the corresponding certificate delivered on the Guarantee Agreement Date except to the extent that (i) counsel to SunPower reasonably requests changes; (ii) the relevant facts or law (including administrative interpretations thereof) have, in the good faith opinion of DOE or DOE's counsel, changed; (iii) DOE or DOE's counsel requests in good faith reasonable changes to correct errors or omissions in the corresponding certificate delivered on the Guarantee Agreement Date, determined in their reasonable judgment; (iv) the scope of the conclusions in the cash grant opinion to be delivered differ from those of the corresponding opinion on the Guarantee Agreement Date (taking into account all of the requirements as to reasonableness and otherwise with respect to such opinion in Section 4.3.6); or (v) as SunPower, DOE and their respective counsel shall agree.

(c) An Officer's Certificate from the Borrower dated as of such Quarterly Advance Date and certifying as to factual matters as to which the Borrower is required to make a representation under the cash grant opinion required to be provided pursuant to Section 4.3.6 hereof, and which will be relied upon in such opinion, substantially in the form of the corresponding certificate delivered on the Guarantee Agreement Date except to the extent that (i) counsel to the Borrower reasonably requests changes; (ii) the relevant facts or law (including administrative interpretations thereof) have, in the good faith opinion of DOE or DOE's counsel, changed; (iii) DOE or DOE's counsel requests in good faith reasonable changes to correct errors or omissions in the corresponding certificate delivered on the Guarantee Agreement Date, determined in their reasonable judgment; (iv) the scope of the conclusions in the cash grant opinion to be delivered differ from those of the corresponding opinion on the Guarantee Agreement Date (taking into account all of the requirements as to reasonableness and otherwise with respect to such opinion in Section 4.3.6); or (v) as the Borrower, DOE and their respective counsel shall agree.

4.3.6. Cash Grant Opinion. DOE shall have received a cash grant opinion dated as of such Quarterly Approval Date from tax counsel reasonably satisfactory to DOE, in form satisfactory to DOE and in substance reasonably satisfactory to DOE as to the matters discussed in the cash grant opinion provided pursuant to Section 4.1.12 hereof, relying solely upon, with respect to factual matters, (a) the Transaction Documents, (b) the Merger Documents, (c) the Independent Engineer Report, and (d) the items delivered to DOE pursuant to Sections 4.1.7(c)(i), 4.3.5(a), 4.3.5(b), and 4.3.5(c) hereof, and subject to qualifications, assumptions, representations and exceptions reasonably satisfactory to DOE, that there have been no changes in facts or Applicable Law that should adversely affect in any material manner the legal conclusions contained in the cash grant opinion provided pursuant to Section 4.1.12 hereof.

4.3.7. Receipt of Evidence of Insurance. All required insurance is in place and in full force and effect, with all premiums due thereon paid in full, together with a certificate from the Borrower Insurance Advisor confirming the same.

4.3.8. Quarterly Certificates

DOE has received:

(a) Borrower Certificate. An Officer's Certificate of the Borrower regarding the matters required to be certified by it as set forth in this Section 4.3 and other matters that DOE reasonably requests. Matters requiring certification of the Borrower pursuant to this Section 4.3.8(a) may be included in the Quarterly Reporting Certificate substantially in the form of Exhibit L and otherwise delivered as part of the Quarterly Reporting Package pursuant to Section 6.1.5 hereof.

(b) Sponsor Certificate. An Officer's Certificate of the Sponsor substantially in the form of Exhibit H and otherwise regarding the matters that DOE reasonably requests.

(c) Independent Engineer Certificate. A certificate of the Independent Engineer and otherwise regarding the matters required to be certified by it as set forth in this Section 4.3 in substantially the form attached as Exhibit M.

4.3.9. Additional Documents.

DOE has received such other documents, certifications, or consents relating to the Project, any Borrower Entity, any Major Project Participant, or the matters contemplated by the Transaction Documents as DOE reasonably requests.

SECTION 4.4. Conditions Precedent to Each Advance.

The obligation of DOE to approve any Advance (including the first Advance) is subject to the prior satisfaction (or waiver), as determined by DOE, of each of the following conditions precedent (and of any deliverable, as to its form and substance) as of the date of the relevant Master Advance Notice (or such other date specified in this Section 4.4).

4.4.1. Master Advance Notice and Invoices.

DOE has received an executed Master Advance Notice delivered in accordance with the terms of Section 2.2.1 hereunder, together with all certificates and documentation required under this Section 4.4 (and, in the case of the first Advance, Section 4.2).

4.4.2. Quarterly Conditions Precedent.

All Quarterly Conditions Precedent were satisfied on the immediately preceding Quarterly Approval Date.

4.4.3. Representations and Warranties.

Each of the representations and warranties made (or deemed made) by any Borrower Entity or Major Project Participant in any Transaction Document are true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by "materiality," "Material Adverse Effect" or a similar qualifier, in which case it shall be true and correct in all respects) as of such date, except to the extent such representation or warranty is made only as of a specific date or time (in which event such representation or warranty shall be true and correct as of such date or time).

4.4.4. Covenants.

Each Borrower Entity is in compliance in all material respects with its obligations under each Financing Document to which it is a party.

4.4.5. Events of Default.

No Event of Default or Potential Event of Default has occurred or is continuing.

4.4.6. Material Adverse Effect.

Since the Guarantee Agreement Date, for the first Advance, and since the previous Advance Date, for each succeeding Advance, no event (including any legal, arbitral or other dispute review proceeding or any Change of Law) has occurred or could reasonably be expected to occur that has had or could reasonably be expected to have a Material Adverse Effect.

4.4.7. Debt to Equity Ratio.

Both before and after giving effect to the Advance and associated Equity Contributions, the Debt to Equity Ratio, has and will not exceed the Maximum Debt to Equity Ratio.

4.4.8. Permits and Approvals.

(a) All Required Approvals required for the Project as of the date of the relevant Master Advance Notice are listed on Part I of Schedule 4.4.8 (as may have been amended by the Borrower since the delivery of the previous Master Advance Notice), and DOE has received fully executed copies of each of the Required Approvals listed on Part I such schedule (as may have been amended by the Borrower since the delivery of the previous Master Advance Notice), together with an Officer's Certificate of the Borrower to the effect that: (i) the copies of such Required Approvals delivered pursuant to this Section 4.4.8 are true, correct and complete copies of such Required Approvals (including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters); (ii) no term or condition of any of such Required Approvals delivered pursuant to this Section 4.4.8 has been amended from the form thereof delivered pursuant to this Section 4.4.8; (iii) each such Required Approval delivered pursuant to this Section 4.4.8 has been validly issued, is in full force and effect and Non-Appealable; (iv) all conditions precedent to the effectiveness of any such Required Approval delivered pursuant to this Section 4.4.8 have been satisfied (other than conditions not required to be satisfied as of the date of the applicable Master Advance Notice that do not require discretionary approval of a third party); (v) the Borrower has no reason to believe that any of such Required Approvals delivered pursuant to this Section 4.4.8 shall be revoked; and (vi) the Required Approvals described in Part I of Schedule 4.4.8 (as may have been amended by the Borrower since the delivery of the previous Master Advance Notice) are all of the Required Approvals that are necessary or required to be obtained as of the applicable Quarterly Approval Date under Applicable Law or any agreement applicable to, or binding on, any Borrower Entity or any of their respective Properties or, to the Borrower's Knowledge, any Project Participant or any of their respective Properties.

(b) All Required Approvals not required for the Project as of the date of the relevant Master Advance Notice are listed on Part II of Schedule 4.4.8 (as may have been amended by the Borrower since the delivery of the previous Master Advance Notice), and DOE has received an Officer's Certificate of the Borrower to the effect that the Borrower has no reason to believe that it or any other Borrower Entity or, to the Borrower's Knowledge, any Major Project Participant (as applicable) shall fail to obtain the Required Approvals set forth on Part II of Schedule 4.4.8 (as may have been amended by the Borrower since the delivery of the previous Master Advance Notice) in the ordinary course free of any unduly burdensome conditions or requirements at such time or times as may be required under the Transaction Documents or as is otherwise necessary to avoid any material delay in, or impairment to, the performance of the transactions as contemplated by the Transaction Documents.

4.4.9. Litigation.

There is no pending or, to the Borrower's Knowledge, threatened Action (in writing) (i) that relates to the Project or to any transaction contemplated by any of the Transaction Documents, (ii) that relates to the legality, validity or enforceability of any of the Transaction Documents, or (iii) to which any Borrower Entity (other than any Action contemplated under clause (i) above) or, to the Borrower's Knowledge, any other Major Project Participant is a party, that (in the case of clause (i) or (iii) above), either singly or in the aggregate, has, or could reasonably be expected to have, a Material Adverse Effect or would not, in DOE's determination, have a Material Adverse Effect on DOE's interest.

4.4.10. No Violation of Law.

The Borrower is in compliance with all Applicable Laws in all material respects and the making of the requested Advance will not result in a violation of any Applicable Law, Transaction Document, Governmental Approval, or any other agreement or consent to which the Borrower is a party or any judgment or approval to which it is subject.

4.4.11. Fees and Expenses; Taxes.

(a) Fees. Receipt of payment of all Guaranteed Loan Fees and fees of Independent Consultants then due in connection with the Project.

(b) Taxes; Costs and Periodic Expenses. All required Taxes and all other costs, fees and Periodic Expenses (other than fees payable to Independent Consultants) due in connection with the execution, delivery, filing, registration, recordation or performance of the Transaction Documents or the perfection of the security interests in the Collateral (i) have been paid in full, (ii) are to be paid with the proceeds of the requested Advance or (iii) are to be paid by other arrangements satisfactory to DOE.

4.4.12. Davis-Bacon Requirements.

DOE shall have received a certificate from the Borrower, dated as of the date of the relevant Master Advance Notice, certifying that the Borrower has complied with all Davis-Bacon Requirements including any retroactive compliance. The Borrower has included, in each of its Davis-Bacon Act Covered Contracts, the Davis-Bacon Requirements.

4.4.13. Program Requirements.

The Borrower is in compliance with the Program Requirements; provided, however, that the Borrower shall be required to comply with any changes to U.S. Department of Energy and Federal Financing Bank legal and financial requirements, policies, and procedures applicable to the Title XVII program that occur after the Guarantee Agreement Date only to the extent that such requirements, policies, and procedures and such changes have the force of law.

4.4.14. Recovery Act Requirements.

DOE has received an Officer's Certificate of the Borrower, substantially in the form of Exhibit W, dated as of a date not earlier than fifteen (15) Business Days prior to the relevant Requested Advance Date, stating that the Borrower has timely complied in all material respects with its reporting obligations under Section 6.24(a) with respect to the Recovery Act.

4.4.15. Certificates for Each Advance.

DOE has received:

(a) Borrower Certificate. A Master Advance Notice containing certifications of the Borrower regarding (i) the matters required to be certified by it as set forth in this Section 4.4, (ii) reaffirming the certifications delivered pursuant to Section 4.2.19(a), as applicable, and (iii) other matters that DOE reasonably requests.

(b) Sponsor Certificate. An Officer's Certificate of the Sponsor, regarding the matters required to be certified by it as set forth in this Section 4.4, substantially similar to that delivered pursuant to Section 4.2.19(b) and addressing such other matters that DOE reasonably requests.

(c) Independent Engineer's Certificate. An Independent Engineer's Certificate regarding the matters required to be certified by it as set forth in this Section 4.4 in substantially the form attached as Exhibit E.

(d) Total Funding Certificate. A Borrower's certificate certifying that Total Funding Available is sufficient to pay Total Project Costs (including Debt Service through Project Completion, Guaranteed Loan Fees, Periodic Expenses, any identified Cost Overruns and the funding of the Debt Service Reserve Account).

4.4.16. Construction Budget.

Certification from the Borrower and Independent Engineer that (a) there have been no changes to the Construction Budget since the date of the most recent Master Advance Notice, except for Approved Construction Changes, and (b) the aggregate amounts to be expended for each category of Project Costs do not exceed the aggregate amounts budgeted for such costs in the then-approved Construction Budget.

4.4.17. Independent Engineer's Report.

Receipt of the Independent Engineer's Report, certified as being true and accurate and reporting as to the following:

(a) *Construction Progress.* Evaluation of progress of the construction of the Project in accordance with the Project Plan, the Construction Budget, and the Project Milestone Schedule;

(b) *Expected completion dates.* Expectation that the Project will achieve Operational Completion and Project Completion by the Guaranteed Operational Completion Date and Guaranteed Project Completion Date, as applicable;

(c) *Other Matters.* Other matters reasonably requested by DOE.

4.4.18. Receipt of Evidence.

Each of the following conditions has occurred and DOE has received satisfactory evidence of such occurrence:

(a) Lien Waivers. (i) Each Construction Contractor and any Subcontractors (except those that have individual contract values less than Five Hundred Thousand Dollars ($500,000.00), but not to exceed Ten Million Dollars ($10,000,000) in the aggregate) have unconditionally and irrevocably waived and released all Liens, statutory or otherwise, that it may have or acquire on any portion of the Collateral or the Project with respect to work performed prior to the last submission for payment; (ii) each Construction Contractor and any Subcontractors (except those that have individual contract values less than Five Hundred Thousand Dollars ($500,000.00), but not to exceed Ten Million Dollars ($10,000,000) in the aggregate) have irrevocably waived and released all Liens, statutory or otherwise, that it may have or acquire on any portion of the Collateral or the Project with respect to work performed subsequent to the last submission for payment, conditioned only on receipt of payment for such work; and (iii) all unpaid balances that are due or unsettled claims with any Construction Contractor or any Subcontractor, if any, have been fully paid, other than any such claims that qualify under clause (iii) of the definition of Permitted Liens.

(b) Title Continuation. DOE has received a a pending disbursements endorsement to the Title Policy in the form of attached Exhibit J (or such other form as may be reasonably acceptable to DOE) insuring as of the date of the relevant Master Advance Notice that Borrower owns, as applicable, good and marketable fee title, a valid leasehold interest or a valid easement in and to each element of the Project Site and that the lien of the Deed of Trust is a first and prior lien upon such Real Property as security for the Secured Obligations pursuant to the terms of this Loan Guarantee Agreement, subject only to the Permitted Liens.

(c) Prime Contractor Indemnity. The applicable Construction Contractor has agreed to indemnify DOE, pursuant to a written agreement in form and substance satisfactory to DOE in its reasonable discretion, with respect to any Lien claims that may be made by any Subcontractor of such Construction Contractor from whom any lien waiver was not delivered to DOE pursuant to clauses (i) and (ii) of Section 4.4.18(a). For the avoidance of doubt, such Construction Contractor indemnity shall be required with respect to Lien claims by any Subcontractor from whom a lien waiver is not required to be delivered to DOE under the terms of Section 4.4.18(a) because the applicable contract value is less than Five Hundred Thousand Dollars ($500,000.00).

4.4.19. Subordination Agreements.

DOE has received each of the subordination agreements that Borrower is required to deliver pursuant to Section 6.19.

4.4.20. Additional Documents.

DOE has received such other documents, certifications, or consents relating to the Project, any Borrower Entity, any Major Project Participant, or the matters contemplated by the Transaction Documents that DOE reasonably requests.

4.4.21. Cash Grant Eligibility and Cash Grant Opinion. If a notice described in Section 6.1.9 hereof shall have been provided to DOE at any time since the immediately preceding Advance Date, DOE shall have received:

(a) An Officer's Certificate from the Sponsor dated as of the date of the relevant Master Advance Notice and certifying (i) as to those factual matters (other than factual matters described in Section 4.4.21(a)(ii) hereof) as to which the Sponsor is required to make a representation under the cash grant opinion required to be provided pursuant to Section 4.4.21(d) hereof, and which will be relied upon in such opinion, substantially in the form of the corresponding certificate delivered on the Guarantee Agreement Date except to the extent that (A) counsel to the Sponsor reasonably requests changes; (B) the relevant facts or law (including administrative interpretations thereof) have, in the good faith opinion of DOE or DOE's counsel, changed; (C) DOE or DOE's counsel requests in good faith reasonable changes to correct errors or omissions in the corresponding certificate delivered on the Guarantee Agreement Date, determined in their reasonable judgment; (D) the scope of the conclusions in the cash grant opinion to be delivered differ from those of the corresponding opinion on the Guarantee Agreement Date (taking into account all of the requirements as to reasonableness and otherwise with respect to such opinion in Section 4.4.21(d)); or (E) as the Sponsor, DOE and their respective counsel shall agree, and (ii) that the Projected Cash Grant Basis is not materially less than described in the cost eligibility study report delivered pursuant to Section 4.1.7(c)(i) hereof.

(b) An Officer's Certificate from SunPower dated as of the date of the relevant Master Advance Notice and certifying as to factual matters as to which SunPower is required to make a representation under the cash grant opinion required to be provided pursuant to Section 4.4.21(d) hereof, and which will be relied upon in such opinion, substantially in the form of the corresponding certificate delivered on the Guarantee Agreement Date except to the extent that (i) counsel to SunPower reasonably requests changes; (ii) the relevant facts or law (including administrative interpretations thereof) have, in the good faith opinion of DOE or DOE's counsel, changed; (iii) DOE or DOE's counsel requests in good faith reasonable changes to correct errors or omissions in the corresponding certificate delivered on the Guarantee Agreement Date, determined in their reasonable judgment; (iv) the scope of the conclusions in the cash grant opinion to be delivered differ from those of the corresponding opinion on the Guarantee Agreement Date (taking into account all of the requirements as to reasonableness and otherwise with respect to such opinion in Section 4.4.21(d)); or (v) as SunPower, DOE and their respective counsel shall agree.

(c) An Officer's Certificate from the Borrower dated as of the date of the relevant Master Advance Notice and certifying as to factual matters as to which the Borrower is required to make a representation under the cash grant opinion required to be provided pursuant to Section 4.4.21(d) hereof, and which will be relied upon in such opinion, substantially in the form of the corresponding certificate delivered on the Guarantee Agreement Date except to the extent

that (i) counsel to the Borrower reasonably requests changes; (ii) the relevant facts or law (including administrative interpretations thereof) have, in the good faith opinion of DOE or DOE's counsel, changed; (iii) DOE or DOE's counsel requests in good faith reasonable changes to correct errors or omissions in the corresponding certificate delivered on the Guarantee Agreement Date, determined in their reasonable judgment; (iv) the scope of the conclusions in the cash grant

opinion to be delivered differ from those of the corresponding opinion on the Guarantee Agreement Date (taking into account all of the requirements as to reasonableness and otherwise with respect to such opinion in Section 4.4.21(d)); or (v) as the Borrower, DOE and their respective counsel shall agree.

(d) DOE shall have received a cash grant opinion dated as of the date of the relevant Master Advance Notice from tax counsel reasonably satisfactory to DOE, in form satisfactory to DOE and in substance reasonably satisfactory to DOE as to the matters discussed in the cash grant opinion provided pursuant to Section 4.1.12 hereof, relying solely upon, with respect to factual matters, (i) the Transaction Documents, (ii) the Merger Documents, (iii) the Independent Engineer Report, and (iv) the items delivered to DOE pursuant to Sections 4.1.7(c)(i), 4.4.21(a), 4.4.21(b), and 4.4.21(c) hereof, and subject to qualifications, assumptions, representations and exceptions reasonably satisfactory to DOE, that the Project should qualify for Cash Grants in amounts not less than, and by the dates, set forth in Exhibit T.

4.4.22. CEQA Litigation Support Instruments. Unless the Settlement has occurred in a manner satisfactory to DOE, DOE shall have received (a) satisfactory evidence, including the Borrower's certification that any CEQA Litigation Support Instruments have been issued in the CEQA Support Required Amount and (b) if the CEQA Litigation Support Instruments include a Total Guarantee being delivered, or otherwise amended or modified, with respect to such Advance, a legal opinion, in form and substance satisfactory to the Collateral Agent, regarding the due execution, authorization, delivery and enforceability of the Total Guarantee; provided that, if the Total Guarantee guarantees all the Secured Obligations, then such legal opinion shall only be issued on the date of the issuance of the Total Guarantee and no bring-down of such legal opinion shall be required prior to each Advance so long as the Total Guarantee continuously remains in full force and effect.

4.4.23. CEQA Litigation Support Instruments. Unless the Settlement has occurred, DOE shall have received fully executed originals of one or more CEQA Litigation Support Instruments in the aggregate amount of not less than the CEQA Support Required Amount.

SECTION 4.5. Semi-Annual Conditions Precedent to Advances.

The obligation of DOE to approve each Advance (other than any Advances occurring on or prior to the six (6) month anniversary of the Guarantee Agreement Date) is subject to the prior satisfaction (or waiver), as determined by DOE, of each of the following conditions precedent (and of any deliverable, as to its form and substance) as of the most recent Semi-Annual Approval Date:

4.5.1. Cash Grant Eligibility.

(a) An Officer's Certificate from the Sponsor dated as of the most recent Semi- Annual Approval Date and certifying (i) as to those factual matters (other than factual matters described in Section 4.5.1(a)(ii) hereof) as to which the Sponsor is required to make a representation under the cash grant opinion required to be provided pursuant to Section 4.5.2 hereof, and which will be relied upon in such opinion, substantially in the form of the corresponding certificate delivered on the Guarantee Agreement Date except to the extent that (A) counsel to the Sponsor reasonably requests changes; (B) the relevant facts or law (including administrative interpretations thereof) have, in the good faith opinion of DOE or DOE's counsel, changed; (C) DOE or DOE's counsel requests in good faith reasonable changes to correct errors or omissions in the corresponding certificate delivered on the Guarantee Agreement Date, determined in their reasonable judgment; (D) the scope of the conclusions in the cash grant opinion to be delivered differ from those of the corresponding opinion on the Guarantee Agreement Date (taking into account all of the requirements as to reasonableness and otherwise with respect to such opinion in Section 4.5.2); or (E) as the Sponsor, DOE and their respective counsel shall agree, and (ii) that the Projected Cash Grant Basis is not materially less than described in the cost eligibility study report delivered pursuant to Section 4.1.7(c)(i) hereof.

(b) An Officer's Certificate from SunPower dated as of the most recent Semi-Annual Approval Date and certifying as to factual matters as to which SunPower is required to make a representation under the cash grant opinion required to be provided pursuant to Section 4.5.2 hereof, and which will be relied upon in such opinion, substantially in the form of the corresponding certificate delivered on the Guarantee Agreement Date except to the extent that (i) counsel to SunPower reasonably requests changes; (ii) the relevant facts or law (including administrative interpretations thereof) have, in the good faith opinion of DOE or DOE's counsel, changed; (iii) DOE or DOE's counsel requests in good faith reasonable changes to correct errors or omissions in the corresponding certificate delivered on the Guarantee Agreement Date, determined in their reasonable judgment; (iv) the scope of the conclusions in the cash grant opinion to be delivered differ from those of the corresponding opinion on the Guarantee Agreement Date (taking into account all of the requirements as to reasonableness and otherwise with respect to such opinion in Section 4.5.2); or (v) as SunPower, DOE and their respective counsel shall agree.

(c) An Officer's Certificate from the Borrower dated as of the most recent Semi- Annual Approval Date and certifying as to factual matters as to which the Borrower is required to make a representation under the cash grant opinion required to be provided pursuant to Section 4.5.2 hereof, and which will be relied upon in such opinion, substantially in the form of the corresponding certificate delivered on the Guarantee Agreement Date except to the extent that (i) counsel to the Borrower reasonably requests changes; (ii) the relevant facts or law (including administrative interpretations thereof) have, in the good faith opinion of DOE or DOE's counsel, changed; (iii) DOE or DOE's counsel requests in good faith reasonable changes to correct errors or omissions in the corresponding certificate delivered on the Guarantee Agreement Date, determined in their reasonable judgment; (iv) the scope of the conclusions in the cash grant opinion to be delivered differ from those of the corresponding opinion on the Guarantee Agreement Date (taking into account all of the requirements as to reasonableness and

otherwise with respect to such opinion in Section 4.5.2); or (v) as the Borrower, DOE and their respective counsel shall agree.

4.5.2. Cash Grant Opinion.

DOE shall have received a cash grant opinion dated as of the most recent Semi-Annual Approval Date from tax counsel reasonably satisfactory to DOE, in form satisfactory to DOE and in substance reasonably satisfactory to DOE as to the matters discussed in the cash grant opinion provided pursuant to Section 4.1.12 hereof, relying solely upon, with respect to factual matters, (a) the Transaction Documents, (b) the Merger Documents, (c) the Independent Engineer Report, and (d) the items delivered to DOE pursuant to Sections 4.1.7(c)(i), 4.5.1(a), 4.5.1(b), and 4.5.1(c) hereof, and subject to qualifications, assumptions, representations and exceptions reasonably satisfactory to DOE, that the Project should qualify for Cash Grants in amounts not less than, and by the dates, set forth in Exhibit T.

SECTION 4.6. Determination of Satisfaction of Conditions Precedent.

The satisfaction of any condition precedent to the Guarantee Agreement Date or to the making of any Advance or any Quarterly Approval Date shall be determined by DOE, and it shall be entitled (but not required) to consult with the Independent Engineer or any of its other Independent Consultants in making such determinations.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

The Borrower makes all of the following representations and warranties to and in favor of DOE as of (i) the Guarantee Agreement Date, (ii) each Quarterly Approval Date, (iii) each Advance Date and (iv) the Project Completion Date, except as such representations and warranties relate to an earlier date and all of these representations and warranties shall survive the Guarantee Agreement Date:

SECTION 5.1. Organization.

The Borrower (i) is a limited liability company organized, validly existing and in good standing under the laws of the State of Delaware, (ii) is duly qualified to do business in the State of California and in each other jurisdiction where the failure to so qualify could reasonably be expected to have a Material Adverse Effect and (iii) has all requisite limited liability company power and authority to (A) own or hold under lease and operate the property it purports to own or hold under lease; (B) carry on its business as now being conducted and as proposed to be conducted in respect of the Project; (C) incur Indebtedness and create Liens on all and any of its Properties; and (D) execute, deliver, perform and observe the terms and conditions of each of the Transaction Documents to which it is a party.

SECTION 5.2. Authorization; No Conflict.

The Borrower has duly authorized, executed and delivered the Transaction Documents to which it is a party, and neither its execution and delivery thereof nor its consummation of the

transactions contemplated hereby or thereby nor its compliance with the terms hereof or thereof does or will (i) contravene its Organizational Documents or any Applicable Laws, (ii) contravene or result in any breach or constitute any default under any Governmental Judgment, (iii) contravene or result in any breach or constitute any default under, or result in or require the creation of any Lien upon any of its Properties, under any agreement or instrument to which it is a party or by which it or any of its Properties may be bound, except for any Permitted Liens or (iv) require the consent or approval of any Person other than the Required Approvals and any other consents or approvals that have been obtained, which are in full force and effect.

SECTION 5.3. Legality; Validity; Enforceability.

Each Transaction Document, each of the CEQA Litigation Support Instruments and each of the NRG Cash Grant Shortfall Security and the SunPower Cash Grant Shortfall Security is a legal, valid and binding obligation of each party thereto, enforceable against such party in accordance with its terms, subject to Bankruptcy Laws and general principles of equity regardless of whether enforcement is considered in a proceeding at law or in equity.

SECTION 5.4. Capitalization.

All of the Equity Interests of the Borrower have been duly authorized, validly issued, are fully paid and non-assessable and are owned by the Holding Company, free and clear of all Liens other than Liens created under the Equity Pledge Agreement. After giving effect to the condition precedent set forth in Section 4.1.17, there are no outstanding options or rights for conversion into or acquisition, purchase or transfer of Equity Interests of the Borrower or any agreements or arrangements for the issuance by the Borrower of additional Equity Interests. After giving effect to the condition precedent set forth in Section 4.1.17, the Borrower does not have outstanding (i) any securities convertible into or exchangeable for its Equity Interests or (ii) any rights to subscribe for or to purchase, or any option for the purchase of, or any agreement, arrangement or understanding providing for the issuance (contingent or otherwise) of, or any call, loan commitment or claims of any character relating to, its Equity Interests.

SECTION 5.5. Title.

The Borrower owns and has valid legal and beneficial title to, or a valid leasehold interest in, the Project Site and the personal property and other assets and revenues of the Borrower on which it purports to grant Liens pursuant to the Security Documents, in each case free and clear of any Lien of any kind, except for Permitted Liens.

SECTION 5.6. Real Property.

(a) Each Lease for any portion of the Project Site is valid and subsisting; neither the Borrower nor, to the knowledge of Borrower, the applicable Project Participant is in default in any material respect under any such Lease, and no event has occurred which, with the giving of any applicable notice or passage of time or both, would result in such a default; and the Borrower enjoys peaceful and undisturbed possession of the portion of the Project Site that is the subject of any such Lease and the right to continue to enjoy such possession during the time when such Property is necessary or desirable for the development, construction, ownership, operation or maintenance of the Project subject to any Permitted Liens.

(b) Each easement used in connection with the Project is valid and subsisting; neither the Borrower nor, to the knowledge of Borrower, the applicable Project Participant is in default in any material respect under any such easement, and no event has occurred which, with the giving of any applicable notice and passage of time, could result in such a default; and the Borrower enjoys peaceful and undisturbed use of the portion of the real property that is the subject of any such easement and the right to continue to enjoy such use during the time when any such easement is necessary or desirable for the development, construction, ownership, operation or maintenance of the Project subject to any Permitted Liens.

(c) No condemnation or eminent domain proceeding has been commenced with respect to all or any portion of any Real Property or for the relocation of roadways providing access to such Real Property except, in each case, as would not, individually or in the aggregate, reasonably be expected to result

in a Material Adverse Effect.

(d) Except for those disclosed in the Title Policy approved by DOE, there are no current or pending special or other assessments (other than for ad valorem taxes) for public improvements or otherwise affecting any Real Property that would reasonably be expected to result in a Material Adverse Effect.

(e) The Borrower has not suffered, permitted or initiated the joint assessment of any Real Property with any other real property constituting a separate tax lot. The Real Property has been legally subdivided, and for all purposes the Real Property may be mortgaged, conveyed and otherwise dealt with as separate legal lots or parcels; provided that, easement parcels shall not be required to be separate legal lots or parcels.

(f) There are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting any of the Borrower's Real Property (other than those restrictions on transfer set forth in the Financing Documents or the Land Lease Agreement).

(g) Other than as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Borrower reasonably expects, as and when necessary, for the development, construction, ownership, operation and maintenance of the Project, to have all utilities available at the title lines of the Project Site, and to the extent the same pass through adjoining private land, are located within valid public or unencumbered private easements which inure to the benefit of the Real Property or to the benefit of the Borrower and its successors and assigns and run with the land.

(h) Other than as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, the Borrower reasonably expects, as and when necessary for the development, construction, ownership, operation and maintenance of the Project, to have all roads completed and dedicated to public use and accepted by all Governmental Authorities or the subject of access easements which inure to the benefit of the Real Property or to the benefit of the Borrower and its successors and assigns and run with the land.

SECTION 5.7. Security Interests; Liens.

(a) Pursuant to the Security Documents, the Collateral Agent (for the benefit of the Secured Parties) has a perfected first priority Lien in the Collateral, subject only to Permitted

Liens. Such security interest in the Collateral is and, with respect to any subsequently acquired Property, when so subsequently acquired, will be superior and prior to the rights of all third Persons (other than Permitted Liens) now existing or hereafter arising, whether by way of deed of trust, mortgage, Lien, security interests, encumbrance, assignment or otherwise. All documents and instruments, including the Deeds of Trust and financing statements, have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable have been taken to establish and perfect the Collateral Agent's Lien in and to the Collateral (for the benefit of the Secured Parties) to the extent contemplated by the Security Documents. All Taxes and filing fees and Periodic Expenses that are due and payable in connection with the execution, delivery or recordation of the Deed of Trust and the financing statements, or the execution, issuance and delivery of the FFB Promissory Notes, or the mortgaging of the mortgaged property under the Deed of Trust, have been paid.

(b) Except for Permitted Liens, the Borrower has not created or suffered to exist, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien upon any of its revenues, properties or assets. There are no Liens on the Equity Interests of the Borrower, except for Permitted Liens.

SECTION 5.8. Required Approvals.

(a) All Required Approvals required for the Project as of each date on which this representation is made are listed on Part I of Schedule 4.1.6, 4.2.5, 4.3.3 or 4.4.8 (as such Schedules exist on each such date) and:

(i) DOE has received fully executed copies of each of the Required Approvals listed on Part I of such schedules;

(ii) the copies of such Required Approvals delivered to DOE as of the date on which this representation is made are true, correct and complete copies of such Required Approvals (including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters);

(iii) no term or condition of any of such Required Approvals has been amended from the form delivered to DOE as of the date on which this representation is made;

(iv) each such Required Approval has been validly issued, is in full force and effect and Non-Appealable;

(v) all conditions precedent to the effectiveness of any such Required Approval have been satisfied (other than conditions not required to be satisfied as of the date on which this representation is made that do not require discretionary approval of a third party); and

(vi) the Borrower has no reason to believe that any of such Required Approvals shall be revoked.

(b) All Required Approvals not required for the Project as of the date on which this representation is made are listed on Part II of Schedule 4.1.6, 4.2.5, 4.3.3 or 4.4.8 (as such Schedules exist on each such date), respectively, and the Borrower has no reason to believe that it or any other Borrower Entity or, to the Borrower's Knowledge, any relevant Major Project Participant (as applicable) shall fail to obtain the Required Approvals set forth on Part II of such schedule in the ordinary course free of any unduly burdensome conditions or requirements at such time or times as may be required under the Transaction Documents or as is otherwise necessary to avoid any material delay in, or impairment to, the performance of the transactions as contemplated by the Transaction Documents.

(c) The Required Approvals described in Section 5.8(a) are all of the Required Approvals that are necessary or required to be obtained as of the Guarantee Agreement Date and as of each date thereafter that this representation is made, as applicable, under Applicable Law or any agreement applicable to, or binding on, any Borrower Entity or any of their respective Properties or, to the Borrower's Knowledge, any Project Participant or any of their respective Properties.

(d) The Borrower, each Borrower Entity and, to the Borrower's Knowledge, each other Major Project Participant is in compliance in all material respects with all Required Approvals that are, as of each date of this representation, required to be obtained by or are, as of the date of this representation, otherwise applicable to such Person.

SECTION 5.9. Insurance.

All Required Insurance that is required to be in full force and effect as of the date this representation is made is in full force and effect.

SECTION 5.10. Intellectual Property.

(a) The Borrower owns or holds or can obtain at the appropriate time on terms that are commercially reasonable for the solar energy industry a valid and enforceable license, permit, certificate, franchise, or other authorization or right to use (subject to Bankruptcy Laws and general principles of equity regardless of whether enforcement is considered in a proceeding at law or in equity) the Technology and Intellectual Property Rights necessary to (i) design, construct, operate, use and maintain the Project in a commercially reasonable manner and as contemplated under the Major Project Documents in connection with the Project, and (ii) exercise its rights and perform its Obligations under the Major Project Documents and the EPC Contract in connection with the Project.

(b) The Technology and the Intellectual Property Rights licensed to Borrower under the EPC Contract and the use thereof by Borrower in accordance with the terms of the EPC Contract does not infringe upon or misappropriate the Intellectual Property Rights or other rights of any other Person, and (ii) no process, method, substance, part or other material contemplated under the Major Project Documents or otherwise employed by the Borrower infringes, or will infringe, upon or misappropriates, or otherwise violates, the Intellectual Property Rights of any other Person. The Borrower shall indemnify DOE for the full amount of any damages from claims that may be asserted (whether or not validly asserted) against DOE by any Person in

connection with the breach, misappropriation, or other violation of the Intellectual Property Rights of such Person in connection with the Project.

SECTION 5.11. Litigation, Labor Disputes.

(a) Except as set forth on Schedule 4.1.18, there is no pending or, to the Borrower's Knowledge, threatened (in writing) Action that relates to (i) the Project or to any transaction contemplated by any of the Transaction Documents, (ii) the legality, validity or enforceability of any of the Transaction Documents, or (iii) any Borrower Entity or, to the Borrower's Knowledge, any other Major Project Participant is a party to, that (excluding any Action contemplated under clause (i) or (ii) above) either singly or in the aggregate, has, or could reasonably be expected to have, a Material Adverse Effect.

(b) The Borrower has not failed to observe, in any material respect, any Governmental Judgment that has, or could reasonably be expected to have, a Material Adverse Effect. There is no injunction, writ, or preliminary restraining order of any nature issued by a Governmental Authority directing that any transactions contemplated by any of the Transaction Documents not be consummated as herein or therein provided.

(c) No Governmental Judgment has been entered against the Borrower or any Borrower Entity that has, or could reasonably be expected to have, a Material Adverse Effect.

(d) There are no strikes, slowdowns or work stoppages by the employees of any of the Borrower or, to the Borrower's Knowledge, any Major Project Participant on-going or threatened in writing that have caused or could reasonably be expected to cause a Material Adverse Effect.

(e) None of the Actions set forth on Schedule 4.1.18 has or could reasonably be expected to have a Material Adverse Effect.

SECTION 5.12. Tax.

(a) The Borrower has filed all material tax returns required by Applicable Laws to be filed by it and has paid (i) all income Taxes payable by it and (ii) all other Taxes and assessments payable by it that have become due (other than those Taxes that it is contesting in good faith and by appropriate proceedings, for which reserves have been established to the extent required by GAAP and permitted by the Applicable Regulations).

(b) Except for those items set forth on Schedule 5.12(b), no withholding Taxes are payable by the Borrower to any Governmental Authority in connection with any amounts payable by the Borrower under or in respect of the Financing Documents.

(c) No Borrower Compliance Entity owes any delinquent Indebtedness to any Governmental Authority of the U.S., including Tax liabilities, unless the delinquency has been resolved with the appropriate Governmental Authority in accordance with the standards of the Debt Collection Improvement Act.

SECTION 5.13. Financial Statements.

Each of the Financial Statements of the Borrower and the Sponsor delivered to DOE has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower or the Sponsor (as the case may be) as of the respective dates of the balance sheets included therein and the results of operations of the Borrower or the Sponsor for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no material liabilities or obligations of the Borrower or the Sponsor, as applicable, of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP. Since the date of delivery of such Financial Statements, neither the Borrower nor the Sponsor has incurred or assumed any material liabilities or obligations that would be required to be disclosed in accordance with GAAP.

SECTION 5.14. Business; Contracts; Powers of Attorney; Contingency Fees.

(a) The Borrower has not conducted any business, other than the business contemplated by the Transaction Documents and such other business as may be related to the Project.

(b) The Borrower is not a party to or bound by any contract other than those contracts permitted under the Financing Documents.

(c) Except as provided for in the Financing Documents, the Borrower has not executed and delivered any powers of attorney.

(d) No Borrower Entity has entered into any agreements with financial and/or other professional advisors that provide for payment of a contingent fee computed as a percentage of the amount of the FFB Commitment.

SECTION 5.15. Transactions with Affiliates.

Except (i) as set forth on Schedule 5.15 and (ii) for Permitted Affiliate Transactions, the Borrower is not a party to any contract or agreement with, and does not have any other loan commitment to, any Borrower Affiliate or SunPower. The Borrower is not a party to any agreement requiring the payment of development fees, the Advances, the Guaranteed Loans or the Maximum Capitalized Interest Amount (other than fees payable to DOE and FFB in accordance with the Financing Documents).

SECTION 5.16. No Additional Fees.

The Borrower has not paid or become obligated to pay any fee or commission to any broker, finder or intermediary for or on account of arranging the financing of the transactions contemplated by the Transaction Documents.

SECTION 5.17. Investments; Subsidiaries.

The Borrower has not made any Investments other than Permitted Investments. The Borrower has no subsidiaries and does not beneficially own any Equity Interests of any other Person.

SECTION 5.18. Sufficiency of Project Documents.

(a) All fee, leasehold, easement and other real property interests, utility and other services, means of transportation, facilities, and all other materials and rights that are or can reasonably be expected to be necessary for the development, construction, ownership, operation and maintenance of the Project in accordance with Applicable Laws and the Transaction Documents have been procured under the Project Documents or, at the time such rights or materials are required, will be commercially available to the Project at the Project Site on terms consistent with the Construction Budget and the Base Case Projections and, to the extent appropriate, arrangements therefor have been made on terms consistent with the Construction Budget and the Base Case Projections for all such interests, services, means of transportation, facilities, materials and rights.

(b) As of any date on which this representation is made or deemed made, DOE has received a true, complete and correct copy of each of the Project Documents and any Support Instrument related thereto (including all exhibits, schedules, protocols and side letters referred to therein or delivered pursuant thereto, if any, and all amendments, modifications, additions, waivers thereto or thereof) that is in effect as of such date. Since the Guarantee Agreement Date, none of the Project Documents or Support Instruments have been amended or modified, except in accordance with this Loan Guarantee Agreement. Prior to the execution of each such Project Document, the Borrower believed, after having made a reasonable investigation with respect thereto, that each party to each such Project Document or Support Instrument would be able to carry out its Obligations in accordance therewith and nothing has come to the attention of the Borrower to cause it to believe that any such Person will not be able to carry out its Obligations in accordance therewith.

(c) As of any date on which this representation is made or deemed made, (i) each Project Document and any Support Instrument related thereto that is necessary or desirable in connection with the construction, completion, operation or maintenance of the Project as of such date is in full force and effect and all conditions precedent to the Obligations of the respective parties under the Project Documents required to be performed as of such date have been satisfied (or, where required, with the written consent of DOE, waived); (ii) no event has occurred that gives the Borrower, or, to the Borrower's Knowledge, any Project Participant, the right to terminate any Project Document or any related Support Instrument; (iii) the Borrower is not in default of any material term or provision of any Project Document or related Support Instrument; and (iv) to the Borrower's Knowledge, no Project Participant is in default of any material term or provision of any Project Document or related Support Instrument.

(d) (i) All representations, warranties and other factual statements made by the Borrower or any other Borrower Entity in any Project Document to which such entity is a party are true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by "materiality," "Material Adverse Effect" or a similar qualifier, in which case it shall be true and correct in all respects) as of any date on which this representation

or warranty is made, except to the extent such representation or warranty is made only as of a specific date or time (in which event such representation or warranty shall be true and correct as of such date or time); and (ii) to the Borrower's Knowledge, all representations, warranties and other factual statements made by each Project Participant in each Project Document (other than the Borrower and the Borrower Entities) are true and correct in all material respects (except to the extent any such representation and warranty itself is qualified by "materiality," "Material Adverse Effect" or a similar qualifier, in which case it shall be true and correct in all respects) as of any date on which this representation or warranty is made, except to the extent such representation or warranty is made only as of a specific date or time (in which event such representation or warranty shall be true and correct as of such date or time).

(e) The Borrower believes that it is technically feasible for the Project Facility to be constructed, completed, operated and maintained so as to fulfill in all material respects the design specifications and requirements contained in the Application.

SECTION 5.19. Project Milestone Schedule and Construction Budget; Operating Forecasts and Base Case Projections.

(a) As of the time at which this representation is made or deemed made (or in the case of the making of this representation solely on the Guarantee Agreement Date with respect to the Base Case Projections, as of the time such Base Case Projections were delivered pursuant to Section 4.1.2(a)(vii)), the Project Plans, the Construction Budget, the Financial Plan, the Project Milestone Schedule and the Base Case Projections, as amended or supplemented by Approved Construction Changes, (i) are complete and based on reasonable assumptions, (ii) are consistent with the provisions of the Project Documents, (iii) have been prepared in good faith and with due care and (iv) fairly represent the Borrower's expectation as to the matters covered thereby.

(b) The Project Milestone Schedule, as amended or supplemented by Approved Construction Changes, accurately specifies in summary form the work that each Construction Contractor proposes to complete on or before the deadlines specified therein.

(c) As of the Guarantee Agreement Date, the Construction Budget represents the Borrower's best estimate of Total Project Costs anticipated to be incurred to construct the Project Facility in the manner contemplated by the Transaction Documents. Since the Guarantee Agreement Date, the Construction Budget has not been amended or changed in any material respect other than with respect to Approved Construction Changes.

(d) As of the Guarantee Agreement Date, the Advance Schedule represents the Borrower's best estimate of the expected dates and amounts of proposed Advances and Equity Contributions to fund the Borrower's Project Costs. Since the Guarantee Agreement Date, the Advance Schedule has not been amended or changed in any material respect other than with respect to Approved Construction Changes.

(e) The Borrower's good faith estimate and belief as of each date this representation is made is that (i) Project Completion will occur no later than the Guaranteed Project Completion Date and (ii) Total Funding Available is sufficient to achieve Project Completion.

SECTION 5.20. Sufficient Funds.

Total Funding Available will be sufficient to achieve Project Completion.

SECTION 5.21. Use of Proceeds.

The Borrower has used and shall continue to use the proceeds of all Advances in accordance with the terms and conditions of all applicable Financing Documents.

SECTION 5.22. Fees and Enforcement.

Other than amounts that have been paid in full or with respect to which arrangements satisfactory to DOE have been made, no fees or Taxes, including documentary, stamp, transaction, registration, or similar Taxes are required to have been paid to ensure the legality, validity, enforceability, priority or admissibility in evidence in applicable jurisdictions of any Transaction Documents.

SECTION 5.23. Compliance with Applicable Laws.

(a) The Borrower is in compliance with, and has conducted (or caused to be conducted) its business and operations and the business and operations of the Project in compliance with all Environmental Laws and all other Applicable Laws in all material respects.

(b) No notices of violation of any Applicable Law have been issued, entered or received by the Borrower that have not been cured with no remaining liability to the Borrower, other than those that are immaterial.

SECTION 5.24. Environmental Laws.

(a) All Required Approvals for the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, or (v) the use, generation, storage, transportation or disposal of toxic or Hazardous Substances or wastes (vi) natural resources (including threatened and endangered species) or (vii) other environmental, health or safety matters have been obtained, and the Borrower has not received, nor is the Borrower aware of any facts or circumstances that could reasonably be expected to result in, any complaint, order, directive, claim, citation or notice by any Governmental Authority that is, or could reasonably be expected to become material and relates to its then-existing obligations with respect to the foregoing.

(b) Except as set forth on Schedule 5.24(b), none of the Borrower, any Borrower Entity nor, to the Borrower's Knowledge, any other Person, has used, released, discharged, generated, manufactured, produced, stored, or disposed of in, on, under or about the Project Facility or transported thereto or therefrom, any Hazardous Substances that could reasonably be expected to form the basis of an Environmental Claim or cause the Project to be subject to any restrictions arising under Environmental Laws or otherwise result in material harm to human health or safety, natural resources or the environment.

(c) Except as set forth on Schedule 4.1.18 (as in effect on the Guarantee Agreement Date, as may be updated with DOE's prior written consent), there is no Environmental Claim pending or, to the Borrower's Knowledge, threatened against the Borrower or any Borrower

Entity, or against any Person whose liability for any Environmental Claim the Borrower or any Borrower Entity has retained or assumed either contractually or by operation of law. There is not and has not been any condition, circumstance, action, activity or event with respect to the Project, the Borrower or, to the Borrower's Knowledge, the Project Site that could reasonably be expected to form the basis of any violation of any Environmental Law or otherwise result in material harm to human health or safety, or natural resources or the environment.

(d) The Borrower has provided to DOE all assessments, reports, data, results of investigations or audits, and other information that is in the possession of or reasonably available to the Borrower regarding environmental matters pertaining to the Project (other than those documents prepared directly by DOE pursuant to the National Environmental Policy Act), or the environmental condition of the Project or Project site, or the compliance (or noncompliance) by the Borrower or any Borrower Entity with any Environmental Laws.

SECTION 5.25. U.S. Government Requirements.

(a) Davis-Bacon Requirements. The Borrower has complied with all Davis-Bacon Requirements, including any retroactive compliance, and included in each of its Davis-Bacon Act Covered Contracts, the Davis-Bacon Requirements.

(b) Buy American Provisions. The Project does not involve the construction, alteration, maintenance, or repair of a "public building" or "public work" within the meaning of the Buy American Provisions and, therefore, is not subject to the Buy American Provisions.

(c) U.S. Preference. The Borrower has used good faith efforts to maximize U.S.- manufactured content in Project facilities and components, taking into account availability, cost, technical performance, reliability, efficiency, warranty coverage and related commercial terms.

(d) Foreign Asset Control Regulations. Neither the making of any Advances nor the use of the proceeds thereof by the Borrower or at the direction of the Borrower will violate the Foreign Asset Control Regulations.

(e) Prohibited Persons.

(i) None of the Borrower Entities or Borrower Entity Controlling Persons is a Prohibited Person. No event has occurred and no condition exists that is likely to result in any Borrower Entity or Borrower Entity Controlling Person becoming a Prohibited Person.

(ii) To the Borrower's Knowledge, (A) none of the Major Project Participants or Persons that Control a Major Project Participant is a Prohibited Person and (B) no event has occurred and no condition exists that is likely to result in any Major Project Participant or Persons that Control a Major Project Participant becoming a Prohibited Person.

(f) Anti-Terrorism Order.

(i) Each Borrower Entity and each Borrower Entity Controlling Person, is in compliance with the Anti-Terrorism Order and has not previously violated the Anti- Terrorism Order.

(ii) To the Borrower's Knowledge, each Major Project Participant and each Person that Controls a Major Project Participant is in compliance with the Anti-Terrorism Order and has not previously violated the Anti-Terrorism Order.

(g) Corrupt Practices Laws; OFAC.

(i) Each Borrower Entity, each Borrower Entity Controlling Person, and each of their respective employees and agents have complied with OFAC and all applicable Corrupt Practices Laws in obtaining any consents, licenses, approvals, authorizations, rights, or privileges with respect to the Project and, otherwise, conduct the Project in compliance with OFAC and all applicable Corrupt Practices Laws. The internal management and accounting practices and controls of each Borrower Entity and each Borrower Entity Controlling Person are adequate to ensure compliance with all Corrupt Practices Laws.

(ii) To the Borrower's Knowledge, each Major Project Participant, each Person that Controls a Major Project Participant, and each of their respective employees, and agents is in compliance with OFAC and all Corrupt Practices Laws in obtaining any consents, licenses, approvals, authorizations, rights, or privileges with respect to the Project and, otherwise, are conducting all activities in connection with the Project in compliance with OFAC and all applicable Corrupt Practices Laws.

(h) Investment Company Act. The Borrower is not required to register as an "investment company" and it is not "controlled" by a company required to register as an "investment company" under the Investment Company Act.

(i) PUHCA. The Borrower is an "exempt wholesale generator" as defined in the Public Utility Holding Company Act. No Secured Party shall, solely by reason of its ownership or operation of the Project or the Borrower upon the exercise of remedies under the Security Documents (without regard to any other asset or entity owned or controlled by such Secured Party or its Affiliates), become subject to the provisions of 18 C.F.R. §§ 366.2, 366.21, 366.22 or 366.23.

(j) Lobbying. No proceeds of the Advances have been or will be expended by the Borrower or any of its Affiliates to pay any Person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress.

(k) ERISA.

(i) The Borrower does not and has not operated or sponsored any Employee Benefit Plans. The ERISA Affiliates have (A) operated the Pension Plans in compliance with their terms and with all applicable provisions and requirements of the Internal

Revenue Code, ERISA and other applicable Federal or state laws and (B) performed all their respective obligations under such plans in all material respects.

(ii) No ERISA Event has occurred or is reasonably expected to occur that could reasonably be expected to give rise to any material liability to the Borrower or the ERISA Affiliates.

(iii) Except to the extent required under Section 4980B of the Internal Revenue Code or comparable state law or as properly recognized in the Financial Statements most recently delivered to DOE pursuant to Section 6.1, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) for any retired or former employee of the Borrower or any ERISA Affiliate.

(iv) As of the most recent valuation date for any Pension Plan, (A) the amount of unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), individually and in the aggregate for all Pension Plans (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), has not had and would not reasonably be expected to have a Material Adverse Effect and (B) no Pension Plan has been determined to be in "at risk" status within the meaning of Section 303(i) of ERISA or Section 430(i) of the Code.

(v) The execution and delivery of this Loan Guarantee Agreement and the consummation of the transactions contemplated hereunder will not involve any transaction that is subject to the prohibitions of Section 406 of ERISA or in connection with which taxes could be imposed pursuant to

Section 4975(c)(1)(A)-(D) of the Internal Revenue Code.

(vi) All liabilities under each Pension Plan are (A) funded to at least the minimum level required by Applicable Law or, if higher, to the level required by the terms governing the Pension Plans (B) provided for or recognized in the Financial Statements most recently delivered to DOE pursuant to Section 6.1 to the extent required by and in accordance with GAAP and (C) estimated in the formal notes to the Financial Statements most recently delivered to DOE pursuant to Section 6.1 to the extent required by and in accordance with GAAP.

(vii) (A) The Borrower is not and will not be a "plan" within the meaning of Section 4975(e) of the Internal Revenue Code, (B) the assets of the Borrower do not and will not constitute "plan assets" within the meaning of Section 3(42) of ERISA and the United States Department of Labor Regulations set forth in 29 C.F.R. 2510.3-101, (C) the Borrower is not and will not be a "governmental plan" within the meaning of Section 3(32) of ERISA and (D) transactions by or with the Borrower are not and will not be subject to state statutes applicable to the Borrower regulating investments of fiduciaries with respect to governmental plans. The Borrower further agrees to deliver to the Loan Servicer such certifications or other evidence of compliance with the provisions of this Section 5.25(k) as the Loan Servicer or DOE may from time to time request.

SECTION 5.26. No Judgment Liens; No Indebtedness.

(a) The Borrower (i) does not have a judgment lien against any of its property for a debt owed to the United States of America or any other creditor and (ii) does not have any indebtedness owed to the U.S. or any Governmental Authority thereof that is in delinquent status, as the term "delinquent status" is defined in 31 C.F.R. Section 285.13(d), including any Tax liabilities, except to the extent such delinquency has been resolved with the appropriate Governmental Authority in accordance with the standards of the Debt Collection Improvement Act of 1996.

SECTION 5.27. Insolvency Proceedings; Solvency.

(a) The Borrower is not insolvent and is not the subject of any pending, or to the Borrower's Knowledge, threatened, Insolvency Proceedings.

(b) The Borrower is and, upon the incurrence of any Indebtedness under the Financing Documents and after giving effect to the transactions contemplated hereby, will be, solvent.

SECTION 5.28. No Defaults; Material Adverse Effect.

(a) No Event of Default or Potential Event of Default has occurred and is continuing. Neither the Borrower nor any Borrower Entity has (i) breached any of its material obligations under any Financing Document or (ii) issued, entered or received any notice of breach of any Financing Document that has not been cured or waived.

(b) No Material Adverse Effect has occurred or could reasonably be expected to occur.

SECTION 5.29. Certain Program Requirements.

(a) Eligibility. The Project qualifies as an "Eligible Project" under Title XVII and is not a research, development, or demonstration project or a project that employs Commercial Technologies (as defined in the Applicable Regulations) in service in the U.S.

(b) U.S. Nexus. The Project will be constructed and operated in the U.S., the employment of the new or significantly improved technology in the Project has the potential to be replicated in other commercial projects in the United States and this technology is or is likely to be available in the United States for further commercial application.

(c) Useful Life. The Maturity Date occurs prior to the end of the period equal to the lesser of (i) thirty (30) years or (ii) ninety percent (90%) of the projected useful life of the Project's major physical assets.

(d) No Tax-Exempt Indebtedness. The Guaranteed Loans do not finance or refinance, either directly or indirectly, tax-exempt indebtedness obligations, consistent with the requirements of Section 149(b) of the Internal Revenue Code.

(e) Recovery Act Reporting. The Borrower has taken all necessary steps to be in compliance with its reporting obligations under Section 6.24(a) with respect to the Recovery Act.

SECTION 5.30. Full Disclosure.

(a) Other than Predictive Information, the statements and information of the Borrower contained in any certificate of the Borrower or FFB Document, taken together with all documents, reports or other written information pertaining to the Project, together with all updates of such information from time to time, that have, in each case, been furnished by or on behalf of the Borrower or any other Borrower Entity (including, without limitation, by the Sponsor) to DOE, the Loan Servicer or any Independent Consultant, are true and correct in all material respects and do not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained therein not materially misleading in light of the circumstances in which they were made. For the avoidance of doubt, with respect to the deliverables furnished by the Borrower under Section 4.1.2, the representation contained in this Section 5.30(a) is made as of the date of the Ratings Delivery Package Date only.

(b) There is no fact known to the Borrower that has not been disclosed to DOE in writing that could reasonably be expected to be material to DOE's decision to enter into this Loan Guarantee Agreement or the DOE Guarantee or to DOE's decision to issue the DOE Guarantee or authorize any Advance or that could otherwise reasonably be expected to have a Material Adverse Effect.

(c) All existing documents and agreements known to the Borrower that are material in the context of the Transaction Documents or that have the effect of varying any of the Transaction Documents or the Project have been disclosed to DOE in writing.

SECTION 5.31. Cash Grant Application.

As of each Cash Grant Application Date, all factual information and the representations of the Borrower set forth in the applicable Cash Grant Application will be true, correct and complete in all material respects. No Federal tax credit under Section 45 or Section 48 of the Internal Revenue Code has been claimed or will be claimed by any Person with respect to any assets or property included in the Project or electricity produced by the Project. As of each Cash Grant Application Date, the Borrower will have made every election that is necessary to claim and apply for the applicable Cash Grant.

SECTION 5.32. Cash Grant Compliance.

(a) The Borrower will meet the standards for applicant and property eligibility set forth in the Cash Grant Guidance. The Borrower reasonably estimates that the aggregate Cash Grant proceeds will be sufficient to timely repay the Guaranteed Cash Grant Bridge Loan. Such estimate is, as of the Guarantee Agreement Date, (i) based on the Borrower's good faith reasonable judgment (after due inquiry) as to the best available assumptions as to all factual matters material to such estimates, (ii) has been calculated in good faith and with due care and (iii) fairly represents the Borrower's best expectations as to the amount of the Cash Grants.

(b) From and after the filing of any Cash Grant Application for the Project, the factual information and the representations of the Borrower set forth in such Cash Grant Application are (i) true, correct and complete in all material respects, (ii) based on the Borrower's good faith reasonable judgment (after due inquiry) as to the best available

assumptions as to all factual matters material to the figures set forth therein, (iii) consistent with the provisions of the Financing Documents in all material respects, (iv) prepared in good faith and with due care and (v) fairly represent the Borrower's good faith reasonable expectations (after due inquiry) as to the matters covered thereby. No federal tax credit has been or shall be claimed by any Person with respect to any asset or property included in the Project or any electricity produced by the Project.

SECTION 5.33. Ownership by Disqualified Person.

As of the Guarantee Agreement Date and each Cash Grant Application Date, the Borrower is a Delaware limited liability company that is not treated as a corporation for U.S. federal income tax purposes.

SECTION 5.34. Cargo Preference Act.

To the extent required by the United States Maritime Administration, Borrower is in compliance with the requirements of the Cargo Preference Act of 1954, as amended, and related regulations.

ARTICLE 6
AFFIRMATIVE COVENANTS

The Borrower covenants and agrees that until the date all Secured Obligations (other than inchoate indemnity obligations) are paid in full and the FFB Commitment has terminated, unless DOE waives compliance in writing:

SECTION 6.1. Information Covenants.

At its own expense the Borrower shall furnish or cause to be furnished to DOE, in each case (x) in unalterable electronic format (except for the financial model, which shall be finished in Excel file format) with a reproduction of the signatures where required and (y) upon request by DOE, in other electronic format, the following items:

6.1.1. Monthly Reports.

(a) Within fifteen (15) Business Days after the end of each month prior to the Project Completion Date, a Construction Progress Report certified by an Authorized Officer of the Borrower and the Independent Engineer as being accurate and complete in all material respects based upon the Borrower's good faith reasonable estimates of information contained therein and certification that the Project is expected to achieve Operational Completion and Project Completion by the Guaranteed Operational Completion Date and Guaranteed Project Completion Date, as applicable; and

(b) Within fifteen (15) Business Days after the end of each month falling after the Operational Completion Date, an Operations Report covering the previous monthly period and certified by an Authorized Officer of the Borrower as being accurate and complete in all material respects based upon the Borrower's good faith reasonable estimates of information contained therein;

6.1.2. Quarterly Financial Statements. Within forty five (45) days after the end of each fiscal quarter of the Borrower:

(a) unaudited Financial Statements of the Borrower as at the end of such quarterly period; and

(b) a discussion and analysis by a Financial Officer of the Borrower of the business and operations of the Borrower with respect to such quarter, including (A) a statement of all material financial transactions (other than any transactions contemplated under the Transaction Documents) and a report of all transactions involving the Borrower, on the one hand, and on the other hand any other Borrower Entity (other than any such transaction under the O&M Agreement or the Delivery Term Security Maintenance Agreement), (B) for each such quarter that includes all or a portion of the Construction Period, calculations showing the Debt to Equity Ratio and (C) for each such quarter that includes all or a portion of the Operating Period, calculations showing compliance with the requirements of Section 6.16 and certification of such compliance

6.1.3. Annual Financial Statements and Reports. As soon as available, but in any event within ninety (90) days after the end of each Fiscal Year:

(a) audited Financial Statements of the Borrower for such Fiscal Year, accompanied by a report and opinion of the Borrower's Accountant to the effect that such Financial Statements present fairly the financial condition, results of operations, shareholder's equity and cash flows of the Borrower for such Fiscal Year, which report and opinion should be prepared in accordance with GAAP and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) a discussion and analysis by management of the Borrower of the Borrower's business and operations at the end of such Fiscal Year, including with respect to the matters set forth in clause 6.1.2(b) above; and

(c) a report detailing a comparison between the Operating Revenues, Operating Costs and Debt Service projected to be received or paid in such Fiscal Year pursuant to the applicable Operating Budget for such Fiscal Year and the Operating Revenues, Operating Costs and Debt Service actually received or paid in such Fiscal Year.

6.1.4. Certification by Financial Officer.

Each time Financial Statements of the Borrower are delivered pursuant to clauses 6.1.2(a) and 6.1.3(a) hereof such Financial Statements shall be certified by a Financial Officer of the Borrower (in the case of Financial Statements delivered pursuant to clause 6.1.2(a), in a Quarterly Reporting Certificate, and in the case of Financial Statements delivered pursuant to clause 6.1.3(a) in an Officer's Certificate of a Financial Officer of the Borrower in the form of Exhibit I-2) as having been prepared in accordance with GAAP on a consistent basis and as fairly presenting in all material respects the financial condition of the Borrower as of the date thereof and the results of operations and cash flows of the Borrower for the periods presented. Such certification also shall include a certification that the Person has made or caused to be made a review of the

transactions and financial condition of the Borrower during the relevant fiscal period and (i) that other than as set out in such Financial Statements, there are no liabilities or obligations of the Borrower that are required to be presented in such Financial Statements in accordance with GAAP and (ii) that no Event of Default or Potential Event of Default exists, or if such certification cannot be made, the nature and period of existence of such Event of Default or Potential Event of Default and what corrective action the Borrower has taken or proposes to take with respect thereto.

6.1.5. Quarterly Reporting Package. Within forty five (45) days after the end of each fiscal quarter of each Fiscal Year, each certified by an Officer's Certificate of the Borrower:

(a) for each fiscal quarter that includes all or a portion of the Construction Period: (i) a summary construction report, which shall include a detailed assessment of the Project's performance in comparison with the Construction Budget and Project Milestone Schedule then in effect for such period, including (A) basic data relating to construction of the Project Facility, (B) a description and explanation of any Event of Loss, Actions or other material disputes between the Borrower and any Person and (C) any material non-compliance with any Required Approval then in effect and (ii) an updated Project Milestone Schedule and an updated Construction Budget, reflecting any Approved Construction Changes (or certification that no changes or updates are then required);

(b) for each fiscal quarter that includes all or a portion of the Operating Period: (i) a summary operating report, which shall include a detailed assessment of the Project's performance in comparison with the Project Plans then in effect for such period, including basic data relating to the operation of the Project, pricing information, unusual maintenance activity, material casualty losses, material disputes between the Borrower and any Person and material non-compliance with any Governmental Approvals, (ii) an updated Operating Plan for the next four fiscal quarters, an updated Operating Forecast for the next four fiscal quarters, and, if requested by DOE, updated Base Case Projections in form and substance satisfactory to DOE and (iii) upon the request of DOE, an Authorized Officer of the Borrower shall schedule a date to discuss any updated Operating Plan, updated Operating Forecast, updated Base Case Projections and such other matters relating to the Project as DOE reasonably requests; and

(c) all other items indicated in Section 6.1.2 as being part of the Quarterly Reporting Package, together with a Quarterly Reporting Certificate;

6.1.6. Financial Statements of Sponsor.

Promptly after the same become available, unaudited quarterly and audited annual Financial Statements of the Sponsor prepared in accordance with GAAP and certified by a Financial Officer of the Sponsor pursuant to an Officer's Certificate in the form of Exhibit I-3 as having been prepared in accordance with GAAP on a consistent basis and as fairly presenting in all material respects the financial condition of the Sponsor as of the

date thereof and the results of operations and cash flows of the Sponsor for the periods presented.

6.1.7. Management Letters.

Promptly, but in any event within five (5) Business Days, after the Borrower's receipt thereof, a copy of any management letter or other material communications received by the Borrower from the Borrower's Accountant in relation to its financial, accounting and other systems, management or accounts or the Project (other than communications received in the ordinary course of business).

6.1.8. Reporting Obligations. Promptly, but in any event within five (5) Business Days, after the Borrower obtains Knowledge thereof or information pertaining thereto, notice of:

(a) the occurrence of any event that constitutes an Event of Default or Potential Event of Default, specifying the nature thereof, together with an Officer's Certificate of the Borrower indicating any steps the Borrower has taken or proposes to take to remedy the same;

(b) any Action, pending or threatened in writing (i) against the Borrower or any of its property, (ii) with respect to the Project or any Transaction Document or (iii) against any other Project Participant that, in each case, either singly or in the aggregate, could reasonably be expected to have a Material Adverse Effect and of any material developments with respect to any of the foregoing;

(c) any proceeding or legislation by any Governmental Authority specifically affecting (i) the Project, the Borrower, any of its property or its Equity Interests or (ii) a Project Participant that, in each case, could reasonably be expected to have a Material Adverse Effect, including any developments with respect to any of the foregoing;

(d) any change in the Authorized Officers of the Borrower, including certified specimen signatures of any new Person so appointed and satisfactory evidence of the authority of such Person, or any change in the Borrower's Accountant and the reason therefor;

(e) any actual or proposed termination, rescission, discharge (otherwise than by performance), amendment, supplement, modification, waiver or indulgence or breach in any material respect of any Transaction Document or Required Approval; or any execution of any new material agreement, that is not otherwise approved, consented to or accepted pursuant to the terms of the Transaction Documents;

(f) any material notice or correspondence received or initiated by the Borrower relating to the Project or any Transaction Document or any material notice or correspondence received or initiated by the Borrower relating to any Required Approval, but excluding notices or correspondence received or initiated in the ordinary course of business or otherwise previously delivered pursuant to any Transaction Document;

(g) any Lien (other than a Permitted Lien) being granted or established or becoming enforceable over any of the Borrower's Properties or the Equity Interests in the Borrower, together with a description thereof;

(h) any proposed material change in the nature or scope of the Project or the business or operations of the Borrower, together with a description thereof;

(i) any casualty damage or loss to the Project (i) in excess of Five Million Dollars ($5,000,000) for a single event or in excess of Ten Million Dollars ($10,000,000) annually in the aggregate or (ii) affecting one or more transformers;

(j) any notice of a delinquent payment owed by the Borrower to, or to the Borrower by, (i) any Major Project Participant if such payment is more than thirty (30) days delinquent or (ii) any other party under the Project Documents if such payment is more than ninety (90) days delinquent and in either case, if the amount of any such delinquent payment is in excess of Two Hundred Fifty Thousand Dollars ($250,000), in each case together with a copy of all correspondence received or sent by the Borrower with respect to such delinquent payment;

(k) any material correspondence from any Major Project Participant relating to (i) any material delay in the completion of the Project or (ii) any event that could reasonably be expected to interrupt the operation of the Project for more than thirty (30) Business Days;

(l) any notice of interruption of the ability of PG&E to receive material quantities of deliveries under the HPR II PPA or HPR III PPA or any event that could reasonably be expected to interrupt the ability of PG&E to receive material quantities of deliveries under the HPR II PPA or HPR III PPA for more than ten (10) consecutive Business Days;

(m) any notice from PG&E regarding the payment of an invoice submitted to PG&E by the Borrower other than a notice given by PG&E in the ordinary course of business;

(n) any one or more events, conditions or circumstances (including government action) that exist or have occurred or in the judgment of the Borrower are expected as imminent that could reasonably be expected to have a Material Adverse Effect, together with a description thereof;

(o) any non-compliance of any Reserve Letter of Credit with the criteria established with respect thereto and any event, condition or circumstance that represents or could reasonably be expected to lead to non-compliance by any issuer with the required criteria with respect thereto or the renewal thereof;

(p) the occurrence of any Event of Force Majeure affecting, or that either the Borrower or any other Project Participant claims would affect, the performance by such Person of any obligation under any Transaction Document, together with copies of all

notices, calculations, data and other correspondence between such Project Participant and the Borrower in respect of any such Event of Force Majeure;

(q) any material dispute between (a) the Borrower and any Project Participant or (b) between the Borrower, any Project Participant and any Governmental Authority, in each case relating to the Project;

(r) upon request by DOE, copies of any data relating to the performance of tests under any Project Document;

(s) the occurrence of any event that could reasonably be expected to cause a reduction in the Operating Revenues of the Borrower for any Fiscal Year by more than ten percent (10%) of the amount estimated therefor in the then applicable Operating Forecast;

(t) any proposed cancellation or material change in any Required Insurance maintained by the Borrower or by any other Person for the benefit of the Borrower with respect to the Project and after Borrower obtains knowledge of any occurrence that has or could reasonably be expected to result in any premium increase in excess of ten percent (10%) over the cost then in effect for any insurance contract, or any cancellation or non-renewal of, any policy of Required Insurance or any Required Insurance coverage required to be maintained hereby or by any other Transaction Document, notice (including a summary description) of such event and within thirty (30) days after an Authorized Officer obtains knowledge of such event, a report describing such event and the potential insurance-related impact thereof;

(u) notice and a copy of any periodic reports submitted by the Borrower to PG&E pursuant to the HPR II PPA and HPR III PPA;

(v) notice and a copy of any other material report filed or required to be filed by any Project Participant with any Governmental Authority relating to the Project;

(w) the occurrence of (i) an ERISA Event, (ii) the adoption of any new Pension Plan by the Borrower or any ERISA Affiliate, (iii) the adoption of any amendment to a Pension Plan, if such amendment will result in a material increase in benefits or unfunded benefit liabilities (as defined in Section 4001(a)(18) of ERISA), (iv) the commencement of contributions by the Borrower or any ERISA Affiliate to any Pension Plan that is subject to Title IV of ERISA or Section 412 of the Internal Revenue Code or (v) the receipt by the Borrower or any ERISA Affiliate of a notice from a Multiemployer Plan sponsor concerning an ERISA Event; and

(x) the Borrower's or Sponsor's receipt of a written demand for Recapture Damages.

6.1.9. Cash Grant Determination. As soon as possible, but in any event within five (5) Business Days, after either of the Sponsor or the Borrower obtains Knowledge regarding any change in facts or in Applicable Law which might reasonably be expected

to adversely affect in any manner or way the eligibility of the Project to qualify for Cash Grants in the amounts, and by the dates, set forth in Exhibit T.

6.1.10. Governmental and Environmental Indemnity Claims and Reports. As soon as available, but in any event:

(a) within seven (7) Business Days after any such report is submitted, a copy of any report required to be filed by the Borrower (or on behalf of the Borrower) with any Governmental Authority other than in the ordinary course of business;

(b) within one (1) Business Day after the Borrower obtains Knowledge of any accident related to the Project having a material and adverse impact on the environment or on human health (including any accident resulting in the loss of life), notice thereof, and within twenty (20) Business Days thereafter a report describing such accident, the impact of such accident and the remedial efforts required and (as and when taken) implemented with respect thereto;

(c) within twenty (20) Business Days after the close of each Fiscal Year, a report, satisfactory to DOE in its reasonable discretion, summarizing any actual or alleged violations of and the status of compliance with Environmental Laws in connection with the Project over the preceding year, with sufficient information (as determined by DOE) to allow DOE to monitor the Project's performance with respect to the environment and its compliance with Environmental Laws, and including a narrative summary of the results of environmental monitoring or sampling activity, including, but not limited to, (A) copies of the annual compliance certification required under Title V of the Clean Air Act; (B) Discharge Monitoring Reports for the preceding calendar year submitted in accordance with the Clean Water Act; (C) a summary of any spills or releases required to be reported during the previous calendar year under applicable Environmental Laws; (D) any summaries relating to compliance with the federal Endangered Species Act and (E) a summary of any violations of Environmental Laws during the previous calendar year, together with a description of any remedial or corrective action taken with respect thereto;

(d) within two (2) Business Days after the Borrower obtains Knowledge thereof, any pending or asserted Environmental Claim by any Governmental Authority or any other Person or Persons, and any threatened Environmental Claim that could materially impact the Project, together with a copy of any correspondence relating thereto and a description of any steps the Borrower is taking and proposes to take with respect thereto;

(e) unless otherwise required more quickly under Environmental Law, within two (2) Business Days after delivery thereof, any report, plan or other written communication required to be delivered to any Governmental Authority pursuant to: (i) the Biological Opinion; (ii) the SHPO Clearance Letter; and (iii) the Final Environmental Assessment, and any amendments, supplements or other modifications of any of the foregoing; and

(f) immediately, any proposed changes to the Project that would alter the implementation of the "Proposed Action" as described in the Final Environmental Assessment.

6.1.11. Annual Safety Audit. Within twenty (20) Business Days after its completion, a copy of the report regarding the required annual safety audit pursuant to Section 6.17;

6.1.12. Additional Project Documents and Governmental Approvals. As soon as available, but in no event later than ten (10) Business Days after the receipt thereof by the Borrower, copies of any Additional Project Documents obtained or entered into by the Borrower after the Guarantee Agreement Date;

6.1.13. Additional Audit Reports. As soon as available, but in any event within ten (10) Business Days after the receipt thereof by the Borrower, copies of all other material annual or interim reports submitted to the Borrower by the Borrower's Accountant;

6.1.14. Other Reports and Filings. Promptly upon transmission thereof, copies of all financial information, statutory audits, proxy materials and other information and reports, if any, that the Borrower has delivered to the Securities and Exchange Commission or any successor regulatory authority;

6.1.15. Insurance Certificate. On or before the tenth Business Day after renewal of the insurance policies in respect of the Required Insurance, an annual certificate with respect to Required Insurance (in form and substance reasonably satisfactory to DOE) conforming to the insurance requirements of Schedule 6.3(b);

6.1.16. Other Information. Reasonably promptly upon request, such other information or documents as DOE reasonably requests; and

6.1.17. Information Made Available.

(a) In accordance with Section 609.10(d)(19) of the Applicable Regulations, (i) the information that will be made available to DOE is as set forth in the Financing Documents and (ii) any information will be made publicly available to the extent required by applicable federal law; and

(b) without limiting the generality of clause (a) above, all correspondence, books, documents, papers and records relating to the structuring, negotiation and execution of this Loan Guarantee Agreement and the transactions contemplated herein, including this Loan Guarantee Agreement, the Financing Documents, the pre-application, the Application, the term sheet and all supporting documentation, Financial Statements, audit reports of independent accounting firms, permits and regulatory approvals furnished or otherwise made available to DOE, will be handled in accordance with all applicable federal laws, rules, or regulations, including the Trade Secrets Act, 18 U.S.C.

Section 1905, and the Freedom of Information Act, 5 U.S.C. Section 552, and DOE's implementing regulations at 10 C.F.R. 1004.

SECTION 6.2. Books, Records and Inspections; Accounting and Auditing Matters.

(a) The Borrower shall (i) keep proper records and books of account in which full, true and correct entries in accordance with GAAP and all Applicable Laws are made in respect of all dealing and transactions relating to the business and activities of the Borrower, and (ii) maintain adequate management information and cost control systems and make arrangements reasonably satisfactory to DOE (A) for overseeing the financial operations of the Borrower, including its cash management, accounting and financial reporting, (B) for overseeing the Borrower's relationship with DOE and the Borrower's Accountant and (C) for facilitating the effective and accurate audit and performance evaluation of the Project pursuant to the Applicable Regulations and Program Requirements;

(b) Each set of Financial Statements the Borrower delivers shall be prepared in accordance with GAAP consistently applied except to the extent that there have been any changes to such accounting principles or the application thereof noted in such Financial Statements and all financial records of the Borrower shall be maintained at the principal executive office of the Borrower;

(c) The Borrower shall (i) consult and cooperate with DOE regarding the Project upon DOE's request, (ii) upon reasonable notice (to be given not more than once in any calendar quarter unless an Event of Default or potential Event of Default has occurred and is continuing, in which case such frequency limitation shall not apply), permit officers and designated representatives of DOE, its agents, the Comptroller General and the Independent Consultants to visit and inspect the Project and any other facilities and Properties of the Borrower (provided that at all times during such visit and inspection, each such visiting Person will comply with all site safety rules disclosed by the Borrower or its representative), (iii) upon reasonable notice, provide to officers and designated representatives of DOE, its agents, the Comptroller General and the Independent Consultants access to any pertinent books, documents, papers and records of the Borrower for the purpose of audit, examination, inspection and monitoring upon reasonable notice and at reasonable times during normal business hours, to examine and discuss the affairs, finances and accounts of the Borrower with the representatives of the Borrower, (iv) afford proper facilities for such inspection, shall make copies (at the Borrower's expense) of any records that are subject to such inspection, shall make available all information related to the Project, including all patents, technology and proprietary rights owned or controlled by the Borrower and utilized in the construction, startup or operation of the Project, as may be reasonably necessary in order to determine the technical progress, soundness of financial condition, management stability, compliance with environmental requirements, adequacy of health and safety conditions and all other matters with respect to the Project and (v) exercise commercially reasonable efforts to cause each Major Project Participant to make available to DOE, its agents, the Comptroller General and the Independent Consultants the same rights of inspection and access to its books and records that such Major Project Participant makes available to the Borrower;

(d) The Borrower shall upon the request of DOE, with reasonable advance notice, make the Borrower's Accountant available to communicate with DOE, the Comptroller General and the Independent Consultants and their representatives at any reasonable time regarding any of the Borrower's accounts and operations;

(e) In the event that the Borrower's Accountant should cease to be the accountant of the Borrower for any reason, the Borrower shall appoint and maintain as the Borrower's Accountant another firm of independent public accountants, which firm shall be nationally recognized; and

(f) The Borrower shall retain all records relating to expenditures with respect to which Advances were made for five (5) years after the Advance was made with respect to such expenditure.

SECTION 6.3. Maintenance of Existence, Property and Insurance.

(a) The Borrower shall preserve and maintain (i) its legal existence and (ii) all of its licenses, rights, privileges and franchises material to the conduct of its business and the Project.

(b) The Borrower shall keep its present and future Properties insured as required by and in accordance with the terms and provisions described on Schedule 6.3(b). The Borrower shall obtain and maintain and shall pursue any contractual remedies to cause other Persons required to provide Required Insurance, including any Construction Contractor and the Operator, to obtain and maintain such Required Insurance or alternate coverage provided for on Schedule 6.3(b) or in their respective Project Documents, as the case may be.

(c) In the event that the Borrower fails to procure or maintain (or cause to be procured and maintained) the Required Insurance, DOE may (but shall not be obligated to) take out the Required Insurance and pay the premiums in connection therewith. All amounts so advanced for such purpose by DOE shall become an additional Secured Obligation owed by the Borrower to DOE and, within ten (10) days of demand by DOE, the Borrower shall pay any such amounts to DOE, together with interest on such amounts at the Late Charge Rate from the date reimbursement is due.

SECTION 6.4. Compliance with Applicable Laws; Environmental Laws; Governmental Approvals.

(a) The Borrower shall, with respect to the design, construction, operation and maintenance of the Project, pursue all contractual remedies available to it in a commercially reasonable manner to cause each Project Participant to (i) comply with and conduct its Property, business and operations in compliance with all Applicable Laws, including all Environmental Laws, in all material respects and (ii) procure, maintain and comply in all material respects with all Required Approvals.

(b) Notwithstanding the foregoing, the Borrower shall fully comply in all respects with (i) the Biological Opinion; (ii) the SHPO Clearance Letter; and (iii) the Proposed Design Features and Proposed Action as described in the Final Environmental Assessment, and any

amendments, supplements or other modifications to any of the foregoing including preparing and submitting all reports and other information and taking all actions required by such documents.

SECTION 6.5. Taxes, Duties, Expenses and Liabilities.

(a) The Borrower shall pay or arrange for the payment before they become overdue of all present and future (i) Taxes (including stamp taxes), duties, fees, Periodic Expenses, or other charges payable on or in connection with the execution, issue, delivery, registration, or notarization, or for the legality, validity, or enforceability, of this Loan Guarantee Agreement, any other Transaction Documents and any other documents related to this Loan Guarantee Agreement (other than those Taxes that it is contesting in good faith and by appropriate proceedings for which reserves have been established to the extent required by GAAP); provided that the Borrower shall promptly pay any valid, final judgment rendered upon the conclusion of any relevant Action enforcing any Tax and cause it to be satisfied of record and (ii) claims, levies, or liabilities (including claims for labor, services, materials and supplies), for sums that have become due and payable and that have or, if unpaid, might become a Lien (other than a Permitted Lien) upon the Property of the Borrower (or any part thereof).

(b) The Borrower shall duly and punctually pay and discharge its Obligations in respect of any Indebtedness permitted under Section 7.1 when due, subject to the terms and conditions of this Loan Guarantee Agreement and the other Financing Documents.

(c) From and after the creation of the Borrower, the Borrower has not been, is not and shall not be, a member of an affiliated or consolidated group for federal or state tax purposes (except as otherwise required by a Change of Law).

SECTION 6.6. Proper Legal Form.

The Borrower shall take all action to ensure that each of the Transaction Documents is in proper legal form under the respective governing laws selected in such Transaction Document, without any further action required with respect to such legal form for the enforcement of such Transaction Documents.

SECTION 6.7. Construction and Approved Construction Changes.

The Borrower shall apply the proceeds of the Advances exclusively to Eligible Project Costs (including reimbursement of Equity Contributions that fund Eligible Project Costs prior to the time such Equity Contributions are required) and shall use its commercially reasonable efforts to cause (i) Operational Completion to be achieved on or prior to the Anticipated Operational Completion Date and (ii) Project Completion to be achieved on or prior to the Guaranteed Project Completion Date, in each case within the Construction Budget.

The Borrower shall cause all Approved Construction Changes to be reflected in a revised Project Milestone Schedule or Construction Budget, as the case may be, and delivered to DOE as contemplated by Section 6.1.5.

SECTION 6.8. Diligent Construction of Project.

The Borrower shall construct and complete, or cause to be constructed and completed, the Project Facility diligently in accordance with the Project Plans, the Construction Contracts and the other Transaction Documents, Required Approvals, the Project Milestone Schedule and the Construction Budget.

SECTION 6.9. Acceptance and Startup Testing.

The Borrower shall (a) consult with and provide, or cause to be provided, reasonable notice to the Loan Servicer and Independent Engineer regarding provisions related to startup and testing of facility and equipment pursuant to the Construction Contracts and the O&M Agreement; (b) provide the Independent Engineer with the opportunity to observe the startup and testing of the Project Facility and (c) at the request of DOE, provide DOE and the Independent Engineer with any data or reports received by the Borrower in connection with any of the startup testing of the Project Facility.

SECTION 6.10. Operating Plan; Operations.

(a) From and after the Operational Completion Date, the Borrower shall or shall cause the Project to operate in all material respects pursuant to the Operating Plan then in effect. The Borrower shall conduct, and shall cause the Operator to conduct, the operations of the Project on the basis of customary commercial practice and arm's-length arrangements, or as otherwise set forth in the Project Documents, with due diligence and efficiency and under the supervision of qualified and experienced management.

(b) The Borrower shall (i) keep (or cause to be kept) all its Properties in good working order and condition to the extent necessary to ensure that its business can be conducted properly at all times, (ii) operate, maintain and repair the Project or cause the Project to be operated, maintained and repaired materially in accordance with the standards set forth in the O&M Agreement, manufacturer's recommendations and Required Approvals, (iii) possess all equipment necessary for the operation of the Project and maintain such spare parts and inventory or renew and replace such equipment, in each case as consistent with the Transaction Documents and the "reasonable and prudent operator" standard and (iv) maintain or cause to be maintained at the Project Site a complete set of plans and specifications for the Project.

(c) The Borrower shall maintain or cause to be maintained at the Project Site a complete set of plans and specifications for the Project.

SECTION 6.11. Operating Budget.

6.11.1. Submission and Approval of Operating Budget.

(a) For each Fiscal Year during the Operating Budget Period, as soon as it is available, but in any event at least forty-five (45) days prior to the commencement of the Operating Budget Period (and prior to the commencement of each Fiscal Year during the Operating Budget Period), the Borrower shall submit to DOE and the Independent Engineer for approval by DOE the Operating Budget for such Fiscal Year prepared by the Borrower. Each Operating Budget shall be consistent with the Base Case Projections and be accompanied by certification of an Authorized Officer of the Borrower that, to the best of such Authorized

Officer's Knowledge, the Operating Budget is a reasonable estimate for the period covered thereby and is in compliance with the requirements of this Section 6.11.

(b) DOE will make commercially reasonable efforts to promptly review each proposed Operating Budget and, no later than ten (10) Business Days prior to the time the Operating Budget is scheduled to become effective, reasonably approve or disapprove each line item in the proposed Operating Budget.

(c) A proposed Operating Budget shall become effective on the later of (i) the first day of the relevant Fiscal Year (or, for any Fiscal Year in which the Phase Operation Date for Phase 1 occurs, such date) and (ii) the date DOE or the Loan Servicer advises the Borrower that DOE has approved such Operating Budget. If DOE does not approve an Operating Budget, DOE shall advise the Borrower of the items that are disapproved and the reason for such disapproval.

(d) If all or any part of an Operating Budget is disapproved, the Borrower shall comply with all approved aspects of such Operating Budget. With respect to those aspects of any Operating Budget that are not approved, the Borrower and DOE shall continue to discuss such aspects in good faith and the Operating Budget for the preceding Fiscal Year related to such disapproved items, adjusted for inflation as specified in the last sentence of this Section 6.11.1(d) (or, in the case of any Operating Budget intended to be effective prior to the Project Completion Date, the amounts contemplated by Exhibit D-3 of the O&M Agreement), shall be applicable and for all purposes hereof be deemed to be part of the approved Operating Budget for the current Fiscal Year until such time as such aspects of the Operating Budget for the current Fiscal Year have been approved in writing by DOE. The inflation adjustment for any disapproved items shall be equal to the lesser of (i) the annual inflation adjustment assumed with respect to each such disapproved item in the Base Case Projections as of the Guarantee Agreement Date and (ii) the Borrower's good faith estimate of the inflation increase (or decrease) with respect to each such disapproved item since the date of the Operating Budget for the preceding Fiscal Year.

(e) Each Operating Budget shall (i) be prepared in good faith on the basis of all facts and circumstances then existing and known to the Borrower and written assumptions stated therein which the Borrower believes to be reasonable as to all factual and legal matters material to such estimates, and reflect the Borrower's best estimate of the future results of the Borrower and the Project and (ii) except in the case of the Initial Operating Budget, be based on the same format and maintained substantially on the same basis as, and provide sufficient detail to permit a meaningful comparison to, previous years. Each Operating Budget shall include (A) fair and good faith reasonable estimates of Operating Revenues, Operating Costs (both fixed and variable) on an individual line item basis for the Project and projected Debt Service and pro forma cash flow projections for each period covered by such Operating Budget, (B) a summary of the Project's major maintenance schedule to the end of the then current long term major maintenance cycle (and related scheduled outages), (C) the Borrower's fair and good faith reasonable estimates of any Capital Expenditures (but excluding Project Costs) for the succeeding five (5) years and the envisioned effect of any contemplated major maintenance activities on the Project's operations and (D) such other information as may be reasonably requested by DOE.

6.11.2. Amendments to Operating Budget.

If at any time during any Fiscal Year (a) total Operating Costs to be paid during the balance of such Fiscal Year, exceed or are reasonably expected to exceed the allowance provisions of Section 7.16, then the Borrower shall deliver a proposed amendment to the then current Operating Budget to DOE and the Independent Engineer and such proposed amendment shall become effective on the date it is approved by DOE. At the time the Borrower submits such proposed amendment, the Borrower shall certify the purpose of such amendment and that such amendment is reasonably necessary or advisable for the operation and maintenance of the Project. The Borrower shall comply with the approved Operating Budget (subject to the allowance provisions of Section 7.16) until the proposed amendment is approved by DOE. For the avoidance of doubt, nothing in this Section 6.11.2 shall be interpreted to disallow the application of Loss Proceeds on terms and conditions set forth in Section 6.22, incurrence of capital expenditures on terms and conditions set forth in Section 7.5, incurrence of Major Maintenance Costs (as that term is defined in the Accounts Agreement) on terms and conditions set forth in the Accounts Agreement, the application of Performance Liquidated Damages on the terms and conditions set forth in Section 3.4.3(a), the application of proceeds from a Permitted Disposition on the terms and conditions set forth in Section 3.4.3(d), the application of Major Project Document Breach Damages or Major Project Document Termination Damages or the application of funds to settle disputes in accordance with the terms and conditions set forth in Section 7.19.

SECTION 6.12. Performance of Obligations.

(a) The Borrower shall maintain in full force and effect each of the FFB Documents and each of the other Financing Documents to which it is a party in accordance with the respective terms thereof.

(b) The Borrower shall (i) perform and observe all of its covenants and obligations contained in any Transaction Document or Required Approval in all material respects, (ii) take all reasonable and necessary action to prevent the termination, suspension or cancellation of any Transaction Document or Required Approval (except for the expiration of any Transaction Document or Required Approval in accordance with its terms and not as a result of a breach or default thereunder by the Borrower) and (iii) enforce against the relevant Project Participant each material covenant or obligation under each Project Document to which such Person is a party in accordance with its terms.

SECTION 6.13. Replacement of Certain Project Participants.

The Borrower shall, (after consulting with DOE and to the extent the Borrower deems such action prudent and commercially reasonable) exercise its rights (if any, which may include termination) against (a) the Operator in accordance with and as permitted by the O&M Agreement if the Operator is not operating the Project in accordance with the O&M Agreement and each other Transaction Document to which it is a party, (b) the EPC Contractor in accordance with and as permitted by the EPC Contract, if the EPC Contractor is not in compliance with the EPC Contract or other Transaction Documents to which it is a party or (c) any Person party to a Project Document in accordance with and as permitted by such Project Document if such Person is not in compliance with such Project Document. Prior to, or

promptly after, any termination, the Borrower shall enter into a replacement agreement with a new operator, EPC contractor or other Person, as the case may be, on terms and conditions and with a counterparty reasonably acceptable to DOE.

SECTION 6.14. Accounts; Cash Deposits.

The Borrower shall maintain, or cause to be maintained, in full force and effect each of the Project Accounts in accordance with the terms of the Accounts Agreement. The Borrower shall instruct each Person remitting cash to or for the account of the Borrower to deposit such cash in accordance with the terms of the Accounts Agreement and shall otherwise comply with the provisions thereof. The Borrower shall remit any amounts received by it or received by third parties on its behalf to the Collateral Agent for deposit in accordance with the terms of the Accounts Agreement.

SECTION 6.15. Debt Service Reserve.

The Borrower shall establish and maintain in accordance with the provisions of the Accounts Agreement a reserve for Debt Service (the "Debt Service Reserve"). The Debt Service Reserve shall consist of any combination of cash and Reserve Letters of Credit. Beginning not later than the earlier of (i) the Operational Completion Date and (ii) the date that is six (6) months prior to the First Payment Date, the amount on deposit in or credited to the Debt Service Reserve shall at all times be no less than the Debt Service Reserve Requirement.

SECTION 6.16. Debt to Equity Ratio.

The Borrower shall maintain, during the Availability Period, a Debt to Equity Ratio no greater than the Maximum Debt to Equity Ratio.

SECTION 6.17. Safety Audit.

Not less frequently than annually, the Borrower shall cause the Operator to conduct, a safety audit of the Project in a manner reasonably satisfactory to DOE, including an analysis of whether the Project is in compliance with all Applicable Laws and Environmental Laws in all material respects and each such safety audit shall result in the prompt preparation of a written report with respect thereto that shall be delivered to DOE and the Independent Engineer for review and approval by DOE. The Borrower shall provide for the prompt correction of any deficiencies identified in such safety audit and for the operation and maintenance of the Project in accordance with any recommendations set forth therein.

SECTION 6.18. Independent Consultants.

The Borrower (a) shall cooperate in all respects with each Independent Consultant and (b) shall ensure that each Independent Consultant is provided with all information reasonably requested by such Independent Consultant in fulfilling its duties to DOE and ensure that any information that it may supply to such Independent Consultant is accurate and not, by omission of information or otherwise, misleading in any material respect at the time such information is provided.

SECTION 6.19. Title; Rights to Land.

The Borrower shall preserve and maintain good and valid title to such Real Property interests as are necessary and sufficient to construct, operate and maintain the Project on the Project Site in accordance with the requirements of the Transaction Documents. The Borrower shall obtain and deliver to DOE a subordination agreement in the form of Exhibit P or such other form as may be reasonably acceptable to DOE from each Subcontractor with whom Borrower enters into a contract after the date of this Loan Guarantee Agreement that provides for aggregate payments to the contractor or supplier equal to or in excess of $25,000,000.

SECTION 6.20. Creation and Perfection of Security Interests; Additional Documents; Filings and Recordings.

(a) The Borrower shall promptly execute and deliver, from time to time as reasonably requested by the Loan Servicer, DOE or the Collateral Agent at the Borrower's expense, such other documents as shall be necessary or advisable or that the Loan Servicer, DOE and the Collateral Agent may reasonably request in connection with the rights and remedies of DOE and the Collateral Agent granted or provided for by the Transaction Documents and to consummate the transactions contemplated therein.

(b) The Borrower shall, at its own expense, promptly take all actions that have been or shall be requested by the Loan Servicer, DOE, the Collateral Agent or that the Borrower knows are necessary to establish, maintain, protect, perfect and continue the perfection of the first priority (subject to Permitted Liens) security interests of the Secured Parties created by the Security Documents and shall furnish timely notice of the necessity of any such action, together with such instruments, in execution form, and such other information as may be required or reasonably requested to enable any appropriate Secured Party to effect any such action. Without limiting the generality of the foregoing, the Borrower shall, at its own expense, (i) execute or cause to be executed and shall file or cause to be filed or register or cause to be registered such financing statements, continuation statements, fixture filings and mortgages or deeds of trust in all places necessary or advisable (in the opinion of counsel for the Loan Servicer, DOE or the Collateral Agent) to establish, maintain and perfect such security interests and in all other places that the Loan Servicer, DOE or the Collateral Agent shall reasonably request, (ii) discharge all other Liens (other than Permitted Liens) or other claims adversely affecting the rights of the Secured Parties in the Collateral; and (iii) deliver or publish all notices to third parties that may be required to establish or maintain the validity, perfection or priority of any Lien created pursuant to the Security Documents.

(c) The Borrower shall promptly do everything necessary or advisable in the judgment of the Loan Servicer, DOE or the Collateral Agent (including filing, registering and recording all necessary documents and paying all fees, taxes, levies, imposts and Periodic Expenses in connection therewith) to (i) create security arrangements, including, as applicable, the establishment of a pledge or the perfection of any Lien or, as applicable, the enforceability of a Lien as against the Borrower and any subsequent lienor (including a judgment lienor), holder of a charge, or transferee for or not for value, in bulk, by operation of law, or otherwise, in each case granted, with respect to future assets in accordance with the requirements of all Applicable

Laws, or the law of any other jurisdiction, as applicable, (ii) maintain the security and pledges created by the Security Documents in full force and effect at all times (including, as applicable, the priority thereof); and (iii) preserve and protect the Collateral and protect and enforce its rights and title, and the rights and title of the Secured Parties, to the security created by the Security Documents. Furthermore, the Borrower shall cause to be delivered to the Loan Servicer such opinions of counsel and other related documents as may be reasonably requested by the Loan Servicer, DOE or the Collateral Agent to assure compliance with this Section 6.20(c).

(d) If the Borrower shall at any time acquire any interest in Property that is Collateral but is not covered by the Security Documents or enter into any Additional Project Document, the Borrower shall promptly (i) as applicable: (A) execute, deliver and record an amendment or supplement to the Security Documents, satisfactory in form and substance to DOE, or (B) enter into a Direct Agreement with the Collateral Agent, in each case, as necessary in order to grant the Collateral Agent a first priority lien or security interest (as applicable) in such Property, subject only to Permitted Liens, and otherwise in form and substance satisfactory to the Loan Servicer and the Collateral Agent and (ii) ensure that such lien or security interest shall be valid and effective.

SECTION 6.21. Event of Loss.

If any material Event of Loss shall occur with respect to the Project or any part thereof, the Borrower shall (i) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such event, (ii) not, without the written consent of DOE compromise or settle any claim with respect to any Event of Loss involving an amount in excess of Ten Million Dollars ($10,000,000) per claim and (iii) pay or apply all Loss Proceeds received by the Borrower and stemming from such event in accordance with Section 3.4.3(b) and Section 6.22.

SECTION 6.22. Application of Loss Proceeds.

(a) All Loss Proceeds received by the Borrower shall be applied as provided in this Section 6.22. To the extent the Borrower is entitled to receive Loss Proceeds, Loss Proceeds shall be paid by the relevant insurers, reinsurers and Governmental Authorities, as applicable, directly to the Collateral Agent as loss payee and, if paid to the Borrower, such Loss Proceeds shall be received in trust and for the benefit of the Collateral Agent segregated from other funds of the Borrower, and shall be forthwith paid over to the Collateral Agent in the same form as received (with any necessary endorsement). Any Loss Proceeds received by either of the Collateral Agent or the Borrower shall promptly be deposited into, or credited to the Loss Proceeds Account.

(b) Upon the occurrence of any Event of Loss, the Loss Proceeds from which are not reasonably expected to exceed Ten Million Dollars ($10,000,000) (such Event of Loss, a "Minimum Threshold Event of Loss"), the Borrower shall apply or cause to be applied such Loss Proceeds to the payment of the costs of repair or restoration of the portion of the Project lost or damaged, and the Parties shall deliver written instruction to the Collateral Agent to disburse such Loss Proceeds in accordance with this Section 6.22.

(c) Upon the occurrence of any event other than Minimum Threshold Event of Loss, disbursement of funds by the Collateral Agent to the Borrower shall be permitted if, and only if, DOE after consultation with the Independent Engineer determines that:

(i) repair or replacement of the relevant portion of the Project is technically and economically feasible; and

(ii) the Borrower is in compliance with such other conditions and requirements as DOE shall, acting reasonably, consider appropriate in the circumstances.

(d) Borrower's Notice. In respect of any Event of Loss that is not a Minimum Threshold Event of Loss as to which DOE has consented to the repair and restoration in accordance with clause (b), the Borrower shall, on the first Business Day of each month until such restoration and repair has been completed and the contractors performing such restoration or repair work have been paid in full, deliver to the Collateral Agent and DOE the following:

(i) a detailed summary of the work performed in connection with any such restoration or repair during the preceding month and the itemized expenses that are then due and payable, together with copies of all invoices, conditional (upon payment only) lien waivers from the contractors performing such restoration or repair work and other information and documents reasonably requested by DOE with respect to such restoration or repair work; and

(ii) proposed Transfer/Withdrawal Instructions directing the Collateral Agent to disburse to the contractors performing such restoration or repair work amounts constituting Loss Proceeds on deposit in the Loss Proceeds Account in the respective amounts then due and payable to such contractors.

(e) Upon the completion of any such restoration and repair work, or if restoration and repair work is not undertaken pursuant to this Section 6.22, the Loan Servicer shall deliver written instructions to the Collateral Agent, instructing the Collateral Agent to apply any amounts constituting Loss Proceeds on deposit in the Loss Proceeds Account to the prepayment of the Guaranteed Loans on the second Business Day following receipt of such instructions, in accordance with Section 3.4.3(b).

SECTION 6.23. Technology.

(a) The Borrower shall not take any action that would prevent it from exercising any Intellectual Property Rights granted to the Borrower under the EPC Contract, or that would otherwise materially conflict with or adversely affect such Intellectual Property Rights granted to the Borrower.

(b) The Borrower shall take all commercially reasonable actions necessary to maintain and protect the Borrower's rights and interests in the Technology and Intellectual Property Rights necessary to construct, operate, use and maintain the Project, including (i) protecting the secrecy and confidentiality of all confidential information and trade secrets having material value to the Project by having and enforcing a policy requiring all employees, consultants, licensees, vendors and contractors to execute appropriate confidentiality and, where

applicable, invention assignment agreements and (ii) taking all commercially reasonable actions necessary to protect the Technology that is a trade secret having a material value to the Project from falling into the public domain as a result of any action by the Borrower.

(c) If the Borrower becomes aware of any matieral breach or violation of any of the terms or conditions of its intellectual property rights in connection with the Project, the Borrower shall take commercially reasonable actions necessary to protect such rights granted to the Borrower, including, if appropriate in Borrower's reasonable determination, and provided the Borrower has standing, suing for an injunction against such violation or breach.

SECTION 6.24. Compliance with Certain U.S. Government Requirements.

(a) Recovery Act. The Borrower shall timely comply with the reporting requirements set out in Section 1512(c) of Title XV of Division A of the Recovery Act. Such reporting shall be made in accordance with the procedures set out or otherwise referenced in 2 C.F.R. Section 176.50 and the OMB Implementing Guidance and, in each case, any amendment, supplement or successor thereto. DOE may require in its notice that such reporting relate back to the date hereof. Accordingly, Borrower shall at all times maintain such records as may be necessary, in the event DOE issues such notice, to undertake such reporting obligations.

(b) Lobbying Requirements. The Borrower shall comply with all requirements of 31 U.S.C. §1352, including (i) if any funds have been paid or will be paid to any Person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress (as defined for purposes of 31 U.S.C. §1352), an officer or employee of Congress, or an employee of a Member of Congress in connection with the Guaranteed Loans, the Borrower shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions and (ii) no proceeds of the Advances will be expended to pay any Person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress.

(c) Environmental. The Borrower shall comply with Environmental Laws in all material respects. Notwithstanding the generality of the foregoing, the Borrower shall fully comply in all respects with (i) the Biological Opinion ; (ii) the SHPO Clearance Letter; and (iii) the Project Design Features and Proposed Action as described in the Final Environmental Assessment and any amendments, supplements or other modifications of any of the foregoing.

(d) Use of U.S. Government Funds. The Borrower shall comply with Section 609.10(c) of the Applicable Regulations regarding the prohibition on the use of funds obtained from the U.S. Government, or from a loan or other instrument guaranteed by the U.S. Government, for the payment of Credit Subsidy Costs, administrative fees, or other fees charged by or paid to DOE relating to the Applicable Regulations, except to the extent explicitly authorized by an act of Congress.

(e) Program Requirements. The Borrower shall timely comply with all other Program Requirements and shall reasonably cooperate with DOE to achieve compliance with

any U.S. Department of Energy and FFB legal and financial requirements, policies, and procedures, and changes thereto, applicable to the Title XVII program that are not otherwise Program Requirements.

(f) Prohibited Persons.

(i) The Borrower shall provide immediate written notice (including a brief description) to DOE if, at any time, it learns that the representations made with respect to Prohibited Persons (including the debarment regulations) were erroneous when made or have become erroneous by reason of changed circumstances.

(ii) If any Major Project Participant or any Person that Controls a Major Project Participant becomes (whether through a transfer or otherwise) a Prohibited Person, the Borrower shall, within thirty (30) days of Knowing that such Person has become a Prohibited Person, engage and continue to engage in constructive discussions with DOE regarding the removal or replacement of such Person or, if such removal or replacement is not reasonably feasible, the implementation of other migration measures.

(g) Patriot Act. The Borrower shall establish and maintain an anti-money laundering compliance program if and as required by the Patriot Act.

(h) Davis-Bacon Act.

(i) In accordance with Section 1702(k) of Title XVII, beginning on the Guarantee Agreement Date, all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part by the Guaranteed Loan shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, including but not limited to those wages set forth in Schedule 6.24(h). The contract clauses set forth in Exhibit N shall be incorporated into all Davis-Bacon Act Covered Contracts.

(ii) The Borrower shall, on DOE's behalf and in accordance with subparagraph (b)(3)(i) of Exhibit N, maintain the payrolls described in such subparagraph (hereinafter "certified payrolls") that shall be provided weekly by each DBA Contract Party and shall systematically review such certified payrolls for compliance with the Davis-Bacon Act. The Borrower shall promptly notify DOE in writing if it receives any complaint related to non-compliance with the Davis-Bacon Act, or discovers an incident that the Borrower reasonably believes to be a case of such non-compliance. In such instances, the Borrower shall forward to DOE (1) the complaint or a written summary of the non-compliant incident, (2) a summary of the Borrower's investigation into such complaint or such incident, (3) a summary of the Borrower's resolution (or proposed resolution) of the compliant or incident, (4) the relevant certified payrolls and (5) any other information requested by DOE regarding the complaint or incident. Certified payrolls shall be maintained by the Borrower for three (3) years after the date of completion of the Davis-Bacon Act Covered Contract. Copies of certified payrolls and basic payroll records shall be maintained by each DBA Contract Party for three (3) years

after the date of completion of the Davis-Bacon Act Covered Contract. Pursuant to the third sentence of subparagraph (b)(3)(ii)(A) of Exhibit N, DOE directs that the Borrower shall, in lieu of satisfying the requirement set forth therein (i) maintain such certified payrolls at a site designated by the Borrower and shall make such payrolls available to DOE and the U.S. Department of Labor when necessary, and upon request, for purposes of an investigation or audit of compliance with prevailing wage requirements, and (ii) periodically report payroll information to DOE in such electronic or

other form as DOE may require. Certified payrolls maintained by the Borrower shall be considered federal government records for the purposes of the Freedom of Information Act, 42 U.S.C. § 552.

(iii) If the Borrower, the Sponsor or any Affiliate of the Borrower or the Sponsor intends to enter into: (i) enter into a Davis-Bacon Act Covered Contract after the Financial Closing Date; (ii) materially change the scope of work of any Davis-Bacon Act Covered Contract; or (iii) exercise any option to extend the term of a Davis-Bacon Act Covered Contract to perform work for a period of time for which it was not obligated under the terms of the original contract (subsections (i), (ii) and (ii) collectively, "Davis- Bacon Actions"), the Borrower shall provide DOE: (A) a statement of the work for any DBA Contract Party that will perform construction, alteration, or repair of a building or work financed in whole or in part by the Guaranteed Loan; (B) notice of intent to exercise any option described in subsection (iii) above; and (C) any other information requested by DOE relating to such Davis-Bacon Action. This information shall be provided no less than ten Business Days prior to the occurrence of such Davis-Bacon Action. Promptly after execution of any Davis-Bacon Act Covered Contract, or other document evidencing a Davis-Bacon Action, a copy of such document shall be provided to DOE.

(i) ERISA Covenants.

(i) The Borrower shall do, and shall cause each of its ERISA Affiliates to do, each of the following: (A) maintain each Pension Plan in compliance in all material respects with the applicable provisions of ERISA, the Internal Revenue Code or other federal or state law, (B) cause each Qualified Plan to maintain its qualified status under Section 401(a) of the Internal Revenue Code, (C) timely make all required contributions to any Pension Plan, (D) in the case of the Borrower, not become a party to any Multiemployer Plan and, in the case of any ERISA Affiliate, not become party to any Multiemployer Plan except as would not reasonably be expected to have a Material adverse Effect, (E) ensure that all liabilities under each Pension Plan are either (i) funded to at least the minimum level required by law or, if higher, to the level required by the terms governing such Pension Plan or (ii) provided for or recognized in the Financial Statements most recently delivered to the Loan Servicer under Section 6.1 and (F) ensure that the contributions or premium payments to or in respect of each Pension Plan is and continues to be promptly paid at no less than the rates required under the rules of such Pension Plan and in accordance with the most recent actuarial advice received in relation to such Pension Plan and Applicable Law.

(ii) The Borrower shall not, nor shall it permit any of ERISA Affiliate to, (A) terminate any Pension Plan so as to result in any material (in the opinion of DOE) liability to the Borrower or any ERISA Affiliate, (B) permit to exist any ERISA Event, or

any other event or condition, that presents the risk of a material (in the opinion of DOE) liability to any ERISA Affiliate, (C) make a complete or partial withdrawal (within the meaning of Section 4201 of ERISA) from any Multiemployer Plan so as to result in any material (in the opinion of DOE) liability to the Borrower or any ERISA Affiliate, (D) enter into any new Plan or modify any existing Plan so as to increase its obligations thereunder that could result in any material (in the opinion of DOE) liability to the Borrower or any ERISA Affiliate or (E) permit the present value of all nonforfeitable accrued benefits under any Pension Plan (using the actuarial assumptions utilized by the PBGC upon termination of an employee pension benefit plan subject to Title IV of ERISA) materially (in the opinion of DOE) to exceed the fair market value of the Pension Plan's assets allocable to such benefits, all determined as of the most recent valuation date for each such Pension Plan.

(j) CCR Registration. The Borrower shall maintain its CCR registration at all times.

(k) Corrupt Practices Laws.

(i) All Borrower Entities and their respective officers, directors, employees and agents shall comply with all applicable Corrupt Practices Laws in obtaining any consents, licenses, approvals, authorizations, rights, or privileges with respect to the Project;

(ii) All Borrower Entities and their respective officers, directors, employees and agents shall otherwise conduct the Project and the Borrower's business in compliance with all applicable Corrupt Practices Laws.

(iii) The internal management and accounting practices and controls of all Borrower Entities shall at all times be adequate to ensure compliance with all Corrupt Practices Laws.

(iv) If any Major Project Participant, person that Controls a Major Project Participant, or any of their respective employees or agents fail to comply with OFAC and all applicable Corrupt Practices Laws in obtaining any consents, licenses, approvals, authorizations, rights, or privileges with respect to the Project or, otherwise, in conducting activities in connection with the Project, the Borrower shall, within 30 days of Knowing that such Person has so failed to comply, engage and continue to engage in constructive discussions with DOE regarding the removal or replacement of such Person or, if such removal or replacement is not reasonably feasible, the implementation of other mitigation measures.

SECTION 6.25. Anti-Terrorism Order.

If any Major Project Participant or Person that Controls a Major Project Participant fails to comply with the Anti-Terrorism Order, the Borrower shall, within 30 days of Knowing that such Person has so failed to comply, engage and continue to engage in constructive discussions with DOE regarding the removal or replacement of such Person or, if such removal or replacement is not reasonably feasible, the implementation of other mitigation measures.

SECTION 6.26. Borrower Bankruptcy Remote.

The Borrower shall do all things necessary to maintain its corporate existence separate and apart from any other Borrower Entity including:

(a) maintaining at least one independent director who (i) is not currently and has not been during the five years preceding the date of this Loan Guarantee Agreement an officer, director, or employee of any other Borrower Entity or SunPower and (ii) is not a stockholder or member of any other Borrower Entity or SunPower;

(b) conducting its business from an office separate from those of any other Borrower Entity (but which may be located in the same facility as any other Borrower Entity);

(c) having stationery and other business forms and a telephone number separate from those of any other Borrower Entity;

(d) being at all times adequately capitalized in light of its contemplated business;

(e) providing at all times for its own operating expenses and liabilities from its own funds (including Advances and Equity Contributions);

(f) maintaining its assets, funds and transactions separately from those of any other Borrower Entity, reflecting such assets and transactions in financial statements separate and distinct from those of any other Borrower Entity, and evidencing such assets and transactions by appropriate entries in books and records separate and distinct from those of any other Borrower Entity;

(g) holding itself out to the public under the Borrower's own name as a legal entity separate and distinct from any other Borrower Entity;

(h) holding regular duly noticed meetings, or obtaining appropriate consents, of its board of directors (or equivalent governing body), and making and retaining minutes of such meetings, as are necessary or appropriate to authorize all of the Borrower's actions required by law to be authorized by its board of directors (or equivalent governing body);

(i) not engaging in any transaction with any other Borrower Entity, except as permitted by this Loan Guarantee Agreement;

(j) not maintaining any joint account with any other Borrower Entity or becoming liable as a guarantor or otherwise with respect to any debt or contractual obligation of any other Borrower Entity (other than solely by reason of being a member of a unitary group for state tax purposes);

(k) not directing or participating in the management of any other Borrower Entity;

(1) not making any payment or distribution of assets with respect to any obligation of any other Borrower Entity or granting an adverse claim on any of its assets to secure any obligation of any other Borrower Entity;

(m) not making loans or advances or otherwise extending credit to any other Borrower Entity; and

(n) not holding itself out as having agreed to pay, or as being liable (primarily or secondarily) for, any obligations of any other Borrower Entity (other than solely by reason of being a member of a unitary group for state tax purposes).

SECTION 6.27. Internal Controls.

The Borrower, the Holding Company, NRG Solar Sunrise LLC, the Intermediate Parent Company and the Sponsor shall:

(a) Maintain internal accounting controls, sufficient to provide reasonable assurances that:

(i) transactions will be executed in accordance with management's general or specific authorizations,

(ii) transactions will be recorded as necessary to permit preparation of financial statements in conformity with GAAP, and to maintain accountability for assets,

(iii) access to assets will be permitted only in accordance with management's general or specific authorization, and

(iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(b) Establish internal controls and reporting systems that are reasonably expected to them to satisfy the reporting obligations under the Financing Documents and promptly identify any cost overruns.

(c) Record, store, maintain, and operate their records, systems, controls, data and information using means (including any electronic, mechanical or photographic process, whether computerized or not) that are under their exclusive ownership and direct control (including all means of access thereto and therefrom).

(d) Disclose in writing to their outside auditors and any audit committee:

(i) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect their ability to record, process, summarize and report financial information,

(ii) any fraud, whether or not material, that involves management or other employees who have a significant role in such entity's internal controls over financial reporting, and

(iii) promptly provide copies of any disclosures referred to in this clause (d) to DOE.

SECTION 6.28. Corporate Governance.

The Borrower, the Holding Company, NRG Solar Sunrise LLC, the Intermediate Parent Company and the Sponsor shall:

(a) No later than six months after the Guarantee Agreement Date, adopt a written code of ethics that will be applicable to all employees and be consistent with the requirements of Item 406 of Regulation S-K, promulgated under the Securities Act of 1933 (as amended). Such code of ethics must be reasonably satisfactory to DOE, and copies thereof, and any amendments thereto, shall be provided promptly to DOE,

(b) Cause each of their respective directors and officers to comply with the provisions of SEC Exchange Act Rule 13b2-2 in dealing with their auditors to assure their independence in the preparation of the reports required by the Financing Documents, as if such rules were otherwise applicable to them with respect to the preparation of such reports, and

(c) Establish procedures, reasonably satisfactory to DOE, to insure that their auditors comply with the auditor independence rules established by the SEC pursuant to Section 10A of the Securities Exchange Act, as if applicable to such auditors with respect to any reports provided to DOE pursuant to the Financing Documents.

SECTION 6.29. Cash Grant Application.

(a) The Borrower shall comply with (i) all Cash Grant Application requirements (including any preliminary filing requirements), (ii) all obligations set forth in the Cash Grant Guidance, including all annual filing requirements and the delivery of all reports, certificates and other such documents as required thereunder, and (iii) all limitations set forth in the Cash Grant Guidance relating to (A) transfers to Disqualified Persons and (B) claims in respect of any Section 45 or Section 48 tax credits. The Borrower shall make every election that is necessary to claim and apply for the Cash Grant in accordance with the Cash Grant Guidance and Applicable Law.

(b) As soon as practicable following, and in any case within sixty (60) days after the Placed in Service Date for a phase of the Project, the Borrower shall (i) prepare and file, or cause to be filed, a Cash Grant Application for such phase of the Project as a single property with the United States Treasury Department in a manner consistent with the Cash Grant Guidance and Applicable Law and otherwise true, correct and complete in all material respects; (ii) provide all supporting documentation required to be filed with such Cash Grant Application or subsequently thereto in accordance with the Cash Grant Guidance; (iii) promptly respond to all requests for further information with respect to such Cash Grant Application; and (iv) make other related filings that are necessary or advisable with regard to the Cash Grants.

SECTION 6.30. Cash Grant Guidance Terms and Conditions.

(a) During the Recapture Period for each respective Cash Grant Borrower shall comply with the Cash Grant Guidance and the Cash Grant Terms and Conditions, including all requirements to file annual performance reports, file annual certifications that neither the Project

nor interest therein has been disposed of to a Disqualified Person, and that the Project continues to qualify as "specified energy property" (as such terms are defined in the Cash Grant Terms and Conditions) and maintain proper project, financial and accounting records.

(b) To the extent required by the Cash Grant Guidance and the Cash Grant Terms and Conditions during the Recapture Period for each respective Cash Grant, Borrower shall deliver to the U.S. Department of the Treasury (i) no later than twenty-one (21) days following the anniversary of the Placed in Service Date and for each successive anniversary of the Placed in Service Date for the next five years thereafter, an annual project performance report and a certification that no direct or indirect equity interests in the Project have been transferred to a Disqualified Person and (ii) the certification that the Project continues to qualify as "specified energy property" (as such terms are defined in the Cash Grant Terms and Conditions). During the Recapture Period Borrower shall cause maintain proper financial and accounting records with respect to the Qualifying Costs incurred with respect to the Project in accordance with the requirements of the Cash Grant Guidance and Cash Grant Terms and Conditions

SECTION 6.31. Cargo Preference Act.

The Borrower shall comply at all times with all requirements (if any) of the Cargo Preference Act applicable to the Project.

SECTION 6.32. Update of Required Approvals' Schedules.

(a) If, prior to the First Advance Date, Part I or Part II of Schedule 4.2.5 needs to be revised in accordance with Section 4.2.5 to accurately represent the status of any Required Approvals, the Borrower will promptly submit an updated Schedule 4.2.5 to the Loan Servicer reflecting such changes, together with the documentation relating to such changes; provided that no such update shall (i) without the consent of DOE, be deemed to cure the falsity of any certification, representation or warranty previously made to DOE under this Loan Guarantee Agreement or (ii) cause any certification, representation or warranty previously made to DOE under this Loan Guarantee Agreement that was true when made to be false.

(b) If, prior to any Quarterly Approval Date or a date of each Advance (as applicable), Part I or Part II of Schedule 4.3.3 or Schedule 4.4.8 (as applicable) needs to be revised in accordance with Section 4.3.3 or Section 4.4.8 (as the case may be) to accurately represent the status of any Required Approvals, the Borrower will promptly submit an updated Schedule 4.3.3 and Schedule 4.4.8 to the Loan Servicer reflecting such changes, together with the documentation relating to such changes; provided that no such update shall (i) without the consent of DOE, be deemed to cure the falsity of any certification, representation or warranty previously made to DOE under this Loan Guarantee Agreement or (ii) cause any certification, representation or warranty previously made to DOE under this Loan Guarantee Agreement that was true when made to be false.

SECTION 6.33. Interest Rate Swaption Agreements.

On or before the date that is thirty (30) days after the Guarantee Agreement Date, the Borrower shall deliver to the Loan Servicer fully executed copies of the Interest Rate Swaption

Agreements, each in form and substance reasonably satisfactory to DOE, and each Interest Rate Swaption Agreement shall have become effective pursuant to its terms.

SECTION 6.34. Maintenance of the CEQA Litigation Support Instruments.

Until the date of the Settlement of all Project Claims (if any) filed or asserted prior to the date of Settlement of the Project Claims asserted in Carrizo Commons v. County of San Luis Obispo (San Luis Obispo Superior Court Case No. CV 110314) (the "CEQA Litigation Support Release Date"), the Borrower shall maintain (or cause to be maintained) the CEQA Litigation Support Instruments in full force and effect. Upon the CEQA Litigation Support Release Date, all CEQA Litigation Support Instruments shall be released by DOE. Any determination regarding the particular CEQA Litigation Support Instruments to be provided in order to meet the requirements of this Section 6.34 shall be made by SunPower on or before each CEQA Litigation Support Determination Date; provided that if SunPower fails to make any election on or before such CEQA Litigation Support Determination Date then the form(s) of CEQA Litigation Support Instruments last so elected by SunPower shall be deemed to also apply to the six-month period beginning on such CEQA Litigation Support Determination Date.

SECTION 6.35. Maintenance of the Cash Grant Shortfall Security.

(a) Until such time as the Cash Grant Bridge Loans have been repaid in full, the Borrower shall maintain (or cause to be maintained) the Cash Grant Shortfall Security in full force and effect.

(b) All amounts of Pre-Completion Revenues that are on deposit in the Restricted Payment Account after the Cash Grant Support Release Date will, subject to the requirements of section 4.10 of the Accounts Agreement, reduce the Base Equity Commitment dollar for dollar.

(c) On the Cash Grant Support Release Date, the Base Equity Commitment will, subject to the requirements of section 4.10 of the Accounts Agreement, be reduced dollar for dollar for each dollar on deposit in the Restricted Payment Account; provided that such reduction will not, in any event, exceed the positive difference, if any, between the Actual Aggregate Cash Grant Security Support and Phase 3 Cash Grant Support Amount.

(d) On the Cash Grant Support Release Date, the Cash Grant Shortfall Security will be reduced dollar for dollar, pro rata (in a ratio reflective of the then current relative amounts of the NRG Cash Grant Shortfall Security and the SunPower Cash Grant Shortfall Security), in an amount equal to the positive difference, if any, between the Actual Cash Grant Security Support and the Phase 3 Cash Grant Support Amount. For the avoidance of doubt, no Cash Grant Shortfall Security will be released under this Section 6.35(d) unless all amounts then on deposit in the Restricted Payment Account shall have first been applied to reduce the Base Equity Commitment on the Cash Grant Support Release Date.

(e) For the avoidance of doubt, there shall be no requirement to replenish or repost collateral released pursuant to Section 6.35(c) or Section 6.35(d).

ARTICLE 7
NEGATIVE COVENANTS

The Borrower covenants and agrees that until the date all Secured Obligations (other than inchoate indemnity obligations) are paid in full and the FFB Commitment has terminated, unless DOE waives compliance in writing:

SECTION 7.1. Indebtedness.

The Borrower shall not, nor shall it agree to, incur, create, guarantee, assume, permit to exist or otherwise become liable for any Indebtedness, except for:

(a) Indebtedness incurred under the Financing Documents;

(b) Capital Leases and purchase money Indebtedness, in each case, incurred by the Borrower to finance the acquisition of Immaterial Equipment, in an aggregate amount at any time not in excess of $500,000, and any refinancings, renewals or extensions thereof; provided that any such Indebtedness (i) shall be secured only by the Immaterial Equipment acquired (and any accessions, additions and replacements, and any proceeds arising from the Disposition, of such Immaterial Equipment) in connection with the incurrence of such Indebtedness and (ii) shall not exceed an amount equal to one hundred percent (100%) of the aggregate consideration paid to acquire such asset; and

(c) Indebtedness in respect of amounts due to trade creditors and accrued expenses, in each case arising in the ordinary course of business, to the extent such amounts and expenses are not unpaid more than ninety (90) days past the due date therefor.

SECTION 7.2. Liens.

The Borrower shall not, nor shall it agree to, create, assume or otherwise permit to exist any Lien upon any of the Collateral or any of its other property, whether now owned or hereafter acquired, or in any proceeds or income therefrom, other than Permitted Liens.

SECTION 7.3. Leases.

The Borrower shall not enter into any agreement or arrangement to acquire by Lease the use of any Property or equipment of any kind (including by sale-leaseback or otherwise), except for Permitted Leases in an amount not in excess of the amount budgeted therefor in the Construction Budget or Operating Forecast, as applicable.

SECTION 7.4. Loans, Advances and Investments.

The Borrower shall not make or permit to remain outstanding any loans, extensions of credit or advances by the Borrower to or Investments by the Borrower in (whether by acquisition of any stocks, notes or other securities or obligations) any Person, except for Permitted Investments or as expressly provided in the Transaction Documents as in effect on the Guarantee Agreement Date.

SECTION 7.5. Capital Expenditures.

The Borrower shall not make any Capital Expenditure in any year except for (i) expenditures contemplated by the Construction Budget or any Operating Budget, (ii) expenditures made from the proceeds of insurance to the extent permitted by the Financing Documents, (iii) to the extent any required Major Maintenance Cost constitutes Capital Expenditures, such Capital Expenditures, but solely to the extent of funds on deposit in the Major Maintenance Reserve Account, (iv) expenditures from amounts that are available and could have been paid as Restricted Payments to the Sponsor under Section 7.10 and (v) other Capital Expenditures in an aggregate in any Fiscal Year not in excess of Five Million Dollars ($5,000,000), but solely to the extent any funds required for such Capital Expenditures are provided to the Borrower by the Sponsor (or its Affiliates) as equity contributions; provided that, in each case, in no event shall any Capital Expenditure permitted under this Section 7.5 expand the capacity of the Project in any material respect, change the nature or functional purpose of the Project or permit any activities that are prohibited under Section 7.21.

SECTION 7.6. Subsidiaries; Partnerships.

The Borrower shall not: (i) form or have any Subsidiaries, (ii) enter into any partnership or a joint venture, (iii) acquire any Equity Interests in or make any capital contribution to any other Person, (iv) enter into any partnership, profit-sharing or royalty agreement or other similar arrangement whereby the Borrower's income or profits are, or might be, shared with any other Person or (v) enter into any management contract or similar arrangement whereby its business or operations are managed by any other Person, other than the O&M Agreement or any other operating agreements executed by the Borrower with DOE's consent.

SECTION 7.7. Ordinary Course of Conduct; No Other Business.

The Borrower shall not: (i) engage in any business other than the acquisition, ownership, design, development, construction, financing, implementation, completion, operation and maintenance of the Project in accordance with and as contemplated by the Transaction Documents, (ii) undertake any action that could reasonably be expected to lead to a material alteration of the nature of its business or the nature or scope of the Project, (iii) change its name or take any other action that might adversely affect the Liens created by the Security Documents or (iv) fail to maintain its existence and its right to carry on its business.

SECTION 7.8. Merger; Bankruptcy; Dissolution; Transfer of Assets.

The Borrower shall not, nor shall it agree to:

(a) enter into any transaction of merger or consolidation (other than pursuant to the Merger Documents);

(b) liquidate, wind up or dissolve itself or otherwise commence any Insolvency Proceeding in respect of itself or file any petition or pass a resolution seeking the same;

(c) dispose of all or any part of its Property, including its interest in the Project (including leases or subleases related to the Project Site), whether now owned or hereafter acquired, except for Permitted Dispositions; or

(d) acquire by purchase or otherwise the business, Property or fixed assets of, or Equity Interests or other evidence of beneficial ownership interests in any Person, other than (i) purchases or other acquisitions of inventory or materials or spare parts or Capital Expenditures each in the ordinary course of business in accordance with the applicable budget or (ii) purchases or other acquisitions permitted by the Transaction Documents; or

(e) transfer or release (other than as permitted by clause (c) above) of the Collateral, or other similar actions.

SECTION 7.9. Organizational Documents; Fiscal Year; Legal Form; Capital Structure.

The Borrower shall not (i) amend or modify its Organizational Documents (other than to correct minor or technical errors that do not change any Person's rights or obligations or to consummate transactions permitted by the Financing Documents) or (ii) amend or modify its legal form, its Fiscal Year or its capital structure (including the issuance of any options, warrants or other rights with respect thereto).

SECTION 7.10. Restricted Payments.

(a) The Borrower shall not reduce its capital or declare or make or authorize any dividend or any other payment or distribution of cash or property to its equity investors on account of any Equity Interest (each of the foregoing a "Restricted Payment") unless the Borrower satisfies each of the following conditions to DOE's satisfaction:

(i) the Borrower provides DOE and the Collateral Agent not less than ten (10) Business Days' notice of its request to make a Restricted Payment;

(ii) such Restricted Payment is made within forty-five (45) days following a Payment Date;

(iii) no other Restricted Payment has been made during the then current semi-annual period;

(iv) the Project Completion Date has occurred;

(v) no Potential Event of Default or Event of Default then exists or would exist after giving effect to any such Restricted Payment;

(vi) all reserves in the Debt Service Reserve Account, the O&M Reserve Account and the Major Maintenance Reserve Account have been fully funded (or secured by Reserve Letters of Credit), both before and after the Restricted Payment is made;

(vii) the Historical Debt Service Coverage Ratio for the immediately preceding rolling twelve (12) months (or the applicable shorter stub period) and the Projected Debt Service Coverage Ratio for the immediately succeeding rolling twelve (12) months, in each case measured from the

Payment Date referred to in Section 7.10(a)(ii), is at least 1.20 to 1.00; and

(viii) at least one (1) scheduled principal payment has been made;

provided that, notwithstanding the foregoing, if (x) no Event of Default or Potential Event of Default has occurred or is continuing, (y) the Project Completion Date has occurred and (z) all Guaranteed Cash Grant Bridge Loans have been, together with all fees and interest accrued thereon, fully repaid in accordance with Section 3.4.3(g) or otherwise, the Borrower may make a Restricted Payment, in an amount not to exceed the proceeds of the Cash Grants not used to repay all Guaranteed Cash Grant Bridge Loans, together with all fees and interest accrued thereon, in full, to the Holding Company for further distribution to the direct and indirect owners of the Holding Company (or as otherwise directed by the Sponsor); provided further that, in the event that the Borrower receives Interest Rate Swaption Proceeds after the Project Completion Date and all Project Costs incurred during the Construction Period have been paid in full, then the Borrower may make a Restricted Payment in an amount not to exceed to (A) 100% of such Interest Rate Swaption Proceeds multiplied by (B) the percentage equal to (1) the Equity Contribution component of the Debt to Equity Ratio divided by (2) the sum of the Guaranteed Loan component of the Debt to Equity Ratio and the Equity Contribution component of the Debt to Equity Ratio, provided further that the Borrower may make the payment contemplated by Section 6.1(d) of the Equity Funding Agreement and such payment shall not be deemed a Restricted Payment.

In all cases in accordance with Section 7.10(a) above and, in any event, Restricted Payments (other than Restricted Payments described in the proviso to Section 7.10(a)) cannot be made until all past due mandatory prepayments have been made pursuant to Section 3.4.3 and all such Restricted Payments permitted hereunder will only include Monies on deposit in or credited to the Restricted Payment Account on the Payment Date that coincides with the date of such Restricted Payment (or the immediately preceding Payment Date if such Restricted Payment is not made on a Payment Date).

(b) For the avoidance of doubt:

(i) Nothing in Section 7.10(a) shall preclude the Borrower from withdrawing cash on deposit in the Restricted Payment Account (without satisfying the conditions above) as long as such cash is used for the purposes of the Project and if the prior written consent of DOE has been obtained.

(ii) Borrower may make up to three (3) reimbursements of Equity Contributions that shall have previously funded Eligible Project Costs, and such reimbursements shall not be deemed to be a Restricted Payment; provided that (A) the Debt to Equity Ratio after giving effect to such reimbursement would be no greater than the Maximum Debt to Equity

Ratio and (B) either (x) the Debt to Equity Ratio has previously reached the Maximum Debt to Equity Ratio at least once or (y) the aggregate Equity Contributions are in excess of the Base Equity Commitment.

(iii) Nothing in Section 7.10(a) shall preclude the Borrower from transferring funds in accordance with section 4.10 of the Accounts Agreement (A) prior to the Cash Collateral Support Release Date, with DOE's consent, for the purposes of paying any Existing Cost Overruns and (B) after the Cash Collateral Support Release Date, for the purposes of paying any Existing Cost Overruns and to reduce any Base Equity Commitment, in accordance with section 4.10 of the Accounts Agreement; provided, however, that no such reduction of Base Equity Commitment shall occur until the DOE (in consultation with the Independent Engineer) has determined, to its reasonable satisfaction, that all Existing Cost Overruns have been fully funded.

SECTION 7.11. Redemption or Issuance of Stock.

The Borrower shall not redeem, retire, purchase or otherwise acquire, directly or indirectly, any of its Equity Interests now or hereafter outstanding (or any options or warrants issued by the Borrower with respect to its Equity Interests) or set aside any funds for any of the foregoing or issue any Equity Interests to any other Person.

SECTION 7.12. Other Transactions.

Except for the Transaction Documents in effect as of the Guarantee Agreement Date, the Borrower shall not, directly or indirectly, enter into any transaction or series of related transactions with any Person (including any Borrower Affiliate or SunPower) (i) other than in the ordinary course of business and on an arm's-length basis or (ii) whereby the Borrower might pay more than the fair market value for the products of others.

SECTION 7.13. Accounts.

The Borrower shall not establish or maintain any bank accounts other than the Project Accounts.

SECTION 7.14. Commissions.

The Borrower shall not pay:

(a) any commission or fee to the Sponsor or any Affiliate of the Sponsor or SunPower for furnishing guarantees, counter-guarantees or similar credit support for any obligations undertaken in connection with the Project (other than as set forth in clause (b) below); or

(b) any fee to the Sponsor or any Affiliate of the Sponsor with respect to or in connection with the development, construction, financing or operation of the Project, including

salaries, bonuses, commissions, management fees, consulting fees, and technical assistance fees other than as agreed in the O&M Agreement, the EPC Contract and other Transaction Documents as of the Guarantee Agreement Date.

SECTION 7.15. Amendment of and Notices Under Transaction Documents.

The Borrower shall not (other than to correct minor or technical errors that do not change any Person's rights or obligations), except with the prior written consent of DOE:

(a) directly or indirectly agree to any material amendment, modification, termination, replacement, supplement, consent or waiver or waive any right to consent to any amendment, modification, termination, replacement, supplement or waiver of any right with respect to, or assign any of the respective duties or obligations under:

(i) any Project Document, except for Change Orders under any Construction Contract that (A) do not change the Construction Budget or the Project Milestone Schedule, except for Approved Construction Changes, (B) could not reasonably be expected to delay the occurrence of Operational Completion beyond the Guaranteed Project Completion Date and (C) could not reasonably be expected to have a Material Adverse Effect; provided, that the Borrower shall give DOE and the Independent Engineer prompt written notice of such Change Orders;

(ii) any Governmental Approval or other Required Approval, the effect of which could reasonably be expected to have a Material Adverse Effect;

(iii) any Financing Document; or

(iv) any agreement replacing the Operator;

For the avoidance of doubt, any increase in the amount of Development Term Security (as such term is defined in each Power Purchase Agreement) under any Power Purchase Agreement shall be a material amendment to such Power Purchase Agreement.

(b) certify, consent to or otherwise permit through a Change Order or otherwise "Final Completion" to occur under the EPC Contract; provided that DOE will not unreasonably withhold or delay any request by Borrower to consent to such action;

(c) enter into any agreement other than any Financing Document restricting its ability to amend or otherwise modify any of the Transaction Documents; or

(d) amend or modify any of the CEQA Litigation Support Instruments, the NRG Cash Grant Support Security or the SunPower Cash Grant Support Security or consent to any amendment or modification thereof (except to amend, modify or replace the same, as permitted by the Loan Guarantee Agreement).

SECTION 7.16. Operating Costs Expenditures; Approved Construction Changes; Amendments.

(a) The Borrower shall not (i) without having first proposed an amendment to the then-current Operating Budget in accordance with Section 6.11.2 (and DOE having approved such amendment in accordance with such Section), incur or pay any Operating Costs that are not contemplated in such Operating Budget (other than application of Loss Proceeds on terms and conditions set forth in Section 6.22, incurrence of Capital Expenditures on terms and conditions set forth in Section 7.5, or incurrence of Major Maintenance Costs (as that term is defined in the Accounts Agreement) on terms and conditions set forth in the Accounts Agreement, the application of Performance Liquidated Damages on the terms and conditions set forth in Section 3.4.3(a), the application of proceeds from a Permitted Disposition on the terms and conditions set forth in Section 3.4.3(d), the application of Major Project Document Breach Damages or Major Project Document Termination Damages or the application of funds to settle disputes in accordance with the terms and conditions set forth in Section 7.19), except to the extent payment of such Operating Costs would not cause aggregate expenditures for the period covered by such Operating Budget to exceed 105% of the aggregate amount of expenditures contemplated in such Operating Budget for the period covered, (ii) without having notified DOE, incur or pay any Operating Costs if aggregate expenditures for any category of such Operating Budget for the applicable time period exceed 107.5% of the aggregate expenditures contemplated for such category in such Operating Budget for such period or (iii) fail to incur or pay any Operating Costs contemplated in such Operating Budget except to the extent that such unincurred or unpaid Operating Costs would not result in aggregate expenditures to be less than 90% of the aggregate amount of fixed Operating Costs contemplated for such period in such Operating Budget. The Borrower shall promptly (and in any event within five (5) Business Days) provide notice to DOE of any proposed expenditure in excess of such threshold.

(b) The Borrower shall not materially change, reallocate, amend, modify, or supplement or permit or consent, directly or indirectly, to any material changes, reallocations, amendments, modifications, or supplements (each a "Construction Change") of any of the provisions of any of the Project Plans, the Construction Budget, the Financial Plan, the Project Milestone Schedule or the Base Case Projections, except for the following Construction Changes ("Approved Construction Changes"):

(i) any Construction Change that (A) has been submitted in writing by the Borrower to DOE (including an explanation in reasonable detail of the reasons for such Construction Change) and (B) has received a written approval from DOE (such approval not to be unreasonably withheld or delayed); or

(ii) any Construction Change to (i) allocate contingencies to Borrower Project Costs set forth in the Construction Budget or (ii) change the Project Milestone Schedule; provided that such Construction Change (A) could not reasonably be expected to result in a material breach of either Power Purchase Agreement, (B) does not extend any Major Project Milestone or any critical path item that could reasonably be expected to result in a Major Project Milestone being missed, (C) could not reasonably be expected to cause the Operational Completion Date to occur later than the Guaranteed Operational Completion Date or (D) could not reasonably be expected to result in a Material Adverse Effect; provided further that the date of any Major Project Milestone may be moved as a result of an event that constitutes an Event of Force Majeure under the EPC Contract (as the EPC Contract is in effect on the Guarantee Agreement Date) to the extent such Event of Force

Majeure affords the Borrower schedule relief under the related milestone in the Power Purchase Agreements and, in such case, the Borrower shall present to DOE for approval any mitigation or recovery plan necessitated by such Event of Force Majeure, which approval will not be unreasonably withheld, conditioned or delayed; provided, further, however that, with respect to any "Network Upgrades" listed on Schedule 1.1, the above proviso shall not apply and the date of any such Major Project Milestone may be moved as a result of any scheduling change with respect to such "Network Upgrade"; provided that, the Borrower, promptly after receiving notice thereof, notifies DOE of such scheduling change and, in such case, the Borrower shall

present to DOE for approval any mitigation or recovery plan necessitated by such scheduling change, which approval will not be unreasonably withheld, conditioned or delayed.

SECTION 7.17. Other Agreements.

The Borrower shall not enter into or become a party to any agreement, contract or loan commitment outside the ordinary course of business other than (i) the Transaction Documents as in effect on the Guarantee Agreement Date (or amended with DOE's consent), (ii) agreements, contracts or loan commitments expressly contemplated or permitted by the Transaction Documents as in effect on the Guarantee Agreement Date, (iii) the Interest Rate Swaption Agreements or (iv) as contemplated by the Construction Budget, Project Milestone Schedule, the Operating Plan or the Operating Forecast.

SECTION 7.18. Hedging Agreements.

The Borrower shall not enter into any Hedging Agreement, foreign currency trading or other speculative transactions other than (a) the Interest Rate Swaption Agreements and (b) any such Hedging Agreement consented to in writing by DOE.

SECTION 7.19. Compromise or Settlement of Disputes.

The Borrower shall not agree or otherwise consent to settle or compromise: (i) any single Action in excess of Ten Million Dollars ($10,000,000) net of any applicable insurance proceeds received or reasonably expected to be received by the Borrower, in each case without the prior written consent of DOE or (ii) any material dispute under any Project Document without the prior written consent of DOE.

SECTION 7.20. Abandonment or Suspension of Project.

The Borrower shall not (i) abandon, or suspend, agree (directly or indirectly) to abandon or suspend or make any public statements regarding its intention to abandon or suspend the development, construction or operation of the Project, or take any action that could be deemed an "abandonment," or "suspension," or transfer the Project to any Person or (ii) notify any Major Project Participant of its intent to terminate, or agree (directly or indirectly) to the termination of, any Major Project Document or the construction or operation of the Project.

SECTION 7.21. Improper Use.

The Borrower shall not use, operate or occupy, or allow (directly or indirectly) the use, maintenance, operation or occupancy of, any portion of the Project Site or Project in any manner or for any purpose: (i) that would be illegal or dangerous (unless safeguarded as required by Applicable Laws); (ii) that could reasonably be expected to have a Material Adverse Effect; (iii) that may make void, voidable or cancelable, or materially increase the premium of, any insurance or warranty then in force with respect to the Project or any part thereof; or (iv) other than for the intended purpose thereof in the construction, operation and maintenance of the Project.

SECTION 7.22. Assignment.

Other than the assignment of the Project Documents and Governmental Approvals to the Collateral Agent as security for the benefit of the Secured Parties, the Borrower shall not assign or otherwise transfer its rights under any of the Transaction Documents or Required Approvals to any Person.

SECTION 7.23. Margin Regulations.

The Borrower shall not directly or indirectly apply any part of the proceeds of any Advance or other revenues to the purchasing or carrying of any margin stock within the meaning of Regulation T, U or X of the Board of Governors of the Federal Reserve of the United States, or any regulations, interpretations or rulings thereunder.

SECTION 7.24. Environmental Laws.

The Borrower shall not undertake any action or Release any Hazardous Substances in material violation of any Environmental Law and the Project shall not be operated in any manner that would pose a material hazard to public health or safety or to the environment.

SECTION 7.25. ERISA.

The Borrower shall not adopt, establish, participate in, or incur any obligation to contribute to, any Pension Plan or Multiemployer Plan or incur any liability to provide post- retirement welfare benefits other than as required under any Applicable Law. No ERISA Affiliate of Borrower shall adopt, establish, participate in, or incur any obligation to contribute to, any Pension Plan or Multiemployer Plan or incur any liability to provide post-retirement welfare benefits other than as required under any Applicable Law, except as would not reasonably be expected to have a Material Adverse Effect.

SECTION 7.26. Investment Company Act.

The Borrower shall not take any action that would result in the Borrower being required to register as an "investment company" under the Investment Company Act.

SECTION 7.27. Public Utility Holding Company Act.

The Borrower shall not take, nor permit any Affiliate to take any action that could result in the Borrower losing its status as an "exempt wholesale generator" as defined in the Public Utility Holding Company Act.

SECTION 7.28. Subordinated Debt.

The Borrower shall not incur any subordinated debt.

SECTION 7.29. Powers of Attorney.

The Borrower shall not grant any power of attorney to any Person, except (i) to its directors and employees in the ordinary course of business or (ii) in connection with Permitted Liens granted to the Secured Parties.

ARTICLE 8
EVENTS OF DEFAULT; REMEDIES

SECTION 8.1. Events of Default.

The occurrence of any of the following events shall constitute an Event of Default hereunder:

(a) Failure to Make Payment Under Financing Documents. The Borrower shall fail to pay, in accordance with the terms of this Loan Guarantee Agreement, the FFB Documents or any other Financing Documents (whether at scheduled maturity, as a required prepayment, by acceleration or otherwise), (i) any principal amount of the Advances, any Capitalized Interest Amounts, interest otherwise due and payable in the respect of the Guaranteed Loans or any DOE Guarantee Payment on or before the date such amount is due or (ii) any scheduled fee, charge or other amount due under any Financing Document on or before the date such amount is due and, solely in the case of any amounts contemplated by this clause (ii), such failure to pay shall continue unremedied for a period of five (5) Business Days after the date on which such amount was due; provided that the Borrower shall not be in default under this Section 8.1(a) if it has timely remitted all such payments to the Loan Servicer but the Loan Servicer has failed to timely remit payments to FFB.

(b) Misstatements; Omissions.

(i) Any representation or warranty confirmed or made in any Financing Document by or on behalf of the Borrower, any other Borrower Entity or in any certificate of the Borrower or any other Borrower Entity (or any Authorized Officer thereof), Financial Statement or other document provided by or on behalf of any such Person to DOE, the Collateral Agent, the Loan Servicer, or any Independent Consultant in connection with the transactions contemplated by the Transaction Documents shall be found to have been incorrect, false or misleading in any material respect when made or deemed to have been made (other than a representation or a certification as to the amount (but not the timing of or eligibility for the Cash Grant).

(ii) Any representation or warranty confirmed or made in any Financing Document by or on behalf of any Major Project Participant or in any certificate of a Major Project Participant (or any Authorized Officer thereof), Financial Statement or other document provided by or on behalf of any such Person to DOE, the Collateral Agent, the Loan Servicer, or any Independent Consultant in connection with the transactions contemplated by the Transaction Documents shall be found to have been incorrect, false or misleading when made or deemed to have been made, to the extent the same results in a Material Adverse Effect.

(c) Covenants Without Cure Period. The Borrower or any Borrower Entity shall fail to perform or observe any of its obligations under (i) any term, covenant or agreement set forth in (i) Section 6.1.7, Section 6.1.8, Section 6.7, Section 6.20(b), Section 6.22, Section 6.29, Section 6.30 or Article 7 or (ii) any material term, covenant or agreement set forth in the Security Agreement or (iii) any negative covenants in any other Financing Document, in each case where default under the applicable term, covenant, agreement or negative covenant has not been remedied within the cure period, if any, specified for such negative covenant in such Financing Document.

(d) Covenants and Other Agreements with Cure Period. The Borrower or any Borrower Entity shall fail to perform or observe any term, covenant or agreement in any Financing Document (other than those set forth in Section 8.1(c)), where such default has not been remedied within thirty (30) days after the Borrower Knew about such default or received notice from DOE that such default has occurred, in each case if such default is capable of being remedied within such time period. If the default described in this Section 8.1(d) is not reasonably capable of remedy within thirty (30) days after the Borrower receives notice of the default from DOE, the Borrower shall have an additional ninety (90) days to cure the default, as long as the Borrower commences a cure within thirty (30) days and diligently pursues such cure.

(e) Environmental Matters. (i) Any Action under or relating to any Environmental Law or asserting any Environmental Claim is initiated, or (ii) any Governmental Judgment is issued relating to any Environmental Claim, Environmental Law or any Required Approval issued under any Environmental Law, in each case, that has, or could reasonably be expected to have, a Material Adverse Effect.

(f) Breach or Default Under Project Documents. (i) Any Major Project Participant shall breach or default under any of its material agreements, conditions, terms or covenants contained in any Major Project Document to which it is a party and such breach or default shall continue unremedied beyond any applicable cure period set forth therein and (ii) any other Project Participant (other than a Major Project Participant) shall breach or default under its material agreements, conditions, terms or covenants contained in any Major Project Document to which it is a party and (x) such breach or default shall continue unremedied beyond any applicable cure period set forth therein and (y) such Project Participant (and Project Document) is not replaced in accordance with Section 6.13.

(g) Equity Funding Agreement. Any breach of or default under the Equity Funding Agreement occurs and such default or breach continues beyond the applicable grace period.

(h) Unenforceability, Termination, Repudiation or Transfer of Any Transaction Document. This Loan Guarantee Agreement, any other Financing Document or any Major Project Document or any material provision hereof or thereof at any time for any reason (i) is or becomes invalid, illegal, void or unenforceable or any party thereto has repudiated or disavowed or taken any action to challenge the validity or enforceability of such agreement, (ii) except as otherwise expressly permitted hereunder, ceases to be in full force and effect except at the stated termination date thereof or (iii) shall cease to give the Collateral Agent, FFB or DOE in any material respect the Liens, rights, powers and privileges purported to be created thereby or hereby.

(i) Security Interests. Any of the Security Documents shall fail to provide the Liens, security interests, rights, titles, interests, remedies, powers or privileges intended to be created thereby (including the priority intended to be created thereby) or such Lien shall fail to have the priority contemplated therefor in such Security Documents, or any such Security Document or Lien shall cease to be in full force and effect, or the validity thereof or the applicability thereof to the Advances, the Secured Obligations or any other obligations purported to be secured or guaranteed thereby or any part thereof, shall be disaffirmed by or on behalf of the Borrower, the Sponsor or any other Person party thereto (other than DOE, the Loan Servicer or the Collateral Agent).

(j) Default under Other Indebtedness. The Borrower shall default under any agreement or instrument evidencing Indebtedness for Borrowed Money (other than the Guaranted Loans) with an aggregate principal amount in excess of Five Million Dollars ($5,000,000), if the effect of such default is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness for Borrowed Money.

(k) Judgments. One or more Governmental Judgments shall be entered against (i) the Borrower and such Governmental Judgments shall not be vacated, discharged or stayed or bonded pending appeal for any period of thirty (30) days, and the aggregate amount of all such Governmental Judgments outstanding at any time (except to the extent any applicable insurer(s) have acknowledged liability and paid therefor) exceeds Ten Million Dollars ($10,000,000) or (ii) the Sponsor (prior to the Project Completion Date) or the EPC Contractor (prior to the Operational Completion Date), and such Governmental Judgments shall not be vacated, discharged or stayed or bonded pending appeal for any period of sixty (60) consecutive days and could reasonably be expected to have a Material Adverse Effect.

(l) Bankruptcy; Insolvency; Dissolution.

(i) Involuntary Bankruptcy, Etc. An Insolvency Proceeding has been commenced against:

(A) the Borrower if such proceeding continues undismissed for sixty (60) days;

(B) the Sponsor (prior to the Project Completion Date) if such proceeding continues undismissed for sixty (60) days;

(C) the EPC Guarantor (prior to the Operational Completion Date) if such proceeding continues undismissed for sixty (60) days; or

(D) or PG&E if (I) such proceeding continues undismissed for sixty (60) days and (II) could reasonably be expected to have a Material Adverse Effect.

(ii) Voluntary Bankruptcy, Etc.

(A) The institution by the Borrower of any Insolvency Proceeding with respect to itself, or the admission by it in writing of its inability to pay its Indebtedness generally as it becomes due or its general failure to pay its Indebtedness as it becomes due, or any action is taken by any such Person for the purpose of effecting any of the foregoing or any analogous proceeding.

(B) The institution by the Sponsor (prior to the Project Completion Date) of any Insolvency Proceeding with respect to itself, or the admission by it in writing of its inability to pay its Indebtedness generally as it becomes due or its general failure to pay its Indebtedness as it becomes due, or any action is taken by any such Person for the purpose of effecting any of the foregoing or any analogous proceeding.

(C) The institution by the EPC Guarantor (prior to the Operational Completion Date) of any Insolvency Proceeding with respect to itself, or the admission by it in writing of its inability to pay its Indebtedness generally as it becomes due or its general failure to pay its Indebtedness as it becomes due, or any action is taken by any such Person for the purpose of effecting any of the foregoing or any analogous proceeding.

(D) The institution by PG&E of any Insolvency Proceeding with respect to itself, or the admission by it in writing of its inability to pay its Indebtedness generally as it becomes due or its general failure to pay its Indebtedness as it becomes due, or any action is taken by any such Person for the purpose of effecting any of the foregoing or any analogous proceeding

(iii) Dissolution. The dissolution of the Borrower, the Sponsor (prior to the Project Completion Date), the EPC Guarantor (prior to the Operational Completion Date) or PG&E.

(m) Governmental Approvals and Required Approvals.

(i) The Borrower, any other Borrower Entity or any Major Project Participant shall fail to obtain, renew, maintain or comply in all material respects with any Required Approval at any time when such Required Approval is required to be obtained, renewed, maintained or complied with;

(ii) any Required Approval shall, at any time when such Required Approval is required for the Project, be rescinded, terminated, suspended, modified, withdrawn or withheld or shall be determined to be invalid or shall cease to be in full force and effect; or

(iii) any proceedings shall be commenced by or before any Governmental Authority for the purpose of rescinding, terminating, suspending, modifying, withdrawing or withholding any such Required Approval, and such proceedings could reasonably be expected to result in a Material Adverse Effect.

(n) Use of Project Site. The Borrower shall cease to have the right to (i) possess and use the Project for the purpose of owning, constructing, maintaining and operating the Project in the manner contemplated by the Transaction Documents or (ii) sell or otherwise dispose of any of its leasehold or

easement interest in the Project Site or its ownership of the Project other than as expressly permitted by Section 8.26 of the Deed of Trust.

(o) Event of Loss. All or substantially all of the Project is destroyed or becomes permanently inoperative as a result of an Event of Loss whether because (i) it is not covered by insurance, (ii) the Loss Proceeds received from the insurance are insufficient to repair or restore the Project to allow it to operate as contemplated in the Transaction Documents or (iii) for whatever reason, the Project is not repaired or restored with the Loss Proceeds received within the time periods specified in the Transaction Documents.

(p) Suspension of Construction. Prior to the Project Completion Date, construction of the Project shall be suspended, other than as a result of the occurrence of an Event of Force Majeure, for a period of sixty (60) consecutive days.

(q) Suspension of Operation. From and after the Project Completion Date, the Project ceases to operate, other than as a result of the occurrence of an Event of Force Majeure, for a period of sixty (60) consecutive days; provided that, such period may be extended to up to one hundred eighty (180) consecutive days (or such longer period as the DOE may determine, in its sole discretion) from the date on which the Project ceased to operate if (a) the Project cannot be restored to operation within sixty (60) days due solely to the unavailability of the main 34.5kV to 230kV step-up transformer, (b) the Borrower has presented a reasonable plan for remediation of the issue to DOE and the Independent Engineer in the first sixty (60) days following the cessation of operation, (c) the Independent Engineer has confirmed the unavailability of the main 34.5kV to 230kV step-up transformer and the reasonableness of the mitigation plan in such sixty (60) day period and (d) such extension will not result in any counterparty to a Power Purchase Agreement having the right to terminate such Power Purchase Agreement. For the avoidance of doubt, the Borrower shall promptly provide to the Independent

Engineer any such additional information and access to the Project Site as the Independent Engineer may request in order to make the determination required in this clause (q).

(r) Failure of Completion to Occur; Insufficient Funding.

(i) Operational Completion shall not have occurred by the Guaranteed Operational Completion Date;

(ii) Project Completion shall not have occurred by the Guaranteed Project Completion Date; or

(iii) at any time prior to the Project Completion Date, in the reasonable opinion of DOE, the remaining Project Costs necessary to achieve Project Completion exceed the Total Funding Available to the Borrower and the Borrower fails within sixty (60) days after receiving notice thereof from DOE to arrange for the provision of the requisite funds (through additional equity contributions) to achieve Project Completion on terms and conditions and from parties reasonably acceptable to DOE.

(s) ERISA. (i) There occurs one or more ERISA Events that individually or in the aggregate results in or otherwise is associated with liability of the Borrower or any of its ERISA Affiliates that would reasonably be expected to have a Material Adverse Effect during the term of this Loan Guarantee Agreement; (ii) the Borrower or any of its ERISA Affiliates request a minimum funding waiver or fails to meet any funding obligations with respect to any Pension Plan or Multiemployer Plan; or (iii) the imposition of a Lien or other security interest on any property of the Borrower pursuant to Section 303(k) of ERISA or Section 430(k) of the Code.

(t) Force Majeure. An Event of Force Majeure shall occur and continue for a period of one hundred eighty (180) consecutive days.

(u) Material Adverse Effect. The occurrence of any event or condition that has had or could reasonably be expected to have a Material Adverse Effect.

(v) Suspension and Debarment. The occurrence of any event or condition that has resulted in the debarment or suspension of the Borrower from contracting with the United States Government or any agency or instrumentality thereof under Debarment Regulations.

(w) Compliance with Applicable Regulations; Program Requirements.

(i) The Borrower shall fail to comply with the provisions of Title XVII and such failure continues unremedied for any period of at least thirty (30) days or, in the case of a failure to comply with Section 1702(k) of Title XVII, such failure continues unremedied for ninety (90) days.

(ii) The Borrower fails to comply with the provisions of the Applicable Regulations; provided, however, that, if such failure is capable of being cured, and the Borrower is diligently pursuing such cure, such failure shall be an Event of Default if not remedied within ninety (90) days.

(iii) The Borrower fails to comply in all material respects with (A) all other Applicable Laws and (B) all other Program Requirements (other than the provisions of Title XVII and the Applicable Regulations), where such failure continues unremedied for at least ninety (90) days (unless such failure cannot reasonably be cured within such period and the Borrower or the Operator, as applicable, is diligently working to cure such failure according to an applicable remediation plan); provided that the Borrower shall not be in default under this clause (iii) at any time it is contesting in good faith by appropriate legal proceedings each assertion by a Governmental Authority that the Borrower is not in compliance with such Program Requirements or other Applicable Laws.

Notwithstanding the foregoing, no Event of Default shall exist under this Section 8.1(w) where the Parties have specifically agreed elsewhere in this Loan Guarantee Agreement (including in Section 6.24(k), Section 6.25, Section 8.1(y), Section 8.1(z), Section 8.1(aa), and Section 8.1(cc)) on the terms of compliance with a provision Title XVII, Applicable Regulations, Applicable Laws or Program Requirements.

(x) Foreign Asset Control Regulations. The making of any Advances or the use of the proceeds thereof violates the Foreign Asset Control Regulations.

(y) Prohibited Person.

(i) Any Borrower Entity or Borrower Entity Controlling Person becomes (whether through a transfer or otherwise) a Prohibited Person; provided that if any such Person (other than a Borrower Entity) that becomes a Prohibited Person is removed or replaced with a Person reasonably acceptable to DOE within thirty (30) days from the date that the Borrower Knew that such Person became a Prohibited Person (or, if such removal or replacement is not reasonably feasible, the Borrower implements other mitigation measures to the reasonable satisfaction of DOE), no Event of Default shall be deemed to have occurred.

(ii) The Borrower Knowingly enters into a transaction with a Person who is a Prohibited Person.

(iii) The Borrower enters into a transaction with a Person who is a Prohibited Person and does not remove or replace such Prohibited Person with a Person who is reasonably acceptable to DOE (or, if such removal or replacement is not reasonably feasible, does not implement other mitigation measures to the reasonable satisfaction of DOE) within thirty (30) days from the date that the Borrower Knew that such Person was a Prohibited Person.

(iv) Any of the Collateral is traded or used, directly or indirectly, by a Prohibited Person or by a Person organized in a Prohibited Jurisdiction.

(v) For the avoidance of doubt, the representation and warranty set forth in Section 5.25(e) shall have the benefit of a cure period set forth in this Section 8.1(y).

(z) OFAC; Corrupt Practices Laws. Any Borrower Entity, Borrower Entity Controlling Person, Major Project Participant or their respective employees or agents fail to

comply with all applicable orders, rules and regulations of OFAC and all applicable Corrupt Practices Laws in obtaining any consents, licenses, approvals, authorizations, rights, or privileges with respect to the Project or, otherwise, fail to conduct the Project in compliance with all applicable orders, rules and regulations of OFAC and all applicable Corrupt Practices Law; provided that if the Borrower shall, within 30 days of Knowing that such Person has so failed to comply, engage or continue to engage in constructive discussions with DOE regarding the removal or replacement of such person or, if such removal or replacement is not reasonably feasible, implements other mitigation measures to the reasonable satisfaction of the Guarantor, no Event of Default shall be deemed to have occurred. For the avoidance of doubt, the representation and warranty set forth in Section 5.25(g) shall have the benefit of a cure period set forth in this Section 8.1(z).

(aa) Anti-Terrorism Order.

(i) Any Borrower Entity or Borrower Entity Controlling Person fails to comply with the Anti-Terrorism Order; provided that if the Borrower shall, within thirty (30) days from the date that the Borrower Knew that such Person so failed to comply, engage and continue to engage in constructive discussions with DOE regarding the removal or replacement of such Person or, if such removal or replacement is not reasonably feasible, implement other mitigation measures to the reasonable satisfaction of DOE, no Event of Default shall be deemed to have occurred.

(ii) Any Major Project Participant or any Person that Controls any Major Project Participant fails to comply with the Anti-Terrorism Order and such Major Project Participant or Controlling Person is not removed or replaced with a Person reasonably acceptable to DOE within twenty (20) Business Days from the date that the Borrower Knew that such Major Project Participant or Controlling Person failed to comply with the Anti-Terrorism Order.

(iii) For the avoidance of doubt, any alleged breach of the representation and warranty in Section 5.25(f) shall have the benefit of the cure period set forth in this Section 8.1(aa).

(bb) Equity Transfers. At any time prior to the Project Completion Date, the Sponsor fails to hold, directly or indirectly, greater than 50% of the Equity Interests of the Borrower.

(cc) Change in Control.

(i) *Prohibited Direct Transfers.* Any failure of the Holding Company to own one hundred percent (100%) of the Equity Interests in the Borrower; provided, however, that notwithstanding the foregoing, DOE shall not unreasonably withhold, condition or delay its consent to a transfer of Equity Interests in the Borrower to one or more Tax Equity Investors if (x) DOE has received a written request from the Borrower that DOE consent to such transfer pursuant to a proposal for tax equity financing and (y) all terms of such proposal and DOE's consent thereto, including all required modifications to the Transaction Documents and all requirements of Section 609.18 of the Applicable Regulations, have been complied with.

(ii) *Prohibited Indirect Transfers.* Subject to clause (AA) (Widely-Held Public Companies; Designated Private Companies), clause (BB) (Natural Persons), clause (CC) (Transfers Resulting in No New Person Holding a 10% or Greater Interest in Borrower), clause (DD) (Transfers Among Existing Investors), and clause (EE) (Portfolio Sales) in the proviso at the end of this Section 8.1(cc), any transfer of any Proportional Ownership Interest in the Borrower, unless DOE provides its prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed if (A) the proposed transferee is a Qualified Transferee and (B) not less than thirty (30) days prior written notice of such transfer is given to DOE and the transferee (x) represents and warrants to DOE and the Borrower that it is a Qualified Transferee, and (y) delivers to DOE an organizational chart showing ownership up to the Widely-Held Public Company level or the Designated Private Company level, as applicable;

(iii) *Prohibited Change of Control of Borrower.* Subject to clause (AA) (Widely-Held Public Companies; Designated Private Companies), and clause (BB) (Natural Persons) in the proviso at the end of this Section 8.1(cc),

(A) Prior to Project Completion. At any time prior to the Project Completion Date, any transfer or other event that results in a change of Control of the Borrower;

(B) After Project Completion. At any time on or after the Project Completion Date, any transfer or other event that results in a change of Control of the Borrower, unless DOE provides its prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed if the proposed transferee is a Qualified Transferee;

(iv) *Prohibited Persons.* Subject to clause (AA) (Widely-Held Public Companies; Designated Private Companies):

(A) Prohibited Person Transfer. The occurrence of any Prohibited Person Transfer;

(B) Designated Private Company or Widely-Held Public Company. Any Person that is (x) a Designated Private Company or a Widely-Held Public Company, or (y) an investor that Controls such Designated Private Company or Widely-Held Public Company, becomes a Prohibited Person; provided, that it shall not be an Event of Default under this Section 8.1(dd)(iv)(B) if (1) within 30 days from the date that the Borrower learns that a Person is a Prohibited Person the Borrower has provided to DOE a mitigation plan (which plan may include the exercise of applicable contractual rights and remedies) reasonably acceptable to DOE with respect to the removal, replacement or other arrangement regarding such Person

and (2) thereafter the Borrower uses all commercially reasonable efforts to implement the agreed mitigation plan;

provided, however, that to the extent specified above in clauses (i) through (v) of this Section 8.1(cc), the following exceptions shall apply:

(AA) Widely-Held Public Companies; Designated Private Companies. Any transfer of an Equity Interest in a Widely-Held Public Company or a Designated Private Company is not an Event of Default and shall be disregarded in the calculation of Proportional Ownership Interests and the determination of the occurrence of a Prohibited Person Transfer;

(BB) Natural Persons. Any transfer of any Equity Interest by a natural Person is not an Event of Default if (x) such transfer is (1) in connection with bona fide estate planning, (2) upon death or disability of the transferor, (3) pursuant to a divorce decree respecting the transferor, (4) upon personal bankruptcy of the transferor, or (5) of Equity Interests issued pursuant to an equity incentive plan that qualifies under Rule 701 under the Securities Act of 1933, and (y) the transferee is not a Prohibited Person at the time of such transfer;

(CC) Transfers Resulting in No New Person Holding a 10% or Greater Interest in Borrower. Any transfer of any Proportional Ownership Interest in the Borrower is not an Event of Default if (1) after giving effect to such transfer no Person (including such Person's Affiliates), other than (x) the Sponsor, and (y) any transferee to which DOE has expressly consented, owns or Controls ten percent (10%) or more of the Proportional Ownership Interests in the Borrower, and (2) the transferee is not directly or indirectly Controlled or owned, in any material respect, by any Governmental Authority;

(DD) Transfers Among Existing Investors. Any transfer of a Proportional Ownership Interest in the Borrower is not an Event of Default if the transferee either (1) had a Proportional Ownership Interest in the Borrower on the Guarantee Issuance Date, or (2) subsequently acquired a Proportional Ownership Interest with DOE's express consent.

(EE) Portfolio Sales. Any transfer of a Proportional Ownership Interest in the Borrower is not an Event of Default if the

transfer is to a Qualified Transferee in connection with a sale of (x) all or substantially all of the transferor's interest in its Renewable Energy Portfolio, or (y) a non-Controlling interest in the transferor's interest in its Renewable Energy Portfolio.

(dd) Transfer to a Disqualified Person. During the Recapture Period (if any), any Recapture Liability has arisen as a result of the Borrower or Sponsor (i) becoming a Disqualified Person, or (ii) causing, permitting, or consenting to any transfer of any direct or indirect ownership interest or other interest in the Borrower or in any Project assets to a Disqualified Person or (in the case of an interest in any Project assets) to a Person that has not agreed to be jointly liable with the Borrower for Cash Grant Recapture Liabilities, unless such Cash Grant Recapture Liability arises in connection with the Lender or DOE foreclosing on the Project or directing the foreclosure on the Project.

(ee) Cash Grant Recapture Liabilities. Any Cash Grant Recapture Liability has arisen with respect to any asset that is included in or part of the Project and has not been satisfied by the Borrower within fifteen (15) days, unless such Cash Grant Recapture Liability arises in connection with the Lender or DOE foreclosing on the Project or directing the foreclosure on the Project.

(ff) Failure to Maintain Project Document Letters of Credit and the LGIA Surety Bonds. At any time, Letters of Credit representing Development Security, the Delivery Term Security, the EPC Contract Security or the Mitigation Land Security or the LGIA Surety Bonds shall not be maintained in the amounts required pursuant to the terms of this Loan Guarantee Agreement (subject to the applicable reductions and releases under the Major Project Documents).

(gg) Failure to Maintain CEQA Litigation Support Instruments. At any time prior to the occurrence of the Settlement, any of the CEQA Litigation Support Instruments is not in full force and effect or a default under any such CEQA Litigation Support Instrument shall occur (which, for the avoidance of doubt shall not include any event or circumstance which gives rise to any such Letter of Credit becoming capable of being drawn, as long as such Letter of Credit has been or remains capable of being drawn), such that the aggregate amount of the CEQA Litigation Support Instruments (and any proceeds thereof) is less than the CEQA Support Required Amount.

(hh) Failure to Maintain Cash Grant Shortfall Security. At any time until the Cash Grant Bridge Loans have been repaid in full, any of the Cash Grant Shortfall Security fails to be in full force and effect or a default under any such Cash Grant Shortfall Security shall occur (which, for the avoidance of doubt shall

not include any event or circumstance which gives rise to any such Letter of Credit becoming capable of being drawn, as long as such Letter of Credit has been, remains capable of, or is being drawn), except as each may be (i) drawn in accordance with section 4.12 of the Accounts Agreement, (ii) drawn or paid in accordance with Section 3.4.3(g) or any other provision of this Loan Guarantee Agreement or (iii) reduced on or after the Cash Grant Support Release Date in accordance with the terms of this Loan Guarantee Agreement.

For the avoidance of doubt, each clause of this Section 8.1 shall operate independently, and the occurrence of any such event shall constitute an Event of Default.

SECTION 8.2. Remedies for Events of Default.

(a) Upon the occurrence and during the continuance of an Event of Default, DOE may, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands being waived (to the extent permitted by Applicable Laws), exercise any or all rights and remedies at law or in equity (in any combination or order that DOE may elect), including, without prejudice to DOE's other rights and remedies, the following:

(i) (A) refuse, and DOE and FFB shall not be obligated, to make or guarantee any further Advances, and the Collateral Agent shall not be obligated to make any payments from any Project Account or any Account Proceeds or other funds held by the Collateral Agent by or on behalf of the Borrower and (B) suspend or terminate the FFB Commitment;

(ii) take those actions necessary to perfect and maintain the Liens of the Security Documents;

(iii) declare and make all sums of outstanding principal and accrued but unpaid interest remaining under this Loan Guarantee Agreement and the other Financing Documents together with all unpaid fees, Periodic Expenses and charges due hereunder or under any other Financing Document, payable on demand or immediately due and payable, whereupon such amounts shall immediately mature and become due and payable;

(iv) enter into possession of the Project (or any portion thereof) and perform any and all work and labor necessary to complete the Project (or any portion thereof) or to operate and maintain the Project (or any portion thereof), apply for and obtain the appointment of a receiver with respect to the Collateral or any portion thereof (and the Borrower hereby consents thereto) or otherwise foreclose upon or take possession of any Collateral and all sums expended by any such Person in so doing, together with interest on such amount at the Late Charge Rate, shall be repaid by the Borrower to such Person upon demand and shall be secured by the Security Documents, notwithstanding that such expenditures may, together with the aggregate amount of Advances of the Guaranteed Loans, exceed the amount of the total FFB Commitment;

(v) otherwise foreclose upon or take possession and cause the sale or disposition of any Collateral;

(vi) set off and apply such amounts to the satisfaction of the Secured Obligations under all of the Financing Documents, including (A) all monies on deposit in any Project Account (including any Reserve Letter of Credit issued in lieu thereof); (B) any Account Proceeds; (C) any amounts paid under the Equity Funding Agreement including any Reserve Letters of Credit issued thereunder; or (D) any other moneys of the Borrower on deposit with the Collateral Agent or any other Secured Party;

(vii) prior to the Project Completion Date, require the Sponsor to make an accelerated Equity Contribution in accordance with the terms of the Equity Funding Agreement in an amount equal to the balance of the undrawn Base Equity Commitment;

(viii) cure defaults;

(ix) charge interest at the Late Charge Rate on any amounts not paid when;

(x) proceed to protect and enforce its rights and remedies by appropriate proceedings, whether for damages or the specific performance of any provision of this Loan Guarantee Agreement or any other Transaction Document, or in aid of the exercise of any power granted in this Loan Guarantee Agreement or any other Transaction Document, or by law, or proceed to enforce the payment of any amount due and payable;

(xi) exercise any and all rights and remedies available to it under any of the Transaction Documents with respect to the Project, any Borrower Entity or any other Major Project Participant and under the Security Documents or otherwise under Applicable Laws;

(xii) exercise any and all rights and remedies available to it under any of the CEQA Litigation Support Instruments and the Cash Grant Shortfall Security; and

(xiii) take such other actions as DOE may reasonably require to provide for the care, preservation, protection, and maintenance of all Collateral so as to enable the United States to achieve maximum recovery upon default by the Borrower on the Guaranteed Loans.

SECTION 8.3. Automatic Acceleration.

Upon the occurrence of an Event of Default referred to in Section 8.1(1) in respect of the Borrower, (a) the FFB Commitment and, to the extent permitted under the FFB Documents, the capitalization of interest owed in respect of the Advances pursuant to Section 7(b) of each of the FFB Promissory Notes shall automatically be terminated and (b) the Guaranteed Loans, together with interest accrued thereon and all other amounts due under the Guaranteed Loans and the other Financing Documents, shall immediately mature and become due and payable, without any other presentment, demand, diligence, protest, notice of acceleration, or other notice of any kind, all of which the Borrower hereby expressly waives.

SECTION 8.4. Remedies.

At any time when an Event of Default exists, DOE (and the Loan Servicer on DOE's behalf) shall be entitled to instruct the Collateral Agent to exercise, or to refrain from exercising, any right, remedy, power or privilege available to or conferred upon it with respect to the Collateral or otherwise under this Loan Guarantee Agreement, any CEQA Litigation Support Instrument, the Cash Grant Shortfall Security, the Security Documents or any other Financing Document to which it is a party and direct the time, place and manner in which the Collateral Agent is to exercise any such right, remedy, power or privilege. DOE shall cause the Collateral Agent to comply with any such instruction as promptly as practicable.

SECTION 8.5. Appointment of a Receiver.

Notwithstanding any appointment of a receiver, subject to mandatory provisions of Applicable Law, the Collateral Agent shall be entitled to retain possession and control of all cash, investments and Reserve Letters of Credit held by, or deposited with, it or its agents or nominees pursuant to any provision of this Loan Guarantee Agreement, the Accounts Agreement or any other Security Document or Financing Document.

ARTICLE 9
AGENTS AND ADVISORS

SECTION 9.1. Appointment of Loan Servicer.

In connection with the Project, DOE hereby appoints the U.S. Department of Energy, an agency of the United States of America, acting through its Loan Guarantee Program Office, or its designee to act as Loan Servicer and authorizes it to exercise such rights, powers, authorities and discretions as are specifically delegated to the Loan Servicer by the terms of this Loan Guarantee Agreement and the other Financing Documents, together with all such rights, powers, authorities and discretions as are reasonably incidental thereto. The Loan Servicer, by its signature below, accepts such appointment.

SECTION 9.2. Duties and Responsibilities.

(a) The Loan Servicer shall not have any duties or responsibilities except those expressly set out in this Loan Guarantee Agreement or in the other Financing Documents. Notwithstanding anything to the contrary contained herein or in any other Financing Document, the Loan Servicer shall not be required to take any action that is contrary to any Applicable Law.

(b) DOE, and any subsequent Person acting as Loan Servicer, or to whom any rights or responsibilities of the Loan Servicer are delegated, under the Financing Documents, shall comply with all requirements of the Applicable Regulations with respect to servicing the Advances, including:

(i) the Loan Servicer, with the assistance of the Collateral Agent, has taken and shall continue to take those actions necessary to perfect and maintain Liens on assets that are pledged as Collateral pursuant to the terms of the Security Documents;

(ii) the Loan Servicer shall keep such records concerning the Project as are necessary for facilitating the effective and accurate audit and performance evaluation of the Project pursuant to the Applicable Regulations and Program Requirements;

(iii) any assignment or transfer of the servicing, monitoring, tracking, and reporting functions performed by the Loan Servicer must be approved by DOE in writing in advance of such assignment or transfer; and

(iv) for the purpose of identifying holders with the right to receive payment under the DOE Guarantee, the Loan Servicer shall develop a procedure for tracking and identifying holders of Guaranteed Loans.

SECTION 9.3 Rights and Obligations.

(a) The Loan Servicer may:

(i) assume, absent actual knowledge or written notice to the contrary, that (A) any representation made by any Project Participant in connection with any Transaction Document is true, (B) no Event of Default or Potential Event of Default exists, (C) no Project Participant is in breach of or in default under its obligations under any Transaction Document and (D) any right, power, authority or discretion vested herein upon any other Agent or Independent Consultant has not been exercised;

(ii) assume, absent actual knowledge or written notice to the contrary, that any notice or certificate given by any Project Participant or Independent Consultant has been validly given by a Person authorized to do so and act upon such notice or certificate unless the same is revoked or superseded by a further such notice or certificate;

(iii) assume, absent actual knowledge or written notice to the contrary, that the address, telecopy and telephone numbers for the giving of any written notice to any Person hereunder is that identified in Schedule 11.1 until it has received from such Person a written notice designating some other office of such Person to replace any such address, or telecopy or telephone number, and act upon any such notice until the same is superseded by a further such written notice;

(iv) employ at the expense of the Borrower in accordance with Section 9.7, lawyers, accountants or other experts whose advice or services such Agent may reasonably determine are necessary, expedient or desirable, and pay reasonable fees and expenses for the advice or service of any such Person and may rely upon any advice so obtained; provided that no Agent shall be under any obligation to act upon such advice if it does not deem such action to be appropriate;

(v) rely on any matters of fact that might reasonably be expected to be within the Knowledge of any Project Participant or any Independent Consultant upon a certificate signed by or on behalf of such party;

(vi) conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(vii) refrain from acting or continuing to act in accordance with any instructions of DOE (or the Loan Servicer on DOE's behalf) to begin any legal action or proceeding arising out of or in connection with any Transaction Document until it has received such indemnity or security from the Borrower or such other Person (other than DOE, the Loan Servicer and FFB) as it may reasonably require (whether by payment in advance or otherwise) for all costs, claims, losses, expenses (including reasonable legal fees and expenses) and liabilities that it will or may expend or incur in complying or continuing to comply with such instructions; and

(viii) seek instructions from DOE (or the Loan Servicer on DOE's behalf) as to the exercise of any of its rights, powers, authorities or discretions hereunder, and in the event that it does so, it shall not be considered as having acted unreasonably when acting in accordance with such instructions or, in the absence of any (or any clear) instructions, when refraining from taking any action or exercising any right, power or discretion hereunder.

(b) The Loan Servicer shall:

(i) except as otherwise expressly provided in any Financing Document, perform its duties in accordance with any instructions given to it by DOE (or the Loan Servicer on DOE's behalf); and

(ii) if so instructed by DOE (or the Loan Servicer on DOE's behalf), refrain from exercising any right, power, authority or discretion vested in it as an Agent hereunder or under the other Financing Documents (other than rights arising under this Article 9 or Section 9.13).

SECTION 9.4. No Responsibility for Certain Conduct.

(a) In connection with the Financing Documents, notwithstanding anything to the contrary expressed or implied herein or in the other Financing Documents, the Loan Servicer shall not:

(i) be bound to inquire as to (A) whether or not any representation made by any other Person in connection with any Transaction Document is true; (B) the occurrence or otherwise of any Event of Default or Potential Event of Default; (C) the performance by any other Person of its obligations under any of the Transaction Documents; or (D) any breach of or default by any other Person of its obligations under any of the Transaction Documents;

(ii) be bound to account to any Person for any sum or the profit element of any sum received by it for its own account except as expressly provided under the Financing Documents;

(iii) be bound to disclose to any Person any information relating to the Project or to any Person if such disclosure would, or might in its opinion, constitute a breach of any Applicable Law or be otherwise actionable at the suit of any Person; or

(iv) be under any fiduciary duties or obligation other than those for which express provision is made in this Loan Guarantee Agreement or in any other Financing Document to which such Person is a party.

(b) The Loan Servicer shall not have any responsibility for the accuracy or completeness of any information supplied by any Person (other than such Person) in connection with the Project or for the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or any other document referred to herein or provided for herein or therein or for any recitals, statements, representations or warranties made by the Borrower or any other

Person contained in this Loan Guarantee Agreement or any other Transaction Document or in any certificate or other document referred to or provided for in, or received by such Agent, hereunder or thereunder.

(c) The Loan Servicer and its Affiliates may accept deposits from, lend money to, act as trustee under indentures of and generally engage in any kind of banking or other business with any Person, without any duty to account therefor to the Secured Parties.

SECTION 9.5. Defaults.

The Loan Servicer shall not be deemed to have knowledge or notice of the occurrence of any Event of Default or Potential Event of Default unless the Loan Servicer has Knowledge of such Event of Default or Potential Event of Default or has received a notice from a Project Participant, referring to this Loan Guarantee Agreement, describing such Event of Default or Potential Event of Default and stating that such notice is a "notice of default." If the Loan Servicer has Knowledge of an Event of Default or Potential Event of Default or receives such a notice of default, the Loan Servicert shall give prompt notice thereof to DOE. The Loan Servicer shall take such action with respect to such Event of Default or Potential Event of Default as is provided in Article 8 of this Loan Guarantee Agreement; provided, however, that unless and until the Loan Servicer receives direction from DOE, it may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Event of Default or Potential Event of Default as it shall deem advisable and in the best interest of the Secured Parties.

SECTION 9.6. No Liability.

Neither the Loan Servicer, nor any of its officers, directors, employees or agents shall be liable:

(a) as a result of any failure by the Borrower or its Affiliates or any Person party hereto or to any other Transaction Document (except such Agent) to perform their respective obligations hereunder or under any other Transaction Document or any document referred to or provided for herein or therein or as a result of taking or omitting to take any action hereunder or in relation to any Transaction Document; or

(b) to any Borrower Entity, Project Participant or Independent Consultant for any action taken or omitted under this Loan Guarantee Agreement or under the other Financing Documents, or in connection therewith, except to the extent caused by the gross negligence or willful misconduct of the Loan Servicer, as determined by a court of competent jurisdiction in a final non-appealable Governmental Judgment. DOE (for itself and any Person claiming through it) hereby releases, waives, discharges and exculpates the Loan Servicer for any action taken or omitted by the Loan Servicer under this Loan Guarantee Agreement or under the other Financing Documents, or in connection therewith, except to the extent caused by the gross negligence or willful misconduct of the Loan Servicer as determined by a court of competent jurisdiction in a final non-appealable Governmental Judgment.

SECTION 9.7. Fees and Expenses of Loan Servicer.

(a) The Borrower shall be responsible for paying the fees and expenses of the Loan Servicer in connection with the Project, the Transaction Documents and the Guaranteed Loans under all circumstances, pursuant to a separate written agreement with the Loan Servicer, without recourse to DOE by the Loan Servicer, any Borrower Entity or any other Person.

(b) In accordance with a letter agreement to be entered into between the Borrower and the Loan Servicer, the Borrower shall (i) from time to time on demand by the Loan Servicer, indemnify the Loan Servicer against any and all costs, claims, losses, expenses (including reasonable legal fees and expenses) and liabilities, that the Loan Servicer may incur in acting in its capacity as the Loan Servicer hereunder, other than by reason of its own gross negligence or willful misconduct and (ii) without limitation of the foregoing, reimburse the Loan Servicer promptly upon demand for any out-of-pocket expenses (including reasonable legal fees and expenses) incurred by the Loan Servicer in connection with the preparation, execution, administration or enforcement of, or services provided in respect of rights or responsibilities under, the Transaction Documents.

(c) All payments or reimbursements under this Section 9.7 shall be due and payable (i) not later than ten (10) Business Days after the Borrower's receipt of the the Loan Servicer's request therefor from time to time and (ii) whether or not this Loan Guarantee Agreement is terminated or any Advance is made.

(d) The Borrower and the Loan Servicer expressly acknowledge and agree that:

(i) DOE shall not be financially liable to the Loan Servicer for any services rendered or expenses incurred in connection with the Project under any circumstances whatsoever, including whether any Advance occurs or under circumstances in which the Borrower fails to pay such fees and expenses;

(ii) the Borrower shall acknowledge and pay all fees and expenses represented by periodic invoices for services rendered by the Loan Servicer to DOE with respect to the Project upon their periodic presentation thereof by the Loan Servicer, including prior to or on the Guarantee Agreement Date;

(iii) while the services provided by the Loan Servicer shall be rendered for the benefit of DOE in connection with the Project, the invoices of the Loan Servicer shall be the sole responsibility of the Borrower, notwithstanding that the Loan Servicer is an agent of DOE; and

(iv) the Borrower specifically disclaims any implication of confidential, fiduciary or other client relationship between the Borrower or any Borrower Entity and the Loan Servicer as a result of this Section 9.7 and shall not interfere with the relationship (including the ability to terminate the agency relationship) between the Loan Servicer and DOE.

The provisions of this Section 9.7 shall survive the termination of this Loan Guarantee Agreement and the other Financing Documents.

SECTION 9.8. Resignation and Removal.

(a) Subject to Section 9.9, the Loan Servicer may resign its appointment hereunder at any time without providing any reason therefor by giving prior written notice to that effect to each of the other parties hereto.

(b) Subject to Section 9.9, DOE may remove the Loan Servicer from its appointment hereunder with or without cause by giving prior written notice to that effect to each of the other parties hereto.

SECTION 9.9. Successor Loan Servicer.

(a) No resignation or removal pursuant to Section 9.8 shall be effective until:

(i) a successor for the Loan Servicer is appointed in accordance with (and subject to) the provisions of this Section 9.9;

(ii) the resigning or removed Loan Servicer has transferred to its successor all of its rights and obligations in its capacity as the Loan Servicer under this Loan Guarantee Agreement and the other Financing Documents; and

(iii) the successor Loan Servicer has executed and delivered an agreement to be bound by the terms of this Loan Guarantee Agreement and the other Financing Documents and to perform all duties required of the Loan Servicer hereunder and under the other Financing Documents.

(b) If the Loan Servicer has given notice of its resignation pursuant to Section 9.8(a) or if DOE gives the Loan Servicer notice of removal pursuant to Section 9.8(b), then a successor to the Loan Servicer may be appointed by DOE (and, unless an Event of Default or Potential Event of Default has occurred and is continuing, with the written consent of the Borrower, which consent shall not be unreasonably withheld or delayed) during the ninety (90) day period beginning on the date of such notice in accordance with the terms of this Loan Guarantee Agreement but, if no such successor is so appointed within ninety (90) days after the above notice, the resigning or removed Loan Servicer may appoint such a successor. If a resigning or removed Loan Servicer appoints a successor, such successor shall (i) be authorized under all Applicable Law to exercise corporate trust powers and (ii) be acceptable to DOE (and, unless an Event of Default or Potential Event of Default has occurred and is continuing, the Borrower, approval by which shall not be unreasonably withheld or delayed); provided, that if DOE and the Borrower, as applicable, do not confirm such acceptance in writing within sixty (60) days following selection of such successor by the resigning or

removed Loan Servicer or otherwise appoint a successor within such sixty (60) day period, then DOE and the Borrower, as the case may be, shall be deemed to have given such acceptance and such successor shall be deemed appointed as the successor to such resigning or removed Loan Servicer hereunder.

(c) If a successor to the Loan Servicer is appointed under the provisions of this Section 9.9, then:

(i) the predecessor Loan Servicer shall be discharged from any further obligation hereunder (but without prejudice to any accrued liabilities);

(ii) the resignation pursuant to Section 9.8(a) or removal pursuant to Section 9.8(b) of the predecessor Loan Servicer notwithstanding, the provisions of this Loan Guarantee Agreement shall inure to the predecessor Loan Servicer's benefit as to any actions taken or omitted to be taken by it under this Loan Guarantee Agreement and the other Financing Documents while it was a Loan Servicer; and

(iii) the successor Loan Servicer and each of the other parties hereto shall have the same rights and obligations amongst themselves as they would have had if such successor Loan Servicer had been a party hereto beginning on the date of this Loan Guarantee Agreement.

SECTION 9.10. Due Authorization; Execution; Delivery.

The Loan Servicer is hereby authorized by DOE to execute, deliver and perform each of the Financing Documents to which the Loan Servicer is or is intended to be a party.

SECTION 9.11. Actions.

Except as otherwise provided in this Article 9, and subject to the other provisions of this Loan Guarantee Agreement, the Loan Servicer shall take any action it requests in writing with respect to the Collateral, this Loan Guarantee Agreement or any other Financing Document to which it is a party, as applicable.

SECTION 9.12. Delegation of Duties.

Subject to the provisions of Section 9.1 hereof, the Loan Servicer may execute any of the rights, remedies, powers, privileges, duties or obligations under this Loan Guarantee Agreement and the other Financing Documents to which it is a party either directly or by or through nominees or agents, and shall not be liable for any misconduct or negligence of any such nominee or agent appointed with due care by it hereunder.

SECTION 9.13. Patriot Act.

The parties hereto acknowledge that in accordance with Section 326 of the Patriot Act and in order to help fight the funding of terrorism and money laundering, the Collateral Agent, like all financial institutions, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with the Collateral Agent. The parties to this Loan Guarantee Agreement agree that they will provide the Collateral Agent with such information as it may request in order for the Collateral Agent to satisfy the requirements of the Patriot Act.

SECTION 9.14. Authority of the Loan Servicer.

The Borrower acknowledges that the rights and responsibilities of the Loan Servicer under this Loan Guarantee Agreement with respect to any action taken by the Loan Servicer or the exercise or non-exercise by the Loan Servicer of any power, right or remedy provided for or resulting or arising out of this Loan Guarantee Agreement shall, as between the Loan Servicer and DOE, be governed by this Loan Guarantee Agreement and by such other agreements with

respect thereto as may exist from time to time among them, but, as between the Loan Servicer, and the Borrower, the Loan Servicer shall be conclusively presumed to be acting as the Loan Servicer for DOE with full and valid authority so to act or refrain from acting, and the Borrower shall not be under any obligation or entitlement to make any inquiry respecting such authority.

SECTION 9.15. Force Majeure.

In no event shall the Loan Servicer be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services, it being understood that the Loan Servicer shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 9.16. Representations and Warranties of the Loan Servicer.

The Loan Servicer makes all of the following representations and warranties to and in favor of DOE as of the date hereof.

(a) Power and Authority. The Loan Servicer has the requisite power and authority to (i) execute, deliver and perform each of the Financing Documents to which it is a party and (ii) carry on its business as now being conducted.

(b) Legal, Valid and Binding. The obligations of the Loan Servicer under the Financing Documents to which it is a party are the legal, valid and binding obligations of the Loan Servicer enforceable in accordance with their respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether enforcement is sought in proceedings at law or in equity).

(c) No Consents. Neither the execution, delivery or performance by the Loan Servicer of any Financing Document to which it is a party, nor the performance by the Loan Servicer of the terms and conditions thereof requires the approval, consent or authorization of any Person other than (i) such approvals,

consents and authorizations as have been obtained or (ii) as may be required from time to time in connection with the exercise of remedies provided for herein and in the other Financing Documents (as to which the Loan Servicer makes no representation or warranty).

(d) Proceedings. There are no actions, suits or proceedings, claims or investigations pending or, to the actual knowledge of any officers of the Loan Servicer responsible for the administration of this Loan Guarantee Agreement, threatened against it that (i) challenge the validity or enforceability of any Financing Document to which it is a party or (ii) relate to the banking or trust powers of the Loan Servicer and that, individually or in the aggregate, if adversely determined would materially and adversely affect the ability of the Loan Servicer to perform its obligations under any Financing Document to which it is a party.

(e) No Liens. There are no Liens on or against the Collateral that result from (i) claims against the Loan Servicer unrelated to the transactions contemplated by this Loan Guarantee Agreement or the other Financing Documents or (ii) affirmative acts by the Loan Servicer creating a Lien other than as contemplated or permitted by this Loan Guarantee Agreement or the other Financing Documents.

SECTION 9.17. Survival.

The provisions of this Article 9 shall survive the termination of this Loan Guarantee Agreement.

ARTICLE 10
REIMBURSEMENT

SECTION 10.1. Reimbursement Obligation.

If the Borrower defaults in any payment due to FFB (whether such payment is required to be made directly to FFB or to DOE for further payment to FFB) under the Guaranteed Loans or otherwise under any FFB Document, and as a result of such payment default by the Borrower, DOE becomes obligated to make any payments to FFB or otherwise makes any payments to FFB pursuant to the DOE Guarantee (a "DOE Guarantee Payment"), the Borrower shall become immediately obligated to reimburse DOE in an amount (the "DOE Guarantee Payment Amount") equal to the sum of (i) all DOE Guarantee Payments paid by DOE to FFB and (ii) all fees, costs, expenses and other amounts incurred by DOE in connection therewith, whether by payment to FFB or otherwise; provided, however, that (A) any DOE Guarantee Payment shall not operate to satisfy the Borrower's obligations to FFB under the Guaranteed Loan or otherwise under the FFB Documents and (B) to the extent of any DOE Guarantee Payment, DOE shall be deemed hereunder to have been granted a participation in any or all of FFB's rights under the Financing Documents and with respect to the Collateral. Any DOE Guarantee Payment Amount shall be due and payable to DOE by the Borrower within two (2) days after Borrower's receipt of notice from DOE.

SECTION 10.2. Payments and Computations.

10.2.1. Interest.

The Borrower shall pay to DOE an amount (the "Borrower Reimbursement Obligations") equal to the sum of (i) the DOE Guarantee Payment Amount and (ii) interest on the DOE Guarantee Payment Amount from the date the DOE Guarantee Payment was paid or incurred by DOE under the DOE Guarantee until payment in full by the Borrower to DOE of the DOE Guarantee Payment Amount, at a rate of interest equal to the rate of interest in effect under the FFB Note Purchase Agreement with respect to Overdue Amounts at the time of the payment default by the Borrower.

10.2.2. Method of Payment.

The Borrower shall make each payment with respect to Borrower Reimbursement Obligations hereunder (a "Borrower Reimbursement Payment"), irrespective of any right of

counterclaim or set-off, in Dollars and in immediately available funds on or before the fifth (5th) Business Day following a written demand by DOE or the Loan Servicer to the Borrower indicating the DOE Guarantee Payment Amount and the date it was paid or incurred by DOE, by wire transfer to the following account, or to such other account as may be specified by DOE or the Loan Servicer from time to time:

U.S. Treasury Department
ABA No. 0210-3000-4 TREASNYC/CTR/I3NF=D89000001
OBI=LGPO Loan No. 1229 — Guarantee Reimbursement

10.2.3. Taxes.

All Borrower Reimbursement Payments by the Borrower hereunder shall be made in accordance with Section 3.1.2.

10.2.4. Calculations.

All computations of interest or fees under this Loan Guarantee Agreement shall be made by the Loan Servicer, on the same basis as payments under the FFB Note Purchase Agreement.

10.2.5. Determinations.

The Borrower and each other party hereto agrees that each determination by the Loan Servicer of an amount of interest or fees payable hereunder shall constitute *prima facie* evidence of the amount thereof and shall be conclusive absent manifest error.

SECTION 10.3. Obligations Absolute.

To the fullest extent permitted by law, the Borrower Reimbursement Obligations are absolute, irrevocable and unconditional, and shall be paid strictly in accordance with the terms of this Loan Guarantee Agreement under all circumstances whatsoever, including the following circumstances, whether or not with notice to or the consent of the Borrower:

(a) the occurrence, or the failure by DOE or any other Secured Party or any other Person to give notice to the Borrower of the occurrence, of any Event of Default or Potential Event of Default under this Loan Guarantee Agreement or any default under any of the other Financing Documents;

(b) the extension of the time for performance of any obligations, covenants or agreements of any Person under or arising out of any of the Financing Documents;

(c) the existence of any claim set-off, counterclaim, defense or other rights of any kind or nature that (A) the Borrower, DOE or any other Person may have at any time against FFB or any transferee or (B) the Borrower or any other Person may have at any time against DOE, whether in connection with the Financing Documents, the transactions contemplated therein or any unrelated transactions;

(d) any failure, omission or delay on the part of (A) DOE to assert a defense to a DOE Guarantee Payment Amount under the DOE Guarantee or to otherwise contest the DOE Guarantee or (B) DOE or any other Secured Party or the Borrower to enforce, assert or exercise any other right, power or remedy conferred by this Loan Guarantee Agreement or any of the Financing Documents;

(e) the taking or the omission on the part of DOE or any other Secured Party or the Borrower of any other actions or remedies referred to in any of the Financing Documents;

(f) the compromise, settlement, release, modification, amendment (whether material or otherwise) or termination of any or all of the obligations, conditions, covenants or agreements of any Person in respect of any of the Financing Documents;

(g) any amendment or waiver of the payment, performance or observance of any of the obligations, conditions, covenants or agreements of any Person contained in any of the Financing Documents;

(h) the exchange, surrender, substitution or modification of any security for any of the Financing Documents;

(i) any disability, incapacity or lack of powers, authority or legal personality of or dissolution or change in the status of the Borrower or any other Person;

(j) any release, irregularity, invalidity, illegality, lack of genuineness, unenforceability or modification affecting this Loan Guarantee Agreement, the DOE Guarantee, the Guaranteed Loans, or the other Financing Documents, or the transactions contemplated hereby or thereby;

(k) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets of, the marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustment of, or other similar proceedings that affect the Borrower or any other Person party to any of the Financing Documents;

(l) the release or discharge by operation of law of the Borrower from the performance or observance or any obligation, covenant or agreement contained in any of the Financing Documents;

(m) any statement or any other document presented under the DOE Guarantee proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect whatsoever;

(n) any determination by a court or arbitrator, or any settlement of a disputed claim by any party hereto or other Person, relating to this Loan Guarantee Agreement, the DOE Guarantee, or the other Financing Documents, or the transactions contemplated hereby or thereby;

(o) any promptness, diligence, presentment, demand of payment, protest, notice of dishonor or nonpayment of any liabilities of the Borrower, suit or taking of other action by DOE or any other Secured Party against any party liable thereon; or

(p) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

SECTION 10.4. Security.

10.4.1. Borrower Reimbursement Obligations Secured.

The parties expressly acknowledge that the Collateral pledged and assigned under the Security Documents is pledged and assigned to secure payment by the Borrower of the Borrower Reimbursement Obligations.

10.4.2. Actions.

The Borrower expressly acknowledges that DOE is free to litigate, settle or otherwise satisfy or discharge its obligation with respect to any DOE Guarantee Payment Amount, and take any action under the Security Documents or otherwise with respect to the Collateral, as it may from time to time deem appropriate, and any failure by DOE to advise, notify, or consult with the Borrower shall not be a defense to, or in any way diminish, discharge or derogate from the Borrower Reimbursement Obligations hereunder.

SECTION 10.5. DOE Rights.

10.5.1. Rights Cumulative.

DOE's right to reimbursement provided for in this Article 10 shall be in addition to, and not in limitation of, any other claims, rights or remedies of subrogation, reimbursement, contribution, exoneration or indemnification or similar claims, rights or remedies, whether arising under contract, by statute, or otherwise that DOE may have from time to time.

10.5.2. Subrogation.

Without limiting the generality of Section 10.5.1, upon any DOE Guarantee Payment, DOE shall be subrogated to the rights of FFB or any subsequent holder of either Guaranteed Loan, including all related Liens and Collateral.

SECTION 10.6. Further Assurances.

The Borrower shall cooperate with DOE in connection with the exercise of any of its rights under this Article 10 and agrees, promptly upon request by DOE or the Loan Servicer, to execute, acknowledge and deliver all further instruments and documents, and take all such further acts as DOE reasonably requests from time to time in order to carry out the purposes of this Article 10 or to enable DOE to exercise and enforce its rights and remedies hereunder.

ARTICLE 11
MISCELLANEOUS

SECTION 11.1. Addresses.

Any communications, including any notices, between or among the parties to the Financing Document shall be given to the addresses listed in Schedule 11.1. All notices or other communications required or permitted to be given under the Financing Documents shall be in writing and shall be considered as properly given (a) if delivered in Person, (b) if sent by overnight delivery service for inland delivery or international courier for international delivery, (c) in the event overnight delivery service or international courier service is not readily available, if mailed by first class mail (or airmail for international delivery), postage prepaid, registered or certified with return receipt requested, (d) if sent by facsimile or telecopy with transmission verified or (e) if transmitted by electronic mail (with such transmission verified). Notice so given shall be effective upon delivery to the addressee, except that communication or notice so transmitted by facsimile or telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is validly transmitted if transmitted (with such transmission verified) before 2:00 p.m., recipient's time, and if transmitted after that time, on the next following Business Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party has the right to change its address for notice under any of the Financing Documents to any other location by giving prior written notice to the other parties in the manner set forth hereinabove.

SECTION 11.2. Further Assurances.

The Borrower shall fully cooperate with all Persons as may be necessary to ensure that DOE receives any notices due to DOE pursuant to the Transaction Documents. Each of the parties agrees that money damages would not be a sufficient remedy for any breach of this Section 11.2 and Section 6.1.8 and agrees that in addition to all other remedies, any court or arbitrator may award specific performance or other equitable relief as a remedy for any such breach.

SECTION 11.3. Delay and Waiver.

No delay or omission in exercising any right, power, privilege or remedy under this Loan Guarantee Agreement or any other Financing Document, including any rights and remedies in connection with the occurrence of an Event of Default or Potential Event of Default shall impair any such right, power, privilege or remedy of DOE or the other Secured Parties, nor shall it be construed to be a waiver of any right, power, privilege or remedy or of any breach or default, or an acquiescence therein, or in any similar breach or default thereafter occurring, nor shall any waiver of any single right, power, privilege or remedy, or of any breach or default be deemed a waiver of any other right, power, privilege or remedy or of any other breach or default therefore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character by DOE of any right, power, privilege or remedy including any rights and remedies in connection with the occurrence of an Event of Default or Potential Event of Default or of any other breach

or default under this Loan Guarantee Agreement or any other Financing Document, or any waiver by DOE of any provision or condition of this Loan Guarantee Agreement or any other Transaction Document, must be in writing and shall be effective only to the extent in such writing specifically set forth. All rights, powers, privileges and remedies, either under this Loan Guarantee Agreement or any other Financing Document or by law or otherwise afforded to DOE, shall be cumulative and not alternative and not exclusive of any other rights, powers, privileges and remedies that DOE may otherwise have.

SECTION 11.4. Right of Set-Off.

In addition to any rights now or hereafter granted under Applicable Laws or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, each Secured Party is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to the Borrower or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special, time or demand, provisional or final) and any other Indebtedness at any time held or owing by such Secured Party (including by any branches and agencies of such Secured Party wherever located) to or for the credit or the account of the Borrower against and on account of the Secured Obligations and liabilities of the Borrower to such Secured Party under this Loan Guarantee Agreement or any other Financing Document.

SECTION 11.5. Amendment or Waiver.

Except as otherwise provided herein, neither this Loan Guarantee Agreement nor any of the terms hereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing and signed by the Borrower, and the Loan Servicer and, to the extent it effects their respective rights or obligations, the Collateral Agent or DOE. Any amendment to or waiver of this Loan Guarantee Agreement or any of the terms hereof that constitutes a 'modification' within the meaning set forth in Section 502(9) of the Federal Credit Reform Act of 1990 and OMB Circular A-11 may be subject to the availability to DOE of funds appropriated by Congress to meet an increase, if any, in the Credit Subsidy Cost.

SECTION 11.6. Entire Agreement.

This Loan Guarantee Agreement, including any agreement, document or instrument attached hereto or referred to herein, integrates all the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior agreements and understandings of the parties hereto in respect to the subject matter hereof.

SECTION 11.7. Governing Law.

This Loan Guarantee Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed and interpreted in accordance with, the Federal law of the United States of America. To the extent that Federal law does not specify the appropriate rule of decision for a particular matter at issue, it is the intention and agreement of the parties hereto that the law of the State of New York (without giving effect to its conflict of laws principles (except Section 5-1401 of the New York General Obligations Law) shall be adopted as the governing Federal rule of decision, provided, however that (i) documents to which FFB is a party shall be

governed by the law required by FFB and (ii) the Security Documents shall by the law required to best perfect the relevant security interest.

SECTION 11.8. Severability.

In case any one or more of the provisions contained in any Financing Document should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and the parties thereto shall enter into good faith negotiations to replace the invalid, illegal or unenforceable provision.

SECTION 11.9. Calculations.

All financial data submitted pursuant to this Loan Guarantee Agreement and the other Financing Documents shall be prepared in accordance with GAAP, and all financial ratio tests applicable to the Borrower shall be based on definitions consistent with GAAP.

SECTION 11.10 Borrower's Disclaimers.

Certain information has been, or will be, provided by the Borrower to DOE, the Collateral Agent and their respective Independent Consultants, including the Construction Budget, Project Plans, Financial Plan, Advance Schedule, Project Milestone Schedule, Base Case Projections, Operating Budget, Operating Forecasts and Employment Projections, that is based on good faith or best estimates of events or circumstances that may exist in the future ("Predictive Information"). Such Predictive Information is not intended to be an assurance of the occurrence or non-occurrence of future events or circumstances. Notwithstanding anything to the contrary in this Loan Guarantee Agreement, except to the extent the Borrower has represented, warranted or covenanted as to the accuracy of any Predictive Information, Borrower shall have no liability for the inaccuracy of any Predictive Information provided in good faith.

SECTION 11.11. Limitation on Liability.

No claim shall be made by the Borrower or any of its Affiliates against any Secured Party or any of their Affiliates, directors, employees, attorneys or agents, including the Agents and the Independent Consultants, for any special, indirect, consequential or punitive damages (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Loan Guarantee Agreement or the other Transaction Documents or any act or omission or event occurring in connection therewith; and the Borrower hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

SECTION 11.12. Waiver of Jury Trial.

Each of the parties hereto hereby knowingly, voluntarily, and intentionally waives any rights it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with, this Loan Guarantee Agreement or any other Financing Document, or any course of conduct, course of dealing, statements (whether verbal or written), or actions of

the Borrower. This provision is a material inducement for each party to enter into this Loan Guarantee Agreement and the other Financing Documents.

SECTION 11.13. Consent to Jurisdiction.

By execution and delivery of this Loan Guarantee Agreement, the Borrower irrevocably and unconditionally:

(a) submits for itself and its Property in any legal action or proceeding against it arising out of or in connection with this Loan Guarantee Agreement or any other Financing Document, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of (i) the courts of the United States of America for the District of Columbia; (ii) the courts of the United States of America in and for the Southern District of New York; (iii) any other federal court of competent jurisdiction in any other jurisdiction where it or any of its property may be found; and (iv) appellate courts from any of the foregoing;

(b) consents that any such action or proceeding may be brought in or removed to such courts, and waives any objection, or right to stay or dismiss any action or proceeding, that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower at its address set forth in Schedule 11.1 or at such other address that it shall notify the Loan Servicer hereunder;

(d) agrees that nothing herein shall (i) affect the right of any Secured Party to effect service of process in any other manner permitted by law or (ii) limit the right of any Secured Party to commence proceedings against or otherwise sue the Borrower or any other Person in any other court of competent jurisdiction nor shall the commencement of proceedings in any one or more jurisdictions preclude the commencement of proceedings in any other jurisdiction (whether concurrently or not) if, and to the extent, permitted by the Applicable Laws; and

(e) agrees that judgment against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction within or without the U.S. by suit on the judgment or otherwise as provided by law, a certified or exemplified copy of which judgment shall be conclusive evidence of the fact and amount of the Borrower's obligation.

SECTION 11.14. Successors and Assigns.

(a) The provisions of this Loan Guarantee Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(b) The Borrower may not assign or otherwise transfer any of its rights or obligations under this Loan Guarantee Agreement or under any Transaction Document without the prior written consent of DOE.

(c) FFB may assign any or all of its rights, benefits and obligations under the Financing Documents and with respect to the Collateral to any financial institution in accordance with the provisions of the FFB Documents.

(d) The Loan Servicer, acting for this purpose as an agent of the Borrower shall maintain a register for the recordation of the names and addresses of each Person that acquires an interest in the Guaranteed Loans in accordance with the provisions of the FFB Documents and the principal amounts of the Advances owing to each such Person pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, any Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender for all purposes of this Loan Guarantee Agreement, notwithstanding notice to the contrary. The register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

SECTION 11.15. Participations.

FFB may from time to time sell or otherwise grant participations in any or all of its rights and obligations under the Financing Documents and with respect to the Collateral without the consent of the Borrower. In such case, Borrower and any Agent shall continue to deal exclusively with FFB and the provisions of this Loan Guarantee Agreement shall apply as if no such participation had been sold or granted.

SECTION 11.16. Reinstatement.

This Loan Guarantee Agreement shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Borrower's obligations hereunder, or any part thereof, is, pursuant to Applicable Laws, rescinded or reduced in amount, or must otherwise be restored or returned by any Secured Party. In the event that any payment or any part thereof is so rescinded, reduced, restored or returned, such obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

SECTION 11.17. No Partnership; Etc.

DOE and the Borrower intend that the relationship between them shall be solely that of guarantor and debtor. Nothing contained in this Loan Guarantee Agreement or in any other Financing Document shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by, between or among DOE and the Borrower or any other Person. DOE shall not be in any way responsible or liable for the indebtedness, losses, obligations or duties of the Borrower or any other Person with respect to the Project or otherwise. All obligations to pay Real Property or other taxes, assessments, insurance premiums, and all other fees and Periodic Expenses arising from the ownership, operation or occupancy of the Project and to perform all obligations under the agreements and contracts relating to the Project shall be the sole responsibility of the Borrower.

SECTION 11.18. Payment of Costs and Expenses.

(a) The Borrower shall, whether or not the transactions herein contemplated are consummated, pay or reimburse, without duplication: all reasonable out-of-pocket costs and expenses of each Secured Party (including all commissions, charges, costs and expenses for the conversion of currencies and all other costs, charges and expenses, including all fees and Periodic Expenses of the legal counsel, consultants and advisors for any of the foregoing) made, paid, suffered or incurred in connection with (i) the preparation, execution and delivery of the Term Sheet, (ii) the translation, negotiation, preparation, execution and delivery and, where appropriate, authentication, registration and recordation of this Loan Guarantee Agreement, the other Transaction Documents and any other documents and instruments related hereto or thereto (including legal opinions) and (iii) the authentication, registration, translation and recordation (where appropriate) of any of the Transaction Documents and the delivery of the evidences of Indebtedness relating to the Advances and the disbursements thereof.

(b) The Borrower also shall pay or reimburse, without duplication, all reasonable and reasonably documented out-of-pocket costs and expenses of DOE or any other Secured Party (including all commissions, charges, costs and expenses for the conversion of currencies and all other costs, charges and expenses including all fees and Periodic Expenses of the legal counsel, consultants and advisors for any of the foregoing) made, paid, suffered or incurred in connection with (A) any amendment or modification to, or the protection or preservation of any right or claim under, or consent or waiver in connection with, this Loan Guarantee Agreement or any other Transaction Document, any such other document or instrument related hereto or thereto or any Collateral, (B) the administration, preservation in full force and effect and enforcement (including with respect to a work out) of this Loan Guarantee Agreement, the other Transaction Documents and any other documents and instruments referred to herein or therein (including the fees and disbursements of counsel for DOE and travel costs) and (C) the fees and expenses of the Independent Engineer and other Independent Consultants from time to time retained pursuant to the Financing Documents.

(c) The Borrower shall, whether or not the transactions herein contemplated are consummated, indemnify DOE, FFB, each other Secured Party and each of their respective officers, directors, employees, representatives, attorneys and agents (each an "Indemnified Person" and, collectively, the "Indemnified Parties") from and hold each of them harmless against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements incurred by any of them as a result of, or arising out of, or in any way related to, or by reason of, any investigation, litigation or other proceeding or inquiry (whether or not such Indemnified Person is a party thereto) arising out of or related to (i) the preparation, execution and delivery of the Term Sheet and (ii) the entering into and performance of any Transaction Document or the disbursement of, or use of the proceeds of, any Advance or the consummation of any transactions contemplated herein or in any Transaction Document, and including without limitation, any pollution or threat to human health or the environment that is related in any way to the Project, and further including, without limitation, all on-site and off-site activities involving Hazardous Substances, whether or not any such matters are included in any schedule to this Loan Guarantee Agreement, and any Environmental Claim against any Person whose liability for such Environmental Claim the Borrower or any Borrower Entity has assumed or retained either contractually or by operation of law, including the fees and Periodic Expenses of counsel selected by such Indemnified Person incurred in connection with any such investigation, litigation or other proceeding or in connection with

enforcing the provisions of this Section 11.18 (but excluding any such liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements to the extent incurred by reason of the gross negligence or willful misconduct of the Indemnified Person or its officers, directors, employees, representatives, attorneys or agents, as the case may be, as determined pursuant to a final, non-appealable judgment by a court of competent jurisdiction) (collectively, "Indemnity Claims").

(i) Without limitation to the provisions of clause (b) above, the Borrower agrees to defend, indemnify and hold harmless each Indemnified Person and each of its respective directors, officers, shareholders, agents, employees, participants, successors and assigns, from and against any and all Indemnity Claims.

(ii) All sums paid and costs incurred by any Indemnified Person with respect to any matter indemnified hereunder shall bear interest at the Late Charge Rate applicable to the Advance from the date the Borrower receives notice thereof from such Indemnified Person, until reimbursed by the Borrower, and all such sums and costs shall be added to the Secured Obligations and be secured by the Security Documents and shall be immediately due and payable on demand. Each such Indemnified Person shall promptly notify the Borrower in a timely manner of any such amounts payable by the Borrower hereunder; provided that any failure to provide such notice shall not affect the Borrower's obligations under this Section 11.18.

(d) Each Indemnified Person within seven (7) Business Days after the receipt by it of notice of the commencement of any action for which indemnity may be sought by it, or by any Person controlling it, from the Borrower on account of the agreements contained in this Section 11.18, shall notify the Borrower in writing of the commencement thereof, but the failure of such Indemnified Person to so notify the Borrower of any such action shall not release the Borrower from any liability that it may have to such Indemnified Person.

(e) To the extent that the undertaking in the preceding clauses of this Section 11.18 may be unenforceable because it is violative of any law or public policy, the Borrower shall contribute the maximum portion that it is permitted to pay and satisfy under Applicable Laws to the payment and satisfaction of such undertakings.

(f) The provisions of this Section 11.18 shall survive foreclosure under the Security Documents and satisfaction or discharge of the Secured Obligations, and shall be in addition to any other rights and remedies of any Indemnified Person.

(g) Any amounts payable by the Borrower pursuant to this Section 11.18 shall be payable not later than the later of (i) ten (10) Business Days after the Borrower receives an invoice for such amounts from any applicable Indemnified Person and (ii) five (5) Business Days prior to the date on which such Indemnified Person expects to pay such costs on account of which the Borrower's indemnity hereunder is payable, and if not paid by such applicable date shall bear interest at the Late Charge Rate from and after such applicable date until paid in full.

(h) The Borrower shall be entitled, at its expense, to participate in the defense thereof provided that such Indemnified Person shall have the right to retain its own counsel, at the

Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnified Person. Any Indemnified Person against whom any Indemnity Claim is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnified Person is advised that such Indemnity Claim is meritorious, to compromise or settle any such Indemnity Claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 11.18.

(i) Upon payment of any Indemnity Claim by the Borrower pursuant to this Section 11.18, the Borrower, without any further action, shall be subrogated to any and all claims that such Indemnified Person may have relating thereto, and such Indemnified Person shall at the request and expense of the Borrower cooperate with the Borrower and give at the request and expense of the Borrower such further assurances as are necessary or advisable to enable the Borrower vigorously to pursue such claims.

(j) Notwithstanding any other provision of this Section 11.18, the Borrower shall not be entitled to any (i) notice, (ii) participation in the defense of, (iii) consent rights with respect to any compromise or settlement or (iv) subrogation rights, in each case except as otherwise provided for pursuant to this Section 11.18 with respect to any action, suit or proceeding against the Borrower, the Operator or the Sponsor.

SECTION 11.19. Counterparts.

This Loan Guarantee Agreement may be executed in one or more duplicate counterparts and when signed by all of the parties shall constitute a single binding agreement.

SECTION 11.20. Contest Rights.

In the event that the Department of the Treasury (i) requests any additional information from the Borrower or any other person after submission of the Cash Grant Application or (ii) indicates orally or in writing, formally or informally that the Department of the Treasury may or will delay or disallow the Cash Grant in whole or in part, Borrower shall provide DOE and its counsel with copies of any relevant correspondence between Borrower and the Department of the Treasury, including any additional information sent by Borrower to the Department of the Treasury in response to the Department of the Treasury's request for such information.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Guarantee Agreement to be executed and delivered by their respective officers or representatives hereunto duly authorized as of the date first written above.

HIGH PLAINS RANCH II, LLC

as Borrower

By: Richard Grosdidier

Its: Vice President, Finance

/s/ Richard Grasididier
Signature

[Signature Page to Loan Guarantee Agreement]

U.S. DEPARTMENT OF ENERGY,
as Guarantor

By: /s/ David G. Frantz
Name: David G. Frantz
Title: Director of the Loan Guarantee Origination Division, Loan Programs Office

U.S. DEPARTMENT OF ENERGY,
as Loan Servicer

By: /s/ David G. Frantz
Name: David G. Frantz
Title: Director of the Loan Guarantee Origination Division, Loan Programs Office

[Signature Page to Loan Guarantee Agreement]

Exhibit A
to Loan Guarantee Agreement

DEFINITIONS

"Account Proceeds" means interest or any other income arising out of the investment of amounts on deposit in the Project Accounts.

"Accounts Agreement" means the Collateral Agency and Accounts Agreement, dated as of the date hereof, among the Loan Servicer, the Collateral Agent and the Borrower, pursuant to which the Project Accounts are established and will be managed, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Accounts Control Agreement" means the Blocked Accounts Control Agreement, dated as of the date hereof, among the Borrower, PNC Bank, National Association and the Collateral Agent, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Action" means any (a) action, suit or proceeding of or before any Governmental Authority, (b) investigation by a Governmental Authority or (c) arbitral proceeding.

"Actual Aggregate Cash Grant Security Support" means, at any time, the sum of the Cash Grant Shortfall Security outstanding, plus the amount of funds on deposit in the Cash Grant Proceeds Account, plus the amount of funds on deposit in the Restricted Payment Account.

"Actual Cash Grant Security Support" means, at any time, the sum of the Cash Grant Shortfall Security outstanding, plus the amount of funds on deposit in the Cash Grant Proceeds Account.

"Additional Project Document" means all of the contracts necessary for or material to the construction and operation of the Project entered into by the Borrower subsequent to the Guarantee Agreement Date.

"Advance" means, collectively, any Cash Grant Bridge Loan Advance or Term Loan Advance, but in each case excluding any Capitalized Interest Amounts.

"Advance Date" means a Business Day on which FFB makes an Advance in accordance with Article 2.

"Advance Schedule" means the advance schedule delivered pursuant to Section 4.1.2(a)(v), as amended from time to time with DOE's consent.

"Affiliate" means with respect to any Person, any other Person that directly or indirectly Controls, or is under common Control with, or is Controlled by, such Person; provided, however, that, in any event and for all purposes of the Financing Documents, the Sponsor or any Affiliate of the Sponsor shall be deemed an "Affiliate" of the Borrower.

"Agents" means collectively, the Loan Servicer and the Collateral Agent (and each, individually, an "Agent").

"ALTA" means the American Land Title Association headquartered in Washington D.C.

"ALTA Survey" means a current ALTA/ACSM survey of the Project Site prepared by North Coast Engineering, Inc. or another licensed surveyor reasonably satisfactory to DOE in accordance with the 2011 Minimum Standard Detail Requirements for ATLA/ACSM Land Title Surveys , certified to the Collateral Agent and the Title Companies, and otherwise in form and substance satisfactory to DOE.

"Anticipated Operational Completion Date" means December 31, 2013; provided that such date may be moved as a result of an event that constitutes an Event of Force Majeure under the EPC Contract (as the EPC Contract is in effect on the Guarantee Agreement Date) to the extent such Event of Force Majeure affords the Borrower schedule relief for the last "Guaranteed Phase Operation Date" to occur under the Power Purchase Agreements and, in such case, the Borrower shall present to DOE for approval any mitigation or recovery plan necessitated by such Event of Force Majeure, which approval will not be unreasonably withheld, conditioned or delayed..

"Anti-Terrorism Order" means Executive Order No. 13,224, 66 Fed. Reg. 49,079 (2001), issued by the President of the United States of America (Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism).

"Applicable Law" means, with respect to any Person, any constitution, statute, law, rule, regulation, code, ordinance, treaty, judgment, order or any published directive, guideline, requirement or other governmental rule or restriction which has the force of law, by or from a court, arbitrator or other Governmental Authority having jurisdiction over such Person or any of its Properties, whether in effect as of the date hereof or as of any date hereafter.

"Applicable Regulations" means the final regulations located at 10 CFR Part 609 and any other applicable regulations from time to time promulgated by DOE to implement Title XVII.

"Application" means the Loan Guarantee Application of the Sponsor dated May 14, 2010, for a DOE Guarantee under Title XVII.

"Approved Construction Changes" is defined in Section 7.16(b).

"Approved Pre-Closing Equity Credit" means the sum of the Project Costs set forth in the Pre-Closing Project Costs Report.

"Authorized Officer" means, (a) with respect to any Person (i) that is a corporation, the chairman, chief executive officer, president, vice president, assistant vice president, treasurer, assistant treasurer, or any other Financial Officer of such Person, (ii) with respect to any Person that is a partnership, each general partner of such Person or the chairman, chief executive officer, president, a vice president, an assistant vice president, treasurer, an assistant treasurer or any other Financial Officer of a general partner of such Person or (iii) with respect to any Person that

is a limited liability company, the manager, managing partner or duly appointed officer of such Person, the individuals authorized to represent such Person pursuant to the Organization Documents of such Person, or the chairman, chief executive officer, president, vice president, assistant vice president, treasurer, assistant treasurer or any other Financial Officer of the manager or managing member of such Person and (b) with respect to any Borrower Entity, only those individuals holding any of the foregoing positions whose name appears on the certificate of incumbency delivered pursuant to Section 4.1.1(d), as such certificate of incumbency may be amended from time to time to identify names of the individuals then holding such offices and the capacity in which they are acting.

"Availability Period" means, collectively, the Term Loan Availability Period and the Cash Grant Bridge Loan Availability Periods.

"Bankruptcy Code" means Title 11 of the United States Code entitled "Bankruptcy."

"Bankruptcy Law" means the Bankruptcy Code and any similar federal, state or foreign law for the relief of debtors, conservatorship, bankruptcy, general assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization or similar debtor relief laws of the U.S. or other applicable jurisdictions from time to time in effect and any similar federal, state or foreign law for the relief of debtors affecting the rights of creditors generally.

"Base Case Projections" are the projections delivered pursuant to Section 4.1.2(a)(vii), as amended from time to time with DOE's consent.

"Base Equity" means the sum of (i) equity funding to be provided to the Borrower by the Sponsor under the Equity Funding Agreement and (ii) the Approved Pre-Closing Equity Credit, in an amount not less than the Base Equity Commitment.

"Base Equity Commitment" means the obligation of the Sponsor under the Equity Funding Agreement to fund an aggregate amount equal to the difference between (i) Base Project Costs less (ii) the Guaranteed Loan Amount.

"Base Equity Commitment Collateral" means the Equity Letter(s) of Credit and the cash pledged to the Collateral Agent under the Cash Collateral Security Agreement.

"Base Project Costs" means all Project Costs, including Eligible Project Costs, expected to be incurred to achieve Project Completion, as agreed to by the Borrower and DOE, and as set forth in the Base Case Projections as of the Guarantee Agreement Date.

"Biological Opinion" means the Biological Opinion issued by the United States Fish & Wildlife dated June 24, 2011 and any future amendments or modifications thereto and any documents incorporated therein, including but not limited to any biological assessments, amendments to biological assessments, and terms and conditions of any incidental take statements.

"Borrower" is defined in the preamble to the Loan Guarantee Agreement.

"Borrower Compliance Entity" means each of the Borrower, the Holding Company, NRG Solar Sunrise LLC and the Sponsor and each of their respective successors or assigns.

"Borrower Entity" means each of the Borrower, the Holding Company, NRG Solar Sunrise LLC, the Sponsor, the Intermediate Parent Company, the Ultimate Parent, any other Major Project Participant that is an Affiliate of the Borrower and each of their respective successors or assigns.

"Borrower Entity Controlling Person" means any Person that, directly or indirectly, Controls any Borrower Entity.

"Borrower Insurance Advisor" means Moore-McNeil, LLC or any other insurance advisor or expert appointed by the Borrower and reasonably acceptable to DOE.

"Borrower Reimbursement Obligations" is defined in Section 10.2.1.

"Borrower Reimbursement Payment" is defined in Section 10.2.2.

"Borrower's Accountant" means KPMG LLP or such other firm of independent certified public accountants of nationally recognized standing as may be appointed by the Borrower from time to time with the approval of the Loan Servicer.

"Borrower Released Parties" means (i) the Borrower and all other owners or operators of the Project, (ii) and any other Person with responsibilities or obligations (including, without limitation, any Governmental Authorities, and specifically including the DOE) under the Current Entitlements.

"Business Day" means any day other than a Saturday, Sunday or any other day on which either FFB or the Federal Reserve Bank of New York are not open for business.

"Buy American Provisions" means Section 1605 of Title XVI of Division A of the Recovery Act 2 C.F.R. Sections 176.140 and 176.160, Office of Management and Budget's Initial Implementing Guidance for the Recovery Act, M 09 10 (February 18, 2009) and Updated Implementing guidance for the Recovery Act, M 09 15 (April 3, 2009) and, in each case, any amendment, supplement or successor thereto, including any relevant regulation or guidance that may be issued by DOE that has the force of law.

"Capital Expenditures" means all expenditures that should be capitalized in accordance with GAAP.

"Capital Lease" means, for any Person, any lease of (or other agreement conveying the right to use) any Property of such Person that would be required, in accordance with GAAP, to be capitalized and accounted for as a capital lease on a balance sheet of such Person.

"Capitalized Interest Amount" means, with respect to any Advance or any related Capitalized Interest Amount as of any date of determination, the actual amount of interest capitalized in respect of such Advance or Capitalized Interest Amount as of such date of determination in accordance with Section 7(b) of the applicable FFB Promissory Note (including

any interest to be capitalized in respect of the previous Advances or Capitalized Interest Amount as of such date of determination).

"Cash Collateral Security Agreement" means the Security Agreement, between the Sponsor and the Collateral Agent, dated as of the date hereof, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Cash Collateral Accounts Control Agreement" means the Accounts Control Agreement, between the Sponsor and the Collateral Agent, dated as of the date hereof, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Cash Flow Available for Debt Service" means for any period, the sum for such period of Project cash revenue (excluding extraordinary revenues, but including business interruption insurance proceeds received during such period for an event that occurred during such period and cash repayments received under the Large Generator Interconnection Agreement) received during such period, minus (i) cash operating and maintenance expenses to the extent not funded by withdrawals from the Major Maintenance Reserve Account; (ii) scheduled contributions to the Major Maintenance Reserve Account; (iii) taxes paid with cash; (iv) nondiscretionary Capital Expenditures; and (v) required periodic decommissioning or restoration contributions paid or payable as required under the Financing Documents.

"Cash Grant" means a grant provided for in Section 1603 of Division B of the Recovery Act.

"Cash Grant Application" means an "Application for Section 1603: Payments for Specified Renewable Energy Property in Lieu of Tax Credits" filed by the Borrower, as an applicant, for the Cash Grant with respect to the Project (or a phase thereof).

"Cash Grant Application Date" means the date on which the Borrower has filed a Cash Grant Application with respect to the Project (or a phase thereof).

"Cash Grant Bridge Loan Advance" means an advance or a borrowing of the Guaranteed Cash Grant Bridge Loan made pursuant to the Loan Guarantee Agreement and the FFB Documents.

"Cash Grant Bridge Loan Availability Period" means, individually, each of the Phase 1 Cash Grant Bridge Loan Availability Period, the Phase 2 and 4 Cash Grant Bridge Loan Availability Period and the Phase 3 Cash Grant Bridge Loan Availability Period, as applicable, and, collectively, the period commencing on the Guarantee Agreement Date and ending when the Phase 1 Cash Grant Bridge Loan Availability Period, the Phase 2 and 4 Cash Grant Bridge Loan Availability Period and the Phase 3 Cash Grant Bridge Loan Availability Period have all expired or terminated.

"Cash Grant Guidance" means the guidance issued on July 9, 2009 (as revised March 2010 and April 2011), by the U.S. Department of the Treasury for payments for specified energy property in lieu of tax credits under Section 1603 of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5), including (i) the paper entitled "Evaluating Cost Basis for Solar Photovoltaic Properties,"available on the U.S. Department of the Treasury's website, and (ii) any

clarification, amendment, addition or supplement to such guidance, such paper, or any other guidance or similar materials issued by the U.S. Department of the Treasury or any other Governmental Authority.

"Cash Grant Proceeds Account" has the meaning set forth in the Accounts Agreement.

"Cash Grant Recapture Liabilities" means any loss or liability resulting from all or any portion of a Cash Grant being "recaptured" as a result of the Project or any part thereof or any interest in the Borrower being disposed of, all or any portion of the Project ceasing to be specified energy property, or otherwise, including any interest or penalties related thereto as described in the Cash Grant Guidance.

"Cash Grant Shortfall Security" means the NRG Cash Grant Shortfall Security and the SunPower Cash Grant Shortfall Security and the unapplied proceeds of each such item.

"Cash Grant Support Release Date" means the earlier of the date that (i) each of the Phase 1 Cash Grant Bridge Loan and the Phase 2 and 4 Cash Grant Bridge Loan have been repaid in full and (ii) the balance of the Cash Grant Proceeds Account equals or exceeds the then current amount required to repay each of the Phase 1 Cash Grant Bridge Loan and the Phase 2 and 4 Cash Grant Bridge Loan in full.

"Cash Grant Terms and Conditions" means the "Payments for Specified Energy Property in Lieu of Tax Credits under the American Recovery and Reinvestment Act of 2009 — Terms and Conditions" issued by the U.S. Department of Treasury, as amended or supplemented.

"CCR" means the Central Contractor Registration database, established in accordance with the Federal Acquisition Streamlining Act of 1994.

"CEQA Letter of Credit" means a Letter of Credit that (a) names the Collateral Agent (acting for the benefit of the Secured Parties) as the beneficiary, (b) is non-recourse to the Borrower and (c) is substantially in the form of Exhibit CC or another form acceptable to DOE.

"CEQA Litigation" means Carrizo Commons v. County of San Luis Obispo (San Luis Obispo Superior Court Case No. CV 110314).

"CEQA Litigation Support Instrument" means one or more of the following instruments: (i) one or more CEQA Letters of Credit, (ii) the Total Guarantee or (iii) any combination of instruments in clauses (i) and (ii), which will be made available to DOE for the purpose of mitigating the risk of the CEQA Litigation; provided that any drawing under a CEQA Letter of Credit in accordance with its terms will not result in an Event of Default under Section 8.1(gg) if the proceeds from such draw are deposited into a Project Account in accordance with the Accounts Agreement.

"CEQA Litigation Support Determination Date" means (a) the date that immediately preceeds the date of the first Advance and (b) each six-month anniversary of such date, until the earlier to occur of (i) the Maturity Date and (ii) the Settlement.

"CEQA Support Required Amount" means, at such time, an amount equal to the aggregate principal amount of all Advances outstanding at such time (including the then requested Advance), plus the sum of (i) all accrued and unpaid interest on all Advances outstanding, and (ii) interest that is expected to become due and payable (through accrual or capitalization) in immediately following six (6) months on all outstanding Advances (including the then requested Advance).

"Change of Law" means any change in any Applicable Law or the application or requirements thereof, or required or directed compliance by any Person with any request or directive (whether or not having the force of law but if not having the force of law, being of a type with which they customarily comply) of any Governmental Authority issued after the Guarantee Agreement Date.

"Change Orders" means any change order or variation order, amendment, supplement or modification in respect of any Construction Contract.

"Claim" means any controversy, dispute, claim, action, cause of action, suit,proceeding (including judicial, regulatory and administrative proceeding, challenge or appeal), investigation, order, demand or notice by any person or entity.

"Collateral" means all Property (whether tangible or intangible) and Equity Interests whether now existing or hereinafter acquired that are subject to or are intended to be or become subject to the security interest or Lien granted to the Collateral Agent or otherwise for the benefit of DOE and the other Secured Parties under the Security Documents.

"Collateral Agent" means PNC Bank, National Association, doing business as Midland Loan Services, a division of PNC Bank, National Association, a national bankng association, or its successor, as appointed pursuant to the Accounts Agreement.

"Commencement of Construction" means (a) the Borrower has (i) completed all pre-construction engineering and design, (ii) received all necessary licenses, permits and local and national environmental clearances, (iii) engaged all contractors and ordered all essential equipment and supplies that, in each case, are reasonably necessary to begin (or, if previously interrupted or suspended, resume) physical work of a significant nature on the Project and to proceed to completion without foreseeable interruption of a material duration; and (b) the Borrower or relevant sub-contractor has begun (or resumed) such physical work.

"Comptroller General" means the Comptroller General of the United States.

"Construction Budget" is the budget delivered pursuant to Section 4.1.2(a)(i), as modified from time to time consistent with the terms of this Loan Guarantee Agreement.

"Construction Change" is defined in Section 7.16(b).

"Construction Contracts" means the EPC Contract, the EPC Subcontract, the Materials and Equipment Supply Agreement and the Preliminary Construction Agreement.

"Construction Contractor" means each of the EPC Contractor and the EPC Subcontractor.

"Construction Period" means the period prior to the Project Completion Date.

"Construction Progress Report" means a construction progress report prepared monthly by or on behalf of the Borrower, which shall include: (a) a detailed assessment of the progress of construction to date in comparison with the Project Plans, the Construction Budget, the Financial Plan and Project Milestone Schedule then in effect for such monthly period (along with an explanation of material delays, if any) and the expected progress of construction; (b) contingencies used or reasonably expected to be used to pay Project Costs; (c) any events that have occurred or are reasonably expected to occur that would materially affect the construction schedule or the Project's ability to achieve Project Completion by the Guaranteed Project Completion Date; (d) a description and explanation of any (i) Events of Loss that have occurred or (ii) material casualty losses; and (e) material disputes or Actions between the Borrower and any Person.

"Contingent Obligations" means as to any Person, any obligation of such Person with respect to any Indebtedness ("primary obligations") of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent, as a guarantee or otherwise:

(i) for the purchase, payment or discharge of any such primary obligation;

(ii) to purchase, repurchase or otherwise acquire such primary obligations or any property constituting direct or indirect security therefor, including the obligation to make take-or-pay or similar payments;

(iii) to advance or supply funds;

(iv) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet item, level of income or financial condition of the primary obligor;

(v) to purchase Property, securities or services primarily for the purpose of assuring the holder of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation;

(vi) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof, including without limitation with respect to letter of credit obligations, swap agreements, foreign exchange contracts and other similar agreements (including agreements relating to derivative instruments);

provided, however, that the term "Contingent Obligation" shall not include endorsements of instruments for deposit or collection in the ordinary course of business.

The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

"Contract Party" is defined in Exhibit N.

"Control" (including with correlative meanings, the terms "Controlling," "Controlled by" and "under common Control with") The power, directly or indirectly, to direct or cause the direction of the management or business or policies of a Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract, or otherwise (other than through super-majority rights or negative control rights of members).

"Corrupt Practices Laws" means (i) the Foreign Corrupt Practices Act of 1977 (Pub. L. No. 95-213, §§101-104), as amended, and (ii) any equivalent U.S. or foreign Applicable Law.

"Cost Overruns" means any Project Costs in excess of Project Costs set forth in the initial Base Case Projections, whether Eligible Project Costs or not, and including:

(i) costs associated with the design, engineering, financing, construction, startup and commissioning of the Project;

(ii) shortfalls from anticipated revenues, increases from anticipated costs, changes in intercompany payment amounts, and other working capital needs of the Borrower prior to Project Completion;

(iii) amounts arising from timing differences in disbursement of cash to pay expenses and receipt of cash associated with revenues prior to Project Completion; and

(iv) any other amounts required to achieve Project Completion or otherwise incurred prior to the Project Completion Date, to be funded from contingencies

"Covered Taxes" is defined in Section 3.1.2(a).

"Credit Subsidy Cost" means the "cost of a loan guarantee", as set forth in section 502(5)(C) of FCRA.

"Current Entitlement" means any Required Approval of a Governmental Authority under Environmental Laws, or other federal, state and local governmental determination, approval, decision, permit, authorization, environmental review, certification, waiver, finding, contract,

modification, amendment or action relating to the design, engineering, construction, financing, operation, compliance, repair, maintenance, replacement, extension, decommission and reclamation activities related to the Project.

"Cutoff Date" means the date occurring 90 days after the Guarantee Agreement Date, as may be extended by DOE; provided that if Borrower funds initial Project Costs solely with Equity Contributions, the Cutoff Date shall be extended to a date that is up to 18 months after the Guarantee Agreement Date, which extension shall be allowed (as determined to DOE's reasonable satisfaction) if, among other conditions to be agreed upon, the Sponsor has made necessary Equity Contributions in accordance with the Construction Budget and the construction is proceeding in accordance with the Construction Budget and the Project Milestone Schedule.

"Davis-Bacon Act" means Subchapter IV of Chapter 31 of Part A of Subtitle II of Title 40 of the United States Code, including and as implemented by the regulations set forth in Parts 1, 3 and 5 of title 29 of the Code of Federal Regulations.

"Davis-Bacon Act Covered Contract" means any contract, agreement or other arrangement related to the Project subject to Davis-Bacon Act requirements under Title XVII, including, but not limited to, those listed on Schedule 6.24(a).

"Davis-Bacon Actions" is defined in Section 6.24(h)(iii).

"Davis-Bacon Requirements" means the requirement that all laborers and mechanics employed by contractors and subcontractors in the performance of construction work financed in whole or in part by either Guaranteed Loan shall be paid wages at rates not less than those prevailing on projects similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, and all regulations related thereto, including those set forth in 29 CFR 5.5(a) (1) to (10), and all notice, reporting and other obligations related thereto as required by DOE, including the obligations under Section 6.24(h) and the inclusion of the provisions in Exhibit N and the appropriate wage determination(s) of the Secretary of Labor in each Davis-Bacon Act Covered Contract.

"DBA Contract Party" means any contractor, subcontractor (including any lower tier subcontractor) or other entity (other than the Borrower but including, if applicable, the project Sponsor or Affiliate) that is party to a Davis-Bacon Act Covered Contract.

"Debarment Regulations" means all of the following:

(i) the Government-wide Debarment and Suspension (Non-procurement) regulations (Common Rule), 53 Fed. Reg. 19204 (May 26, 1988),

(ii) Subpart 9.4 (Debarment, Suspension, and Ineligibility) of the Federal Acquisition Regulations, 48 C.F.R. 9.400 - 9.409, and

(iii) the revised Government-wide Debarment and Suspension (Non-procurement) regulations (Common Rule), 60 Fed. Reg. 33037 (June 26, 1995).

"Debt Collection Improvement Act" means the Debt Collection Improvement Act of 1996, as amended from time to time.

"Debt Service" means, with respect to any computation period, the sum of (i) scheduled principal, interest expense and financing fees to be paid under the FFB Documents during such period, (ii) other fees and amounts paid or scheduled to be payable to FFB or DOE during such period and (iii) all other payments with respect to other Indebtedness for Borrowed Money of the Borrower.

"Debt Service Reserve" is defined in Section 6.15.

"Debt Service Reserve Account" is defined in the Accounts Agreement.

"Debt Service Reserve Requirement" on any date, an amount equal to the highest total six (6) months of Debt Service scheduled to occur within the three (3) years period immediately following such date.

"Debt to Equity Ratio" means the ratio of (a) aggregate amounts outstanding under the Guaranteed Loans, including the amount of any capitalized interest to (b) aggregate Equity Contributions used by the Borrower to fund Eligible Project Costs (less reimbursement of Equity Contributions pursuant to Section 7.10(b)(ii).

"Deed of Trust" means the Construction and Permanent Leasehold Deed of Trust with Assignment of Rents and Fixture Filing made by the Borrower, as trustor, in favor of the Title Companies, as trustee, for the benefit of the Collateral Agent, as beneficiary, pursuant to which the Borrower grants for the benefit of DOE a lien on all of its right, title and interest in and to the Project Site and all Real Property improvements to the Project Site.

"Delivery Term Security" means the HPR II Delivery Term Security and the HPR III Delivery Term Security.

"Delivery Term Security Maintenance Agreement" means that certain Delivery Term Security Maintenance Agreement by and among SunPower Corporation, a Delaware corporation, NRG Energy, Inc., a Delaware corporation, and the Borrower dated as of the date hereof.

"Designated Private Company" means a Person that has been so designated by DOE, which designation shall not be unreasonably withheld, conditioned or delayed if such Person (x) is sufficiently capitalized, (y) has a sufficiently large number of investors that are not Affiliates of one another, and (z) is not a Prohibited Person. A Person may request that it be so designated in accordance with the following procedures:

(i) with respect to any investment fund, the fund manager shall represent to DOE that, at the time of such fund's investment in the Project, (A) none of (1) such fund, (2) the fund manager of such fund, or (3) any investor that Controls such fund is a Prohibited Person, and (B)

such other information as may reasonably be required by DOE in light of the foregoing criteria for designation if a Person as a Designated Private Company, and

(ii) with respect to any other Person, such Person shall represent to DOE that, at the time of its investment in the Project, neither it nor to its knowledge any Person that directly or indirectly owns any Equity Interest in it is a Prohibited Person.

"Development Security" means the HPR II Development Security and the HPR III Development Security.

"Developmental Delay Notice" means a letter, dated December 17, 2010, given by the Borrower and acknowledged and agreed by PG&E.

"Development Services Agreement" means the Development Services Agreement, among the Borrower, the Sponsor and SunPower, dated as of September 23, 2010, as amended by the certain Amendment No. 1 to Development Services Agreement, dated as of the date hereof.

"Direct Agreement" means each consent and agreement required to be delivered pursuant to the Financing Documents in respect of any Major Project Document, each of which shall be in a form as may be reasonably acceptable to DOE and the Collateral Agent.

"Disposition" is defined in the definition of "Permitted Dispostion."

"Disqualified Person" means (a) any federal, state, or local government (or any political subdivision, agency, or instrumentality thereof); (b) any organization described in Section 501(c) of the Internal Revenue Code and exempt from tax under Section 501(a) of the Internal Revenue Code; (c) any entity referred to in paragraph (4) of Section 54(j) of the Internal Revenue Code; (d) any real estate investment trust, as defined in Section 856(a) of the Internal Revenue Code; (e) any other Person that is ineligible to receive the Cash Grant under Section 1603(g) of the Recovery Act; and (f) any partnership or other pass-through entity (including a single-member disregarded entity), any partner (or other holder of an equity or profits interest) of which is a Disqualified Person; provided that a taxable C corporation, any (or all) of whose shareholders are ineligible to receive a Cash Grant by virtue of being described in clauses (a) through (f) above, will not be considered a Disqualified Person; provided, further, that if and to the extent the definition of "Disqualified Person" under Section 1603(g) of the Recovery Act is amended after the Guarantee Agreement Date, the definition of "Disqualified Person" provided in the Loan Guarantee Agreement shall be interpreted to conform to such amendment and any U.S. Department of the Treasury guidance with respect thereto.

"DOE" is defined in the preamble to the Loan Guarantee Agreement.

"DOE Guarantee" means the guarantee provided by DOE in favor of FFB pursuant to the FFB Documents.

"DOE Guarantee Payment" is defined in Section 10.1.

"DOE Guarantee Payment Amount" is defined in Section 10.1.

"DOE Insurance Advisor" means Moore-McNeil, LLC, acting as insurance advisor for DOE, or any successor insurance advisor or expert appointed by DOE.

"DOE Maintenance Fee" means a maintenance fee in respect of DOE's administrative expenses in servicing and monitoring the Project and the Financing Documents during the construction, startup, commissioning and operation of the Project in an amount per year equal to $100,000, until the earlier of the date on which the principal amounts of each Guaranteed Loan have been fully paid and the FFB Commitment has been terminated or the Maturity Date, payable annually in advance, commencing on the Guarantee Agreement Date.

"DOE Modification Fee" means a fee payable to DOE in the event that the Project experiences technical, financial, legal or other events that require DOE to incur time or expenses (including third-party expenses) beyond standard monitoring and administration of the Financing Documents, reimbursing DOE in full for such amounts as DOE reasonably determines are its additional internal administrative costs, any costs associated in reviewing whether such events would alter the Credit Subsidy Cost, and related fees and expenses of its independent consultants and outside legal counsel, to the extent that such third parties are not paid directly by on or behalf of the Borrower.

"Dollars" or " $" means the lawful currency of the United States of America.

"DSCR Restoration Cap Amount" means $0.00.

"Eligible Project Costs" means those portions of Project Costs that are eligible for funding as "Project Costs" as defined in the Applicable Regulations as reasonably determined by DOE (including interest amounts permitted to be capitalized pursuant to the Financing Documents).

"Employee Benefit Plan" means (i) all "employee benefit plans" (as defined in Section 3(3) of ERISA) other than any Multiemployer Plans that are or at any time have been maintained or sponsored by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate has ever made, or been obligated to make, contributions or with respect to which the Borrower or any ERISA Affiliate has incurred any material liability or obligation, (ii) all Pension Plans and (iii) all Qualified Plans.

"Employment Projections" means the employment projections delivered pursuant to Section 4.1.2(a)(ix).

"Environmental Claim" means any and all obligations, liabilities, losses, administrative, regulatory or judicial actions, causes of action, suits, demands, decrees, claims, liens, judgments, notices of noncompliance or violation, investigations, orders, proceedings, clean-up, removal or remedial actions or orders, or damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, fees, out-of-pocket costs, expenses, disbursements, attorneys' or consultants' fees, relating in any way to any violation of Environmental Law or any violation of any Governmental Approval issued under any such Environmental Law including without limitation (a) any of the foregoing by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law and (b) any of the foregoing by any third party seeking damages,

contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances, the violation or alleged violation of any Environmental Law or Governmental Approval issued thereunder, or arising from alleged injury or threat of injury to health, safety, natural resources or the environment.

"Environmental Laws" means any Applicable Law in effect as of the Guarantee Agreement Date or thereafter, and in each case as amended, regulating or imposing obligations, liability or standards of conduct concerning or otherwise relating to (a) environmental impacts resulting from the use of the Project Site or environmental conditions present on, in or under the Project Site, (b) pollution, protection or preservation of human or animal health or safety or the environment, including flora and fauna, or mitigation of adverse effects on or to human health or the environment, including from Releases or threatened Releases of pollutants, contaminants, chemicals, radiation or industrial, toxic or Hazardous Substances, or (c) otherwise relating to the emission, discharge, release, generation, manufacture, processing, distribution, containment, use, treatment, storage, recycling, disposal, transport, or handling of, or exposure to, pollutants, contaminants, chemicals, or industrial, toxic or Hazardous Substances, (d) recordkeeping, notification, disclosure and reporting requirements regarding Hazardous Substances, (e) endangered or threatened species of fish, wildlife and plant and the management or use of natural resources, or (f) emissions or control of greenhouse gases.

"EPC Contract" means that certain Engineering, Procurement and Construction Agreement between the Borrower and the EPC Contractor dated as of the date hereof, as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"EPC Contract Security" means those certain Letter(s) of Credit posted by the EPC Guarantor, for the benefit of the Borrower, in a total aggregate amount of $220,000,000, to secure the EPC Contractor's obligations under the EPC Contract.

"EPC Contractor" means SunPower or any assignee of SunPower consented to by DOE (in its sole discretion).

"EPC Guarantor" means the party guaranteeing the obligations of the EPC Contractor under the EPC Contract and any assignee or successor of such party, as approved by DOE in accordance with the terms of the Financing Documents.

"EPC Subcontract" means that certain Engineering, Procurement and Construction Subcontract between the EPC Contractor and the EPC Subcontractor dated August 19, 2011, as amended by Amendment No. 1 to Engineering, Procurement and Construction Subcontract, dated as of September 23, 2011, as further amended by Amendment No. 2, dated as of September 28, 2011, and as may be further amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"EPC Subcontractor" means Bechtel Power Corporation.

"Equity Contribution" means equity contributed as Base Equity.

"Equity Documents" is defined in Section 4.1.1(a)(iii).

"Equity Funding Agreement" means the Equity Funding Agreement dated as of the Guarantee Agreement Date, among the Borrower, the Sponsor, the Collateral Agent, the Loan Servicer and DOE, as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, pursuant to which the Sponsor commits to provide the applicable Base Equity Commitment and will make certain additional undertakings for the duration of the Guaranteed Loans.

"Equity Interests" means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) the common or preferred equity or preference share capital of a Person, including partnership interests and limited liability company interests.

"Equity Letter of Credit" means one or more Letters of Credit, posted by the Sponsor for the benefit of the Collateral Agent, on behalf of itself and the other Secured Parties, to secure the Sponsor's obligations to make Equity Contributions pursuant to the terms of the Equity Funding Agreement.

"Equity Pledge Agreement" means that certain Pledge and Security Agreement, dated as of the Guarantee Agreement Date, between the Holding Company and the Collateral Agent, as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"ERISA" means the Employee Retirement Income Security Act of 1974 of the United States, as amended from time to time, and the regulations promulgated, and any publicly available rulings issued, thereunder.

"ERISA Affiliate" means as applied to any person (as defined in Section 3(9) of ERISA), means (i) any corporation that is a member of a controlled group of corporations within the meaning of Section 414(b) of the Internal Revenue Code of which that person is a member, (ii) any trade or business (whether or not incorporated) that is a member of a group of trades or business under common control within the meaning of Section 414(c) of the Internal Revenue Code or Section 4001(b) of ERISA of which that person is a member, or (iii) any member of an affiliated service group within the meaning of Section 414(m) and (o) of the Internal Revenue Code of which that person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is a member.

"ERISA Event" means:

(i) a reportable event as defined in Section 4043 of ERISA and the regulations issued under such Section with respect to a Pension Plan, excluding, however, such events as to which the PBGC by regulation has waived the requirement of Section 4043(a) of ERISA that it be notified within thirty (30) days of the occurrence of such event;

(ii) the applicability of the requirements of Section 4043(b) of ERISA with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, to any

Pension Plan where an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such plan within the following thirty (30) days;

(iii) a withdrawal by the Borrower or an ERISA Affiliate from a Pension Plan or the termination of any Pension Plan resulting in liability under Sections 4063 or 4064 of ERISA;

(iv) the withdrawal of the Borrower or an ERISA Affiliate in a complete or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefore, or the receipt by the Borrower or an ERISA Affiliate of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to Sections 4241 or 4245 of ERISA,

(v) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Sections 4041 or 4041A of ERISA of an Employee Benefit Plan, or the commencement of proceedings by the PBGC to terminate a Pension Plan or Multiemployer Plan;

(vi) the imposition of liability on the Borrower or an ERISA Affiliate pursuant to Sections 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA;

(vii) the failure by the Borrower or an ERISA Affiliate to make any required contribution to an Employee Benefit Plan, or the failure to meet the minimum funding standard of Section 412 of the Internal Revenue Code with respect to any Pension Plan (whether or not waived in accordance with Section 412(c) of the Internal Revenue Code) or the failure to make by its due date a required installment under Section 430(j) of the Internal Revenue Code with respect to any Pension Plan or the failure to make any required contribution to a Multiemployer Plan;

(viii) an event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan;

(ix) the imposition of any material liability under Title I or Title IV of ERISA, other than PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or an ERISA Affiliate;

(x) an application for a funding waiver under Section 302 of ERISA with respect to any Pension Plan;

(xi) the imposition of any lien on any of the rights, properties or assets of the Borrower or an ERISA Affiliate, or the posting of a bond or other security by of such entities, in either case pursuant to Title I or IV of ERISA or to Sections 412, 430 or 436 of the Internal Revenue Code;

(xii) the making of any amendment to any Pension Plan that could directly result in the imposition of a lien or the posting of a bond or other security;

(xiii) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the Internal Revenue Code or Section 406 of ERISA) involving the assets of an Employee Benefit Plan;

(xiv) the final determination that a Qualified Plan's qualification or tax exempt status should be revoked;

(xv) a determination that any Employee Benefit Plan is, or is expected to be, in "at risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Internal Revenue Code); or

(xvi) the receipt by the Borrower or an ERISA Affiliate of any notice, of the imposition of withdrawal liability or of a determination that a Multiemployer Plan is, or is expected to be, in "endangered" or "critical" status, within the meaning of Section 305 of ERISA.

"Escrow Agreement" means that certain Escrow Agreement, dated as of the date hereof, by and among the Borrower, SunPower and SunPower Corporation, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Event of Default" means any of the events described in Section 8.1.

"Event of Force Majeure" means any event, circumstance or condition in the nature of force majeure that would entitle any Project Participant to any abatement, postponement, or other relief from any of its contractual obligations under any Project Document to which such Person is party, including (i) an Uncontrollable Cause and (ii) with respect to FFB, an "Uncontrollable Cause" as defined under the FFB Note Purchase Agreement.

"Event of Loss" means any event that causes any portion of the Project or any other property of the Borrower to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including without limitation through a failure of title, casualty, condemnation or eminent domain or any other loss of such property.

"Excess Cash Grant Proceeds" means any Cash Grant proceeds deposited in the Cash Grant Proceeds Account in accordance with Section 3.4.3(g)(i).

"Excess Major Project Document Breach Damages" means any amounts paid to Borrower as a result of a material breach of a Major Project Document that are in excess of Major Project Document Breach Damages (if any); provided that Excess Major Project Document Breach Damages shall include any Major Project Document Breach Damages that are not used to cure the relevant breach within forty-five (45) days of receipt of the Major Project Document Breach Damages (or such longer period of time as DOE may approve at the request of the Borrower).

"Existing Cost Overruns" means any Cost Overruns existing or identified at that time.

"Excess Major Project Document Termination Damages" means any amounts paid to the Borrower as a result of a termination or repudiation of a Major Project Document that are in excess of Major Project Document Termination Damages (if any); provided that Excess Major Project Document Termination Damages shall include any Major Project Document Termination Damages that are not used to replace the relevant Major Project Document within sixty (60) days of receipt of the Major Project Document Termination Damages (or such longer period of time as DOE may approved at the request of the Borrower).

"FFB" means the Federal Financing Bank, a body corporate and instrumentality of the United States of America.

"FFB Advance Request" means a request for an Advance delivered to FFB pursuant to the FFB Note Purchase Agreement.

"FFB Advance Request Approval Notice" means an "Advance Request Approval Notice" as defined in the FFB Note Purchase Agreement, signed by DOE.

"FFB Cash Grant Bridge Loan Commitment" means, individually, the FFB Phase 1 Cash Grant Bridge Loan Commitment, the FFB Phase 2 and 4 Cash Grant Bridge Loan Commitment and the FFB Phase 3 Cash Grant Bridge Loan Commitment, as applicable, and, collectively, all of the FFB Phase 1 Cash Grant Bridge Loan Commitment, the FFB Phase 2 and 4 Cash Grant Bridge Loan Commitment and the FFB Phase 3 Cash Grant Bridge Loan Commitment.

"FFB Cash Grant Bridge Loan Promissory Notes" means, individually, each of the FFB Phase 1 Cash Grant Bridge Loan Promissory Note, the FFB Phase 2 and 4 Cash Grant Bridge Loan Promissory Note and the FFB Phase 3 Cash Grant Bridge Loan Promissory Note, as applicable, and, collectively, all of the FFB Phase 1 Cash Grant Bridge Loan Promissory Note, the FFB Phase 2 and 4 Cash Grant Bridge Loan Promissory Note and the FFB Phase 3 Cash Grant Bridge Loan Promissory Note.

"FFB Commitment" means, collectively, the FFB Term Loan Commitment and the FFB Cash Grant Bridge Loan Commitment.

"FFB Document" means:

(i) the FFB Note Purchase Agreement;

(ii) the FFB Promissory Notes; and

(iii) any other documents, certificates or instruments required to be delivered in connection with the foregoing.

"FFB Note Purchase Agreement" means the Note Purchase Agreement dated as of the Guarantee Agreement Date, among the Borrower, FFB and DOE, as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"FFB Note Transfer" means any transfer pursuant to the FFB Note Purchase Agreement of all or any part of a FFB Promissory Note.

"FFB Phase 1 Cash Grant Bridge Loan Commitment" means the commitment of FFB to provide funds to the Borrower pursuant to the terms of the FFB Phase 1 Cash Grant Bridge Loan Promissory Note, in an amount not to exceed the Guaranteed Phase 1 Cash Grant Bridge Loan Amount.

"FFB Phase 1 Cash Grant Bridge Loan Promissory Note" means the promissory note to be entered into by the Borrower in favor of FFB and guaranteed by DOE evidencing the Guaranteed Phase 1 Cash Grant Bridge Loan Amount.

"FFB Phase 2 and 4 Cash Grant Bridge Loan Commitment" means the commitment of FFB to provide funds to the Borrower pursuant to the terms of the FFB Phase 2 and 4 Cash Grant Bridge Loan Promissory Note, in an amount not to exceed the Guaranteed Phase 2 and 4 Cash Grant Bridge Loan Amount.

"FFB Phase 2 and 4 Cash Grant Bridge Loan Promissory Note" means the promissory note to be entered into by the Borrower in favor of FFB and guaranteed by DOE evidencing the Guaranteed Phase 2 and 4 Cash Grant Bridge Loan Amount.

"FFB Phase 3 Cash Grant Bridge Loan Commitment" means the commitment of FFB to provide funds to the Borrower pursuant to the terms of the FFB Phase 3 Cash Grant Bridge Loan Promissory Note, in an amount not to exceed the Guaranteed Phase 3 Cash Grant Bridge Loan Amount.

"FFB Phase 3 Cash Grant Bridge Loan Promissory Note" means the promissory note to be entered into by the Borrower in favor of FFB and guaranteed by DOE evidencing the Guaranteed Phase 3 Cash Grant Bridge Loan Amount.

"FFB Promissory Notes" means, collectively, the FFB Term Loan Promissory Note and the FFB Cash Grant Bridge Loan Promissory Notes.

"FFB Term Loan Commitment" means the commitment of FFB to provide funds to the Borrower pursuant to the terms of the FFB Term Loan Promissory Note in an amount not to exceed the Guaranteed Term Loan Amount.

"FFB Term Loan Promissory Note" means the promissory note to be entered into by the Borrower in favor of FFB and guaranteed by DOE evidencing the Guaranteed Term Loan Amount.

"Final Environmental Assessment" means the Final Environmental Assessment prepared by DOE for the Project.

"Financial Officer" means with respect to any Person, the general manager, any director, the chief financial officer, the controller, the treasurer or any assistant treasurer, any vice president-finance or any assistant vice president-finance or any other vice president or assistant vice president with significant responsibility for the financial affairs of such Person.

"Financial Plan" means the financial plan delivered pursuant to Section 4.1.2(a)(iii), as amended from time to time with DOE's consent.

"Financial Statements" means with respect to any Person, such Person's quarterly or annual balance sheet and statements of income, retained earnings, and cash flow for such fiscal period, together with all notes thereto and, except for the first fiscal year, with comparable figures for the corresponding period of its previous fiscal period, each prepared in Dollars and in accordance with GAAP (except for the absence of footnotes and normal year-end adjustments in the case of unaudited Financial Statements), it being agreed that for purposes of the Financing Documents (i) the Financial Statements of the Sponsor shall be prepared on a consolidated basis (including the Borrower) and (ii) separate Financial Statements of the Borrower shall be prepared and delivered.

"Financing Document" means the Loan Guarantee Agreement, the DOE Guarantee, the FFB Documents, the Equity Documents, the Security Documents and any documents and agreements delivered in connection therewith that are agreed in writing by DOE and the Borrower to be Financing Documents, but in all cases excluding any Project Documents.

"Finding of No Significant Impact" means a document under the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), prepared by a Federal agency, briefly presenting the reasons why an action will not have a significant effect on the human environment and, therefore, for which an environmental impact statement will not be prepared.

"First Advance Date" means the date on which the first Advance occurs.

"First Payment Date" means August 5, 2014.

"Fiscal Year" means the accounting year of the Borrower beginning on January 1 and ending on December 31.

"Fitch" means Fitch, Inc., so long as it is a rating agency.

"Foreign Asset Control Regulations" means the United States Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R. Subtitle B, Chapter V, as amended), or any ruling issued thereunder or any enabling legislation or Presidential Executive Order granting authority therefore.

"Full Advance Prepayment" means the prepayment in full of one or more Advances as the Borrower shall select, with any amount that is insufficient to prepay any Advance in full (including any residual amount after prepaying one or more Advances in full) to be applied to the prepayment of outstanding Advances pro rata in inverse order of maturity.

"GAAP" means generally accepted accounting principles in the U.S. in effect from time to time including, where appropriate, generally accepted auditing standards, including the pronouncements and interpretations of appropriate accountancy administrative bodies (including the Financial Accounting Standards Board and any predecessor and successor thereto), applied on a consistent basis both as to classification of item and amounts, it being understood that unaudited Financial Statements will not include footnotes and will be subject to normal year-end adjustments.

"Governmental Approval" means any approval, consent, authorization, license, permit, order, certificate, qualification, waiver, exemption, or variance, or any other action of a similar nature, of or by a Governmental Authority, including any of the foregoing that are or may be deemed given or withheld by failure to act within a specified time period.

"Governmental Authority" means any federal, state, county, municipal, or regional authority or agency, or any other entity of a similar nature, exercising any executive, legislative, judicial, taxing, regulatory, or administrative function of government.

"Governmental Judgment" means with respect to any Person, any judgment, order, decision, or decree, or any action of a similar nature, of or by a Governmental Authority having jurisdiction over such Person or any of its properties.

"Guarantee Agreement Date" means the date on which all the conditions set forth in Section 4.1 (except those that are required to be satisfied as of another date) have been satisfied or, in the sole discretion of DOE, waived.

"Guaranteed Cash Grant Bridge Loan" means, individually, each of the Phase 1 Cash Grant Bridge Loan, the Phase 2 and 4 Cash Grant Bridge Loan and the Phase 3 Cash Grant Bridge Loan, as applicable, and, collectively, all of the Phase 1 Cash Grant Bridge Loan, the Phase 2 and 4 Cash Grant Bridge Loan and the Phase 3 Cash Grant Bridge Loan.

"Guaranteed Cash Grant Bridge Loan Amount" means the maximum amount of the Guaranteed Cash Grant Bridge Loan (including principal and any capitalized interest), which amount shall be $380,800,200.

"Guaranteed Cash Grant Bridge Loan Maturity Date" means August 5, 2013 for the Phase 1 Cash Grant Bridge Loan, February 5, 2014 for the Phase 2 and 4 Cash Grant Bridge Loan and August 5, 2014 for Phase 3 Cash Grant Bridge Loan.

"Guaranteed Construction Start Date" has the meaning set forth in the HPR II PPA.

"Guaranteed Loan Amount" means, collectively, the Guaranteed Term Loan Amount and the Guaranteed Cash Grant Bridge Loan Amount.

"Guaranteed Loans" means, collectively, the Guaranteed Term Loan and the Guaranteed Cash Grant Bridge Loan and, individually, each of the Guaranteed Term Loan and the Guaranteed Cash Grant Bridge Loan.

"Guaranteed Loan Fees" means all fees payable by the Borrower or the Sponsor to DOE or FFB under the Loan Guarantee Agreement, the FFB Documents or related side letters, including the fees payable pursuant to Section 3.5.

"Guaranteed Operational Completion Date" means the date that is three (3) months after the "PV Power Plant Substantial Completion Guaranteed Date" Major Project Milestone.

"Guaranteed Phase 1 Cash Grant Bridge Loan Amount" means the portion of the Guaranteed Cash Grant Bridge Loan Amount that is allocated to the Phase 1 Cash Grant (including the applicable Maximum Capitalized Interest Amount), which amount shall be $34,154,000.

"Guaranteed Phase 2 and 4 Cash Grant Bridge Loan Amount" means the portion of the Guaranteed Cash Grant Bridge Loan Amount that is allocated to the Phase 2 and 4 Cash Grant (including the applicable Maximum Capitalized Interest Amount), which amount shall be $167,291,200.

"Guaranteed Phase 3 Cash Grant Bridge Loan Amount" means the portion of the Guaranteed Cash Grant Bridge Loan Amount that is allocated to the Phase 3 Cash Grant (including the applicable Maximum Capitalized Interest Amount), which amount shall be $179,355,000.

"Guaranteed Project Completion Date" means the date that is two (2) months after the Guaranteed Operational Completion Date.

"Guaranteed Term Loan" means the loans made by FFB and guaranteed by DOE pursuant to the FFB Documents in a maximum amount equal to the Guaranteed Term Loan Amount and, as the context requires, the principal amount of such loan outstanding from time to time.

"Guaranteed Term Loan Amount" means the maximum amount of the Guaranteed Term Loan (including principal and Maximum Capitalized Interest), which amount shall not exceed Eight Hundred Fifty-Six Million Three Hundred One Thousand Three Hundred Dollars ($856,301,300).

"Guarantor" is defined in the preamble to the Loan Guarantee Agreement.

"Hazardous Substance" means any hazardous or toxic substances, chemicals, materials, pollutants or wastes defined, listed, classified or regulated as such in or under any Environmental Laws, including (i) any petroleum or petroleum products (including gasoline, crude oil or any fraction thereof), flammable explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and polychlorinated biphenyls, lead or lead-based paints or materials, radon, fungus, mold, mycotoxins or other substances that may have an adverse effect on human health or the environment, (ii) any chemicals, materials or

substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants" or "pollutants," or words of similar import, under any applicable Environmental Law and (iii) any other chemical, material or substance, including without limitation greenhouse gases, the import, storage, transport, use, Release or disposal of, or exposure to, which is prohibited, limited, governed or otherwise regulated under, or for which liability is imposed pursuant to, any Environmental Law.

"Hedging Agreement" means any agreement or instrument (including a cap, swap, collar, option, forward purchase agreement or other similar derivative instrument) relating to the hedging of any interest under any Indebtedness.

"Historical Debt Service Coverage Ratio" means, as of any date of calculation, the ratio of (a) actual Cash Flow Available for Debt Service for the immediately preceding twelve (12) month period to (b) aggregate Debt Service (disregarding clause (iii) of the definition of Debt Service) for such period.

"Holding Company" is defined in the recitals to the Loan Guarantee Agreement.

"HPR I Assignment" means the agreement between HPR I and the Borrower, dated as of the date hereof, pursuant to which HPR I collaterally assigns, as security for HPR I's obligations under the Mitigation Land Acquisition Agreement, all of HPR I's right, title and interest in, to and under any purchase agreements and option agreements (whether now existing or entered into after the date hereof) for the acquisition of Mitigation Land (as defined in the Mitigation Land Acquisition Agreement).

"HPR II Delivery Term" means the Delivery Term, as defined under the HPR II PPA.

"HPR II Delivery Term Security" means Letters of Credit, posted in accordance with the terms of the Delivery Term Security Maintenance Agreement (and any proceeds thereof), to satisfy the requirement of the Borrower to post "Delivery Term Security" as defined in the HPR II PPA, representing the total amount of "Delivery Term Security" required during the entire term of the HPR II PPA (and, for the avoidance of doubt, shall not include any other form of "Delivery Term Security" (as defined in the HPR II PPA) applicable in accordance with the terms of the HPR II PPA).

"HPR II Development Security" means Letters of Credit posted for the benefit of PG&E (and any proceeds thereof), to satisfy the requirement of the Borrower to post "Development Security" as defined in the HPR II PPA, representing the total amount of "Development Security" required during the entire term o fthe HPR II PPA.

"HPR II PPA" means the power purchase and sale agreement, dated as of July 23, 2008, between PG&E and the Borrower, as may be amended, restated, supplemented or modified from time to time until the Guarantee Agreement Date.

"HPR III Delivery Term" means the Delivery Term, as defined under the HPR III PPA.

"HPR III Delivery Term Security" means Letters of Credit, posted in accordance with the terms of the Delivery Term Security Maintenance Agreement (and any proceeds thereof), to satisfy the requirement of the Borrower to post "Delivery Term Security" as defined in the HPR III PPA, representing the total amount of "Delivery Term Security" required during the entire term of the HPR III PPA (and, for the avoidance of doubt, shall not include any other form of "Delivery Term Security" (as defined in the HPR III PPA) applicable in accordance with the terms of the HPR III PPA).

"HPR III Development Security" means Letters of Credit posted for the benefit of PG&E (and any proceeds thereof), to satisfy the requirement of the Borrower to post "Development Security" as defined in the HPR III PPA, representing the total amount of "Development Security" required during the entire term o fthe HPR III PPA.

"HPR III PPA" means the amended and restated power purchase and sale agreement, dated as of March 5, 2010, between HPR III and PG&E, as amended by the amendment entered into as of March 6, 2010, and as may be further amended, restated, supplemented or modified from time to time until the Guarantee Agreement Date.

"HPR III" means High Plains Ranch III, a Delaware limited liability company.

"Immaterial Equipment" means any equipment that is non-essential to the operation of the Project and the failure of which to be in place or operating could not reasonably be expected to have a Material Adverse Effect.

"Improvements" means the buildings, fixtures and other improvements to be situated on the Project Site.

"Indebtedness" means as to any Person, and at any date, without duplication:

(i) all Indebtedness for Borrowed Money of such Person;

(ii) all obligations of such Person evidenced by bonds, debentures, notes, letters of credit, or other similar instruments;

(iii) all obligations of such Person to purchase securities (or other property) that arise out of or in connection with the sale or acquisition of the same or similar securities (or property);

(iv) all obligations of such Person issued, undertaken or assumed as the deferred purchase price of property or services other than trade credit in the ordinary course of business;

(v) all obligations of such Person under leases that are or should be, in accordance with GAAP, recorded as Capital Leases in respect of which such Person is liable;

(vi) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument;

(vii) the currently available amount of all surety bonds, performance bonds, letters of credit or other similar instruments issued for the account of such Person;

(viii) all liabilities secured by (or for which the holder of such liabilities has an existing right, contingent, or otherwise, to be secured by) any Lien upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such liabilities;

(ix) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to property acquired by such Person (even though the rights and remedies of the seller or bank under such agreement in the event of any default are limited to repossession or sale of such property);

(x) obligations pursuant to any agreement to purchase materials, supplies or other property if such agreement provides that payment shall be made regardless of whether delivery of such materials, supplies or other property is ever made or tendered;

(xi) all obligations in respect of any Hedging Agreement or similar arrangement between such Person and a financial institution providing for the transfer or mitigation of interest risks either generally or under specific contingencies (but without regard to any notional principal amount relating thereto); and

(xii) all Contingent Obligations of such Person with respect to Indebtedness of the types specified in clauses (i) through (xi) above.

For the avoidance of doubt, Indebtedness does not include amounts owed under any Permitted Lease.

"Indebtedness for Borrowed Money" means as to any Person, without duplication, (i) all indebtedness (including principal, interest, fees and charges) of such Person for borrowed money or for the deferred purchase price of property or services (other than any deferral (x) in connection with the provision of credit in the ordinary course of business by any trade creditor or utility or (y) of any amounts payable under the Project Documents) or (ii) the aggregate amount required to be capitalized under any Capital Lease under which such Person is the lessee.

"Indemnified Parties" is defined in Section 11.18(c).

"Indemnified Person" is defined in Section 11.18(c).

"Indemnity Claims" is defined in Section 11.18(c).

"Independent Consultants" means, collectively, the Independent Engineer, the DOE Insurance Advisor, Skadden, Arps, Slate, Meagher & Flom LLP as legal counsel to DOE, and any other advisor or consultant retained by DOE from time to time in connection with the Guaranteed Loans, the Project or the Transaction Documents.

"Independent Engineer" means Parsons Infrastructure & Technology Group Inc., acting as engineering advisor to DOE.

"Independent Engineer Report" means a report or reports of the Independent Engineer delivered (i) on or before the Guarantee Agreement Date, as to matters set forth in Section 4.1.14(d), (ii) on or before the First Advance Date, as to matters set forth in Section 4.2.6(a) (if required by DOE) and (iii) on or before the Project Completion Date as to matters set forth in the definition of Project Completion.

"Initial Operating Budget" is defined in Section 4.1.2(a)(viii).

"Insolvency Proceedings" means any bankruptcy, insolvency, liquidation, company reorganization, restructuring, controlled management, suspension of payments, scheme of arrangement, appointment of provisional liquidator, receiver or administrative receiver, notification, resolution, or petition for winding up or similar proceeding, under any Applicable Law, in any jurisdiction and whether voluntary or involuntary.

"Intellectual Property Rights" means any and all rights in, arising out of, or associated with the following, whether now or hereafter existing, created, acquired or held:

(i) all United States and, as applicable to the Project, international and foreign, patents and patent applications and all reissues, divisions, renewals, extensions, provisionals, continuations and continuations-in-part thereof;

(ii) all trade secret rights;

(iii) all copyrights or other rights associated with works of authorship, including all copyright registrations and applications for copyright registration, renewals and extensions thereof; and, as applicable to the Project, all other rights corresponding thereto throughout the world;

(iv) all mask work rights, mask work registrations and applications therefor, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology;

(v) all rights in industrial designs and any registrations and applications therefor in the United States and, as applicable to the Project, throughout the world;

(vi) all rights to trade names, logos, trademarks and service marks, including registered trademarks and service marks and all applications to register trademarks and service marks;

(vii) all rights to any databases and data collections;

(viii) all moral and economic rights of authors and inventors, however denominated, as applicable to the Project, throughout the world; and

(ix) any similar or equivalent rights to any of the foregoing, as applicable to the Project, anywhere in the world.

"Interest Rate Swaption Agreements" means forward-starting interest rate swap agreements, with a total upfront payment not to exceed $50,000,000 (such upfront payment to be the sole recourse to the Borrower) to be executed after the Guarantee Agreement Date in accordance with the terms of the Loan Guarantee Agreement, with seven scheduled settlement dates, that may occur at any time between April 30, 2012 and October 31, 2013, for an aggregate notional amount of at least 80% of the Guaranteed Term Loan Amount.

"Interest Rate Swaption Proceeds" means any proceeds received by the Borrower under the Interest Rate Swaption Agreement.

"Intermediate Parent Company" is defined in the recitals to the Loan Guarantee Agreement.

"Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder. Section references to the Internal Revenue Code are to the Internal Revenue Code as in effect at the Guarantee Agreement Date and any subsequent provisions of the Internal Revenue Code, amendatory thereof, supplemental thereto or substituted therefor.

"Investment" means for any Person: (i) the acquisition (whether for cash, property, services or securities or otherwise) or holding of Equity Interests, bonds, notes, debentures, partnership or other ownership interests or other securities of or in any other Person, (ii) the making of any deposit with, or advance, loan or other extension of credit to, any other Person or any guarantee of, or other Contingent Obligation with respect to, any Indebtedness or other liability of any other Person and (without duplication) any amount committed to be advanced, lent or extended to any other Person and (iii) the acquisition of any similar property, right or interest of or in any other Person.

"Investment Company Act" means The United States Investment Company Act of 1940, as amended from time to time.

"Knowledge" means: (i) with respect to the Borrower, the actual knowledge of any Principal Persons of the Borrower or any knowledge that should have been obtained by any Principal Person of the Borrower upon reasonable investigation and inquiry and (ii) with respect to any other Person, the actual knowledge of any such Person or any knowledge that should have been obtained by such Person upon reasonable investigation and inquiry.

"Land Lease Agreement" means that certain Solar Facility Ground Lease, dated as of September, 2011, by and between High Plains Ranch IV, LLC, as lessor, and the Borrower, as lessee, pursuant to which the Borrower leases all or a portion of the Project Site.

"Large Generator Interconnection Agreement" means the Large Generator Interconnection Agreement, between the Borrower, PG&E and the California Independent System Operator Corporation, dated as of February 11, 2011, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Late Charge Rate" means the interest rate applicable from time to time under the FFB Documents with respect to Overdue Amounts.

"Lease" means any agreement that would be characterized under GAAP as an operating lease.

"Lender" means any financial institution that acquires an interest in either Guaranteed Loan from time to time in accordance with Section 11.14.

"Letter of Credit" means an irrevocable standby letter of credit issued by a bank or trust company (i) with a combined capital surplus of at least $1.0 billion and (ii) whose senior unsecured obligations have a credit rating of at least A- from Standard & Poor's or Fitch or A3 from Moody's, or better.

"LGIA Surety Bonds" means, collectively, (i) that certain surety bond, dated as of September 29, 2011, in the amount $41,794,737, for the benefit of PG&E and (ii) that certain surety bond, dated as of September 29, 2011, in the amount of $300,000, for the benefit of PG&E, in each case, in form and substance satisfactory to PG&E.

"Lien" means any lien (statutory or other), pledge, mortgage, charge, security interest, deed of trust, assignment, hypothecation, title retention, fiduciary transfer, deposit arrangement, easement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever in respect of an asset, whether or not filed, recorded or otherwise perfected or effective under Applicable Law, as well as the interest of a vendor or lessor under any conditional sale agreement, Capital Lease or other title retention agreement relating to such asset, (including any conditional sale or other title retention agreement, any Capital Lease having substantially the same economic effect as any of the foregoing, or any preferential arrangement having the practical effect of constituting a security interest with respect to the payment of any obligation with, or from the proceeds of, any asset or revenue of any kind).

"Loan Guarantee Agreement" means this Loan Guarantee Agreement, dated as of the Guarantee Agreement Date, among the Borrower, DOE and the Collateral Agent, to which this Exhibit A is appended. The Loan Guarantee Agreement is the "Loan Guarantee Agreement" referred to in the Applicable Regulations. The Loan Guarantee Agreement is the "Common Agreement" referred to in the FFB Documents.

"Loan Servicer" is defined in the preamble to the Loan Guarantee Agreement, or its successor, as appointed pursuant to Section 9.1.

"Loss Proceeds" means all proceeds (other than any proceeds of business interruption insurance and proceeds covering liability of the Borrower to third parties) resulting from an Event of Loss or Minimum Threshold Event of Loss.

"Loss Proceeds Account" is defined in the Accounts Agreement.

"Major Maintenance Reserve Account" has the meaning set forth in the Accounts Agreement.

"Major Project Document" means each of the following: (a) the Master Services Agreement, (b) the O&M Agreement, (c) the Power Purchase Agreements, (d) the Land Lease Agreement, (e) each Construction Contract, (f) the Large Generator Interconnection Agreement, (g) the Delivery Term Security Maintenance Agreement, (h) the Mitigation Land Acquisition Agreement, (i) the Escrow Agreement and (j) any other contract or agreement entered into by the Borrower subsequent to the Guarantee Agreement Date and designated by DOE in a writing delivered to Borrower a "Major Project Document."

"Major Project Document Breach Damages" means any damages paid to the Borrower as a result of a material breach by a counterparty of a Major Project Document that Borrower reasonably estimates, as soon as practicable but in any event within fifteen (15) days of the receipt of such damages, will be necessary to remedy the relevant breach (which amounts will be then deposited into the Construction Account (prior to the Project Completion Date) or the Operating Account (on and after the Project Completion Date), as applicable);

"Major Project Document Termination Damages" means any amounts paid to the Borrower as a result of the termination or repudiation by a counteprarty of a Major Project Document that Borrower reasonably estimates, as soon as practicable but in any event within fifteen (15) days of the receipt of such damages, will be necessary to compensate the Borrower for its reasonable out-of-pocket costs to replace such Major Project Document (which amounts will be then deposited into the Construction Account (prior to the Project Completion Date) or the Operating Account (on and after the Project Completion Date), as applicable).

"Major Project Milestone" means each major project milestone identified on Schedule 1.1.

"Major Project Participant" means any Person (other than the Borrower) party to any Major Project Document and each Person (other than the Borrower) party to any Support Instrument provided in connection with any Major Project Document.

"Master Advance Notice" means a notice of request for an Advance delivered by the Borrower pursuant to Section 4.2.1(a) or Section 4.4.1 in accordance with the terms of Section 2.2.1, which shall contain the certifications required of the Borrower pursuant to Section 4.2.19 and Section 4.4.15, as applicable.

"Master Services Agreement" means that certain Master Services Agreement, dated as of the date hereof, by and among NRG Energy Services LLC, as operator, and SunPower, as contractor, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Material Adverse Effect" means, as of any date of determination, a material and adverse effect on (i) the Project, (ii) the ability of the Borrower or any other Major Project Participant to observe and perform its material obligations in a timely manner under any Transaction Document to which it is a party, (iii) the business, operations, condition (financial or otherwise), Property or prospects of the Borrower or any other Major Project Participant, (iv) the validity or enforceability of any material provision of any Transaction Document, (v) any material right or remedy of DOE under the Transaction Documents, (vi) the security or Lien of the Secured Parties on any of the Collateral under any Security Document, (vii) the eligibility of the Borrower to qualify for a Cash Grant in respect of any Phase of the Project equal to at least 90% of the amount set forth opposite such Phase on Exhibit T unless the sum (without duplication) of (a) the amount of the Cash Grant reasonably expected with respect to such Phase, (b) any unused equity funding that is committed to the Borrower and which is not necessary to fund Project Costs, (c) any retained earnings of the Borrower which are not necessary to fund Project Costs and (d) any Cash Grant Shortfall Security, equals or exceeds 100% of the amount set forth opposite such Phase on Exhibit T.

"Materials and Equipment Supply Agreement" means that certain Materials and Equipment Supply Agreement between the Borrower and the EPC Contractor dated as of the date hereof, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Maximum Capitalized Interest Amount" has the meaning specified in Section 7(b) of the applicable FFB Promissory Note.

"Maximum Debt to Equity Ratio" means 78.8 : 21.2.

"Merger" is defined in the preamble to the Loan Guarantee Agreement.

"Merger Documents" means that certain Agreement and Plan of Merger, dated as of the date hereof, between the Borrower and High Plains Ranch III, LLC, a Delaware limited liability company, and all certificates, filings and instruments that are required to consummate the Merger.

"Minimum DSCR" means 1.35: 1.00.

"Minimum Threshold Event of Loss" is defined in Section 6.22.

"Mitigation Land Acquisition Agreement" means that certain Mitigation Land Agreement by and between High Plains Ranch I, LLC, a Delaware limited liability company, High Plains Ranch IV, LLC, a Delaware limited liability company, and the Borrower, dated as of the date hereof.

"Mitigation Land Security" means those certain Letter(s) of Credit posted by SunPower, for the benefit of the Borrower, in a total aggregate amount of $30,300,000 to secure the obligations of High Plains Ranch I, LLC and High Plains Ranch IV, LLC under the Mitigation Land Acquisition Agreement.

"Modified Tracker Components" is defined in Section 4.1.2(a)(x).

"Monitoring Table" means the plan describing the technical monitoring activities that will be conducted by DOE and the Independent Engineer until the Term Loan Maturity Date, including the methodology, processes and procedures relating to such technical monitoring activities, substantially in the form of Exhibit P.

"Monthly Transfer Date" has the meaning set forth in the Accounts Agreement.

"Moody's" means Moody's Investors Service, Inc., so long as it is a rating agency.

"Multiemployer Plan" means a "multiemployer plan" (within the meaning of Section 3(37) of ERISA) that the Borrower or any ERISA Affiliate contributes to or participates in, or with respect to which the Borrower or any ERISA Affiliate has any material liability or other obligation (whether accrued, absolute, contingent or otherwise).

"National Environmental Policy Act" means the National Environmental Policy Act of 1969 of the United States, as amended from time to time, and the regulations promulgated and any rulings or guidance issued thereunder.

"Non-Appealable" means, with respect to any Required Approval, unless otherwise agreed by DOE, (a) such Required Approval is not subject to any pending appeal, intervention or similar proceeding or any unsatisfied condition (other than conditions that (i) do not require the discretionary approval of a third party and (ii) are not, as of the date of determination, required to be satisfied for construction and operation of the Project to continue consistent with the Project Plans) which may result in material modification or revocation and (b) all applicable appeal periods have expired (except for any Required Approval which does not have any limit on an appeal period under Applicable Law).

"Notice of Cancellation" is defined in Section 2.3.2(a).

"NRG Cash Grant Shortfall Security" means a guarantee issued by the Ultimate Parent for the benefit of the Collateral Agent (acting on behalf of the Secured Parties), in the original aggregate amount of $50,000,000, as the same may be reduced consistent with Section 6.35(d) substantially in the form of Exhibit AA.

"O&M Agreement" means the Operation and Maintenance Agreement between the Operator and the Borrower, dated as of the date hereof, as amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"O&M Reserve Account" has the meaning set forth in the Accounts Agreement.

"Obligation" means, with respect to any Person, any payment, performance or other obligation of such Person of any kind, including any liability of such Person on any claim, whether or not the right of any creditor to payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured or unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any Insolvency Proceeding. Without limiting the generality of the foregoing, the Obligations of the Borrower under the Financing Documents include (a) the obligation to pay principal, interest, charges, expenses, fees, attorneys' or other Independent Consultants' fees and disbursements, indemnities and other amounts payable by the Borrower under any Financing Document and (b) the obligation of the Borrower to reimburse any amount in respect of any of the foregoing that DOE, in its sole discretion, may elect to pay or advance on behalf of the Borrower.

"OFAC" means the Office of Foreign Assets Control, agency of the U.S. Department of the Treasury under the auspices of the Under Secretary of the Treasury for Terrorism and Financial Intelligence.

"Officer's Certificate" means an Officer's Certificate of any Person, signed on behalf of such Person, by an Authorized Officer relating to the items or matters for which such Officer's Certificate is required in form and substance reasonably acceptable to DOE.

"OMB" means the Office of Management and Budget of the Executive Office of the President of the United States of America.

"OMB Implementing Guidance" means the OMB's Initial Implementing Guidance for the Recovery Act, M-09-10 (February 18, 2009), Updated Implementing Guidance for the Recovery Act, M-09-15 (April 3, 2009), Updated Implementing Guidance for the Recovery Act, M-09-21 (June 22, 2009) and, in each case, any amendment, supplement or successor thereto.

"Operating Budget" means the Operating Budget delivered in respect of such year pursuant to Section 6.11, in each case as amended from time to time in accordance with Section 6.11.2.

"Operating Budget Period" means the period beginning on the Phase Operation Date for Phase 1 and ending on the Term Loan Maturity Date.

"Operating Costs" means for any period with respect to which such Operating Costs are being calculated, all amounts paid (or projected to be paid) by the Borrower for the administration, management and operation and maintenance of the Project.

"Operating Forecast" means the periodic forecast prepared by the Borrower (on an aggregate and month-by-month basis) in connection with the operation of the Project, and

delivered from time to time pursuant to Section 6.1.5(b), which (i) shall be the Borrower's good faith projections at such time taking into account all facts and circumstances then existing and assumptions believed by the Borrower to be reasonable on the date made, complete, fair and accurate estimates of all Operating Revenues reasonably expected to be received and all Operating Costs (by category) reasonably expected to be incurred, (ii) shall reflect Debt Service due during each period, and pro forma Cash Flow Available for Debt Service projections for each period, (iii) shall include such other information as may be reasonably requested by DOE or the Independent Engineer and (iv) shall be prepared on a basis consistent from period to period and consistent with the Operating Plan, in sufficient detail to permit meaningful comparisons, and shall include a statement of the assumptions on which it is based.

"Operating Period" means the period from the Operational Completion Date to the date on which the Secured Obligations are repaid in full.

"Operating Plan" means the periodic operating plan for the Project prepared by the Borrower in connection with the operation of the Project, and delivered from time to time pursuant to Section 6.1.5(b) that (i) shall describe the Project's operating plan for the relevant period, (ii) shall summarize any changes in the Project's maintenance plan, including the Project's program for spare parts, inventory management and supply management, (iii) shall include such other information as may be reasonably requested by the Loan Servicer or the Independent Engineer and (iv) shall be prepared on a basis consistent from period to period, and consistent with the Operating Forecast, in sufficient detail to permit meaningful comparisons, shall include a statement of the assumptions on which it is based.

"Operating Revenues" means all cash receipts (or projected receipts) of the Borrower deposited in the Project Accounts, including revenues from: (i) the sales under the Power Purchase Agreements, (ii) proceeds from business interruption and delay in start-up insurance policies, (iii) delay liquidated damages payable under the EPC Contract and (iv) interest and other income earned and received on the Project Accounts; provided, however, that Operating Revenues shall not include proceeds (x) from casualty and event of loss insurance or (y) that are subject to a mandatory prepayment pursuant to Section 3.4.3.

"Operational Completion" means satisfaction of the elements described in the clause (a) of the definition of Project Completion as set forth in Exhibit O.

"Operational Completion Date" means the date on which all the conditions for Operational Completion have been met, as confirmed by DOE in writing.

"Operations Report" means an operations report prepared monthly by the Borrower, which shall include (i) a detailed assessment of the operations to date in comparison with the Operating Plan and the Operating Forecast then in effect for such monthly period, (ii) any events that have occurred or are reasonably expected to occur that would materially affect the operation of the Project, (iii) a description and explanation of any material casualty losses and (iv) material disputes between the Operator and any Person.

"Operator" means NRG Energy Services LLC, a limited liability company organized and existing under the laws of the State of Delaware.

"Organizational Documents" means with respect to any Person, (a) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (b) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (c) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

"Overdue Amount" means any amount owing under a FFB Promissory Note that is not paid when and as due.

"Patriot Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, and all regulations promulgated thereunder.

"Payment Date" means each February 5 and August 5 of each year on and after the First Payment Date, or if not a Business Day, the next Business Day.

"Payment Period" means the period from the Project Completion Date to the First Payment Date after the Project Completion Date and each subsequent semi-annual period between Payment Dates through the Maturity Date.

"PBGC" means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under ERISA.

"Pension Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate has ever made, or was obligated to make, contributions and (ii) that is or was subject to Section 412 of the Internal Revenue Code, Section 302 of ERISA or Title IV of ERISA.

"Periodic Expenses" means all of the following amounts from time to time due under or in connection with the Financing Documents: (i) all recordation and other costs, fees and charges in connection with the execution, delivery, filing, registration, or performance of the Transaction Documents or the perfection of the security interests in the Collateral, (ii) all fees charges, and expenses of any Independent Consultants and (iii) all other fees, charges, expenses and other amounts from time to time due under or in connection with the Financing Documents, including fees payable to the Collateral Agent pursuant to a separate written agreement with the Collateral Agent, as the same may be amended from time to time.

"Permitted Affiliate Transactions" means (i) Borrower Affiliate transactions contemplated in the Financing Documents; or (ii) Borrower Affiliate transactions that could not reasonably be expected to have a Material Adverse Effect; provided that (A) with respect to each of (i) or (ii) above, such Affiliate transaction must be on an arm's length basis or better; and (B)

with respect to (ii) above, each Affiliate transaction must be for an annual amount less than $2,000,000.

For the avoidance of doubt, for the purposes of the definition of "Permitted Affiliate Transactions", SunPower will be deemed to be an Affiliate of the Borrower.

"Permitted Disposition" means any conveyance, sale, lease or sublease (as lessor or sublessor), exchange, transfer or other disposition (a "Disposition"), in any one transaction or a series of transactions, of all or any part of its ownership interests in the Project or any other part of the Borrower's business or Property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, whether now or hereafter acquired that is:

(a) a sale of energy under a Power Purchase Agreement;

(b) a transfer of funds permitted under the Accounts Agreement, including transfers of funds between Project Accounts, payment of Project Costs and Operating Costs, distribution of Loss Proceeds, payment of obligations arising under the Financing Documents and the making of Restricted Payments;

(c) the grant, attachment or perfection of security interests, liens and other interests that are (i) required by the Financing Documents or (ii) Permitted Liens;

(d) a sale of equipment or Property of the Borrower that is (i) obsolete, (ii) no longer used or useful in the operation of the Project or (iii) is to be replaced by other equipment of equal value and utility, and in all cases for which the Borrower has received consideration reflecting in an amount equal to the value that would have been obtained in a transaction on an arm's length basis with an unaffiliated third party (unless such assets only have scrap value); provided, in each case, that the proceeds thereof are, if Section 3.4.3 is applicable to the Disposition, applied in accordance with Section 3.4.3; provided, further, that, in the event that proceeds of a Permitted Disposition are to be applied to a replacement of equipment in accordance with sub-clause (iii) of this clause (d) and are not so applied within 180 days after the date of such Permitted Disposition, 100% of the amount of such proceeds shall be applied in accordance with Section 3.4.3;

(e) a Disposition in the ordinary course of business for fair market value not in excess of One Million Dollars ($1,000,000) for a single transaction or Five Million Dollars ($5,000,000) in the aggregate for all such Dispositions occurring in any given Fiscal Year; provided that such Property is not material or necessary to the performance of the Project; or

(f) a Disposition of Permitted Investments in accordance with the Accounts Agreement.

"Permitted Indebtedness" means any indebtedness permitted to be incurred by the Borrower pursuant to Section 7.1.

"Permitted Investments" means any of the following, to the extent owned by the Borrower free and clear of all liens other than liens created under the Collateral Documents:

(i) direct obligations of the U.S. (including obligations issued or held in book-entry form on the books of the U.S. Department of the Treasury) or obligations, the timely payment of principal and interest of which is fully guaranteed by the U.S. maturing not more than one hundred eighty (180) days from the date of the creation thereof;

(ii) obligations, debentures, notes or other evidence of Indebtedness issued or guaranteed by any agency or instrumentality of the U.S. maturing not more than one hundred eighty (180) days from the date of the creation thereof;

(iii) interest-bearing demand or time deposits (including certificates of deposit) that are held in banks with a general obligation rating of not less than "A-" by S&P or the equivalent rating by Moody's, of a market value of no less than the amount of moneys so invested maturing not more than one hundred eighty (180) days from the date of the creation thereof;

(iv) commercial paper rated (on the date of acquisition thereof) at least "A-1" or "P-1" or equivalent by S&P or Moody's, respectively (or an equivalent rating by another nationally recognized credit rating agency of similar standing if neither of such corporations is then in the business of rating commercial paper), maturing not more than ninety (90) days from the date of creation thereof;

(v) money market funds, so long as such funds are rated "Aaa" by Moody's and "AAA" by S&P; and

(vi) any advances, loans or extensions of credit or any stock, bonds, notes, debentures or other securities as the Loan Servicer, acting pursuant to the instructions of DOE, may from time to time approve.

"Permitted Leases" means (a) the Land Lease Agreement, (b) each other Lease pursuant to which the Borrower, as lessee, leases a portion of the Project Site and which has been approved by DOE in writing, (c) Leases of office space, office equipment or motor vehicles with respect to which the aggregate lease payments do not exceed $500,000 per Fiscal Year, and (d) licenses for Intellectual Property Rights, in each case as required in connection with the construction or operation of the Project; provided, that, for the avoidance of doubt, none of the foregoing shall be Capital Leases.

"Permitted Liens" means:

(i) any rights and interests of the Secured Parties as provided in the Transaction Documents that could constitute a lien;

(ii) Liens for any Tax, assessment or other governmental charge not yet due, or being diligently contested in good faith and by appropriate proceedings timely instituted, so long as (A) such proceedings shall not involve any danger of the sale, forfeiture or loss of the Project, or any easements, as the case may be, title thereto or any interest therein and shall not interfere with the use or disposition of the Project or any easements, (B) such Tax, assessment or other governmental charge is not more than sixty (60) days delinquent and (C) a bond, adequate reserves or other security acceptable to the Loan Servicer has been posted or provided in such manner and amount as to assure DOE that any taxes, assessments or other charges determined to be due will promptly be paid in full when such contest is determined;

(iii) Liens in favor of materialmen, workers or repairmen, or other like Liens arising in the ordinary course of business or in connection with the construction of the Project, either for amounts not yet due or for amounts being diligently contested in good faith and by appropriate proceedings timely instituted so long as (x) such proceedings shall not involve any danger of the sale, forfeiture or loss of any part of the Project, or any easements, as the case may be, title thereto or any interest therein and shall not interfere with the use or disposition of the Project, or any easements and (y) a bond or other security acceptable to the Loan Servicer has been posted or provided in such manner and amount as to assure DOE that any amounts determined to be due will promptly be paid in full when such contest is determined;

(iv) Liens identified in the ALTA Survey;

(v) Liens identified in the Title Policy;

(vi) zoning, entitlement, building and other land use regulations imposed by Governmental Authorities having jurisdiction over the Project Site that do not and will not materially impair the use, development or operation by Borrower of the Project Site for its intended purpose;

(vii) Liens (not securing Indebtedness) of depository institutions and securities intermediaries (including rights of set-off or similar rights) with respect to deposit accounts or securities accounts;

(viii) Liens securing judgments for the payment of money for less than 30 days on terms and conditions set forth in Section 8.1(k);

(ix) pledges or deposits or other Liens in the ordinary course of business in connection with worker's compensation, unemployment insurance, social security and other Government Rules;

(x) Liens securing purchase money obligations of the Borrower in an aggregate amount of less than $500,000; and

(xi) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

provided, however, that, notwithstanding the foregoing, Permitted Liens shall not include any Lien on any Equity Interests of the Borrower (other than any Lien in favor of the Secured Parties).

"Person" means any individual, firm, corporation, company, voluntary association, partnership, limited liability company, joint venture, trust, unincorporated organization, Governmental Authority, committee, department, authority or any other body, incorporated or unincorporated, whether having distinct legal personality or not.

"PG&E" means Pacific Gas and Electric Company.

"Phase" means, as applicable, Phase 1, Phase 2, Phase 3 or Phase 4.

"Phase 1" has the meaning set forth in the HPR II PPA.

"Phase 1 Cash Grant" means the Cash Grant received in connection with Phase 1 being placed in service for federal income tax purposes.

"Phase 1 Cash Grant Bridge Loan" means the loan made by FFB that is sized against the expected amount of the Phase 1 Cash Grant and guaranteed by DOE pursuant to the FFB Documents in a maximum amount equal to the Guaranteed Phase 1 Cash Grant Bridge Loan Amount and, as the context requires, the principal amount of such loan outstanding from time to time.

"Phase 1 Cash Grant Bridge Loan Availability Period" means the period between the Guarantee Agreement Date and the date that is the earlier to occur of (i) August 4, 2013 and (ii) the date upon which the Borrower receives Phase 1 Cash Grant proceeds.

"Phase I Environmental Report" means the Phase 1 environmental site assessment for the Project Site.

"Phase 2" has the meaning set forth in the HPR II PPA.

"Phase 2 Cash Grant" means the Cash Grant received in connection with Phase 2 being placed in service for federal income tax purposes.

"Phase 2 and 4 Cash Grant Bridge Loan" means the loan made by FFB that is sized against the expected amount of the Phase 2 Cash Grant and the Phase 4 Cash Grant and guaranteed by DOE pursuant to the FFB Documents in a maximum amount equal to the

Guaranteed Phase 2 and 4 Cash Grant Bridge Loan Amount and, as the context requires, the principal amount of such loan outstanding from time to time.

"Phase 2 and 4 Cash Grant Bridge Loan Availability Period" means the period between the Guarantee Agreement Date and the date that is the earlier to occur of (i) February 4, 2014 and (ii) the date upon which the Borrower has received both the Phase 2 Cash Grant and the Phase 4 Cash Grant.

"Phase 3" has the meaning set forth in the HPR II PPA.

"Phase 3 Cash Grant" means the Cash Grant received in connection with Phase 3 being placed in service for federal income tax purposes.

"Phase 3 Cash Grant Bridge Loan" means the loan made by FFB that is sized against the expected amount of the Phase 3 Cash Grant and guaranteed by DOE pursuant to the FFB Documents in a maximum amount equal to the Guaranteed Phase 3 Cash Grant Bridge Loan Amount and, as the context requires, the principal amount of such loan outstanding from time to time.

"Phase 3 Cash Grant Bridge Loan Availability Period" means the period between the Guarantee Agreement Date and the date that is the earlier to occur of (a) August 4, 2014 and (b) the date upon which the Borrower receives Phase 3 Cash Grant proceeds.

"Phase 3 Cash Grant Support Amount" means the product of (a) the outstanding amount of Guaranteed Cash Grant Bridge Loans multiplied by (b) .442.

"Phase 4" means the portion of the Project being developed to deliver energy under the HPR III PPA.

"Phase 4 Cash Grant" means the Cash Grant received in connection with Phase 4 being placed in service for federal income tax purposes.

"Phase Operation Date" has the meaning set forth in the HPR II PPA.

"Placed in Service Date" means the date on which the Project (or a Phase) is considered to be placed in service for federal income tax purposes.

"Potential Event of Default" means an event that, with the giving of notice or passage of time or both, would become an Event of Default.

"Power Purchase Agreements" means the HPR II PPA and the HPR III PPA.

"Pre-Closing Equity Credit" means those Project Costs set forth in the Pre-Closing Project Costs Report that DOE has approved for credit to be applied toward Base Equity.

"Pre-Closing Project Costs Report" means the report delivered by the Borrower pursuant to Section 4.2.6(d).

"Pre-Completion Revenues" means any revenues received by the Borrower prior to the earlier of the Project Completion Date and the First Payment Date.

"Preliminary Construction Agreement" means that certain Preliminary Construction Agreement, dated as of August 4, 2011, between the Borrower and SunPower Corporation, Systems.

"Predictive Information" has the meaning set forth in Section 11.10.

"Principal Persons" means any officer, director, owner, key employee or other Person with primary management or supervisory responsibilities with respect to the Borrower or the Operator, or any other Person (whether or not an employee) who has critical influence on or substantive control over the Project.

"Program Requirements" means all of the following:

(i) the provisions of Title XVII of the Energy Policy Act of 2005, Pub. L. 109-58, as amended by Section 406 of Div A of Title IV of Pub. L. 111-5, that may be amended from time to time ("Title XVII"),

(ii) the Applicable Regulations,

(iii) all U.S. Department of Energy and Federal Financing Bank legal and financial requirements, policies, and procedures applicable to the Title XVII program in effect as of the Guarantee Agreement Date and (iv) any such requirements, policies, and procedures or changes thereto adopted after the Guarantee Agreement Date that have the force of law.

"Prohibited Jurisdiction" means any jurisdiction that:

(i) is subject to U.S. or multilateral economic or trade sanctions in which the U.S. participates, including the trade sanctions and economic embargoes administered by OFAC;

(ii) has been designated by the Secretary of the Treasury under Section 311 or 312 of the Patriot Act, as warranting special measures due to money laundering concerns; or

(iii) has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the U.S. is a member, such as the Financial Action Task Force on Money Laundering, and with which designation the U.S. representative to the group or organization continues to concur.

"Prohibited Person" means any person or entity that is:

(i) named, identified, or described on the list of "Specially Designated Nationals and Blocked Persons" (Appendix A to 31 CFR chapter V) as published by OFAC at its official website, http://www.treas.gov/offices/enforcement/ofac/sdn/, or at any replacement website or other replacement official publication of such list;

(ii) named, identified or described on any other blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other list of individuals or entities with whom U.S. persons may not conduct business, including lists published or maintained by OFAC, lists published or maintained by the U.S. Department of Commerce, and lists published or maintained by the U.S. Department of State;

(iii) debarred or suspended from contracting with the U.S. government or any agency or instrumentality thereof;

(iv) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in any of the Debarment Regulations) from contracting with any U.S. federal government department or any agency or instrumentality thereof or otherwise participating in procurement or nonprocurement transactions with any U.S. federal government department or agency pursuant to any of the Debarment Regulations;

(v) indicted, convicted or had a Governmental Judgment rendered against it for any of the offenses listed in any of the Debarment Regulations;

(vi) subject to U.S. or multilateral economic or trade sanctions in which the U.S. participates;

(vii) owned or controlled by, or acting on behalf of, any governments, corporations, entities or individuals that are subject to U.S. or multilateral economic or trade sanctions in which the U.S. participates; or

(viii) an Affiliate of a Person listed above.

"Prohibited Person Transfer" (i) any Borrower Entity, any of such Borrower Entity's Principal Persons, or any Borrower Entity Covered Person becomes (whether through a transfer or otherwise) a Prohibited Person; provided, however, that if any such Principal Person or Borrower Entity Covered Person that is not a Borrower Entity that becomes a Prohibited Person is removed or replaced with a Person reasonably acceptable to DOE within 10 days from the date

that the Borrower Knew that such Principal Person or Borrower Entity Covered Person is a Prohibited Person, no Event of Default shall be deemed to have occurred; (ii) any Major Project Participant, any of such Major Project Participant's Principal Persons, or any Person that Controls any Major Project Participant becomes (whether through a transfer or otherwise) a Prohibited Person and such Major Project Participant, Principal Person, or Controlling Person is not removed or replaced with a Person reasonably acceptable to DOE within 30 days from the date that the Borrower Knew that such Major Project Participant, Principal Person or Controlling Person is a Prohibited Person; (iii) the Borrower Knowingly enters into a transaction with a Person who is a Prohibited Person; (iv) the Borrower enters into a transaction with a Person who is a Prohibited Person and does not remove or replace such Prohibited Person with a Person reasonably acceptable to DOE within 30 days from the date that the Borrower Knew that such Person was a Prohibited Person; or (v) any of the Collateral is traded or used, directly or indirectly, by a Prohibited Person or by a Person organized in a Prohibited Jurisdiction.

"Project" means an approximately 250MW AC solar photovoltaic (PV) electricity generation facility, and associated infrastructure, located in San Luis Obispo County, California. For the avoidance of doubt, the term "Project" includes the Project Site, the Project Facility and all other Property comprising such facility and infrastructure.

"Project Accounts" is defined in the Accounts Agreement.

"Project Claims" means any material written (i) Claim filed or asserted by, with or before any Governmental Authority, or (ii) threatened Claim, in each case, relating to the Project and arising out of, based on, resulting from or relating to (a) any violation, or alleged violation, of any Environmental Law, or (b) any Current Entitlement, including without limitation any and all Claims asserted in the CEQA Litigation.

"Project Completion" is defined in Exhibit O.

"Project Completion Date" means the date on which all the conditions for Project Completion have been met, as confirmed by DOE in writing.

"Project Costs" means all costs incurred by the Borrower or by a Borrower Entity on behalf of the Borrower to acquire title or use rights to the Project Site and to develop, finance and construct the Project Facility, including:

(i) amounts payable under any Construction Contract,

(ii) interest, fees and expenses payable under the Financing Documents prior to the end of the Term Loan Availability Period;

(iii) principal payments on the Guaranteed Loans occurring prior to the Project Completion Date;

(iv) costs to acquire title or use rights to the Project Site, necessary easements and other real property interests;

(v) costs and expenses of legal, engineering, accounting, construction management and other advisors or Independent Consultants incurred in connection with the Project;

(vi) fees, commissions and expenses payable to the Secured Parties at or prior to the First Advance Date;

(vii) funding of the Debt Service Reserve Account;

(viii) development costs to the extent permitted to be paid under the Financing Documents;

(ix) construction insurance premiums for coverage obtained prior to the Project Completion Date;

(x) the Borrower's labor costs and general and administration costs;

(xi) costs incurred under the O&M Agreement and mobilization costs included in the Base Case Projections; and

(xii) such other costs or expenses approved by the Loan Servicer.

"Project Costs Report" means the report required to be delivered pursuant to Section 4.1.2(a)(iv).

"Project Design Package" means the project design package delivered pursuant to Section 4.1.2(a)(xi).

"Project Document" means the Major Project Documents and the Additional Project Documents.

"Project Facility" means the 250MW AC solar photovoltaic (PV) electricity generation facility and related infrastructure and improvements located on the Project Site.

"Project Milestone Schedule" is the schedule delivered pursuant to Section 4.1.2(a)(vi), as amended from time to time consistent with the terms of the Loan Guarantee Agreement.

"Project Participant" means any party to a Major Project Document, and any party to a Financing Document other than the Secured Parties.

"Project Plans" means the project plans delivered pursuant to Section 4.1.2(a)(ii), in form and substance satisfactory to DOE for the design, development, financing, construction, implementation, operation and management of the Project, as amended from time to time with the written consent of DOE.

"Project Site" means all of the real property located in San Luis Obispo County, California on which the Project Facility will be located or that is otherwise necessary for the development, construction, ownership, operation and maintenance thereof.

"Projected Cash Grant Basis" has the meaning set forth in Section 4.1.7(c)(ii).

"Projected Debt Service Coverage Ratio" means, as of any date of determination, for any specified time period, the ratio of (i) projected Cash Flow Available for Debt Service during such specified time period, calculated using projections prepared by the Borrower in good faith based upon reasonable assumptions consistent in all material respects with the Transaction Documents, the then current Operating Budget and the Operating Plan and the P90 energy production forecast in the Base Case Projections, to (ii) Debt Service (disregarding clause (iii) of the definition of Debt Service) during the specified time period, calculated upon the assumption that there will be no early prepayment of either Guaranteed Loan.

"Property" means any right or interest in or to any asset or property of any kind whatsoever (including Equity Interests), whether real, personal or mixed and whether tangible or intangible.

"Proportional Ownership Interests" Equity Interests held by a Person in another Person either directly or indirectly through intermediate entities, expressed as a percentage on a fully-diluted basis. For example, if A holds a 50% Equity Interest in B, B holds a 40% Equity Interest in C, and C holds a 20% Equity Interest in D, then A holds a 4% Proportional Ownership Interest in D. In determining any Proportional Ownership Interest, all Equity Interests in Widely-Held Public Companies and in Designated Private Companies shall be disregarded.

"Public Utility Holding Company Act" or "PUHCA" means the United States Public Utility Holding Company Act of 2005, as amended from time to time."

"Punch List Items" means items listed on the construction punch list that are approved by the Independent Engineer.

"Purchase and Sale Agreement" means the Amended and Restated Purchase and Sale Agreement, dated as of the date hereof, by and between SunPower, as seller, and the Holding Company (as assignee of the Sponsor), as purchaser.

"Qualified Plan" means an employee benefit plan (as defined in Section 3(3) of ERISA) other than a Multiemployer Plan (i) that is or was at any time maintained or sponsored by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate has ever

made, or was ever obligated to make, contributions and (ii) that is intended to be tax-qualified under Section 401(a) of the Internal Revenue Code.

"Qualified Transferee" means an entity that, together with its parent company, (i) either (A) has an investment-grade credit rating from Fitch, S&P or Moody's, or (B) has a tangible net worth of not less than $100,000,000, and has certified to DOE that (x) it has the ability to pay its debts as they mature, (y) it is adequately capitalized to conduct its business, and (z) the fair value of its assets exceed the fair value of its liabilities, (ii) (A) with respect to any Person that has Control of the Borrower, and with respect to transfers at any time, is experienced in the ownership and (either directly or through the retention of a qualified operation and maintenance contractor) the operation of energy projects, or (B) with respect to any Person that does not have Control of the Borrower, and with

respect to transfers prior to Project Completion only, is experienced in the ownership of energy projects, (iii) is not a Prohibited Person, and (iv) is not directly or indirectly Controlled or owned, in any material respect, by any national Governmental Authority.

"Qualifying Costs" means the actual, documented costs expended by the Borrower with respect to the Project (or any Phase thereof) for specified energy property that is an integral portion of the facility for purposes of Section 45 of the Internal Revenue Code and which is eligible to be included in the cost basis under Section 1603 of the Recovery Act, claimed in any Cash Grant Application consistent with the Cash Grant Guidance, Cash Grant Terms and Conditions and other regulations or guidance issued with respect to the Cash Grant.

"Quarterly Approval Date" means each date on which the items required pursant to Sections 4.3 are delivered to DOE; provided that, each Quarterly Approval Date shall be no later than the date that is 45 days after the end of each fiscal quarter of the Borrower, or if such date is not a Business Day, the next Business Day.

"Quarterly Conditions Precedent" is defined in Section 4.3.

"Quarterly Reporting Certificate" means a certificate executed by an Authorized Officer of the Borrower delivered pursuant to Sections 4.3.8(a) or 6.1.5, substantially in the form attached as Exhibit L.

"Quarterly Reporting Package" means the items specified in Section 6.1.5 as being delivered quarterly under cover of a Quarterly Reporting Certificate.

"Ratings Package Delivery Date" means, with respect to any items delivered pursuant to Section 4.1.2, (i) the date such item was delivered to DOE, which shall be on or before the date falling not less than sixty (60) days prior to the Guarantee Agreement Date, unless otherwise agreed by DOE.

"Real Property" means, with respect to any Person, all right, title and interest of such Person in and to any and all parcels of real property owned, leased or encumbered by such Person, together with all improvements and appurtenant fixtures, easements and other real property and rights and interests incidental to the ownership, lease or operation thereof, including the Project Site and the Improvements.

"Recapture Damages" means any loss or liability of the Borrower resulting from all or any portion of a Cash Grant being required to be repaid to the U.S. Department of the Treasury or any Governmental Authority, including any interest and penalties related thereto as described in the Cash Grant Guidance.

"Recapture Period" means the period from the Placed in Service Date until the fifth (5th) anniversary thereof, or such longer period during which a Cash Grant may be required to be repaid to the U.S. Department of Treasury pursuant to the Cash Grant Guidance.

"Recovery Act" means The American Recovery and Reinvestment Act of 2009, P.L. No. 111-5.

"Register" is defined in Section 11.14(d).

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, migrating or placing, into or upon any land or water or air, whether indoor or outdoor, intentional or accidental, above or below ground, or otherwise entering into the environment in any manner.

"Renewable Energy Portfolio" means, with respect to any Person, a group of investments each of which is made by such Person (x) in a renewable energy project or a renewable energy company, or (y) in the solar electrical generation division or sector of an energy company, where (i) such group of investments includes a Proportional Ownership Interest in the Project, (ii) such group of investments constitutes not less than 20% of such Person's total investment in renewable energy, and (iii) such Person's investment in the Project constitutes not more than 35% of the aggregate of such group of investments. For purposes of this definition, the amount of an "investment" shall be measured (A) either (1) with respect to an investment in a renewable energy project or a renewable energy company, based on reasonably estimated market value, or (2) with respect to an investment in the solar electrical generation division or sector of an energy company, based on nameplate power output, and (B) in all cases, based on Proportional Ownership Interests.

"Requested Advance Date" is defined in the FFB Note Purchase Agreement.

"Required Approvals" means all material, discretionary Governmental Approvals and other consents and approvals of third parties (other than corporate governance matters) necessary or required under Applicable Law or any Contractual Obligation for (a) the due execution, delivery recordation, filing or performance by any Borrower Entity or Major Project Participant of any Transaction Document to which such Borrower Entity or Major Project Participant is or is to be a party; (b) the grant by the Borrower and the Holding Company of the Liens granted pursuant to the Security Documents; (c) the perfection or maintenance of the Liens created under the Security Documents (including the first priority nature thereof); (d) the exercise by any Secured Party of its rights under any of the Financing Documents or the remedies in respect of the Collateral pursuant to the Security Documents; (e) the development, construction, operation or maintenance of the Project; or (f) the Borrower's ownership of the Project.

"Required Insurance" means insurance coverage for the Project satisfying the requirements set forth in Schedule 6.3(b).

"Reserve Letter of Credit" means an unconditional, irrevocable, direct-pay, letter of credit that is denominated in Dollars, that is issued in favor of the Collateral Agent by a bank with a branch or representative office in New York, New York and that is organized under or licensed as a branch or agency under the laws of the United States or any state thereof that has (i) outstanding unguaranteed and unsecured long-term Indebtedness that is rated "A-" or better by S&P and/or "A3" or better by Moody's (and if the applicable rating is "A-" by S&P or "A3" by Moody's, such rating is not on negative watch) that meets each of the following requirements and is otherwise in form and substance satisfactory to DOE:

(i) the initial expiration date thereof shall be at least twelve (12) months beyond the date of issuance, and shall automatically renew upon its expiration (which renewal period shall be for at least 12 months) unless, at least forty five (45) days prior to any such expiration, the issuer shall provide the Collateral Agent with a notice of non-renewal of such letter of credit;

(ii) upon any failure to renew such Reserve Letter of Credit at least thirty (30) days prior to such expiration date, or if the issuer of such Reserve Letter of Credit shall fail to meet the requirements with respect thereto the entire face amount thereof shall be drawable by the Collateral Agent (unless the Collateral Agent received a replacement letter of credit meeting the conditions herein imposed or amounts have been deposited in the applicable Project Account such that the amount on deposit therein, when aggregated with the face amount available to be drawn under any applicable Reserve Letter of Credit then outstanding (other than such Reserve Letter of Credit that is not to be renewed or that no longer meets the criteria) is equal to the amount required to be on deposit in the relevant Project Account);

(iii) such Reserve Letter of Credit shall additionally be drawable in all cases in which the Accounts Agreement provides for a transfer of funds from the applicable Project Account and there are insufficient funds on hand for such transfer and there shall be no conditions to any drawing thereunder other than the submission of a drawing request substantially in the form attached to such Reserve Letter of Credit; and

(iv) no agreement, instrument or document executed in connection with such Reserve Letter of Credit shall provide the issuer thereof or any other Person with any claim against the Borrower, the Collateral Agent, the Loan Servicer or any other Secured Party, or against any Collateral, whether for costs of maintenance, reimbursement of amounts drawn under such letter of credit or otherwise.

"Restricted Payment" is defined in Section 7.10.

"Restricted Payment Account" is defined in the Accounts Agreement.

"Risk Evaluation Documents" is defined in Section 4.1.2(a)(xii).

"S&P" means Standard & Poor's Financial Services LLC, so long as it is a rating agency.

"Secured Obligations" means all amounts owing to the Secured Parties under the Financing Documents, including:

(i) all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by the Borrower under the FFB Documents, the Loan Guarantee Agreement or otherwise to the Secured Parties (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to any of the Transaction Documents, including without limitation all interest, fees and Periodic Expenses chargeable to the Borrower and payable by the Borrower hereunder or thereunder;

(ii) any and all sums advanced by any Agent or any other Secured Party in order to preserve the Collateral or preserve the Secured Parties' security interest in the Collateral; and

(iii) in the event of any proceeding for the collection or enforcement of the obligations after an Event of Default has occurred and is continuing, the expenses of retaking, holding, preparing for sale or lease, selling or otherwise disposing of or realizing on the Collateral, or of any exercise by any Secured Party of its rights under the Security Documents, together with any Periodic Expenses, including attorney's fees and court costs.

"Secured Parties" means DOE, FFB, the Collateral Agent and the Loan Servicer or their successors or assigns, as their respective interests may appear (including as provided in Section 20 of each FFB Promissory Note).

"Security Agreement" means the Security Agreement between the Borrower and the Collateral Agent dated as of the date hereof.

"Security Documents" is defined in Section 4.1.1(b) and includes any other contract or document entered into after the Guarantee Agreement Date which provides a Lien, charge or security interest to the Secured Parties (or any of them).

"Semi-Annual Approval Date" means each six month anniversary of the Guarantee Agreement Date, or if not a Business Day, the next Business Day.

"Settlement" means with respect to any Project Claim: (i) entry of a final order or judgment denying or rejecting all such Project Claims with prejudice, and the time period for all appeals or further appellate review has expired; (ii) a dismissal with prejudice, not pursuant to a settlement, of all such Project Claims; (iii) the unconditional release, acquittal and discharge of the Borrower Released Parties from all Claims relating to the Project, including all related damages, expenses, fees, interest, costs, punitive damages, loss of profit, and liabilities whatsoever of every kind and nature, and including release, acquittal and discharge of all related

Claims, whether in personam or in rem, known, or unknown, asserted or unasserted, contingent or non-contingent, matured or not yet accrued, past, present or future, suspected or claimed, material or immaterial, concealed or hidden, liquidated or unliquidated, which any person or entity who has asserted or threatened any such Project Claim ever had, now has, or hereafter can, shall, or may have, whether in law, or equity, against the Borrower Released Parties, including without limitation waivers of the application of California Civil Code Section 1542; (iv) a settlement agreement relating to such Project Claim that does not meet the terms of (iii) above, but which is satisfactory to DOE in its sole discretion, provided that in the case of item (iv) DOE agrees to respond to a request to approve a proposed settlement within a reasonable period of time; or (v) written acknowledgement from DOE (to be provided in DOE's sole discretion) that, notwithstanding the existence of any Project Claims, the CEQA Litigation Support Instruments may be released; provided that the CEQA Litigation has been resolved in accordance with one of the provisions of (i)-(iv) above.

"SHPO Clearance Letter" means the California Office of Historic Preservation Letter to DOE, dated June 23, 2011, and any modifications or amendments thereto.

"Sponsor" means NRG Solar LLC, a Delaware limited liability company.

"Subcontractors" means all subcontractors and materials suppliers that have (or may have) lien rights respecting the Project under the California mechanics lien laws.

"SunPower" is defined in the recitals to the Loan Guarantee Agreement.

"SunPower Cash Grant Shortfall Security" means a Letter of Credit posted by SunPower for the benefit of the Collateral Agent (acting on behalf of the Secured Parties) that is non-recourse to the Borrower, in the original aggregate principal amount of $75,000,000 (and any proceeds of the same drawn in accordance with section 4.12 of the Accounts Agreement), as the same may be reduced consistent with Section 6.35(d), substantially in the form of Exhibit Y.

"Support Instrument" means, with respect to any Project Document, any guarantee, letter of credit, surety, payment or performance bond or other agreement or instrument relating to the performance by any Person of its obligations under such Project Document.

"Tax Equity Investor" means a Person that owns Equity Interests in the Borrower in the form of interests in a class of common equity established solely for tax investors and that (i) either (A) has an investment-grade credit rating from Fitch, S&P or Moody's or (B) has a tangible net worth of not less than $100,000,000 or (C) has certified to DOE that (x) it has the ability to pay its debts as they mature, (y) it is adequately capitalized to conduct its business, and (z) the fair value of its assets exceeds the fair value of its liabilities and (ii) is experienced in holding tax equity investments, (iii) is not a Prohibited Person, and (iv) is not directly or indirectly Controlled or owned, in any material respect, by any national Governmental Authority.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority, including any interest, penalties or additions thereto imposed in respect thereof.

"Technology" means regardless of form, any invention (whether or not patentable or reduced to practice), discovery, proprietary information, work of authorship, articles of manufacture, machines, proprietary methods, processes, models, protocols, designs, diagrams, drawings, flow charts, network configurations and architectures, schematics, specifications, algorithms, formulas, know-how, and techniques, software code, including all source code, object code, firmware, development tools and application programming interfaces (APIs), marketing and development plans, and other forms of technology and all media on which any of the foregoing is recorded.

"Term Loan Advance" means an advance or a borrowing of the Guaranteed Term Loan made pursuant to the Loan Guarantee Agreement and the FFB Documents.

"Term Loan Availability Period" means the period between the Guarantee Agreement Date and the date that is the earlier to occur of (a) August 4, 2014 and b) the Project Completion Date.

"Term Loan Maturity Date" means February 5, 2037.

"Term Sheet" means the Detailed Terms and Conditions for a Loan Guarantee, dated as of April 11, 2011, among DOE, SunPower Corporation, Systems and the Borrower.

"Title Companies" means, collectively, First American Title Insurance Company and Fidelity National Title Insurance Company, as equal co-insurers.

"Title Policy" means an ALTA extended coverage mortgagee's title insurance policy (ALTA Loan Policy 2006 Loan Policy of Title Insurance, or equivalent) or other form satisfactory to DOE) issued by the Title Companies in the amount of the Guaranteed Loans insuring as of the Guarantee Agreement Date that Borrower owns, as applicable, good and marketable fee title, a valid leasehold interest or a valid easement in and to each element of the Project Site and that the lien of the Deed of Trust is a first and prior lien upon such Real Property as security for the Secured Obligations pursuant to the terms of this Agreement, subject only to the Permitted Liens, and otherwise in form and substance satisfactory to DOE and including, without limitation, all endorsements as required by DOE and such coinsurance agreements with such coinsurers as may be reasonably acceptable to DOE.

"Title XVII" means Title XVII of the Energy Policy Act of 2005, Pub. L. 109-58, as amended by Section 406 of Div A of Title IV of Pub. L. 111-5, as may be amended from time to time.

"Total Funding Available" means the aggregate of all funds that are (i) undrawn but committed, or reasonably expected to be available, under the FFB Commitment and the Base Equity Commitment, (ii) received or receivable delay payments and Loss Proceeds and (iii) any other unused equity funding that is committed or reasonably expected to be available.

"Total Guarantee" means a guarantee by Total S.A., organized under the laws of France, in favor of the Collateral Agent (acting for the benefit of the Secured Parties), substantially in the form of Exhibit BB or other form acceptable to DOE.

"Total Project Costs" means, as of any date of determination, the total amount of Project Costs reasonably likely to be needed to be required by the Borrower to achieve Project Completion.

"Transaction Documents" means the Project Documents and the Financing Documents.

"Transfer/Withdrawal Instructions" means instructions, in substantially the form of Exhibit A to the Accounts Agreement, for disbursements, transfers and payments from the Project Accounts in accordance with the Accounts Agreement.

"Ultimate Parent" means NRG Energy, Inc.

"Uniform Commercial Code" means the Uniform Commercial Code of the jurisdiction, the law of which governs the document in which such term is used.

"Uncontrollable Cause" means an unforeseeable cause beyond the control and without the fault of DOE, including an act of God, fire, flood, severe weather, epidemic, quarantine restriction, explosion, sabotage, act of war, act of terrorism, riot, civil commotion, disruption or failure of the DOE communications systems, closure of the U.S. government, or an unforeseen or unscheduled closure or evacuation of DOE's offices.

"U.S." means the United States of America.

"Widely-Held Public Company" means a Person that (i) has a class of common equity securities listed and registered on a national securities exchange, (ii) with respect to such class of common equity securities, immediately upon the issuance thereof $75,000,000 or more in aggregate worldwide market value of such common equity securities is held by non-Affiliates of such Person, and (iii) non-Affiliates of such Person own in excess of 75% of the outstanding capital stock of such Person.

Exhibit 10.9

EXECUTION VERSION

OPERATION AND MAINTENANCE MANAGEMENT AGREEMENT

between

EL SEGUNDO ENERGY CENTER LLC, as "Company"

and

NRG EL SEGUNDO OPERATIONS INC., as "Contractor"

Dated as of

March 31, 2011

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OPERATION AND MAINTENANCE MANAGEMENT AGREEMENT

This OPERATION AND MAINTENANCE MANAGEMENT AGREEMENT (this "Agreement"), dated as of March 31, 2011 (the "Effective Date"), is by and between **EL SEGUNDO ENERGY CENTER LLC,** a Delaware limited liability company (the "Company"), and **NRG EL SEGUNDO OPERATIONS INC.,** a Delaware corporation (the "Contractor"). The Company and the Contractor are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties".

R E C I T A L S

WHEREAS, the Company owns and is currently developing the gas-fired electric generating facility with an expected nameplate capacity of approximately 550 MW located in El Segundo, California (the "Facility") and composed of two trains of rapid response, combined cycle, fast start combustion turbine generators together with all related interconnection facilities and all other rights and assets necessary for the ownership and operation thereof and the sale of power therefrom.

WHEREAS, the Contractor or certain of its Affiliates have expertise in the management, operation and maintenance of electric generating facilities of the type and character of the Facility.

WHEREAS, the Company wishes to engage the Contractor, and the Contractor wishes to accept such engagement, to manage, operate, and maintain the Facility and to perform certain other duties pertaining to the Facility, in each case in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions.

As used in this Agreement, including the Recitals, each capitalized term has the meaning given to it in this Agreement and in the Schedule of Definitions attached as Exhibit A.

1.2 Construction.

All references herein to any agreement are references to such agreement as amended, supplemented or modified from time to time in accordance with its terms. All references to a particular entity shall include a reference to such entity's permitted successors and assigns. The words "herein", "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. The singular includes the plural and the masculine includes the feminine and neuter, and vice versa. The words "includes" or "including" shall be deemed to mean "including, without limitation" or the correlative meaning.

All exhibits and schedules to this Agreement are hereby incorporated herein by reference and considered a part of this Agreement for all purposes. This Agreement was negotiated and prepared by the Parties with advice of counsel to the extent deemed necessary by each Party. The Parties have agreed to the wording of this Agreement, and none of the provisions of this Agreement will be construed against one Party on the ground that such Party is the author of this Agreement or any part thereof.

ARTICLE 2
ENGAGEMENT OF THE CONTRACTOR

2.1 Engagement of the Contractor; Notice to Proceed.

The Company hereby engages the Contractor as an independent contractor to manage, operate, and maintain the Facility and to perform other duties pertaining to the Facility, all as set forth in this Agreement. The Contractor accepts such engagement and agrees to perform such duties in accordance with the terms and conditions hereof. Notwithstanding the foregoing or any other provision of this Agreement, neither Party shall have any obligations under this Agreement until Company shall provide to Contractor a written notice to proceed with the Services (the "Notice to Proceed"), which Notice to Proceed shall be given by the Company no later than one hundred fifty (150) Days prior to the Placed-In-Service Date.

2.2 Relationship.

The Contractor shall act as an independent contractor of the Company with respect to the performance of its obligations hereunder. Neither the Contractor nor any of its Affiliates, employees, subcontractors, vendors or suppliers, or any employees of any of the foregoing Persons shall be deemed to be agents, representatives, employees, or servants of the Company as a result of this Agreement or of performing any duties hereunder, and no such Person as a result of entering into this Agreement or of performing any duties hereunder shall have the right, authority, obligation or duty to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of the Company; except that the Contractor has the right and obligation to act for and on behalf of and to bind the Company to the extent expressly contemplated by and in accordance with this Agreement. In no case shall this Agreement be construed to create a relationship of partnership or any other association of profit between the Company, on the one hand, and the Contractor or any of its Affiliates, employees, subcontractors, vendors or suppliers, or any employees of any of the foregoing Persons, on the other hand.

2.3 Engagement of Third Parties.

The Contractor may engage such Persons (including the Contractor's Affiliates) as it deems advisable for the purpose of performing or carrying out any of its obligations under this Agreement (such Persons, the "Subcontractors"); provided, however, that (a) no such engagement shall relieve the Contractor of any of its obligations or liabilities under this Agreement, including those set forth in Article 11, and (b) the engagement of any proposed Subcontractor is subject to the Company's prior written approval, not to be unreasonably withheld or delayed, if the annual amount payable to such Subcontractor (or any Affiliate of such

Subcontractor) under the relevant subcontract or subcontracts exceeds (i) $250,000 with respect to Services hereunder included under the Fixed Fee (as described in Section 7.1) or (ii) $100,000 with respect to Services or Additional Services hereunder included under Reimbursable Expenses (as set forth in Section 7.2). In no case shall the Company be deemed to have contractual privity with any Subcontractor solely as a result of the engagement by the Contractor of such Subcontractor for the provision of Services.

2.4 Representatives.

(a) Each Party shall designate an individual as its representative under this Agreement within thirty (30) Days after the receipt of the Notice to Proceed. Each such representative is authorized to grant or deny approvals or consents and take such other action on behalf of the Party the representative represents as required under this Agreement. The representative shall have the authority to bind the Party the representative represents until such time as such Party delivers written notice to the other Party in accordance with the terms hereof rescinding the authority of such representative, in which event the Party shall designate a replacement representative with binding authority under this Agreement. In addition, each Party shall, at its sole expense, dedicate sufficient and qualified personnel to the Facility so that decisions and required approvals can be made in a timely and expeditious manner.

(b) The Contractor shall designate an individual as its manager of the Facility (the "Plant Manager") under this Agreement within thirty (30) Days after the receipt of the Notice to Proceed. The Plant Manager shall oversee, on behalf of the Contractor, the performance of the Services (and Additional Services, as applicable) at the Facility and shall be dedicated to the Facility, and except as set forth herein, shall not, without the consent of the Company (such consent not to be unreasonably withheld or delayed), perform services in connection with any other project; provided, however, that the Plant Manager may also perform services at the Long Beach Generating Station and at the El Segundo Generating Station; provided, however, that the Parties agree that the fully loaded labor costs for the Plant Manager shall be split equally between Company and each of the Long Beach Generating Station and the El Segundo Generating Station. The Contractor shall not designate or substitute the Plant Manager with any other person without the consent of the Company (such consent not to be unreasonably withheld or delayed). The Company shall, in its sole and reasonable discretion and in compliance with all applicable Laws, have the right to direct the Contractor to remove the Plant Manager from the Facility Site.

ARTICLE 3
TERM

3.1 Term. The initial term of this Agreement shall commence on the Effective Date and shall continue for ten (10) years following the Placed-in-Service Date (the "Initial Term"), subject to termination earlier as provided in this Agreement. Upon the expiration of the Initial Term and of any subsequent term of this Agreement, the term of this Agreement shall automatically be extended on the same terms and conditions for an additional five (5) year period if the Company delivers written notice of its intention to so renew this Agreement (the "Renewal Notice") to the Contractor at least one hundred twenty (120) Days prior to the scheduled expiration of this Agreement (the Initial Term plus any such extension term, being referred to herein as the

"Term"); provided that the Contractor accepts such renewal election by delivering written acceptance to the Company within thirty (30) Days after the date of the Renewal Notice.

ARTICLE 4
CONTRACTOR'S SERVICES; DUTIES; OBLIGATIONS

The Contractor shall provide the services described in Sections 4.1 and 4.2 from and after the Placed-in-Service Date and during the Term in consideration of the Fixed Fee provided for in this Agreement. The Contractor shall provide the services described in Section 4.3 prior to the Placed-in-Service Date in consideration of Reimbursable Expenses provided for in this Agreement. The services described in Sections 4.1, 4.2 and 4.3 are collectively referred to herein as the "Services". The Contractor shall perform the Services and the Additional Services under this Agreement in accordance with the Operating and Capital Budget and Article 11. Notwithstanding anything to the contrary in the foregoing, if pursuant to Section 4.2(c) or any other provision under this Agreement, the Contractor is precluded from performing any Service or Additional Service, the Contractor shall be relieved from its obligation to provide such Service or Additional Service.

4.1 Services. Subject to the approval requirements set forth in this Agreement and the limitations set forth in Section 4.2(c), the Contractor shall provide or cause to be provided the following services from and after the Placed-in-Service Date on behalf of the Company:

(a) Facility Operation and Maintenance. Managing, supervising, operating, and maintaining the Facility, employing Good Electrical Practice, in accordance with this Agreement, the Interconnection Agreement and other Project Agreements, including the day-to-day management of the Facility and the

management of any maintenance and service work on the Equipment but excluding performing any such maintenance and service work on the Equipment, it being understood that such maintenance and service work on the Equipment is the responsibility of the Equipment Suppliers pursuant to the relevant Project Agreements. The Company shall provide an operating and maintenance building on the Facility Site in which the Contractor's personnel may perform certain of their duties.

(b) Equipment Maintenance. Managing and coordinating with the Equipment Suppliers all Scheduled Maintenance and Unscheduled Maintenance pertaining to the Equipment.

(c) Balance of Plant Maintenance. Managing, performing and coordinating all Scheduled Maintenance and Unscheduled Maintenance pertaining to the Balance of Plant and providing such technical support as is commercially reasonable and necessary for the operation and maintenance of the Facility. The Contractor may engage Subcontractors to perform Scheduled Maintenance and Unscheduled Maintenance pertaining to the Balance of Plant including for the following:

(i) Roads. Causing project roads to be maintained as necessary for Equipment and Balance of Plant service maintenance requirements. Maintaining gates, fences and cattle guards, if any, required for adequate security and maintenance of the Facility.

(ii) Water. Managing water services for the Facility Site and arranging for submission of filings relating to water and water usage at the Facility Site as may be necessary or as may be reasonably directed by the Company.

(iii) Substation and Transmission Facilities. Managing, operating and maintaining the substations and all transmission facilities and electrical lines in connection with the Facility at the Facility Site.

(d) Project Agreement Administration and Performance. When directed by the Company, reviewing and managing the Project Agreements and, on behalf of the Company, coordinating and liaising with each counterparty under such Project Agreements and arranging for the performance of the Company's obligations thereunder, in each case to the extent only as required for the Contractor to perform its obligations hereunder.

(e) Testing. When directed by the Company, carrying out tests of the Facility as required by the Project Agreements or other applicable Laws, and recommending to the Company any remedial action which the Contractor considers necessary in order to correct any deficiencies arising from analyses of test results or otherwise revealed during Facility testing.

(f) Personnel. In accordance with the Operating Plan, providing individuals at the Facility Site as employees or Subcontractors of the Contractor (the "Contractor Personnel"), who (as between the Contractor and the Company) are and shall remain under the exclusive control of the Contractor, and not as employees or subcontractors of the Company, as necessary to enable the Contractor to perform all of its obligations in accordance with this Agreement and the annual Operating Plan. The Company shall, in its sole and reasonable discretion and in compliance with all applicable Laws, have the right to direct the Contractor to remove any employees or Subcontractors (or employees of a Subcontractor) from the Facility Site. The Contractor shall require its employees and Subcontractors to comply with the Occupational Safety and Health Act, and the applicable rules promulgated thereunder by the U.S. Department of Labor and all applicable Laws affecting job safety including the Contractor's Health, Safety, Security, and Environmental ("HSSE") Requirements, as mutually agreed to by the Parties.

(g) Scheduling. Scheduling, in coordination with the Company, the Energy Manager, other contractors and any power purchasers, all power outages and maintenance shutdowns. The Contractor shall monitor and record the power output of the Facility and monitor performance under the Project Agreements. Consistent with Good Electrical Practice, the Contractor shall cause all maintenance and service work to be undertaken so as to minimize interruption of operation of the Facility.

(h) Service and Technical Bulletins. Managing, in consultation with the Company, the implementation of service bulletins issued by Siemens Energy, Inc., the Equipment Suppliers or any Equipment manufacturer, provided that the Company shall provide copies to the Contractor of all such service bulletins to the extent received directly by the Company. Cooperating and coordinating with, and assisting in all commercially reasonable respects, the Equipment Supplier and the Company in maintaining all service and technical bulletins and revisions to the O&M Manuals.

(i) Procurement/Disposition of Equipment and Tools. Purchasing, renting or otherwise acquiring, on behalf of and for the account of the Company, such equipment, machinery, vehicles and tools necessary for the operation and routine maintenance of the Facility (excluding Parts, which are described in Section 4.1(o)) but only in accordance with the terms, timing and amounts set forth in the then current Operating and Capital Budget or as otherwise instructed in writing by the Company. Using commercially reasonable efforts to sell or otherwise dispose of such items of equipment, machinery, vehicles and tools that are in the Contractor's reasonable judgment worn out, obsolete, surplus or no longer useful for the proper operation and routine maintenance of the Facility, each such sale or disposal to be made "as is," "where is" and without warranties, and providing the Company with all consideration received in respect thereof and an accounting thereof; provided, however, for any such items valued at more than Fifty Thousand dollars ($50,000) at the time of sale or disposal, the Contractor will obtain the Company's prior approval for such sale or disposal.

(j) Consultation with Company; Cooperation with Construction Manager, Energy Manager and Administrator. Consulting and cooperating with the Company, the Administrator, the Energy Manager, and the Construction Manager in relation to the provision of the Services, including the development of each Operating Plan and Operating and Capital Budget, and the procurement of Fuel if so requested by the Company and the Energy Manager.

(k) Reporting; Notices; Records.

(i) Providing monthly reports by the tenth (10th) Business Day of the following month and attending such regular monthly and/or quarterly meetings as the Company may reasonably request; provided, the Contractor receives at least fifteen (15) Days' notice of such meetings, and such meetings either are held within forty (40) miles of the Facility Site, or may be attended telephonically.

(ii) Collecting data and information regarding the Facility's performance and generating for the Company performance reports setting forth, among other information reasonably required by the Company, the Facility's performance and availability and, if applicable, the same as compared against

any guaranteed levels set forth in the Project Agreements. Collecting data and information and preparing and delivering reports, notices and certificates pertaining to operational, maintenance or technical matters to be delivered or maintained under any Project Agreement, and retaining copies thereof for the required time periods.

(iii) Promptly after receiving the same, providing to the Company written notice of any communications, orders or requirements of any Governmental Authority affecting the Facility.

(iv) Cooperating fully and providing such records and other information that may be requested by the Company, the Holding Company, or any of its members in connection with (A) the filing of its tax returns, (B) the maintenance and retention of its books and records, (C) any financial reporting or other disclosures that may be required, and (D) any audit, litigation or other proceeding by any Governmental Authority, including those that pertain to taxes.

(v) Collecting and providing any information, to the extent such information is in the Contractor's possession or is reasonably available to the Contractor, regarding the Facility required for any reports to any Governmental Authorities.

(vi) Preparing and maintaining a daily operations log in sufficient detail to document claims, if any, under availability or performance guaranties in the Project Agreements, including fuel consumption, reliability, load factor, actual output, availability, efficiency, and heat rate for each Day, planned and unplanned maintenance Outages, circuit breaker trip operations requiring a manual reset, partial deratings of equipment, and any other significant events related to the operation of the Facility.

(vii) Reporting promptly (and in any event within eight (8) hours of becoming aware of an incident) to the Company and to any other Persons entitled to receive such notice any incident of explosion, fire, storm, or other emergency on the Facility Site which could reasonably be expected to threaten life or property.

(viii) Providing prompt written notice to the Company, all in commercially reasonable detail upon learning of the event requiring notice, of (A) any actual or potential violation of any applicable Law, including a requirement of any Permit, (B) all events, occurrences, conditions, and issues that the Contractor reasonably considers are material to, or are reasonably likely to have a material adverse effect on, the operation, maintenance, or results of operations of the Facility, including notices of liens and claims of liens and any and all notices under Project Agreements of defaults, events or other conditions required to be reported to the counterparties thereunder and (C) any breach under any Project Agreement by any party thereto, and any claims or assertions with respect to any of the foregoing.

(ix) Providing such other reports and information as may be reasonably requested by the Company under the terms of this Agreement, including those relating to the Project Agreements, and those set forth in Schedule 4.1 (k)(ix).

(l) Warranties; Damage Remediation. Managing, supervising and verifying that all Persons providing warranties for the Facility and for the Equipment comply promptly and diligently with all of their respective warranty obligations, and providing such Persons timely notice of all matters affecting their respective warranty obligations. Coordinating and scheduling the provision of all warranty work and cooperating with the Person providing such work. Assisting and supporting the plan and the implementation of remedial activities associated with any accidents or damage relating to the Facility. In connection with the acquisition or procurement of materials and services for operation and maintenance of the Facility, the Contractor will use commercially reasonable efforts to obtain the agreement of subcontractors under the Project Agreements that all warranties applicable to such goods and services will be separately assignable to Company. To the extent that such warranties are not so assignable, the Contractor will notify the Company of such fact and will thereafter cooperate with the Company (for the duration of such warranty) so that the Company receives the benefit thereof to the extent legally permissible.

(m) Environmental, Health and Safety Plan; Security Plan. Implementing and prosecuting the written HSSE plan covering all operations at the Facility. Upon obtaining actual

knowledge thereof, the Contractor shall promptly notify the Company in writing of any of the following matters, to the extent related to the Facility or the operation and maintenance thereof: (i) any inspection by Governmental Authorities; (ii) any pending administrative or judicial proceeding; (iii) any material release of Hazardous Materials; or (iv) any health, safety or security incidents. To the extent the Contractor becomes aware of any environmental, health, safety or security matter at the Facility or the Facility Site that requires a corrective action, the Contractor shall, in consultation with the Company and at the Company's expense, undertake and complete such corrective action. Implementing and prosecuting the written security plan for the Facility and the Facility Site. Investigating all accidents or damage relating to the Facility in accordance with the applicable environmental, health and safety plan.

(n) Compliance with Law; Opposing Regulatory Action. Causing the Facility to comply with all Laws applicable to its operation and maintenance, including those relating to occupational safety and health or environmental protection, and taking such action as may be necessary to comply in a timely manner with any valid orders or requirements of any Governmental Authority affecting the Facility; provided, that unless action is imminently required, the Contractor will provide the Company with a reasonable period for response and discussion before any action is taken.

(o) Parts.

(i) At least semi-annually, assessing Equipment and Balance of Plant Parts inventory and recommending to the Company a list of Parts that are in Contractor's opinion necessary or advisable to be maintained.

(ii) On behalf of the Company and in accordance with the Operating and Capital Budget, procuring all Parts agreed to by the Company as reasonably necessary to provide the Services and any Additional Services, and receiving, unloading, handling, storing and maintaining all Parts on the Facility Site in accordance with the Parts manufacturers' directions in such a manner as to comply with all warranty requirements. All Parts procured and utilized by the Contractor for performance under this Agreement during the term of any equipment warranties shall be of specification and quality required so as to in no way invalidate such warranties, or any portion thereof.

(p) Local Relations. Using reasonable efforts to maintain cordial and "good neighbor" relations with local landowners and community representatives that contact the Facility or the Contractor about any matters affecting the Facility.

(q) Force Majeure Administration. Promptly providing the Company with information regarding all Force Majeure Claims or events relating to the Facility, but in no event later than three (3) Days following the Contractor becoming aware of the Force Majeure Claim or event.

(r) Liens and Encumbrances. Keeping the Facility and all real property and personal property and equipment associated with or part of the Facility free and clear of all liens and encumbrances attributable to the Contractor's (or its Subcontractor's) acts or omissions; provided, that this paragraph shall not prohibit the existence or recordation of liens arising out of

a failure of the Company to meet its payment obligations hereunder to the Contractor or any other Person providing labor or services to the Facility under contract to the Company.

(s) Permits. Obtaining and maintaining any Permit listed in Exhibit B or any other permit required by applicable Law in connection with the operations and maintenance of the Facility and complying with any such Permit.

(t) Interface. At the Company's request, providing the Company reasonable assistance in dealings with any independent system operator or regional transmission organization, Governmental Authority and other third-parties relevant to the Project Agreements (except that the Parties agree that the Contractor is not an agent of the Company and the Contractor agrees it has no authority to commit the Company, nor shall it purport to commit the Company, to any contractual obligation without the prior written consent of the Company).

(u) Consultants. At the Company's request, obtaining and assisting legal counsel, engineers and other professional consultants in connection with the Facility, it being understood that the terms of engagement in each such case, including scope, hourly rates, costs and expenses and expected aggregate of all costs, shall be subject to prior written approval of the Company.

(v) Security. Maintaining security consistent with Good Electrical Practice at the Facility Site.

4.2 Other General Duties. The Contractor shall provide the following other services from and after the Placed-in-Service Date:

(a) Company Access; Audit Rights. The Contractor shall allow the Company and the Company's authorized representatives access to inspect the books and records maintained by the Contractor with respect to the Facility and the Facility Site (excluding, however, (i) the Contractor's company books and records that do not pertain to charges or costs upon which Reimbursable Costs are based, (ii) personnel information or compensation or benefits information pertaining to employees of the Contractor or its Affiliates (not based at the Facility Site), and (iii) information covered by legal privilege or which cannot be disclosed without violating applicable Law). The Company shall have the right to audit such books and records at the Company's sole cost and expense; provided, that the Company shall only have the right to inspect and audit such books and records for any period that is within the seven (7) calendar years from the date of final payment hereunder or the final settlement or disposition of any Claim made pursuant to this Agreement. If any such inspection or audit discloses an error and that, as a result thereof, any overpayment or any underpayment has occurred, the amount thereof shall be paid within thirty (30) Days after receipt of an invoice (with reasonable supporting detail) with interest (except that any underpayment caused by the actions or inactions of the Contractor will not bear interest) at the rate set forth in Section 7.4 to the Party to whom it is owed by the other Party; provided, that a Party shall only be liable for any amounts hereunder that relate to errors discovered and disclosed within the inspection and audit period provided for in this provision.

(b) Operating Plan and Operating and Capital Budget.

(i) On or prior to the Placed-in-Service Date of the Facility and no later than September 1 of each calendar year during the Term, the Contractor shall deliver to the Company

a proposed (A) operating plan for the following three (3) years (the "Operating Plan"), describing the scheduled work to be completed in the following three (3) calendar years and the general operational plans for the Facility during such years, including responsibilities and emergency procedures and (B) budget (the "Operating and Capital Budget"), detailing the expected revenue and expenses for the following calendar year including explanations for any material differences to the base case at closing substantially in the form attached hereto as Exhibit F .

(ii) The Company shall have thirty (30) Days from receipt of the proposed Operating Plan and proposed Operating and Capital Budget either to approve same or to assist the Contractor in preparing an approved Operating Plan and Operating and Capital Budget by October 15th of each year. In the event that a proposed Operating Plan or Operating and Capital Budget is not approved within the time indicated, the Operating Plan or Operating and Capital Budget, as applicable, prepared and approved for the previous year shall be utilized until such time as the new Operating Plan or Operating and Capital Budget is approved.

(iii) If, during any calendar year the Contractor believes that a variance (in excess of the permitted variances described in subsection (iv) below) is reasonably likely to occur between the actual expense of operating and maintaining the Facility and the budgeted expense for a particular material budget item, the Contractor shall timely notify the Company of such belief in writing and advise the Company of the necessary revisions to the annual Operating and Capital Budget and the reasons for those revisions. If the Company agrees, the Parties shall proceed in good faith to revise the Operating Plan or Operating and Capital Budget in such manner for the balance of the year.

(iv) The costs and expenses incurred by the Contractor that are within ten percent (10%) of any line item on the Operating and Capital Budget and do not cause the overall approved Operating and Capital Budget to be exceeded, and which are otherwise incurred in accordance with the most recently approved Operating Plan and Operating and Capital Budget shall not require any additional approval of the Company; provided, however, that the Contractor shall make certain that such expenditures are commercially reasonable and necessary.

(v) [Reserved]

(vi) In conjunction with, but separate from, the preparation of the Operating Plan and the Operating and Capital Budget for each calendar year, the Contractor shall prepare a rolling five (5) year operation and maintenance plan and cost forecast (including major maintenance and capital repairs, and

recommended improvements or additions), in form and with such details as are consistent with the O&M Manuals or as the Company reasonably may require (the "Five Year Forecast"). Each Five Year Forecast shall be submitted to the Company by Contractor annually at the time of submission of each Operating Plan and Operating and Capital Budget, and shall be subject to the same approval process as the Operating Plan and the Operating and Capital Budget. A preliminary Five Year Forecast for the first five (5) operating years is attached hereto as Exhibit H.

(c) Restricted Actions. The Contractor shall obtain the Company's permission before engaging in activities with respect to the Facility that are neither (x) within the scope of the

Services nor (y) emergency in nature. The Contractor may engage in activities with respect to the Facility required by applicable Law with prior notice to the Company; provided that, unless action is imminently required, the Contractor will provide the Company with a reasonable period for response and discussion before any action is taken. The Contractor shall not in any case undertake any of the following actions, without the prior written approval of the Company:

(i) sell, assign, lease, pledge, mortgage, encumber, grant a security interest in, convey, or make any license, exchange or other transfer or disposition of any property or assets of the Company or the Facility (but without prejudice to Section 4.1(i));

(ii) make, enter into, execute, amend, terminate, modify or supplement any contract or agreement (including any labor or collective bargaining agreement) on behalf of or in the name of the Company;

(iii) settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any Claim, suit, debt, demand or judgment against or due by, the Company or related to the Facility or submit any such Claim or stipulate in respect thereof to a judgment, or consent to the same;

(iv) engage in any other transaction on behalf of the Company not expressly permitted under this Agreement;

(v) declare an event of Force Majeure or an event of default with respect to the Facility under any Project Agreement;

(vi) approve or certify the successful completion of any performance test or warranty claim under any Project Agreement at reduced performance standards;

(vii) approve, modify or amend the testing protocols under any Project Agreement;

(viii) terminate or suspend performance of any Project Agreement;

(ix) take any action that would result in a material default under any Financing Agreement; or

(x) consent to, approve or ratify any action taken by Siemens Energy, Inc. or Equipment Suppliers to modify the equipment or services provided by them if such action could reasonably be expected to affect the Company's use or enjoyment of the Facility or such equipment.

(d) Emergencies. In the event of any emergency affecting the safety or protection of individuals or the environment at the Facility or the Facility Site or endangering all or any part of the Facility, the Facility Site or the environment, or materially limiting unit production of one or more units in operation or scheduled to be in operation within the immediate future, the Contractor:

(i) shall take immediate and diligent action in accordance with applicable Law and Good Electrical Practice to attempt to prevent such threatened damage, injury or loss, and, as necessary, mitigate to the greatest extent possible such damage, injury or loss;

(ii) may incur any reasonable expenditure or take any other action as the Contractor deems necessary or appropriate in accordance with Good Electrical Practice to prevent, avoid or mitigate (A) injury, damage, or loss to Persons or property or the environment or (B) a loss to the Company in connection with the Facility, and such expenditures shall be borne by the Company; provided, however, that Contractor shall, in light of the circumstances constituting the emergency, (x) use commercially reasonable efforts to obtain the Company's consent to such expenditures in advance thereof, (y) use commercially reasonable efforts to minimize the costs to the Company, and (z) promptly provide a written report to the Company justifying the actions taken and expenditures made or incurred;

(iii) shall notify the Company of the emergency as soon as practicable following the occurrence thereof (which shall be not later than the close of business on the Business Day following the inception of the emergency unless prevented by circumstances beyond the Contractor's control), which notice shall include specific details of any action being taken or instigated by the Contractor in response thereto and any expenditures incurred by the Contractor, and/or expected to be incurred by the Contractor, in connection with such emergency; and shall consult with the Company with respect to further actions which should be taken, and thereafter comply with any direction from the Company (not inconsistent with applicable Law); and

(iv) The applicable Operating and Capital Budget shall be revised and adjusted accordingly to reflect the necessary costs and expenses incurred by the Contractor for emergency action undertaken under this Section 4.2(d).

4.3 Mobilization Services. The Contractor shall provide the following services prior to the Placed-in-Service Date:

(a) Mobilization. At least one hundred twenty (120) Days prior to the Placed-in-Service Date, perform initial mobilization, training and staffing tasks. Assist the Company with the preparation of punch lists, review construction contractor punch lists, review equipment manuals and as-built blueprints, create operating procedures and protocols, and provide support during the testing, calibration, inspection and start-up of the plant systems.

(b) Interface with CMA. The Contractor shall cooperate with the Construction Manager to effectively transition the obligations of each such Person under their respective agreements with the Company to minimize interruption to the Facility.

(c) Environmental, Health and Safety Plan. At least one hundred fifty (150) Days prior to the Placed-in-Service Date, the Contractor shall provide a written HSSE plan covering all operations at the Facility for the Company's approval, such approval not to be unreasonably withheld. Such plan shall address matters customarily covered by similar plans for gas-fired electrical generation projects in the United States of the type and size comparable to the Facility.

(d) Security Plan. At least one hundred twenty (120) Days prior to the Placed-in-Service Date, the Contractor shall provide a written security plan covering all operations at the Facility for the Company's approval, such approval not to be unreasonably withheld.

4.4 Additional Services. From time to time during the Term of this Agreement, the Company may request that the Contractor furnish specific services in addition to the Services in Sections 4.1, 4.3 and 4.2 (the "Additional Services") that are within the general scope of this Agreement. If the Company desires the Contractor to perform Additional Services and the Contractor agrees, the Parties shall agree in a written statement of work (a "Statement of Work") to provide for the performance of the Additional Services. Each Statement of Work shall reference this Agreement and shall specify (a) the Additional Services to be performed by the Contractor, (b) an estimate of charges, based on the Rate Schedule, to the Company for the Additional Services and (c) other mutually agreed upon terms and conditions.

4.5 Obligations. The Contractor shall have no liability for any obligations except those expressly stated in this Agreement, and nothing in this Agreement shall obligate the Contractor to perform any duties or assume any liabilities under any agreement to which the Contractor is not directly a party unless such duties are also expressly stated in this Agreement and then only to such extent. The Company acknowledges that the Contractor's performance under this Agreement is dependent upon the Contractor having access to all parts of the Facility and the Facility Site and access to all documents as reasonably required by the Contractor, and having required approvals and decisions from the Company.

4.6 Inspection by Company.

The Company, through its employees, agents, lenders, experts or representatives, has the right, at all reasonable times, at the expense of the Company, to (a) inspect or cause to be inspected, the (i) Services (or any Additional Services) of the Contractor, (ii) the Facility and the Facility Site; and (iii) equipment, materials and methods to be used in the operation and maintenance of the Facility; provided, however, that such inspection shall not unreasonably interfere with the operation and maintenance of the Facility, and any Persons inspecting the work shall abide by any and all reasonable safety rules and procedures established by the Contractor that are not inconsistent with this Agreement or otherwise applicable to the Facility, as communicated to them in writing by the Contractor prior to their access to the Facility Site, (b) attend any and all operation and maintenance meetings; provided, however, that such attendance shall not unreasonably interfere with the Contractor's performance of its obligations under this Agreement or in connection with the Facility or the operation and maintenance of the Facility, and (c) access, for itself, its employees, agents, representatives or advisors, to all parts of the Facility and the Facility Site. For purposes of clause (b) immediately above, the Contractor shall give the Company reasonable advance notice of all material construction meetings in order to permit the Company to send a representative, if it so desires.

4.7 Risk of Loss.

As between the Company and the Contractor, the Company shall be responsible for the risk of loss to the Facility or any portion thereof during the operation and maintenance of the Facility regardless of cause, except if such loss is caused in whole or in part by the gross

negligence or willful misconduct of the Contractor Related Parties or the Contractor's subcontractors of any tier, provided that the Contractor will only be liable up to the amount of one hundred thousand dollars ($100,000) per occurrence from all Claims and Losses arising therefrom, on the Company's insurance.

ARTICLE 5
COMPANY'S RESPONSIBILITIES

5.1 General. The Company shall do all of the following:

(a) with the exception of information and data the Contractor is required to record and collect hereunder, provide the Contractor with all material information, including permits, agreements (including the Project Agreements), data, documents for the Facility that is reasonably required for the Contractor to perform its obligations under this Agreement;

(b) examine all material documents submitted by the Contractor and render any necessary decisions pertaining thereto promptly;

(c) promptly make material decisions required under this Agreement or any other agreement that the Contractor may be requested to administer hereunder and respond to all reasonable requests from the Contractor for approval made hereunder;

(d) promptly execute and deliver such evidence of the Contractor's authority as may be reasonably required by third parties; and

(e) except where the same are being disputed in good faith, promptly make all payments and incur all expenditures required in connection with the Facility in accordance with this Agreement and the Operating and Capital Budget.

5.2 Facility and Facility Site. The Company shall ensure that the Contractor and the Contractor Personnel shall have access to the Facility and the Facility Site.

5.3 Fuel Supply. The Company or the Energy Manager shall enter into and shall maintain contractual arrangements for supply and transportation of Fuel (other than fuel oil) to the Facility necessary for the proper operation of the Facility.

5.4 Office Facilities. The Company shall provide office space, storage facilities and other accommodations, including locker rooms, lunch rooms, shop and warehouse facilities, and administrative facilities suitable for the Contractor's needs at the Facility Site.

5.5 Facility Information. The Company shall provide to the Contractor copies of all technical, operational, and all other Facility information (including as-built drawings, Manufacturers' Recommendations, O&M Manuals, specifications, warranties, diagrams, and test results) and other information with respect to the Facility or the Site (collectively, the "Facility Information") provided by Siemens Energy, Inc. and the Equipment Suppliers to the Company , and the Company shall provide such other Facility Information as may be necessary for the Contractor's performance of the Services or Additional Services.

5.6 Power. The Company shall arrange contractually for supply and transportation to the Interconnection Point of all power (including start-up and back-up power) sufficient to enable the Contractor to perform the Services in accordance with the terms of this Agreement.

5.7 Hazardous Materials Disposal. Subject to other provisions of this Agreement, the Company shall be responsible for any Hazardous Materials on the Facility Site. The Contractor shall contract for the remediation and disposal of any Hazardous Materials on the Facility Site on behalf of the Company, and may execute any Hazardous Materials manifests in the Company's name for the transportation and disposal of Hazardous Materials.

5.8 Taxes. Except as otherwise provided in Section 18.3, the Company shall be responsible for and pay all Taxes related to the ownership and operation of the Facility (other than any Taxes assessed or based, in whole or in part, upon the Contractor's or any of its Subcontractors' assets, gross receipts, corporate existence, consents, or income, for which the Contractor (or its Subcontractor, as applicable) shall be solely responsible).

5.9 Dispatch Instructions. The Company or the Energy Manager shall provide dispatch instructions to the Contractor from time to time. The Contractor shall comply therewith unless the CAISO declares an emergency, in which event the Contractor shall immediately attempt to contact the Energy Manager for instructions, but the Contractor shall follow the instructions and dispatch orders of the CAISO if the Contractor is unable after diligent efforts to contact the Energy Manager for instructions.

5.10 Insurance. For the duration of this Agreement, the Company shall, at its sole cost and expense, procure and maintain the insurance policies and coverages required of it and described in Schedule 14.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of Parties. As of the date of this Agreement, each Party represents and warrants to each other Party that:

(a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization or incorporation;

(b) it has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership and/or other actions to authorize such execution and delivery and performance of such obligations;

(c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any Law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any Governmental Authority applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;

(d) all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any Governmental Authority that are required to have been obtained or made by it at the time this representation is made with respect to this Agreement have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with;

(e) this Agreement constitutes the Party's legal, valid, and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law); and

(f) except as otherwise permitted herein, it has neither initiated nor received written notice of any action, proceeding, or investigation pending, nor, to its knowledge, is any such action, proceeding, or investigation threatened (or any basis therefor known to it) which questions the validity of this Agreement, or which would materially or adversely affect its rights or obligations as a Party.

ARTICLE 7
FEES AND COST REIMBURSEMENT

7.1 Fees.

(a) Fixed Fee. Following the Notice to Proceed, the Company shall pay the Contractor an annual fee ("Fixed Fee") (as adjusted pursuant to Section 7.1(b)) equal to Three Hundred Thousand Dollars ($300,000). The Fixed Fee includes compensation for all Services and work performed by the Contractor hereunder, including those Services described in Sections 4.1 and 4.2, but excludes compensation for the Services, Additional Services and other work described in Section 7.2, which shall be payable hereunder as Reimbursable Expenses. The Fixed Fee shall be payable monthly in arrears at the rate of one-twelfth (1/12th) of the annual Fixed Fee, and may be prorated for partial months at the beginning and end of the Term hereof based on the number of days for which the Contractor performed the Services, in accordance with Section 7.3. If the Company declares Force Majeure, the Company shall continue to pay the Contractor the Fixed Fee (as adjusted pursuant to Section 7.1(b)) and the Reimbursable Expenses, as applicable; provided, however, that if the Force Majeure continues for a period of greater than one hundred eighty (180) Days, this payment obligation shall terminate.

(b) Fee Adjustment. The Fixed Fee shall be increased (but not decreased) annually for each calendar year after the Effective Date by a factor of one hundred percent (100%) of the percentage change in the GDPIPD, if increased, during such calendar year.

7.2 Reimbursable Expenses.

Costs and expenses incurred by the Contractor in connection with the following shall be payable by the Company to the Contractor on a reimbursable basis ("Reimbursable Expenses"): (a) all costs and expenses incurred by the Contractor in connection with the provision of the services described under Section 4.3 ("Mobilization Expenses"), (b) all costs of Parts incurred by the Contractor, including Consumables, purchased on behalf of the Company to the extent not

already paid or reimbursed by the Company, (c) any Additional Services performed by the Contractor pursuant to a Statement of Work under Section 4.4, (d) all labor costs and expenses incurred by personnel engaged by the Contractor to perform activities in accordance with the annual Operating Plan ("Labor Expenses"), (e) any service provided at or upon the Company's request under Section 10.4 and (f) any other expenses reasonably incurred by the Contractor on the Company's behalf that are consistent with this Agreement, including any payments made to third parties, and agreed to or approved in advance in writing by the Company. For the avoidance of doubt, it is understood and agreed that costs and expenses paid by the Company shall not be considered Reimbursable Expenses. Reimbursable Expenses shall be payable monthly in arrears pursuant to Section 7.3.

7.3 Payment Procedure.

(a) No later than twelve (12) Days after the end of each calendar month following the Notice to Proceed, the Contractor shall submit to the Company an invoice for the just ended calendar month for (i) Reimbursable Expenses incurred in any prior calendar months and (ii) the Fixed Fee earned by the Contractor in the just ended calendar month.

(b) If there is a dispute about any amount invoiced by the Contractor under Section 7.3(a), the Company shall pay the amount not in dispute in accordance with Section 7.3(c). The Company shall pay any disputed amount ultimately determined as payable with interest in accordance with the provisions of Section 7.4.

(c) The Company shall pay all payments to the Contractor under this Article 7 by wire transfer of immediately available funds to the Contractor at an account designated in writing by the Contractor within thirty (30) Days of receipt of the invoice by the Company.

7.4 Past Due Amounts.

If any amount due under this Agreement, including this Article 7, is not timely paid by the Party from whom it is due, then, in addition to any other rights and remedies available to the Contractor, the unpaid balance shall bear interest until paid at the Default Rate (defined below) during the period from such due date to and including the date payment is received. The "Default Rate" shall be equal to the prime rate as published in the Wall Street Journal (or any successor publication), plus two percent (2%); provided, that, if there is a bona fide Dispute timely made in good faith over whether non-paid amounts are due and it is ultimately determined that such amounts are due, then the Default Rate with respect to such Disputed amounts shall be equal to the prime rate as published in the Wall Street Journal (or any successor publication). For purposes of the preceding sentence, the Wall Street Journal published on the date a payment was due shall be used to determine the Default Rate, or if there is no publication on such date, than the Wall Street Journal published on the immediately following Business Day shall be used.

7.5 Performance Bonus and Fixed Fee Reduction.

The Contractor shall have the opportunity to earn a Performance Bonus or shall incur a Fixed Fee Reduction in an applicable calendar year based on criteria to be determined annually between the Company and the Contractor (and approved by the lenders, as applicable) during the determination of the annual Operating Plan and the annual Operating and Capital Budget. For

the calendar year ending December 31, 2013, the maximum Performance Bonus shall not exceed $300,000, and the maximum Fixed Fee Reduction shall not be greater than $150,000. If the criteria are not established or approved for an applicable calendar year, no Performance Bonus and no Fixed Fee Reduction shall occur. The Performance Bonus or Fixed Fee Reduction for the calendar year ending December 31, 2013 shall be calculated as set forth on Schedule 7.5.

7.6 Payment of Performance Bonus.

Within twenty (20) Business Days after the end of each calendar year, the Contractor shall submit to the Company a statement of any Performance Bonus payments due to the Contractor with respect to such calendar year. The Company shall pay any Performance Bonuses within thirty (30) Business Days after receipt of such statement.

ARTICLE 8
RIGHTS OF COMPANY; LICENSE OF COMPANY PROPERTY

8.1 Company Property.

The Contractor hereby acknowledges and agrees that the Company shall hold title to all specialized equipment, tools, Parts, reports, data, information, records, books, plans, designs, papers or print outs or other information used by the Contractor in the performance of Contractor's obligations under this Agreement to the extent such assets have been paid for by the Company, including those which the Contractor has generated, received or purchased (but has been reimbursed by the Company) in the course of performing its duties hereunder ("Company Property"), but excluding any Contractor owned or licensed property (including software, or other intellectual property developed outside of the scope of the Services or Additional Services). Notwithstanding the foregoing, Company Property does not include personnel records, information about the Contractor's internal costs or internal business practices, trade secrets or other confidential information of the Contractor, materials covered by legal privilege, or materials relating to any audit or dispute between the Parties or between the Contractor and any other Person.

8.2 License of Company Property.

The Company hereby grants the Contractor (including its relevant Subcontractors) a paid-up, worldwide license to use the Company Property in connection with this Agreement. Such license shall automatically expire immediately upon the termination or expiration of this Agreement; provided that the

Contractor may retain a copy of Company Property (other than equipment, tools and Parts) as the Contractor deems necessary for compliance with Law or for audit purposes.

ARTICLE 9
INDEMNIFICATION

9.1 Contractor Indemnification.

(a) Contractor Indemnification. THE CONTRACTOR HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS THE COMPANY RELATED

PARTIES FROM AND AGAINST ANY AND ALL LOSSES OF ANY OF THE COMPANY RELATED PARTIES FOR INJURY OR DEATH OF NATURAL PERSONS OR PHYSICAL LOSS OF OR DAMAGE TO PROPERTY OF ANY PERSON OTHER THAN ANY COMPANY RELATED PARTY TO THE EXTENT ARISING OUT OF THE FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CONTRACTOR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT.

(b) Third Party Providers. Subject to Section 2.3, the Contractor may engage independent consultants, engineers, and contractors to complete any of its scope of work under this Agreement which is covered either by the Contractor's Fixed Fee or the Contractor's Reimbursable Expenses. The Contractor will cause all of such providers of any tier to perform any Services or Additional Services, if applicable, in conformity with all of the applicable provisions of this Agreement. The Contractor shall be responsible and liable for the actions of such Persons in the same manner as if the scope of such engagements were performed by the Contractor under this Agreement.

(c) Disclaimer. IN NO EVENT SHALL THE CONTRACTOR BE LIABLE TO ANY COMPANY RELATED PARTIES PURSUANT TO THIS SECTION 9.1(b) FOR ANY LOSS THAT ARISES OUT OF, RELATES TO, OR IS OTHERWISE ATTRIBUTABLE TO THIS AGREEMENT OR THE PERFORMANCE OF SERVICES, OR ANY ADDITIONAL SERVICES, HEREUNDER, EXCEPT TO THE EXTENT SUCH LOSS IS CAUSED BY THE FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE CONTRACTOR. THIS SECTION 9.1(B) SPECIFICALLY PROTECTS CONTRACTOR AGAINST SUCH LOSSES EVEN IF AND TO THE EXTENT THAT THEY ARE CAUSED BY THE STRICT LIABILITY OR OTHER FAULT OR RESPONSIBILITY (OTHER THAN FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF THE CONTRACTOR; AND ALL SUCH CLAIMS FOR SUCH LOSSES ARE HEREBY WAIVED AND RELEASED.

(d) The Contractor and the Contractor Related Parties may provide services similar to the Services or Additional Services to other parties, including Affiliates of the Company's members, and may also own, engage in, and possess interests in, other businesses, activities, ventures, enterprises and investments of any and every type and description, independently or with others, that may be in competition with the Company and its subsidiaries, with no duty or obligation (express, implied, fiduciary or otherwise) (i) to refrain from engaging in such activities, (ii) to offer the right to participate in such activities to the Company, its members or subsidiaries, or (iii) to account to, or to share the results or profits of such activities with, the Company and its members and subsidiaries, and any doctrines of non-competition, "company opportunity" or similar doctrines are hereby expressly disclaimed; provided, however, in each case, that the Contractor and the Contractor Related Parties are in compliance with the terms of this Agreement, including Article 16. The Company hereby waives any and all rights and claims on the basis of such doctrines which it may otherwise have against any Contractor Related Party as a result of any such activities, provided that any such activities do not arise from or involve any breach of Article 16 or any other provision of this Agreement.

9.2 Company Indemnification; Disclaimer.

(a) Company Indemnification. THE COMPANY HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS THE CONTRACTOR RELATED PARTIES FROM AND AGAINST ANY AND ALL LOSSES FOR INJURY OR DEATH OF NATURAL PERSONS OR PHYSICAL LOSS OF OR DAMAGE TO PROPERTY OF ANY PERSON OTHER THAN ANY CONTRACTOR RELATED PARTY TO THE EXTENT ARISING OUT OF THE FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE COMPANY AND IN ANY WAY RELATED TO OR ARISING FROM THE SERVICES, THE ADDITIONAL SERVICES OR THE CONTRACTOR'S OBLIGATIONS OR RESPONSIBILITIES UNDER THIS AGREEMENT.

(b) Disclaimer. IN NO EVENT SHALL THE COMPANY BE LIABLE TO ANY CONTRACTOR RELATED PARTIES PURSUANT TO THIS SECTION 9.2(b) FOR ANY LOSS THAT ARISES OUT OF, RELATES TO, OR IS OTHERWISE ATTRIBUTABLE TO THIS AGREEMENT OR THE PERFORMANCE OF SERVICES, OR ANY ADDITIONAL SERVICES, HEREUNDER, EXCEPT TO THE EXTENT SUCH LOSS IS CAUSED BY THE FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE COMPANY. THIS SECTION 9.2(b) SPECIFICALLY PROTECTS THE COMPANY AGAINST SUCH LOSSES EVEN IF AND TO THE EXTENT THAT THEY ARE CAUSED BY THE STRICT LIABILITY OR OTHER FAULT OR RESPONSIBILITY (OTHER THAN FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF THE COMPANY; AND ALL SUCH CLAIMS FOR SUCH LOSSES ARE HEREBY WAIVED AND RELEASED.

ARTICLE 10
TERMINATION

10.1 Termination by Company.

The Company may terminate this Agreement by written notice to the Contractor if any of the following occurs:

(a) For Contractor Breach. The Contractor (i) breaches any provision of this Agreement, or (ii) engages in negligence or willful misconduct in the performance of the Services or any Additional Services or any other of its obligations hereunder or fails to meet its standard of performance set forth in Section 11.1; and the Contractor fails to cure any such breach or action within thirty (30) Days after receiving notice thereof from the Company (or, if such cure cannot reasonably be completed within the thirty (30) Day period, the Contractor fails to undertake to promptly cure upon receipt of such notice or fails to give adequate assurances to the Company (in the Company's sole discretion) that such breach or action will be so cured with all reasonable speed, not to exceed an additional thirty (30) Days);

(b) Change of Control. At any time following the Effective Date, the Contractor or an Affiliate of the Contractor ceases to own directly or indirectly at least forty percent (40%) of the membership units of the Holding Company;

(c) Exceeding Liability Limitations. The aggregate liability of the Contractor to the Company for Losses incurred under or arising from this Agreement in a given calendar year equals or exceeds the aggregate liability cap of the Contractor set forth in Section 12.1;

(d) For Cessation of Operations. The Contractor dissolves, liquidates, or terminates its company existence; or

(e) Notice to Proceed. For any reason, if the Notice to Proceed is not issued by March 1, 2013.

In the event of any permitted termination of this Agreement by the Company under this Section 10.1, the Contractor shall provide reasonable assistance to the Company to assure a smooth, efficient transition of its services to the Company, or any successor operator selected by the Company, for which the Contractor shall be compensated as a Reimbursable Expense, and the Contractor shall be entitled to any outstanding monthly Fixed Fee payments and other Reimbursable Expenses due and payable prior to such termination. If so instructed by the Company, the Contractor shall cancel all contracts in a commercially reasonable manner and otherwise use reasonable efforts to mitigate costs associated with such cancellations; provided, however, that all such cancellation and termination costs and expenses shall be borne by the Company and not the Contractor as a Reimbursable Expense; provided, further, that such amounts do not include any sums which are disputed by reason of the Contractor's default; and provided, further, that the Company shall be entitled to off-set any amounts owed to the Company by the Contractor. The Contractor shall forthwith deliver to the Company any plans, designs, papers, computer data, warranties or printouts or other materials which the Contractor has generated or has received in the course of performing its duties hereunder. All parts, tools and other equipment which is the property of the Company shall be returned to the Company. The Company shall have no right to remove the Contractor except as expressly set forth in this Agreement.

10.2 Termination by Contractor.

The Contractor may terminate this Agreement by written notice to the Company if any of the following occurs:

(a) For Company's Breach. The Company's failure to make undisputed payments when such payments are due and payable under Article 7, unless within thirty (30) Days after written notice from the Contractor to the Company of such non-payment, the Company makes such payments in accordance herewith;

(b) Change in Ownership of Facility. At any time during the Term if the Company no longer owns the Facility, the Contractor may terminate this Agreement upon no fewer than ninety (90) Days' written notice to the Company;

(c) For Cessation of Operations. The Company dissolves, liquidates, or terminates its company existence; or

(d) Change in Law. There is a change in applicable Law that has a Material Adverse Effect on the Contractor's ability to realize the anticipated economic benefits originally

contemplated by the Contractor at the time of execution of this Agreement; provided, however, that prior to exercising any right to terminate pursuant to this Section, the Parties shall undertake good faith negotiations to modify this Agreement to avoid or minimize the adverse impact of such Law on the Contractor. If the Parties are unable to agree on such a modification within thirty (30) Days following the initiation of such negotiations, the Contractor shall have the right to terminate this Agreement upon one hundred twenty (120) Days' written notice.

In the event of any permitted termination of this Agreement by the Contractor under this Section 10.2, the Contractor shall provide reasonable assistance to the Company to assure a smooth, efficient transition of its services to the Company, or any successor operator selected by the Company, for which the Contractor shall be compensated as a Reimbursable Expense, and the Contractor shall be entitled to any outstanding monthly Fixed Fee payments and other Reimbursable Expenses due and payable prior to such termination. If so instructed by the Company, the Contractor shall cancel all contracts in a commercially reasonable manner and otherwise use reasonable efforts to mitigate costs associated with such cancellations; provided, however, that all such cancellation and termination costs and expenses shall be borne by the Company and not the Contractor as a Reimbursable Expense.

10.3 Obligations at End of Term.

The Contractor shall perform all Services with respect to the Facility as required under this Agreement through the date of termination or expiration of this Agreement, and each Party shall make all payments required by it hereunder through such date, with such payment to be made in full within thirty (30) Days after such termination or expiration.

10.4 Delivery of Company Property and Other Matters.

The Contractor shall deliver to the Company all of the Company Property (including any copies thereof) upon expiration or termination of this Agreement and upon reasonable request of the Company from time to time. Upon expiration or termination of this Agreement, the Parties shall cooperate with one another in the orderly transfer of Services, including providing all information, service schedules, reports and other data in the Contractor's possession and relating to the Facility (except as otherwise provided in Section 8.1) and, at the Company's request, any rights under any contracts with Subcontractors to the extent assignable; provided, however, that any such efforts requested by the Company and performed by the Contractor after the date of termination or expiration of this Agreement (for any reason) shall be a Reimbursable Expense and compensated in accordance with Article 7.

ARTICLE 11
STANDARD OF PERFORMANCE

11.1 Standard of Performance; No Implied Warranties.

(a) **Standard of Performance**. Throughout the Term of this Agreement, the Contractor shall perform the services and all other obligations under this Agreement in accordance with Good Electrical Practice, the requirements of any Financing Agreements (which requirements will be related to the Contractor by the Company), and all applicable Laws. In addition, the Contractor shall perform the Services and any Additional Services consistent with

the Company's obligations under the Project Agreements, to the extent such Project Agreements relate to or affect the operation and maintenance of the Facility (to the extent that the Contractor receives a copy of any such Project Agreement, and any amendment, modification or supplement thereto). All activities and work performed for or by the Contractor shall, at a minimum, be subject to the HSSE Requirements.

(b) **No Implied Warranties**. EXCEPT AS AND TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN ARTICLE 6, THE CONTRACTOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, STATUTORY OR OTHERWISE (WHETHER IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE), WITH RESPECT TO THE RESULTS OF SERVICES OR ADDITIONAL SERVICES, COMPANY PROPERTY OR ANY PRODUCT, MATERIAL OR SERVICES OF ANY PERSONS, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED BY THE CONTRACTOR, AND ARE EXPRESSLY WAIVED BY THE COMPANY. The Contractor does not warrant under this Agreement any product, material or services of any Persons, including Siemens Energy, Inc., the Equipment Suppliers or the Company.

11.2 Assignment of Warranties.

The Contractor hereby assigns to the Company all manufacturers' warranties that the Contractor receives with respect to any Parts or materials provided to and used by the Contractor under this Agreement. The Company shall assign to the Contractor any claim under a warranty with respect to any Part that the Contractor repairs or replaces other than to the extent the Contractor is reimbursed by the Company pursuant to Article 7.

ARTICLE 12
LIMITATIONS OF LIABILITY

12.1 Total Limitation of Liability.

EXCEPT IN THE CASE OF FRAUD, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, CONTRACTOR'S TOTAL LIABILITY (BUT SPECIFICALLY EXCLUDING ANY INSURANCE PROCEEDS OTHERWISE PAYABLE TO THE COMPANY RELATED PARTIES. IN EACH CASE AS ADDITIONAL INSUREDS UNDER THE INSURANCE COVERAGES DESCRIBED IN SCHEDULE 14) INCURRED AS A RESULT OF EVENTS OCCURRING OR CLAIMS ARISING IN ANY CALENDAR YEAR DURING THE TERM OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THIS AGREEMENT OR FROM THE PERFORMANCE OR BREACH HEREOF, OR FROM ANY SERVICES OR ANY ADDITIONAL SERVICES COVERED BY OR FURNISHED BY THE CONTRACTOR, SHALL IN NO EVENT EXCEED THREE MILLION DOLLARS ($3,000,000).

12.2 Waiver of Consequential Damages.

NO CONTRACTOR RELATED PARTIES SHALL BE LIABLE TO ANY COMPANY RELATED PARTIES, NOR SHALL ANY COMPANY RELATED PARTIES BE LIABLE TO

ANY CONTRACTOR RELATED PARTIES, FOR ANY PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SPECIAL DAMAGES THAT ARISE OUT OF, RELATE TO, OR ARE OTHERWISE ATTRIBUTABLE TO THIS AGREEMENT OR THE PERFORMANCE OR NON-PERFORMANCE OF SERVICES, OR ANY ADDITIONAL SERVICES, OR OTHER DUTIES HEREUNDER. THIS ARTICLE 12 SPECIFICALLY PROTECTS THE CONTRACTOR RELATED PARTIES, AND THE COMPANY RELATED PARTIES, AGAINST SUCH PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES EVEN IF WITH RESPECT TO THE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, STRICT LIABILITY OR OTHER FAULT OR RESPONSIBILITY OF THE CONTRACTOR RELATED PARTIES AND THE COMPANY RELATED PARTIES, AS THE CASE MAY BE; AND ALL RIGHTS TO RECOVER SUCH PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARE HEREBY WAIVED AND RELEASED, EXCEPT TO THE EXTENT SUCH DAMAGES ARE OWED TO THIRD PARTIES IN RELATION TO A LOSS FOR WHICH ONE PARTY OWES INDEMNITY OBLIGATIONS TO THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
FORCE MAJEURE

Notwithstanding any other provision of this Agreement, each Party's obligations under this Agreement shall be suspended by any Force Majeure if and to the extent that such Party is prevented or delayed from performing by reason of the Force Majeure; provided, however, that (a) the prevention or delay of performance shall be of no greater scope and of no longer duration than is necessarily caused by the Force Majeure and required by any remedial measures, (b) no obligations of any Party that arose before the occurrence of such causes shall be excused as the result of the occurrence, and (c) each Party shall use reasonable commercial efforts to remedy its inability to perform; provided, further, that no Force Majeure shall excuse any payment obligations of either the Contractor or the Company due hereunder. If the performance by either Party of its obligations under this Agreement is affected by any Force Majeure, such Party shall as soon as practicable notify the other Party of the nature and extent thereof.

ARTICLE 14
INSURANCE

14.1 Company's Insurance Requirements.

For the duration of this Agreement, the Company shall, at its sole cost and expense, maintain the insurance policies and coverages described in Schedule 14.

14.2 Contractor's Insurance Requirements.

For the duration of this Agreement, the Contractor shall, at its sole cost and expense, procure and maintain the insurance policies and coverages described in Schedule 14.

14.3 Evidence, Terms and Modification of Insurance.

Each Party shall provide the other Party with insurance certificates reasonably acceptable to the other Party evidencing that insurance coverages are in compliance with this Agreement. In

the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this Agreement and such insurance shall be maintained by a Party, with a retroactive date not later than the retroactive date required above, for a minimum of three (3) years after the term hereof. If any insurance required to be maintained by a Party hereunder ceases to be available on commercially reasonable terms in the commercial insurance market, such Party shall provide written notice to the other Party, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not available on commercially reasonable terms in the commercial insurance market for electric generating plants of similar type, geographic location and design. Upon receipt of such notice, such first-mentioned Party shall use commercially reasonable efforts to obtain other insurance that would provide comparable protection against the risk to be insured, and the other Party shall not unreasonably withhold its consent to modify or waive such requirement. If such insurance should again become available on a commercially reasonable basis, subsequent to the granting of a waiver, then the Party who originally requested the waiver shall have such coverage reinstated.

ARTICLE 15
NOTICES

All notices and other communications required or permitted by this Agreement or by applicable Law to be served upon or given to a Party by the other Party shall be in writing and shall be deemed duly served, given and received (a) on the date of service, if served personally or sent by facsimile transmission (with appropriate confirmation of receipt) to the Party to whom notice is to be given, or (b) on date of receipt, if mailed by certified mail, postage prepaid, return receipt requested, or (c) on the date of receipt if sent by a nationally recognized courier for next day service and so addressed as follows:

If to the Company:

El Segundo Energy Center LLC
c/o NRG Energy, Inc.
Attention: Steve Hoffmann, President
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Facsimile: (760) 918-0310
Telephone: (760) 710-2141

with a copy to:

El Segundo Energy Center LLC
c/o NRG Energy, Inc.
Attention: Regional General Counsel
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Facsimile: (760) 918-0310
Telephone: (760) 710-2187

If to the Contractor:

NRG El Segundo Operations Inc.
c/o NRG Energy, Inc
Attention: Roy Craft, Regional Plant Manager
301 Vista del Mar
El Segundo, CA 90245
Facsimile: (310) 615-6061
Telephone: (310) 615-6342

with a copy to:

NRG El Segundo Operations Inc.
c/o NRG Energy, Inc.
Attention: Regional General Counsel
NRG Energy, Inc.
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Facsimile: (760) 918-0310
Telephone: (760) 710-2187

The Parties, by like notice in writing, may designate, from time to time, another address or office to which notices shall be given pursuant to this Agreement.

ARTICLE 16
CONFIDENTIALITY

16.1 Confidentiality.

(a) The Confidential Information shall not be disclosed or permitted to be disclosed by the Receiving Party to any other person or entity not a Party hereto without the prior written consent of the Disclosing Party, except:

(i) to the Receiving Party's Representatives; provided that the Receiving Party guarantees the adherence of its Affiliates to, and will be responsible for their breach of, this Section 16.1; and provided, further, that prior to making disclosure of Confidential Information to its Representatives who are not directors, officers or employees of the Receiving Party or its Affiliates, the Receiving Party shall obtain a written undertaking of confidentiality not less restrictive than this Section 16.1 from each such Representative (except in the case of outside legal counsel the Receiving Party shall only be required to procure that such legal counsel is bound by a professional legal duty of confidentiality); and

(ii) to the extent such information is required to be disclosed under applicable Law or stock exchange regulations or by a governmental or court order, decree, regulation or rule; provided that the Receiving Party makes all commercially reasonable efforts to give prompt written notice to the Disclosing Party as far as possible in advance of such disclosure to permit the Disclosing Party to obtain a protective order against or otherwise to limit the disclosure (in

connection with which the Receiving Party shall reasonably cooperate with the Disclosing Party); and provided, further, that, in any case, the Receiving Party shall only disclose that portion of the Confidential Information that, in the opinion of the Receiving Party's legal counsel, is required to be disclosed and shall use its commercially reasonable efforts to ensure further confidential treatment of the Confidential Information so disclosed.

(b) The Receiving Party shall use the Confidential Information, or permit the same to be used by the Receiving Party's Representatives, in connection with the Receiving Party's exercise of its rights and performance of its obligations under this Agreement and for no other purpose whatsoever.

(c) The Parties acknowledge that the Disclosing Party would not have an adequate remedy at law for money damages if the covenants contained in this Section 16.1 were breached. Accordingly, the Disclosing Party shall be entitled to an injunction restraining such disclosure and other equitable relief (including specific performance), without the requirement of posting a bond or other security.

ARTICLE 17
DISPUTE RESOLUTION

17.1 Applicability. Unless stated otherwise herein, all Disputes shall be resolved in accordance with the dispute resolution procedures set forth in this Article 17. Notwithstanding the foregoing, (a) the Parties may at any time seek injunctive or equitable relief from a court of competent jurisdiction, and (b) nothing herein shall prevent a Party from defending or pursuing any claim in a court or other proceeding against a third party that has been initiated by such third party. In the event any Dispute involves common issues of fact, liability or responsibility with any dispute or controversy under any of the Construction Management Agreement, the Project Administration Services Agreement, the Energy Marketing Agreement and the Power Purchase Agreement, each of the Parties agrees, where reasonably justified, to join such Dispute with such other disputes and controversies to seek a common resolution of all such matters.

17.2 Negotiations by Senior Management.

(a) In the event of a Dispute between the Parties, the Parties will use all reasonable efforts to reach a satisfactory solution by referring the Dispute to senior management of each of the Parties.

(b) Senior management of the Parties will meet as soon as possible, on no less than seven (7) Days' written notice, unless specifically agreed otherwise and shall negotiate in good faith. Senior management of the Parties shall examine any submissions by the Parties, and shall, if the Dispute cannot be resolved immediately, agree to convene for further negotiations aimed at resolving the Dispute.

(c) Should senior management of the Parties be unable to resolve the Dispute within thirty (30) Days after commencement of negotiation by such senior management, then the Parties shall be entitled to pursue any and all available remedies at law, equity or contract in accordance with Section 17.3.

17.3 Binding Arbitration.

(a) If a Dispute remains unresolved after the discussions of senior management of the Parties in accordance with Section 17.2 hereof, or if one or both of the Parties fail to comply with any of the time periods set forth in Section 17.2(b) above, the Parties agree that upon prior written notice to the other Party, either Party may submit such Dispute to binding arbitration and that all such Disputes shall be finally settled by binding arbitration, pursuant to the rules of the American Arbitration Association, by (subject to the first clause in Section 17.3(b)) three (3) arbitrators who are to be appointed in accordance with the said rules and who, to the extent possible, shall have experience and expertise in the subject matter involved in the Dispute.

(b) Unless all Parties can agree in writing on a single arbitrator within ten (10) Days after the delivery of notice referred to in Section 17.3(a), then, within ten (10) Days thereafter, Company, on the one hand (which shall be entitled to specify one arbitrator), and Contractor, on the other hand (which shall be entitled to specify one arbitrator), shall each notify the other in writing of the name of the independent arbitrator chosen by them to participate as a member of a three-member panel of arbitrators. If either Company or Contractor fails to give the other timely notice of such appointment, then the Party who timely gave such notice shall be entitled to require that its arbitrator act as the sole arbitrator hereunder. If an arbitrator is timely appointed by each of the Parties, the two named arbitrators shall select the third member of the arbitration panel within ten (10) Days after they have both been appointed, and they shall promptly notify the Parties thereof. Each Party shall promptly notify the other Party and the Party-selected arbitrators in writing if the third arbitrator has any relationship to or affiliation with such Party (a "Notice of Relationship"), in which event another arbitrator shall be selected within ten (10) Days after receipt of such Notice of Relationship by the Party-selected arbitrators. If the two initially appointed arbitrators cannot timely agree on a third arbitrator, then any Party may request that the American Arbitration Association select the third arbitrator. The arbitrators, to the extent possible, shall have experience and expertise in the subject matter involved in the Dispute.

(c) The arbitration hearing shall be held at a site in New York, New York, to be agreed to by a majority of the arbitrators on thirty (30) days' written notice to the Parties. The arbitration proceedings shall be held in the English language.

(d) The arbitration hearing shall be concluded within sixty (60) Days unless otherwise ordered by a majority of the arbitrators on compelling grounds, and the award thereon or decision with respect thereto shall be made within ten (10) Days after the close of the submission of evidence. Arbitration demanded hereunder by any Party shall be final and binding on the Parties and may not be appealed except in the case of manifest error or impropriety in the arbitration proceedings. The decision, arbitration order and relief agreed upon in writing by any two or more of the arbitrators (in the case of a three-member panel) shall be deemed the decision of the panel for all purposes hereof. If two or more members of the arbitration panel cannot agree, then the decision of the arbitrator not appointed by any Party shall control. The references herein to the arbitration panel shall also be deemed to refer to a single arbitrator where a panel is not being used hereunder, and all references to decisions, orders, awards and relief granted by the panel of arbitrators shall mean the decision, order, award or relief agreed upon in writing by the required number of members of the panel, as indicated.

(e) The Parties agree that the arbitration panel may render and the Parties shall abide by any interim ruling that the arbitration panel deems necessary or prudent regarding discovery, summary proceedings, or other pre-arbitration matters.

(f) The Parties hereby submit to the *in personam* jurisdiction of the state and federal courts located in New York, and agree that any such court may enter all such orders as may be necessary or appropriate to enforce the provisions hereof and/or to confirm any pre-arbitration ruling or decision or any award rendered by the arbitration panel. Any court of law of New York or the United States of America shall enforce the decision of the panel of arbitrators (or single arbitrator, as applicable) in its entirety and only in its entirety; provided, however, that if a court for any reason refuses to enforce any equitable remedies ordered by the arbitration panel, such refusal shall not affect any damage or attorney fee award made by the arbitration panel.

(g) Any costs or other expenses, including reasonable attorneys' fees and costs incurred by the successful Party, arising out of or occurring because of the arbitration proceedings may be assessed against the unsuccessful Party, borne equally, or assessed in any manner within the discretion of the arbitration panel and shall be included as part of any order or decision rendered by the arbitration panel. The arbitration panel may also order any Party who is ordered to pay any other Party's attorneys' fees and costs to pay interest on such award at a rate not to exceed the prime rate published in the Wall Street Journal edition from the date of the award until paid. As an initial matter (and until ordered differently by the arbitration panel in connection with an award), the Parties shall each pay the fees, costs and expenses charged by the arbitrator chosen by it, and, in advance, one-half (1/2) of the fees, costs and expenses charged by the third arbitrator.

(h) Third parties dealing with any Party shall be entitled to fully rely on any written arbitration order or decision with regard to the matters addressed therein, whether or not such arbitration order or decision has been confirmed or adopted by a court, or incorporated in any order of any court.

ARTICLE 18
MISCELLANEOUS

18.1 Untimely Payment. In the event the Company fails to make timely payment of a properly rendered invoice in accordance with Article 7, then the Company shall be responsible for any interest charged by a vendor or contractor as a result of the Company's late payment.

18.2 Governing Law. This Agreement is governed by the Laws of the State of New York, without regard to principles of conflict of laws thereof (other than Section 5-1401 of the New York General Obligations Law). Each Party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York City, and waives, to the fullest extent legally permissible, any objection which it may now or hereafter have to the personal jurisdiction of such courts or venue of any proceeding arising out of or relating to this Agreement in such courts and any defense of an inconvenient forum to the maintenance of such action or proceeding in such courts. IN ADDITION, EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT

OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

18.3 Compliance with Laws; Taxes. At all times during the term of this Agreement, in the performance of its obligations hereunder, the Contractor shall comply with all applicable Laws of all Governmental Authorities having jurisdiction over the Facility, the Facility Site, the Services, Additional Services, if applicable, or the Parties. The Contractor shall be responsible, in connection with its performance of the Services and Additional Services, if applicable, for, (a) all payroll, withholding, old age, social security, unemployment, accident insurance, health insurance, employee benefit, and other taxes of employees of the Contractor, (b) all taxes with respect to amounts paid to the Contractor pursuant to this Agreement, including income and franchise taxes, and (c) all surcharges, penalties, fees and other governmental amounts and charges relating thereto. This Agreement is subject to all present and future Laws, including valid orders, rules and regulations of any Governmental Authority having jurisdiction over the Facility, the Facility Site, the Services, Additional Services, if applicable, or the Parties.

18.4 Survival.

Notwithstanding any other provision of this Agreement, the provisions of Section 4.1(l), Article 9, Section 10.4, Article 12, Article 16, Article 17, and this Section 18.4 are intended to and shall survive termination of this Agreement so as to cover all Claims instituted within the period set forth in the applicable statute of limitations.

18.5 Headings. The descriptive headings of all Articles and Sections of this Agreement are formulated and used for convenience only and are not be deemed to affect the meaning or construction of any such Article or Section.

18.6 Assignment. The Contractor may not assign, pledge or otherwise transfer this Agreement without the prior written consent of the Company, which shall not be unreasonably withheld; provided, however, such restriction on assignment shall not apply if the assignment is to an Affiliate of the Contractor or constitutes an indirect assignment as a result of a merger, acquisition, sale or other institutional reorganization of the Contractor or its Affiliates. This Agreement may be assigned by the Company to a successor owner of the Facility; provided that no such assignment shall diminish the rights or enlarge the obligations of the Contractor under this Agreement. Any assignment, pledge or other transfer in violation of this Section 18.6 shall be null and void. The Company may pledge,

collaterally assign, or encumber its rights under this Agreement to any Lender of the Company, and in such event, the Contractor agrees to execute a consent to assignment (in form and substance reasonably acceptable to Contractor) consistent with then-current financing requirements. The Contractor also agrees that it shall, at any time and from time to time during the term of this Agreement, after receipt of a written request by the Company, execute and deliver to the Company and/or its Lender, such estoppel statements as may reasonably be requested.

18.7 Effect of Waiver. The Parties agrees that no failure or delay by a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, unless such waiver is made expressly and confirmed in writing by the Party against whom such waiver

would be enforced, nor shall any single or partial exercise by a Party of any right, power or privilege hereunder preclude any other or future exercise thereof.

18.8 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

18.9 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, representations, communications and understandings, written or oral, express or implied, pertaining thereto. Any modifications, amendments, or changes to this Agreement shall be binding upon the Parties only if agreed upon in writing and signed by the authorized representatives of the Parties.

18.10 Not for the Benefit of Third Parties. This Agreement is intended to be solely for the benefit of the Parties hereto, their respective successors and permitted assignees, and is not intended to and shall not confer any rights or benefits on any party not a signatory hereto.

18.11 Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, notwithstanding that all of the Parties are not signatories to the original or to the same counterpart. A copy of this Agreement signed by a Party and delivered by facsimile transmission to the other Party shall have the same effect as the delivery of an original of this Agreement containing the original signature of such first-mentioned Party.

18.12 Further Assurances. Each Party agrees to provide such information, execute and deliver any instruments and documents, and to take such other actions as may be necessary or reasonably requested by the other Party, which are not inconsistent with the provisions of this Agreement and which do not involve assumptions of obligations or materially affect the cost of performance, other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

18.13 No Recourse to Affiliate. This Agreement is solely and exclusively between the Company and the Contractor, and any obligations created in this Agreement will be the sole obligations of the Parties to this Agreement. No Party will have recourse to any parent, subsidiary, partner, joint venture, affiliate, director of officer of the other Party for performance of such obligations unless the obligations are assumed in writing by the person against whom recourse is sought.

18.14 No Liens. The Contractor will not create, permit or suffer to exist by the Contractor or its employees, agents, representatives, contractors, Subcontractors or vendors, any liens on the Services, Additional Services, if applicable, the Facility, the Facility Site or other facilities, equipment or materials used to provide or incorporated into the Services or Additional Services. The Contractor will take all prompt steps to discharge any such lien filed against any such item by the Contractor or its employees, agents, representatives, contractors, subcontractors or vendors. If the Contractor fails to discharge promptly any such lien, the Company will have the

right to notify the Contractor in writing and to take any reasonable action to satisfy, defend, settle or otherwise remove the lien at the Contractor's expense.

18.15 Cooperation with Lenders. Notwithstanding any other provision of this Agreement, the Contractor shall during normal business hours and upon reasonable prior notice, cooperate with experts and lenders and make all information, reports, logs and other documents relating to the Facility (subject to the exclusions stated in Section 8.1) available to such experts and lenders, and shall make the Contractor Personnel available for consultation with such experts and lenders all as reasonably requested.

18.16 Review Not Approval or Acceptance. The Company's review or inspection of any Services or Additional Services, as applicable, will not be construed as constituting approval or acceptance of the Contractor's Services or Additional Services, as applicable. The Contractor at all times will retain responsibility for the Services or Additional Services, as applicable, that meets the requirements of this Agreement, regardless of whether or not the Company has reviewed or inspected the Contractor's Services, Additional Services, as applicable, plans, documentation or other acts or items.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE
TO
OPERATION AND MAINTENANCE MANAGEMENT AGREEMENT
BY AND BETWEEN EL SEGUNDO ENERGY CENTER LLC AND NRG EL SEGUNDO OPERATIONS INC.

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representative of each of the Company and the Contractor as of the Effective Date.

NRG EL SEGUNDO OPERATIONS INC.

By: /s/ Fran Sullivan 3/31
Fran Sullivan, Vice President

EL SEGUNDO ENERGY CENTER LLC

By: /s/ M. Stephen Hoffmann
M. Stephen Hoffmann, President

EXHIBIT A
SCHEDULE OF DEFINITIONS

Apart from pronouns and except as required by grammatical usage, when used in the Agreement (as defined below), unless otherwise defined therein, the following capitalized terms shall have the respective meanings set forth below:

"Additional Services" has the meaning set forth in Section 4.4.

"Administrator" means such person designated by the Company to act as the administrator under the Project Administration Agreement.

"Affiliate" means, with respect to any Party, any Person directly or indirectly controlling, controlled by or under common control with such Party. The term "control" and correlative terms include the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. Notwithstanding the foregoing, neither the Company nor the Contractor shall be considered to be an Affiliate of the other for purposes of this Agreement.

"Agreement" has the meaning ascribed to it in the Preamble.

"Balance of Plant" means all Equipment and materials and other items incorporated in the Facility, including the Interconnection Facilities.

"Business Day" means any Day other than a Saturday, a Sunday or a holiday on which national banking associations in the State of New York are required or permitted by law to be closed.

"CAISO" means the California Independent System Operator Corporation or any successor thereto.

"Claim" means claims, actions, damages, expenses (including reasonable attorneys' fees and court costs), fines, penalties, losses and liabilities, including any tax assessments from applicable Governmental Authorities.

"Company" has the meaning ascribed to it in the Preamble.

"Company Property" has the meaning set forth in Section 8.1.

"Company Related Parties" means the Company and its Affiliates, and their respective members, directors, officers, employees, agents and representatives.

"Confidential Information", with respect to a given Disclosing Party and the respective Receiving Party, means, collectively and individually, all data, materials and information (including software, data, technology, know-how, trade secrets, processes, ideas, inventions (whether patentable or not), prototypes, schematics, design plans, drawings, pricing information, customer and service provider lists, business arrangements, business information, financial

information, financial results, technical information, analyses, forecasts, compilations, studies, contracts, agreements, and planning or strategy information) provided by or on behalf of a Party (each Party in such capacity, a "Disclosing Party") to the other Party (each Party in such capacity, a "Receiving Party") or the Receiving Party's Representatives, or to which the Receiving Party or the Receiving Party's Representatives are given access by or on behalf of the Disclosing Party, whether verbally or in written or electronic form, related to the Disclosing Party, the Facility or the Company in the course of provisions of the Services or Additional Services or otherwise in connection with this Agreement.

Notwithstanding the foregoing, Confidential Information under this Agreement does not include any information that: (i) the Receiving Party can demonstrate is now publicly available, or that later becomes publicly available through no action by the Receiving Party or the Receiving Party's Representatives in violation of this Agreement; (ii) the Receiving Party can demonstrate is already in the possession of the Receiving Party or the Receiving Party's Representatives and is not subject to a confidentiality or fiduciary obligation at the time of the information's disclosure under this Agreement, (iii) the Receiving Party can demonstrate is lawfully received from any source other than the Disclosing Party or the Disclosing Party's Representatives under circumstances not involving, to the Receiving Party's knowledge, a breach of any fiduciary or confidentiality obligation; or (iv) the Receiving Party can demonstrate is independently developed by or for the Receiving Party or the Receiving Party's Representatives without reference to, or the use of, any portion of the Confidential Information.

"Construction Management Agreement" means the Construction Management Agreement dated as of even date herewith between the Company and NRG Construction LLC, as Construction Manager.

"Consumables" means rags, solvents, grease, lubricants, and other fluids for topping off (but excluding complete exchanges), wire ties, wire connectors (up to 10 gauge), mechanical fasteners less than 12 mm (112 inch) and excluding series replacements, fuses up to 30 amps, and miscellaneous parts (such as seals, o-rings, springs, hydraulic fittings, hoses, etc.) where individual cost is less than five dollars and excluding series replacements.

"Contractor" has the meaning ascribed to it in the Preamble.

"Contractor Personnel" has the meaning set forth in Section 4.1(f).

"Contractor Related Parties" means the Contractor and its Affiliates, and their respective members, directors, officers, employees, agents and representatives.

"Day" means a calendar day; provided, however, that, if any period of Days referred to in this Agreement ends on a Day that is not a Business Day, then the expiration of such period shall be automatically extended until the end of the first succeeding Business Day.

"Default Rate" has the meaning set forth in Section 7.4.

"Dispute" means any controversy, Claim or dispute that arises out of or in connection with this Agreement or the construction, interpretation, performance, breach, termination, enforceability or validity of this Agreement, whether the same is based on rights, privileges or

interests recognized by or based upon statute, contract, agreement (whether written or oral), tort, common law or other Law.

"Dollars" or "$"means the lawful currency of the United States of America.

"Effective Date" has the meaning set forth in the Preamble.

"El Segundo Generating Station" means that certain gas-fired electric generating facility owned by El Segundo Power, LLC located in El Segundo, California.

"Energy Manager" means NRG Power Marketing LLC or its respective delegate, successor or assignee, which is responsible, in cooperation with the Operator, for arranging for the delivery of Fuel to the Facility for combustion in the Facility and for sale of capacity, energy and ancillary services from the Facility.

"Energy Marketing Agreement" means the Energy Marketing Services Agreement dated as of even date herewith between the Company and NRG Power Marketing LLC, as Energy Manager.

"Engineering Agreement" means the Service Agreement, dated as of July 19, 2010, by and between Siemens Energy, Inc. and NRG West Procurement Company LLC.

"Equipment" means the equipment supplied pursuant to the Equipment Supply Agreement and any other equipment used at the Facility.

"Equipment Suppliers" means Siemens Energy, Inc. and any other supplier of Equipment for the Facility.

"Equipment Supply Agreement" shall mean that Equipment Purchase Agreement, dated as of July 15, 2010, by and between NRG West and Siemens Energy, Inc. that governs the purchase of equipment for the Project.

"Facility" has the meaning set forth in the Recitals.

"Facility Information" has the meaning set forth in Section 5.5.

"Facility Site" means the real property estates created by the Real Property Documents.

"Financing" means debt incurred, debt securities issued, or obligations incurred, by the Company, or NRG West, the proceeds of which shall be used by the Company to finance the Facility.

"Financing Agreements" means any documents or agreements entered into at any time by and among the Company or NRG West and any lenders or other parties evidencing or relating to the provision of any Financing.

"Fixed Fee" has the meaning set forth in Section 7.1(a).

"Fixed Fee Reduction" means any reduction to the Fixed Fee payable by the Company to the Contractor in accordance with Article 7, as calculated in accordance with Schedule 7.5.

"Force Majeure" means acts of God or any other casualty or occurrence, condition, event or circumstance of any kind or nature, including natural catastrophes, terrorism, war or riots, that (i) prevents one Party from performing its obligations under this Agreement; (ii) is not within the reasonable control of, or is not the result of the negligence of, the Party claiming excuse; and (iii) by the exercise of due diligence, such Party is unable to overcome or avoid, or cause to be avoided. The following events, matters or things shall not constitute a Force Majeure: (a) any delay in performing or failure of performance of any contractual provision by a Party (except to the extent caused by a Force Majeure event); (b) economic hardship or the absence of sufficient financial means to perform obligations or the failure to make payments in accordance with this Agreement; (c) late delivery or breakage of equipment or materials (except to the extent caused by a Force Majeure event); or (d) any labor disturbance, strike or dispute of the Contractor's workers or personnel or any its subcontractor's workers or personnel or any independent contractor engaged by the Contractor or any of its subcontractors (unless such event is part of a national or regional disturbance, strike or dispute).

"Fuel" means natural gas or any other fuel suitable for operating the Project.

"GDPIPD" means the Gross Domestic Product Implicit Price Deflator, as published by the Department of Commerce: Bureau of Economic Analysis immediately preceding the applicable date of adjustment, or such other index as mutually agreed upon between the Administrator and the Company.

"Good Electrical Practice" means the practices, methods, standards and procedures generally accepted and followed by a prudent, diligent, skilled and experienced operator acting in accordance with standards generally adopted in the United States of America, with respect to the operation and maintenance of electric generating facility having similar characteristics to the Facility which would be expected to accomplish the desired results and goals, including such goals as efficiency, reliability, economy and profitability, in a safe, reliable and workmanlike manner consistent with applicable Law and environmental protection. "Good Electrical Practice" does not necessarily mean the best practice, method, or standard of care, skill, safety and diligence in all cases, but is instead intended to encompass a range of acceptable practices, methods, and standards.

"Governmental Authority" means any court, tribunal, authority, agency, commission, official or other instrumentality, including regulatory authorities and bodies, of the United States or any state, county, city or other political subdivision, arbitrator or any judicial or quasi judicial tribunal of competent jurisdiction.

"Hazardous Material" means any hazardous or toxic substance or waste, pollutant or contaminant as defined under applicable environmental Laws, including petroleum products, asbestos, polychlorinated biphenyls and radioactive materials.

"Holding Company" means NRG West Holdings LLC.

"HSSE" has the meaning set forth in Section 4.1(f).

"Initial Term" has the meaning set forth in Article 3.

"Interconnection Agreement" means the Large Generator Interconnection Agreement entered into by and among the Company, SCE and the CAISO for the Facility dated as of March 6, 2007, as the same may be amended from time to time.

"Interconnection Facilities" means facilities and devices (e.g., circuit breakers, filters, protection devices, relays and metering) necessary to interconnect and deliver power from the Facility substation(s) to the interconnecting utility's transmission system at the point of interconnection as set forth in the Interconnection Agreement.

"Interconnection Point" means the point of interconnection between the Facility and SCE for the delivery of electricity from the Facility as set forth in the Interconnection Agreement.

"Law" means any applicable constitutional provisions, statutes, acts, codes, laws, rules, regulations, ordinances, orders, decrees, rulings, judgments or decisions of a Governmental Authority or arbitral body.

"Labor Expenses" has the meaning set forth in Section 7.2.

"LLC Agreement" means the Second Amended and Restated Limited Liability Company Agreement of the Company executed by NRG West, as amended, supplemented or modified from time to time in accordance with the terms thereof.

"Long Beach Generating Station" means that certain gas-fired electric generating facility indirectly owned by NRG Parent, located in Long Beach, California.

"Loss" means any loss, liability, damage, claim, demand, cause of action, fine, penalty, expense and cost (including reasonable attorney's fees and expenses and court costs) whether based in tort, breach of contract or any other cause of action.

"Manufacturers' Recommendations" means the instructions, procedures and recommendations which are issued by Siemens Energy, Inc. or manufacturers (and/or suppliers, vendors or distributors) of any plant, facilities, fixtures, accessories, materials, supplies, or Equipment used at the Facility relating to the use, operation, maintenance and repair thereof, and any revisions thereto issued by the such manufacturers (and/or suppliers, vendors or distributors), which have been delivered to the Contractor in accordance with this Agreement and which are applicable at the time such use, operation, maintenance or repair is undertaken.

"Material Adverse Effect" means a material adverse effect on (a) the operation and maintenance of the Facility as required by the standards set forth in Section 11.1(a); (b) the performance of the Services; (c) the ability of the Company to meet its obligations under the Project Agreements or to sell electrical capacity, energy or ancillary services pursuant to the Operating Plan; or (d) the Company's rights and entitlements under the Project Agreements.

"Mobilization Expenses" has the meaning set forth in Section 7.2.

"Notice of Relationship" has the meaning set forth in Section 17.3(b).

"Notice to Proceed" has the meaning set forth in Section 2.1.

"NRG Parent" means NRG Energy, Inc.

"NRG West" means NRG West Holdings LLC.

"O&M Manuals" means, collectively, the integrated operations manuals prepared by Siemens Energy, Inc., the Equipment Suppliers, original equipment manufacturers, the Company or the Company's Affiliates for the Facility, the Manufacturer's Recommendations, and the other operations and maintenance or related manuals for the Facility, as the same may be amended or modified from time to time.

"Operating and Capital Budget" has the meaning set forth in Section 4.2(b)(i).

"Operating Plan" has the meaning set forth in Section 4.2(b)(i).

"Outage" means any interruption in the ability of the Facility to generate and supply electric power.

"Parts" means all appliances, parts, instruments, appurtenances, accessories, furnishings and other equipment of whatever nature which may be from time to time installed in or attached to the Facility or any Equipment used at the Facility.

"Party" or "Parties" has the meaning ascribed to such terms in the Preamble.

"Performance Bonus" means any bonus payable by the Company to the Contractor (other than bonus payments to fund the Incentive Plan) in accordance with Article 7, as calculated in accordance with Schedule 7.5.

"Permit" means any waiver, exemption, variance, franchise, certification, approval, permit, authorization, license, consent, or similar order of or from any Governmental Authority having jurisdiction over the matter in question that have been provided to the Contractor as listed in Exhibit B.

"Person" means any individual, partnership (general or limited), limited liability company, joint stock company, corporation, trust, unincorporated association or joint venture, any Governmental Authority, or any other entity.

"Placed in Service" means the occurrence of all of the following events:

(i) all necessary Permits to operate the Facility shall have been duly obtained or made and validly issued and shall be in full force and effect, and the Facility shall be capable of operation in compliance with all Permits;

(ii) all equipment necessary to operate the Facility shall have been delivered and installed and the synchronization of the Facility shall have occurred with the transmission of

electric power (in acceptable form and quality for interconnection to the electric power grid in accordance with the Interconnection Agreement and the Power Purchase Agreement) from the Facility to the electric power grid;

(iii) Substantial Completion (as such term is defined in the Engineering Agreement) shall have occurred pursuant to the Engineering Agreement; and

(iv) Substantial Completion (as such term is defined in the Equipment Supply Agreement) shall have occurred for all equipment pursuant to the Equipment Supply Agreement.

"Placed-in-Service Date" means the date on which Placed-in-Service occurs.

"Plant Manager" has the meaning set forth in Section 2.4(b).

"Power Purchase Agreement" means the Amended and Restated Power Purchase Tolling Agreement between the Company and SCE, dated as of August 24, 2010, as amended or restated and in effect from time to time, and any other agreement for the sale of electricity and the environmental attributes thereto or ancillary services of the Facility.

"Project Administration Agreement" means the Project Administration Services Agreement to be entered into among the Company, the Holding Company and the Administrator pursuant to which the Administrator shall provide certain accounting, administrative, development and other services for the Company and the Holding Company on the terms set forth therein.

"Project Agreements" means the agreements listed in Exhibit C attached hereto, as such Exhibit C may be amended from time to time by mutual agreement of the parties.

"Real Property Documents" means those easements, leases or deeds entered into by the Company or its Affiliates and landowners, which evidence the land rights to the Facility Site.

"Reimbursable Expenses" has the meaning set forth in Section 7.2.

"Renewal Notice" has the meaning set forth in Section 3.1(a).

"Representatives", with respect to a Party, means, collectively and individually, (i) the officers, directors, employees, shareholders, partners, agents, consultants, contractors (including, with respect to the Contractor, the Contractor's Subcontractors), advisors, lenders, underwriters, trustees of such Party and those of its Affiliates who have a need to know such information in connection with the exercise of such Party's rights and performance of such Party's obligations under this Agreement and (ii) directors, officers, and employees of bona fide prospective purchasers of an equity interest in such Party or any of its parent companies or of all or substantially all assets of such Party or any of its parent companies who are actively and directly participating in negotiations for such purchase transaction(s) and who otherwise need to know the Confidential Information for the purpose of evaluation or consummation of such potential purchase transactions (including their advisors, legal counsel, lenders and accountants who has a need to know in connection with such transaction and who have entered into a written undertaking of confidentiality not less restrictive than Article 16).

"SCE" means Southern California Edison Company or any successor thereof.

"Schedule of Definitions" means this Exhibit A.

"Scheduled Maintenance" means those maintenance and repair activities that the Contractor has reasonably determined may result in a Scheduled Outage and have been scheduled in consultation and coordination with Energy Manager in advance and in accordance with the requirements of Section 4.1.

"Scheduled Outage" means a removal of the Facility's generating capability that (i) has been scheduled and budgeted for in advance, and (ii) is for regularly scheduled inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvements.

"Services" has the meaning set forth in Article 4.

"Statement of Work" has the meaning set forth in Section 4.4.

"Subcontractors" has the meaning set forth in Section 2.3.

"Taxes" means any tax, duty, impost or levy of any nature (whether U.S. federal, state or local) whatsoever and wherever charged, levied or imposed, together with any interest and penalties in relation thereto.

"Ten Year Forecast" has the meaning set forth in Section 4.2(b)(vi).

"Term" has the meaning set forth in Article 3.

"Unscheduled Maintenance" means all non-routine maintenance and repairs of the Facility.

Exhibit 10.10

confidential

EXECUTION VERSION

PROJECT ADMINISTRATION SERVICES AGREEMENT

by and among

NRG WEST HOLDINGS LLC,

EL SEGUNDO ENERGY CENTER LLC

and

NRG WEST COAST LLC

Dated as of

March 31, 2011

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PROJECT ADMINISTRATION SERVICES AGREEMENT

This PROJECT ADMINISTRATION SERVICES AGREEMENT (this "Agreement"), dated as of March 31, 2011 (the "Effective Date") is by and among **EL SEGUNDO ENERGY CENTER LLC,** a Delaware limited liability company, **NRG WEST HOLDINGS LLC,** a Delaware limited liability company (El Segundo Energy Center LLC and NRG West Holdings LLC collectively being referred to herein as the "Company"), and **NRG WEST COAST LLC,** a Delaware limited liability company (the "Administrator"). The Company and the Administrator are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties".

R E C I T A L S

WHEREAS, the Company owns and is currently developing the gas-fired electric generating facility with an expected nameplate capacity of approximately 550 MW located in El Segundo, California (the "Facility") and composed of two trains of rapid response, combined cycle, fast start combustion turbine generators together with all related interconnection facilities and all other rights and assets necessary for the ownership and operation thereof and the sale of power therefrom.

WHEREAS, the Administrator or certain of its Affiliates have expertise in the project administration of electric generating facilities of the type and character of the Facility.

WHEREAS, the Company wishes to engage the Administrator, and the Administrator wishes to accept such engagement, to administer the Facility and to perform certain other duties pertaining to the Facility, in each case in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the Parties, the Parties agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions.

Apart from proper nouns and except as required by grammatical usage, as used in this Agreement, including the Recitals, each capitalized term has the meaning given to it in this Agreement and in the Schedule of Definitions attached as Exhibit A.

1.2 Construction.

All references herein to any agreement are references to such agreement as amended, supplemented or modified from time to time in accordance with its terms. All references to a particular entity shall include a reference to such entity's permitted successors and assigns. The words "herein", "hereof" and "hereunder" refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. The singular includes the plural and the

masculine includes the feminine and neuter, and vice versa. The words "includes" or "including" shall be deemed to mean "including, without limitation" or the correlative meaning. All exhibits and schedules to this Agreement are hereby incorporated herein by reference and considered a part of this Agreement for all purposes. This Agreement was negotiated and prepared by the Parties with advice of counsel to the extent deemed necessary by each Party. The Parties have agreed to the wording of this Agreement, and none of the provisions of this Agreement will be construed against one Party on the ground that such Party is the author of this Agreement or any part thereof.

ARTICLE 2
ENGAGEMENT OF THE ADMINISTRATOR

2.1 Engagement of the Administrator.

The Company hereby engages the Administrator as an independent contractor to administer the Facility, perform development services and to perform other duties pertaining to the Facility, all as set forth in this Agreement. The Administrator accepts such engagement and agrees to perform such duties in accordance with the terms and conditions hereof.

2.2 Relationship.

The Administrator shall act as an independent contractor of the Company with respect to the performance of its obligations hereunder. Neither the Administrator nor any of its Affiliates, employees, subcontractors, vendors or suppliers, or any employees of any of the foregoing Persons shall be deemed to be agents, representatives, employees, or servants of the Company as a result of this Agreement or of performing any duties hereunder, and no such Person as a result of entering into this Agreement or of performing any duties hereunder shall have the right, authority, obligation or duty to assume, create or incur any liability or obligation, express or implied, against, in the name of, or on behalf of the Company; except that the Administrator has the right and obligation to act for and on behalf of and to bind the Company to the extent expressly contemplated by and in accordance with this Agreement. In no case shall this Agreement be construed to create a relationship of partnership or any other association of profit between the Company, on the one hand, and the Administrator or any of its Affiliates, employees, subcontractors, vendors or suppliers, or any employees of any of the foregoing Persons, on the other hand.

2.3 Engagement of Third Parties.

The Administrator may engage such Persons (including the Administrator's Affiliates) as it deems advisable for the purpose of performing or carrying out any of its obligations under this Agreement (such Persons, the "Subcontractors"); provided, however, that (a) no such engagement shall relieve the Administrator of any of its obligations or liabilities under this Agreement, including those set forth in Article 11, and (b) the engagement of any proposed Subcontractor is subject to the Company's prior written approval, not to be unreasonably withheld or delayed, if the annual amount payable to such Subcontractor (or any Affiliate of such Subcontractor) under the relevant subcontract or subcontracts exceeds (i) $250,000 with respect to Services hereunder included under the Fixed Fee (as described in Section 7.1) or (ii) $100,000

with respect to Services or Additional Services hereunder included under Reimbursable Expenses (as described in Section 7.2). In no case shall the Company be deemed to have contractual privity with any Subcontractor solely as a result of the engagement by the Administrator of such Subcontractor for the provision of Services.

ARTICLE 3
TERM

3.1 Term. The initial term of this Agreement shall commence on the Effective Date and shall continue for ten (10) years following the Placed-in-Service Date (the "Initial Term"), subject to termination earlier as provided in this Agreement. Upon the expiration of the Initial Term, the term of this Agreement shall automatically be extended for successive three year periods unless either Party provides the other Party a written notice of its election not to so renew this Agreement (the "Renewal Notice") to the Administrator at least one hundred twenty (120) Days prior to the scheduled expiration of this Agreement (the Initial

Term plus any such extension term, being referred to herein as the "Term"); provided that the Administrator accepts such renewal election by delivering written acceptance to the Company within thirty (30) Days after the date of the Renewal Notice.

ARTICLE 4
ADMINISTRATOR'S SERVICES; DUTIES; OBLIGATIONS

During the Term of this Agreement, the Administrator shall provide the Administrative Services (as defined below) in consideration of the Fixed Fee and Reimbursable Expenses provided for in this Agreement. The Administrative Services and other services described in Sections 4.1, 4.2(a) and 4.2(b) are collectively referred to herein as the "Services". The Administrator shall perform all of the Services and the Additional Services under this Agreement in accordance with the Budget and Article 11. Notwithstanding anything to the contrary in the foregoing, if pursuant to Section 4.2(b) or any other provision under this Agreement, the Administrator is precluded from performing any Service or Additional Service, the Administrator shall be relieved from its obligation to provide such Service or Additional Service.

4.1 Services.

(a) The term "Administrative Services" shall mean the services listed on Schedule 4.1, which shall be provided to either Company, or at the Company's request, to the Holding Company. Subject to the approval requirements set forth in this Agreement and the limitations set forth in Section 4.2(b), the Administrator shall, from the Effective Date, provide or, subject to Section 2.3, cause to be provided the Administrative Services listed in Section 1 of Schedule 4.1 to the Company for the Fixed Fee; and, subject to Section 2.3, provide the Administrative Services listed in Section 2 of Schedule 4.1 through a Subcontractor and such Subcontractor costs shall be Reimbursable Expenses.

(b) The Administrator shall cooperate fully and provide such records and other information that may be requested by the Company, the Holding Company or any of its members in connection with (i) the filing of its tax returns, (ii) the maintenance and retention of its books and records, (iii) any financial reporting or other disclosures that may be required, and (iv) any

audit, litigation or other proceeding by any Governmental Authority, including those that pertain to taxes. The Administrator will immediately provide the Company with written notice of any audit notices, communications or other inquiries from any Governmental Authority.

4.2 Other General Duties.

The Administrator shall provide the following Services from the Effective Date:

(a) Budget.

(i) The Approved Budget has been approved by the Company. Sixty (60) Days prior to the Placed-in-Service Date, the Administrator will prepare and deliver a draft Approved Operating Budget for the remainder of the calendar year in which the Placed-in-Service Date occurs (the "Stub Year") for approval by the Company.

(ii) Within thirty (30) Days of the Effective Date or as otherwise directed by the Company, the Administrator shall deliver to the Company a draft Approved Operating Budget for the succeeding calendar year (the "First Full Year") detailing the expected revenues and expenses for the First Full Year for approval by the Company.

(iii) Beginning on the First Full Year, the Administrator shall deliver a proposal for the Approved Operating Budget on or before September 1 of each calendar year. The Company shall have thirty (30) Days from receipt of the proposed Approved Operating Budget either to approve the same or to assist the Administrator in preparing a final Approved Operating Budget to the Company's satisfaction by October 15th of each year. In the event that a proposed Approved Operating Budget is not approved by the Company within the time indicated in the preceding sentence, the Approved Operating Budget prepared and approved for the previous year shall be utilized and implemented by the Administrator until such time as the new Approved Operating Budget is approved.

(iv) If, during any calendar year, the Administrator believes that a variance (in excess of the permitted variances described in subsection (v) below) is reasonably likely to occur between the actual expense and the budgeted expense for a particular material budget item, the Administrator shall timely notify the Company of such belief in writing and advise the Company of the necessary revisions to the annual Approved Operating Budget and the reasons for those revisions. If the Company agrees, the Company shall arrange for approval of a revised Approved Operating Budget for the balance of the year (or other applicable time period) and shall communicate to the Administrator the final version of Approved Operating Budget so approved.

(v) The costs and expenses that are no more than (A) ten percent (10%) greater than any line item on the Approved Operating Budget or (B) do not cause the overall Approved Operating Budget to be exceeded, and which are otherwise incurred in accordance with the most recently Approved Operating Budget shall not require any additional approval of the Company; provided, however, that the Administrator shall make certain that such expenditures are commercially reasonable and necessary.

(vi) Subject always to approval by the Company, the Administrator shall administer, amend, supplement or modify, as required, the Budget.

(b) Restricted Actions. The Administrator shall obtain the Company's permission before engaging in activities with respect to the Facility that are neither (x) within the scope of the Services nor (y) emergency in nature. The Administrator may engage in activities with respect to the Facility required by applicable Law with prior notice to the Company; provided that, unless action is imminently required, the Administrator will provide the Company with a reasonable period for response and discussion before any action is taken. The Administrator shall not in any case undertake any of the following actions, without the prior written approval of the Company:

(i) sell, assign, lease, pledge, mortgage, encumber, grant a security interest in, convey, or make any license, exchange or other transfer or disposition of any property or assets of the Company or the Facility;

(ii) make, enter into, execute, amend, terminate, modify or supplement any contract or agreement for or by the amount of greater than $100,000 (including any labor or collective bargaining agreement), or amend or waive any material rights under any Project Agreement, in each case on behalf of or in the name of the Company;

(iii) settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any Claim, suit, debt, demand or judgment against or due by, the Company or related to the Facility or submit any such Claim or stipulate in respect thereof to a judgment, or consent to the same;

(iv) engage in any other transaction on behalf of the Company not expressly permitted under this Agreement;

(v) declare an event of default with respect to the Facility under any Project Agreement;

(vi) terminate or suspend performance of any Project Agreement;

(vii) take any action that would result in a default under any Financing Agreement; or

(viii) subcontract for services except for (A) services approved in the Budget, (B) Additional Services or (C) services whose costs and expenses are within the variances provided in Section 4.2(a)(v) other than if required for emergency situations.

(c) Additional Services. From time to time during the Term of this Agreement, the Company may request that the Administrator furnish specific services in addition to the Services in Sections 4.1, 4.2(a) and 4.2(b) (the "Additional Services") that are within the general scope of this Agreement. If the Company desires the Administrator to perform Additional Services and the Administrator agrees, the Parties shall agree in a written statement of work (a "Statement of Work") to provide for the performance of the Additional Services. Each Statement of Work shall reference this Agreement and shall specify (i) the Additional Services to be performed by the Administrator, (ii) an estimate of charges to the Company for the Additional Services and (iii) other mutually agreed upon terms and conditions.

4.3 Inspection by Company.

The Administrator shall allow the Company and the Company's authorized representatives during normal business hours access to inspect the books and records maintained by the Administrator with respect to the Facility or the Facility Site, excluding, however, (a) the Administrator's company books and records that do not pertain to charges or costs upon which Reimbursable Expenses are based, (b) personnel information or compensation or benefits information pertaining to employees of the Administrator or its Affiliates (not based at the Facility Site), and (c) information covered by legal privilege or which cannot be disclosed without violating applicable Law or breaching contractual obligations to third parties. The Company shall have the right to audit such books and records at the Company's sole cost and expense; provided, that the Company shall only have the right to inspect and audit such books and records for any period that is within the seven (7) calendar years from the date of final payment hereunder or the final settlement or disposition of any Claim made pursuant to this Agreement. If any such inspection or audit discloses an error and that, as a result thereof, any overpayment or any underpayment has occurred, the amount thereof shall be paid within thirty (30) Days after receipt of an invoice (with reasonable supporting detail) with interest (except that any underpayment caused by the actions or inactions of the Administrator will not bear interest) at the rate set forth in Section 7.4 to the Party to whom it is owed by the other Party; provided, that a Party shall only be liable for any amounts hereunder that relate to errors discovered and disclosed within the inspection and audit period provided for in this provision.

4.4 Obligations.

The Administrator shall have no liability for any obligations except those expressly stated in this Agreement, and nothing in this Agreement shall obligate the Administrator to perform any duties or assume any liabilities under any agreement to which the Administrator is not directly a party unless such duties are also expressly stated in this Agreement and then only to such extent. The Company acknowledges that the Administrator's performance under this Agreement is dependent upon the Administrator having access to all documents as reasonably required by the Administrator and having required approvals and decisions from the Company.

4.5 Non-Exclusive Arrangement.

The Administrator and Administrator Related Parties may provide services similar to the Services and Additional Services to other parties, including Affiliates of the Company's members, and may also own, engage in, and possess interests in, other businesses, activities, ventures, enterprises and investments of any and every type and description, independently or with others, that may be in competition with the Company and its subsidiaries, with no duty or obligation (express, implied, fiduciary or otherwise) (a) to refrain from engaging in such activities, (b) to offer the right to participate in such activities to the Company, its members or subsidiaries, or (iii) to account to, or to share the results or profits of such activities with, the Company and its members and subsidiaries, and any doctrines of non-competition, "company opportunity" or similar doctrines are hereby expressly disclaimed; provided, however, in each case, that the Administrator and Administrator Related Parties are in compliance with the terms of this Agreement, including Article 16. The Company hereby waives any and all rights and claims on the basis of such doctrines which it may otherwise have against any Administrator

Related Party as a result of any such activities, provided that any such activities do not arise from or involve any breach of Article 16 or any other provision of this Agreement.

ARTICLE 5
COMPANY'S RESPONSIBILITIES

5.1 Company's Responsibilities.

The Company shall do all of the following:

(a) with the exception of information and data the Administrator is required to provide hereunder, provide the Administrator with all material information, including permits, agreements (including the Project Agreements), data, documents for the Facility, the Facility Site or the Company, that is reasonably required for the Administrator to perform its obligations under this Agreement;

(b) examine all material documents submitted by the Administrator and render decisions pertaining thereto promptly;

(c) promptly make decisions required under this Agreement, any Project Agreement or any other agreement that the Administrator may be requested to administer hereunder and respond to all reasonable requests from the Administrator for approval made hereunder;

(d) promptly execute and deliver such evidence of the Administrator's authority as may be reasonably required by third parties; and

(e) except where the same are being disputed in good faith, promptly make all payments and incur all expenditures required in connection with the Facility in accordance with this Agreement and the Budget.

5.2 Insurance.

The Company shall include the Administrator as an additional insured on each insurance policy, as applicable, relating to the administration of the Facility which the Company is required to take out and maintain by any lenders providing Financing for the Facility and any regional transmission operator. The Company shall provide the Administrator notice in writing of any changes to such policies from time to time, or before doing so, of the cancellation of any such policy or policies. Any obligation or liability for premiums, commissions, assessments, deductibles or calls in connection with any recovery under an insurance policy required under Schedule 14 shall be the sole responsibility of the Company, except for Claims arising from Losses due to the Administrator or its subcontractor's fraud, bad faith, gross negligence or willful misconduct, in which case the Administrator shall be responsible for all deductibles or other uninsured Losses. All policies procured by the Company shall require the insurer to waive subrogation against the Administrator Related Parties and all such Persons shall be included as additional insureds to the extent of their interests related hereto.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of Parties.

As of the date of this Agreement, each Party represents and warrants to each other Party that:

(a) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization or incorporation;

(b) it has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary corporate, company, partnership and/or other actions to authorize such execution and delivery and performance of such obligations;

(c) its execution and delivery of this Agreement and its performance of its obligations under this Agreement do not violate or conflict with any Law applicable to it; with any provision of its charter or bylaws (or comparable constituent documents); with any order or judgment of any Governmental Authority applicable to it or any of its assets; or with any contractual restriction binding on or affecting it or any of its assets;

(d) all authorizations of and exemptions, actions or approvals by, and all notices to or filings with, any Governmental Authority that are required to have been obtained or made by it at the time this representation is made with respect to this Agreement have been obtained or made and are in full force and effect, and all conditions of any such authorizations, exemptions, actions or approvals have been complied with;

(e) this Agreement constitutes the Party's legal, valid, and binding obligation, enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application, regardless of whether enforcement is sought in a proceeding in equity or at law); and

(f) except as otherwise permitted herein, it has neither initiated nor received written notice of any action, proceeding, or investigation pending, nor, to its knowledge, is any such action, proceeding, or investigation threatened (or any basis therefor known to it) which questions the validity of this Agreement, or which would materially or adversely affect its rights or obligations as a Party.

ARTICLE 7
FEES AND COST REIMBURSEMENT

7.1 Fees.

(a) Fixed Fee. Commencing on the Effective Date, the Company shall pay the Administrator (i) an annual Fixed Fee (as adjusted pursuant to Section 7.1(b)) equal to Three Hundred Thousand Dollars ($300,000) plus (ii) an amount equal to all Reimbursable Expenses.

The Fixed Fee includes compensation for all Services and work performed by the Administrator hereunder, including those Services set forth in Section 1 of Schedule 4.1, but excludes compensation for the Services, Additional Services and other work described in Section 7.2, which shall be payable hereunder as Reimbursable Expenses. The Fixed Fee shall be payable monthly in arrears at the rate of one-twelfth ($1/12^{th}$) of the annual Fixed Fee. The Fixed Fee may be prorated for partial months at the beginning and end of the Term hereof, based on the number of days for which the Administrator performed the Services, in accordance with Section 7.3. If the Company declares Force Majeure, the Company shall continue to pay the Administrator the Fixed Fee (as adjusted pursuant to Section 7.1(b)) and the Reimbursable Expenses, as applicable; provided, however, that if the Force Majeure continues for a period of greater than one hundred eighty (180) Days, this payment obligation shall terminate.

(b) Fee Adjustment. The Fixed Fee shall be increased (but not decreased) annually for each calendar year after the Effective Date by a factor of one hundred percent (100%) of the percentage change in the GDPIPD during such calendar year.

7.2 Reimbursable Expenses.

Costs and expenses incurred by the Administrator in connection with the following shall be payable by the Company to the Administrator on a reimbursable basis ("Reimbursable Expenses"): (a) the Administrative Services listed in Section 2 of Schedule 4.1 that are provided through a Subcontractor, (b) any Additional Services performed by the Administrator pursuant to a Statement of Work under Section 4.2(c), and (c) any service provided at or upon the Company's request under Section 10.3 and any other expenses reasonably incurred by the Administrator on the Company's behalf that are consistent with this Agreement, including any payments made to third parties, and agreed to or approved in advance in writing by the Company. Reimbursable Expenses shall be payable monthly in arrears in accordance with Section 7.3.

7.3 Payment Procedure.

(a) No later than twelve (12) Days after the end of each calendar month following the Effective Date, the Administrator shall submit to the Company an invoice for the just ended calendar month for (i) Reimbursable Expenses incurred in any prior calendar months and (ii) the Fixed Fee earned by the Administrator in the just ended calendar month.

(b) If there is a dispute about any amount invoiced by the Administrator under Section 7.3(a), the Company shall pay the amount not in dispute in accordance with Section 7.3(c). The Company shall pay any disputed amount ultimately determined as payable with interest in accordance with the provisions of Section 7.4.

(c) The Company shall pay all payments to the Administrator under this Article 7 by wire transfer of immediately available funds to the Administrator at an account designated in writing by the Administrator within thirty (30) Days of receipt of the invoice by the Company.

7.4 Past Due Amounts.

If any amount due under this Agreement, including this Article 7, is not timely paid by the Party from whom it is due, then, in addition to any other rights and remedies available to the

Administrator, the unpaid balance shall bear interest until paid at the Default Rate (defined below) during the period from such specified date to and including the date payment is received. The "Default Rate" shall be equal to the prime rate as published in the Wall Street Journal (or any successor publication), plus two percent (2%); provided, that if there is a bona fide Dispute timely made in good faith over whether non-paid amounts are due and it is ultimately determined that such amounts are due, then the Default Rate with respect to such Disputed amounts shall be equal to the prime rate as published in the Wall Street Journal (or any successor publication). For purposes of the preceding sentence, the Wall Street Journal published on the date a payment was due shall be used to determine the Default Rate, or if there is no publication on such date, than the Wall Street Journal published on the immediately following Business Day shall be used.

ARTICLE 8
RIGHTS OF COMPANY; LICENSE OF COMPANY PROPERTY

8.1 Company Property.

The Administrator hereby acknowledges and agrees that the Company shall hold title to all reports, records, books, plans, designs, papers, data, information or print outs or other information used by the Administrator in connection with the performance of Administrator's obligations under this Agreement to the extent such assets have been paid for by the Company, including those which the Administrator has generated, received or purchased (but has been reimbursed by the Company) in the course of performing its duties hereunder ("Company Property"), but excluding any Administrator owned or licensed property (including software, or other intellectual property developed outside of the scope of the Services or Additional Services). Notwithstanding the foregoing, Company Property does not include personnel records, information about Administrator's internal costs or internal business practices, trade secrets and other confidential information of the Administrator, materials covered by legal privilege, or materials relating to any audit or dispute between the Parties or between Administrator and any other Person.

8.2 License of Company Property.

The Company hereby grants the Administrator (including its relevant Subcontractors) a paid-up, worldwide license to use the Company Property in connection with this Agreement. Such license shall automatically expire immediately upon the termination or expiration of this Agreement; provided that Administrator may retain a copy of Company Property as the Administrator deems necessary for compliance with Law or for audit purposes.

ARTICLE 9
INDEMNIFICATION

9.1 Company Indemnity; Disclaimer.

(a) THE COMPANY HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS THE ADMINISTRATOR RELATED PARTIES FROM AND AGAINST ANY AND ALL LOSSES FOR INJURY OR DEATH OF NATURAL PERSONS OR PHYSICAL LOSS OF OR DAMAGE TO PROPERTY OF ANY PERSON OTHER THAN

ANY ADMINISTRATOR RELATED PARTY TO THE EXTENT ARISING OUT OF THE FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE COMPANY IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT AND IN ANY WAY RELATED TO OR ARISING FROM THE SERVICES, THE ADDITIONAL SERVICES OR THE ADMINISTRATOR'S OBLIGATIONS OR RESPONSIBILITIES HEREUNDER.

(b) IN NO EVENT SHALL THE COMPANY BE LIABLE TO ANY ADMINISTRATOR RELATED PARTIES PURSUANT TO THIS SECTION 9.1(b) FOR ANY LOSS THAT ARISES OUT OF, RELATES TO, OR IS OTHERWISE ATTRIBUTABLE TO THIS AGREEMENT OR THE PERFORMANCE OF SERVICES, OR ANY ADDITIONAL SERVICES, HEREUNDER, EXCEPT TO THE EXTENT SUCH LOSS IS CAUSED BY THE FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE COMPANY. THIS SECTION 9.1(b) SPECIFICALLY PROTECTS THE COMPANY AGAINST SUCH LOSSES EVEN IF AND TO THE EXTENT THAT THEY ARE CAUSED BY THE STRICT LIABILITY OR OTHER FAULT OR RESPONSIBILITY (OTHER THAN FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF THE COMPANY; AND ALL SUCH CLAIMS FOR SUCH LOSSES ARE HEREBY WAIVED AND RELEASED.

9.2 Administrator Indemnity; Disclaimer.

(a) THE ADMINISTRATOR HEREBY AGREES TO INDEMNIFY, PROTECT, DEFEND AND HOLD HARMLESS THE COMPANY RELATED PARTIES FROM AND AGAINST ANY AND ALL LOSSES OF ANY OF THE COMPANY RELATED PARTIES FOR INJURY OR DEATH OF NATURAL PERSONS OR PHYSICAL LOSS OF OR DAMAGE TO PROPERTY OF ANY PERSON OTHER THAN ANY COMPANY RELATED PARTY TO THE EXTENT ARISING OUT OF THE FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE ADMINISTRATOR IN CONNECTION WITH THE PERFORMANCE OF THIS AGREEMENT.

(b) IN NO EVENT SHALL THE ADMINISTRATOR BE LIABLE TO ANY COMPANY RELATED PARTIES PURSUANT TO THIS SECTION 9.2(b) FOR ANY LOSS THAT ARISES OUT OF, RELATES TO, OR IS OTHERWISE ATTRIBUTABLE TO THIS AGREEMENT OR THE PERFORMANCE OF SERVICES, OR ANY ADDITIONAL SERVICES, HEREUNDER, EXCEPT TO THE EXTENT SUCH LOSS IS CAUSED BY THE FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE ADMINISTRATOR. THIS SECTION 9.2(b) SPECIFICALLY PROTECTS THE ADMINISTRATOR AGAINST SUCH LOSSES EVEN IF AND TO THE EXTENT THAT THEY ARE CAUSED BY THE STRICT LIABILITY OR OTHER FAULT OR RESPONSIBILITY (OTHER THAN FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF THE ADMINISTRATOR; AND ALL SUCH CLAIMS FOR SUCH LOSSES ARE HEREBY WAIVED AND RELEASED.

9.3 Third Party Providers.

Subject to Section 2.3, the Administrator may engage independent consultants, engineers, and contractors to complete any of its scope of work under this Agreement which is covered either by the Administrator's Fixed Fee or by the Administrator's reimbursement for Additional Services, if any. The Administrator will cause all of such providers of any tier to perform any Services or Additional Services, if applicable, in conformity with all of the applicable provisions of this Agreement. The Administrator shall be responsible and liable for the actions of such Persons in the same manner as if the scope of such engagements were performed by the Administrator under this Agreement.

ARTICLE 10
TERMINATION

10.1 Termination by Company.

The Company may terminate this Agreement by written notice to the Administrator if any of the following occurs:

(a) For Administrator Breach. The Administrator (i) breaches any provision of this Agreement, or (ii) engages in negligence or willful misconduct in the performance of the Services or Additional Services or any other of its obligations hereunder or fails to meet its standard of performance set forth in Section 11.1; and the Administrator fails to cure any such breach or action within thirty (30) Days after receiving notice thereof from the Company (or, if such cure cannot reasonably be completed within the thirty (30) Day period, the Administrator fails to undertake and promptly cure upon receipt of such notice or fails to give adequate assurances to the Company (in the Company's sole discretion) that such breach or action will be so cured with all reasonable speed, not to exceed an additional thirty (30) Days);

(b) Change of Control. At any time following the Effective Date, if the Administrator or any of its Affiliates no longer owns at least 40% of the membership units of the Holding Company;

(c) For Cessation of Operations. The Administrator dissolves, liquidates, or terminates its company existence; or

(d) Exceeding Liability Limitations. The aggregate liability of the Administrator to the Company for Losses incurred under or arising from this Agreement in a given calendar year equals or exceeds the aggregate liability cap of the Administrator set forth in Section 12.1.

In the event of any permitted termination of this Agreement by the Company under this Section 10.1, the Administrator shall provide reasonable assistance to the Company to assure a smooth, efficient transition of its services to the Company, or any successor operator selected by the Company, for which the Administrator shall be compensated as a Reimbursable Expense. If so instructed by the Company, the Administrator shall cancel all contracts in a commercially reasonable manner and otherwise use reasonable efforts to mitigate costs associated with such cancellations; provided, however, that all such cancellation and termination costs and expenses shall be borne by the Company and not the Administrator as a Reimbursable Expense; and

provided, further, that such amounts do not include any sums which are disputed by reason of the Administrator's default; and provided, further, that the Company shall be entitled to off-set any amounts owed to the Company by the Administrator. The Administrator shall forthwith deliver to the Company any plans, designs, papers, computer data, warranties or printouts or other materials which the Administrator has generated or has received in the course of performing its duties hereunder. All property of the Company shall be returned to the Company. The Company shall have no right to remove the Administrator except as expressly set forth in this Agreement.

10.2 Termination by Administrator.

The Administrator may terminate this Agreement by written notice to the Company if any of the following occurs:

(a) For Company's Breach. The Company's failure to make undisputed payments when such payments are due and payable under Article 7, unless within thirty (30) Days after written notice from the Administrator to the Company of such non-payment, the Company makes such payments in accordance herewith;

(b) Change in Ownership of Facility. At any time during the Term if the Company no longer owns the Facility, the Administrator may terminate this Agreement upon no fewer than ninety (90) Days' written notice to the Company; or

(c) For Cessation of Operations. The Company dissolves, liquidates, or terminates its company existence.

In the event of any permitted termination of this Agreement by the Administrator under this Section 10.2, the Administrator shall provide reasonable assistance to the Company to assure a smooth, efficient transition of its services to the Company, or any successor operator selected by the Company, for which the Administrator shall be compensated as a Reimbursable Expense, and the Administrator shall be entitled to any outstanding monthly Fixed Fee payments and other Reimbursable Expenses due and payable prior to such termination. If so instructed by the Company, the Administrator shall cancel all contracts in a commercially reasonable manner and otherwise use reasonable efforts to mitigate costs associated with such cancellations; provided, however, that all such cancellation and termination costs and expenses shall be borne by the Company and not the Administrator as a Reimbursable Expense.

10.3 Delivery of Company Property and Other Matters.

The Administrator shall deliver to the Company all of the Company Property (including any copies thereof) upon expiration or termination of this Agreement and upon reasonable request of the Company from time to time. Upon expiration or termination of this Agreement, the Parties shall cooperate with one another in the orderly transfer of Services and any Additional Services, including providing all information, service schedules, reports and other data in the Administrator's possession and relating to the Facility (except as otherwise provided in Section 8.1) and at the Company's request, any rights under any contract with Subcontractors to the extent assignable; provided, however, that any such efforts requested by the Company and performed by the Administrator after the date of termination or expiration of this Agreement (for any reason) shall be a Reimbursable Expense and compensated in accordance with Article 7.

ARTICLE 11
STANDARD OF PERFORMANCE

11.1 Standard of Performance; No Implied Warranties.

(a) Throughout the Term of this Agreement, the Administrator shall perform the Services and Additional Services and all other obligations under this Agreement in a prudent and commercially reasonable manner and in accordance with the terms and conditions of this Agreement, the requirements of any Financing Agreement (which requirements will be related to the Administrator by the Company), and all applicable Laws. In addition, the Administrator shall perform the Services and any Additional Services consistent with the Company's obligations under the Project Agreements, to the extent such Project Agreements relate to or affect the administration of the Facility (to the extent that the Administrator receives a copy of any such Project Agreement, and any amendment, modification or supplement thereto).

(b) EXCEPT AS AND TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN ARTICLE 6, THE ADMINISTRATOR MAKES NO REPRESENTATION OR WARRANTY, EXPRESS, IMPLIED, AT COMMON LAW, STATUTORY OR OTHERWISE (WHETHER IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE), WITH RESPECT TO THE RESULTS OF SERVICES OR ADDITIONAL SERVICES, COMPANY PROPERTY OR ANY PRODUCT, MATERIAL OR SERVICES OF ANY PERSONS, AND ALL SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED BY THE ADMINISTRATOR, AND ARE EXPRESSLY WAIVED BY THE COMPANY.

ARTICLE 12
LIMITATIONS OF LIABILITY

12.1 Total Limitation of Liability.

EXCEPT IN THE CASE OF FRAUD, BAD FAITH, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, THE ADMINISTRATOR'S TOTAL LIABILITY (BUT SPECIFICALLY EXCLUDING ANY INSURANCE PROCEEDS OTHERWISE PAYABLE TO THE COMPANY RELATED PARTIES AS ADDITIONAL INSUREDS UNDER THE INSURANCE COVERAGES DESCRIBED IN SCHEDULE 14) INCURRED AS A RESULT OF EVENTS OCCURRING OR CLAIMS ARISING IN ANY CALENDAR YEAR DURING THE TERM OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, WARRANTY, TORT, STRICT LIABILITY OR OTHERWISE, ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THIS AGREEMENT OR FROM THE PERFORMANCE OR BREACH HEREOF, OR FROM ANY SERVICES OR ANY ADDITIONAL SERVICES COVERED BY OR FURNISHED BY THE ADMINISTRATOR, SHALL IN NO EVENT EXCEED THE VALUE OF THE SUM OF THE ADMINISTRATOR'S FIXED FEE FOR THE APPLICABLE CALENDAR YEAR AND ANY ACCRUED FEES FOR ADDITIONAL SERVICES UNDER THIS AGREEMENT FOR SUCH CALENDAR YEAR.

12.2 Waiver of Consequential Damages.

NO ADMINISTRATOR RELATED PARTIES SHALL BE LIABLE TO ANY COMPANY RELATED PARTIES, NOR SHALL ANY COMPANY RELATED PARTIES BE LIABLE TO ANY ADMINISTRATOR RELATED PARTIES, FOR ANY PUNITIVE, EXEMPLARY, CONSEQUENTIAL OR SPECIAL DAMAGES THAT ARISE OUT OF, RELATE TO, OR ARE OTHERWISE ATTRIBUTABLE TO THIS AGREEMENT OR THE PERFORMANCE OR NON-PERFORMANCE OF SERVICES, OR ANY ADDITIONAL SERVICES, OR OTHER DUTIES HEREUNDER. THIS ARTICLE 12 SPECIFICALLY PROTECTS THE ADMINISTRATOR RELATED PARTIES, AND THE COMPANY RELATED PARTIES, AGAINST SUCH PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES EVEN IF WITH RESPECT TO THE NEGLIGENCE, GROSS NEGLIGENCE, WILLFUL MISCONDUCT, STRICT LIABILITY OR OTHER FAULT OR RESPONSIBILITY OF THE ADMINISTRATOR RELATED PARTIES AND THE COMPANY RELATED PARTIES, AS THE CASE MAY BE; AND ALL RIGHTS TO RECOVER SUCH PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARE HEREBY WAIVED AND RELEASED, EXCEPT TO THE EXTENT SUCH DAMAGES ARE OWED TO THIRD PARTIES IN RELATION TO A LOSS FOR WHICH ONE PARTY OWES INDEMNITY OBLIGATIONS TO THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
FORCE MAJEURE

Notwithstanding any other provision of this Agreement, each Party's obligations under this Agreement shall be suspended by any Force Majeure if and to the extent that such Party is prevented or delayed from performing by reason of the Force Majeure; provided, however, that (a) the prevention or delay of performance shall be of no greater scope and of no longer duration than is necessarily caused by the Force Majeure and required by any remedial measures, (b) no obligations of any Party that arose before the occurrence of such causes shall be excused as the result of the occurrence, and (c) each Party shall use reasonable commercial efforts to remedy its inability to perform; provided, further, that no Force Majeure shall excuse any payment obligations of either the Administrator or the Company due hereunder. If the performance by either Party of its obligations under this Agreement is affected by any Force Majeure, such Party shall as soon as practicable notify the other Party of the nature and extent thereof.

ARTICLE 14
INSURANCE

14.1 Company's Insurance Requirements.

For the duration of this Agreement, the Company shall, at its sole cost and expense, maintain the insurance policies and coverages described as insurance requirements of the Company in Schedule 14.

14.2 Administrator's Insurance Requirements.

For the duration of this Agreement, the Administrator shall, at its sole cost and expense, procure and maintain the insurance policies and coverages described as insurance requirements of Administrator in Schedule 14.

14.3 Evidence, Terms and Modification of Insurance.

Each Party shall provide the other Party with insurance certificates reasonably acceptable to such other Party evidencing that insurance coverages are in compliance with this Agreement. In the event that any insurance as required herein is commercially available only on a "claims- made" basis, such insurance shall provide for a retroactive date not later than the date of this Agreement and such insurance shall be maintained by a Party, with a retroactive date not later than the retroactive date required above, for a minimum of three (3) years after the term hereof. If any insurance required to be maintained by a Party hereunder ceases to be available on commercially reasonable terms in the commercial insurance market, such Party shall provide written notice to the other Party, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not available on commercially reasonable terms in the commercial insurance market for electric generating plants of similar type, geographic location and design. Upon receipt of such notice, such first-mentioned Party shall use commercially reasonable efforts to obtain other insurance that would provide comparable protection against the risk to be insured, and the other Party shall not unreasonably withhold its consent to modify or waive such requirement.

ARTICLE 15
NOTICES

All notices and other communications required or permitted by this Agreement or by applicable Law to be served upon or given to a Party by the other Party shall be in writing and shall be deemed duly served, given and received (a) on the date of service, if served personally or sent by facsimile transmission (with appropriate confirmation of receipt) to the Party to whom notice is to be given, or (b) on date of receipt, if mailed by certified mail, postage prepaid, return receipt requested, or (c) on the date of receipt if sent by a nationally recognized courier for next Day service and so addressed as follows:

If to the Company:

NRG West Holdings LLC
c/o NRG Energy, Inc.
Attention: Todd Kerschbaum, President
NRG Tower at the Houston Pavilions
1201 Fannin
Houston, TX 77002
Facsimile: (713) 537-4206
Telephone: (713) 537-2104

- and –

El Segundo Energy Center LLC
c/o NRG Energy, Inc.
Attention: Steve Hoffmann, President
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Facsimile: (760) 918-0310
Telephone: (760) 710-2141

with a copy to:

El Segundo Energy Center LLC
c/o NRG Energy, Inc.
Attention: Regional General Counsel

5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Facsimile: (760) 918-0310
Telephone: (760) 710-2187

If to the Administrator:

NRG West Coast LLC
c/o NRG Energy, Inc
Attention: Regional General Counsel
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Facsimile: (760) 918-0310
Telephone: (760) 710-2187

with a copy to:

NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
Facsimile: (609) 524-4941
Attention: General Counsel

The Parties, by like notice in writing, may designate, from time to time, another address or office to which notices shall be given pursuant to this Agreement.

ARTICLE 16
CONFIDENTIALITY

16.1 Confidentiality.

(a) The Confidential Information shall not be disclosed or permitted to be disclosed by the Receiving Party to any other person or entity not a Party hereto without the prior written consent of the Disclosing Party, except:

(i) to the Receiving Party's Representatives; provided that the Receiving Party guarantees the adherence of its Affiliates to, and will be responsible for their breach of, this Article 16; and provided, further, that prior to making disclosure of Confidential Information to its Representatives who are not directors, officers or employees of the Receiving Party or its Affiliates, the Receiving Party shall obtain a written undertaking of confidentiality not less restrictive than this Article 16 from each such Representative (except in the case of outside legal counsel the Receiving Party shall only be required to procure that such legal counsel is bound by a professional legal duty of confidentiality); and

(ii) to the extent such information is required to be disclosed under applicable Law or stock exchange regulations or by a governmental or court order, decree, regulation or rule; provided that the Receiving Party makes all commercially reasonable efforts to give prompt written notice to the Disclosing Party as far as possible in advance of such disclosure to permit the Disclosing Party to obtain a protective order against or otherwise to limit the disclosure (in connection with which the Receiving Party shall reasonably cooperate with the Disclosing Party); and provided, further, that, in any case, the Receiving Party shall only disclose that portion of the Confidential Information that, in the opinion of the Receiving Party's legal counsel, is required to be disclosed and shall use its commercially reasonable efforts to ensure further confidential treatment of the Confidential Information so disclosed.

(b) The Receiving Party shall use the Confidential Information, or permit the same to be used by the Receiving Party's Representatives, in connection with the Receiving Party's exercise of its rights and performance of its obligations under this Agreement and for no other purpose whatsoever.

(c) The Parties acknowledge that the Disclosing Party would not have an adequate remedy at law for money damages if the covenants contained in this Article 16 were breached. Accordingly, the Disclosing Party shall be entitled to an injunction restraining such disclosure and other equitable relief (including specific performance), without the requirement of posting a bond or other security.

ARTICLE 17
DISPUTE RESOLUTION

17.1 Applicability.

Unless stated otherwise herein, all Disputes shall be resolved in accordance with the dispute resolution procedures set forth in this Article 17. Notwithstanding the foregoing, (a) the Parties may at any time seek injunctive or equitable relief from a court of competent jurisdiction,

and (b) nothing herein shall prevent a Party from defending or pursuing any claim in a court or other proceeding against a third party that has been initiated by such third party. In the event any Dispute involves common issues of fact, liability or responsibility with any dispute or controversy under any of the O&M Agreement, the Construction Management Agreement, the Energy Marketing Agreement and the Power Purchase Agreement, each of the Parties agrees, where reasonably justified, to join such Dispute with such other disputes and controversies to seek a common resolution of all such matters.

17.2 Negotiation by Senior Management.

(a) In the event of a Dispute between the Parties, the Parties will use all reasonable efforts to reach a satisfactory solution by referring the Dispute to senior management of each of the Parties.

(b) Senior management of the Parties will meet as soon as possible, on no less than seven (7) Days' written notice, unless specifically agreed otherwise and shall negotiate in good faith. Senior management of the Parties shall examine any submissions by the Parties, and shall, if the Dispute cannot be resolved immediately, agree to convene for further negotiations aimed at resolving the Dispute.

(c) Should senior management of the Parties be unable to resolve the Dispute within thirty (30) Days after commencement of negotiation by such senior management, then either Party may, by delivery of written notice to the other, submit the Dispute to binding arbitration in accordance with Section 17.3.

17.3 Binding Arbitration.

(a) If a Dispute remains unresolved after the discussions of senior management of the Parties in accordance with Section 17.2 hereof, or if one or both of the Parties fail to comply with any of the time periods set forth in Section 17.2(b) above, the Parties agree that upon prior written notice to the other Party, either Party may submit such Dispute to binding arbitration and that all such Disputes shall be finally settled by binding arbitration, pursuant to the rules of the American Arbitration Association (subject to the first clause of Section 17.3(b)), by three (3) arbitrators who are to be appointed in accordance with the said rules and who, to the extent possible, shall have experience and expertise in the subject matter involved in the Dispute.

(b) Unless all Parties can agree in writing on a single arbitrator within ten (10) Days after the delivery of notice referred to in Section 17.3(a), then, within ten (10) Days thereafter, Company, on the one hand (which shall be entitled to specify one arbitrator), and Administrator, on the other hand (which shall be entitled to specify one arbitrator), shall each notify the other in writing of the name of the independent arbitrator chosen by them to participate as a member of a three-member panel of arbitrators. If either Company or Administrator fails to give the other timely notice of such appointment, then the Party who timely gave such notice shall be entitled to require that its arbitrator act as the sole arbitrator hereunder. If an arbitrator is timely appointed by each of the Parties, the two named arbitrators shall select the third member of the arbitration panel within ten (10) Days after they have both been appointed, and they shall promptly notify the Parties thereof. Each Party shall promptly notify the other Party and the

Party-selected arbitrators in writing if the third arbitrator has any relationship to or affiliation with such Party (a "Notice of Relationship"), in which event another arbitrator shall be selected within ten (10) Days after receipt of such Notice of Relationship by the Party-selected arbitrators. If the two initially appointed arbitrators cannot timely agree on a third arbitrator, then any Party may request that the American Arbitration Association select the third arbitrator. The arbitrators, to the extent possible, shall have experience and expertise in the subject matter involved in the Dispute.

(c) The arbitration hearing shall be held at a site in New York, New York, to be agreed to by a majority of the arbitrators on thirty (30) days' written notice to the Parties. The arbitration proceedings shall be held in the English language.

(d) The arbitration hearing shall be concluded within one hundred twenty (120) Days unless otherwise ordered by a majority of the arbitrators on compelling grounds, and the award thereon or decision with respect thereto shall be made within ten (10) Days after the close of the submission of evidence. Arbitration demanded hereunder by any Party shall be final and binding on the Parties and may not be appealed except in the case of manifest error or impropriety in the arbitration proceedings. The decision, arbitration order and relief agreed upon in writing by any two or more of the arbitrators (in the case of a three-member panel) shall be deemed the decision of the panel for all purposes hereof. If two or more members of the arbitration panel cannot agree, then the decision of the arbitrator not appointed by any Party shall control. The references herein to the arbitration panel shall also be deemed to refer to a single arbitrator where a panel is not being used hereunder, and all references to decisions, orders, awards and relief granted by the panel of arbitrators shall mean the decision, order, award or relief agreed upon in writing by the required number of members of the panel, as indicated.

(e) The Parties agree that the arbitration panel may render and the Parties shall abide by any interim ruling that the arbitration panel deems necessary or prudent regarding discovery, summary proceedings, or other pre-arbitration matters.

(f) The Parties hereby submit to the *in personam* jurisdiction of the state and federal courts located in New York, and agree that any such court may enter all such orders as may be necessary or appropriate to enforce the provisions hereof and/or to confirm any pre-arbitration ruling or decision or any award rendered by the arbitration panel. Any court of law of New York or the United States of America shall enforce the decision of the panel of arbitrators (or single arbitrator, as applicable) in its entirety and only in its entirety; provided, however, that if a court for any reason refuses to enforce any equitable remedies ordered by the arbitration panel, such refusal shall not affect any damage or attorney fee award made by the arbitration panel.

(g) Any costs or other expenses, including reasonable attorneys' fees and costs incurred by the successful Party, arising out of or occurring because of the arbitration proceedings may be assessed against the unsuccessful Party, borne equally, or assessed in any manner within the discretion of the arbitration panel and shall be included as part of any order or decision rendered by the arbitration panel. The arbitration panel may also order any Party who is ordered to pay any other Party's attorneys' fees and costs to pay interest on such award at a rate not to exceed the prime rate published in the Wall Street Journal edition from the date of the award until paid. As an initial matter (and until ordered differently by the arbitration panel in

connection with an award), the Parties shall each pay the fees, costs and expenses charged by the arbitrator chosen by it, and, in advance, one-half (1/2) of the fees, costs and expenses charged by the third arbitrator.

(h) Third parties dealing with any Party shall be entitled to fully rely on any written arbitration order or decision with regard to the matters addressed therein, whether or not such arbitration order or decision has been confirmed or adopted by a court, or incorporated in any order of any court.

ARTICLE 18
MISCELLANEOUS

18.1 Governing Law.

This Agreement is governed by the Laws of the State of New York, excluding any choice of law rules that would direct application of Laws of another jurisdiction (other than Section 51401 of the New York General Obligations Law). Each Party hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York City, and waives, to the fullest extent legally

permissible, any objection which it may now or hereafter have to the personal jurisdiction of such courts or venue of any proceeding arising out of or relating to this Agreement in such courts and any defense of an inconvenient forum to the maintenance of such action or proceeding in such courts. IN ADDITION, EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

18.2 Compliance with Laws; Taxes.

At all times during the term of this Agreement, in the performance of its obligations hereunder, the Administrator shall comply with all applicable Laws of all Governmental Authorities having jurisdiction over the Facility, the Facility Site, the Services, the Additional Services, if any, or the Parties. The Administrator shall be responsible, in connection with its performance of the Services and Additional Services, if applicable, for (a) all payroll, withholding, old age, social security, unemployment, accident insurance, health insurance, employee benefit, and other taxes of employees of the Administrator, (b) all taxes with respect to amounts paid to the Administrator pursuant to this Agreement, including income and franchise taxes, and (c) all surcharges, penalties, fees and other governmental amounts and charges relating thereto. This Agreement is subject to all present and future Laws, including valid orders, rules and regulations of any Governmental Authority having jurisdiction over the Facility, the Facility Site, the Services, the Additional Services, if any, or the Parties.

18.3 Survival.

Notwithstanding any other provision of this Agreement, the provisions of Article 9, Section 10.3, Article 12, Article 16, Article 17 and this Section 18.3 are intended to and shall survive termination of this Agreement so as to cover all Claims instituted within the period set forth in the applicable statute of limitations.

18.4 Headings.

The descriptive headings of all Articles and Sections of this Agreement are formulated and used for convenience only and arc not be deemed to affect the meaning or construction of any such Article or Section.

18.5 Assignment.

The Administrator may not assign, pledge or otherwise transfer this Agreement without the prior written consent of the Company, which shall not be unreasonably withheld; provided, however, such restriction on assignment shall not apply if the assignment is to an Affiliate of the Administrator or constitutes an indirect assignment as a result of a merger, acquisition, sale or other institutional reorganization of the Administrator or its Affiliates. This Agreement may be assigned by the Company to a successor owner of the Facility; provided that no such assignment shall diminish the rights or enlarge the obligations of the Administrator under this Agreement. Any assignment, pledge or other transfer in violation of this Section 18.5 shall be null and void. The Company may pledge, collaterally assign, or encumber its rights under this Agreement to any lender of the Company, and in such event, the Administrator agrees to execute a consent to assignment (in form and substance reasonably acceptable to the Administrator) consistent with then-current financing requirements, The Administrator also agrees that it shall, at any time and from time to time during the term of this Agreement, after receipt of a written request by the Company, execute and deliver to the Company and/or its lender, such estoppel statements as may reasonably be requested.

18.6 Effect of Waiver.

The Parties agrees that no failure or delay by a Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, unless such waiver is made expressly and confirmed in writing by the Party against whom such waiver would be enforced, nor shall any single or partial exercise by a Party of any right, power or privilege hereunder preclude any other or future exercise thereof.

18.7 Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of that provision in any other jurisdiction.

18.8 Entire Agreement; Amendments.

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, representations, communications and understandings, written or oral, express or implied, pertaining thereto. Any modifications, amendments, or changes to this Agreement shall be binding upon the Parties only if agreed upon in writing and signed by the authorized representatives of the Parties.

18.9 Not for the Benefit of Third Parties.

This Agreement is intended to be solely for the benefit of the Parties, their respective successors and permitted assignees, and is not intended to and shall not confer any rights or benefits on any party not a signatory hereto.

18.10 Counterparts.

This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, notwithstanding that all of the Parties are not signatories to the original or to the same counterpart. A copy of this Agreement signed by a Party and delivered by facsimile transmission to the other Party shall have the same effect as the delivery of an original of this Agreement containing the original signature of such first-mentioned Party.

18.11 Further Assurances.

Each Party agrees to provide such information, execute and deliver any instruments and documents, and to take such other actions as may be necessary or reasonably requested by the other Party, which are not inconsistent with the provisions of this Agreement and which do not involve assumptions of obligations or materially affect the cost of performance, other than those provided for in this Agreement, in order to give full effect to this Agreement and to carry out the intent of this Agreement.

18.12 No Recourse to Affiliate.

This Agreement is solely and exclusively between the Company and the Administrator, and any obligations created in this Agreement will be the sole obligations of the Parties to this Agreement. No Party will have recourse to any parent, subsidiary, partner, joint venture, affiliate, director of officer of the other Party for performance of such obligations unless the obligations are assumed in writing by the person against whom recourse is sought.

18.13 No Liens.

The Administrator will not create, permit or suffer to exist by the Administrator or its employees, agents, representatives, contractors, Subcontractors or vendors, any liens on the Services, the Additional Services, the Facility, the Facility Site or other facilities, equipment or materials used to provide or incorporated into the Services or the Additional Services. The Administrator shall promptly notify the Company of any such lien and take all prompt steps to discharge any such lien filed against any such item by the Administrator or its employees, agents, representatives, contractors, Subcontractors or vendors. If the Administrator fails to discharge promptly any such lien, the Company will have the right to notify the Administrator in writing and to take any reasonable action to satisfy, defend, settle or otherwise remove the lien at the Administrator's expense.

18.14 Cooperation with Lenders.

Notwithstanding any other provision of this Agreement, the Administrator shall during normal business hours and upon reasonable prior notice, cooperate with experts and lenders and make all information, reports, logs and other documents relating to the Services and the Additional Services (subject to the exclusion stated in Section 8.1) available to such experts and lenders, and shall make the Administrator's personnel available for consultation with such experts and lenders all as reasonably requested.

18.15 Untimely Payments.

In the event the Company fails to make timely payment of a properly rendered invoice in accordance with Article 7, then the Company shall be responsible for any interest charged by a vendor or contractor as a result of the Company's late payment.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE
TO
PROJECT ADMINISTRATION SERVICES AGREEMENT
BY AND AMONG EL SEGUNDO ENERGY CENTER LLC,
NATURAL GAS REPOWERING LLC AND NRG WEST COAST LLC

IN WITNESS WHEREOF, this Agreement has been executed and delivered by the duly authorized representative of each of the Company, the Holding Company and the Administrator as of the Effective Date.

NRG WEST COAST LLC

By: /s/ Keith Richards
Name: Keith Richards
Title: Vice President

EL SEGUNDO ENERGY CENTER LLC

By: /s/ M. Stephen Hoffmann
Name: M. Stephen Hoffmann
Title: President

NRG WEST HOLDINGS LLC

By: /s/ Todd Kerschbaum
Name: Todd Kerschbaum
Title: President

EXHIBIT A

SCHEDULE OF DEFINITIONS

Apart from pronouns and except as required by grammatical usage, when used in the Agreement (as defined below), unless otherwise defined therein, the following capitalized terms shall have the respective meanings set forth below:

"Additional Services" shall have the meaning set forth in Section 4.2(0).

"Administrator" shall have the meaning ascribed to it in the Preamble.

"Administrator Related Parties" shall mean the Administrator and its Affiliates, and their respective members, directors, officers, employees, agents and representatives.

"Affiliate" shall mean, with respect to any Party, any Person directly or indirectly controlling, controlled by or under common control with such Party. The term "control" and correlative terms include the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract, or otherwise. Notwithstanding the foregoing, neither the Company nor the Administrator shall be considered an Affiliate of the other for purposes of this Agreement.

"Agreement" shall have the meaning ascribed to it in the Preamble.

"Approved Budget" shall mean the total capital budget, including any contingency set forth therein, or operating budget and funding schedule for the payment of costs to develop, construct, startup and finance the Facility.

"Approved Operating Budget" shall mean an operating budget for the calendar year immediately succeeding the First Full Year.

"Budget" shall mean, collectively, the Approved Budget for the duration thereof and each Approved Operating Budget.

"Business Day" shall mean any Day other than a Saturday, a Sunday or a holiday on which national banking associations in the State of New York are required or permitted by law to be closed.

"Claim" shall mean claims, actions, damages, expenses (including reasonable attorneys' fees and court costs), fines, penalties, losses and liabilities, including any tax assessments from applicable Governmental Authorities.

"Company" shall have the meaning ascribed to it in the Preamble.

"Company Property" shall have the meaning set forth in Section 8.1.

"Company Related Parties" shall mean the Company and its Affiliates, and their respective members, directors, officers, employees, agents and representatives.

"Confidential Information", with respect to a given Disclosing Party and the respective Receiving Party, shall mean, collectively and individually, all data, materials and information (including software, data, technology, know-how, trade secrets, processes, ideas, inventions (whether patentable or not), prototypes, schematics, design plans, drawings, pricing information, customer and service provider lists, business arrangements, business information, financial information, financial results, technical information, analyses, forecasts, compilations, studies, contracts, agreements, and planning or strategy information) provided by or on behalf of a Party (each Party in such capacity, a "Disclosing Party") to the other Party (each Party in such capacity, a "Receiving Party") or the Receiving Party's Representatives, or to which the Receiving Party or the Receiving Party's Representatives are given access by or on behalf of the Disclosing Party, whether verbally or in written or electronic form, related to the Disclosing Party, the Facility or the Company in the course of provisions of the Services or Additional Services or otherwise in connection with this Agreement.

Notwithstanding the foregoing, Confidential Information under this Agreement does not include any information that: (i) the Receiving Party can demonstrate is now publicly available, or that later becomes publicly available through no action by the Receiving Party or the Receiving Party's Representatives in violation of this Agreement; (ii) the Receiving Party can demonstrate is already in the possession of the Receiving Party or the Receiving Party's Representatives and is not subject to a confidentiality or fiduciary obligation at the time of the information's disclosure under this Agreement, (iii) the Receiving Party can demonstrate is lawfully received from any source other than the Disclosing Party or the Disclosing Party's Representatives under circumstances not involving, to the Receiving Party's knowledge, a breach of any fiduciary or confidentiality obligation; or (iv) the Receiving Party can demonstrate is independently developed by or for the Receiving Party or the Receiving Party's Representatives without reference to, or the use of, any portion of the Confidential Information.

"Construction Management Agreement" shall mean the Construction Management Agreement dated as of even date herewith between the Company and NRG Construction LLC, as Construction Manager.

"Construction Manager" shall mean such person designated by the Company to act as the construction manager under the Construction Management Agreement.

"Day" shall mean a calendar day; provided, however, that, if any period of Days referred to in this Agreement shall end on a Day that is not a Business Day, then the expiration of such period shall be automatically extended until the end of the first succeeding Business Day.

"Default Rate" shall have the meaning set forth in Section 7.4.

"Dispute" shall mean any controversy, Claim or dispute that arises out of or in connection with this Agreement or the construction, interpretation, performance, breach, termination, enforceability or validity of this Agreement, whether the same is based on rights,

privileges or interests recognized by or based upon statute, contract, agreement (whether written or oral), tort, common law or other Law.

"Effective Date" shall have the meaning set forth in the Preamble.

"Energy Marketing Agreement" shall mean the Energy Marketing Services Agreement to be entered into by El Segundo Energy Center LLC and NRG Power Marketing LLC, pursuant to which NRG Power Marketing LLC agrees to provide certain marketing services for El Segundo Energy Center as set forth therein.

"Facility" shall have the meaning set forth in the Recitals.

"Facility Site" means the real property estates created by the Real Property Documents.

"Financing" means debt incurred, debt securities issued, or obligations incurred, by the Company or NRG West, the proceeds of which shall be used by the Company to finance the Facility.

"Financing Agreements" shall mean any documents or agreements entered into at any time by and among the Company or NRG West and any lenders or other parties evidencing or relating to the provision of any Financing.

"First Full Year" shall have the meaning set forth in Section 4.2(a)(ii).

"Fixed Fee" shall have the meaning set forth in Section 7.1.

"Force Majeure" shall mean acts of God or any other casualty or occurrence, condition, event or circumstance of any kind or nature, including natural catastrophes, terrorism, war or riots, that (i) prevents one Party from performing its obligations under this Agreement; (ii) is not within the reasonable control of, or is not the result of the negligence of, the Party claiming excuse; and (iii) by the exercise of due diligence, such Party is unable to overcome or avoid, or cause to be avoided. The following events, matters or things shall not constitute a Force Majeure: (a) any delay in performing or failure of performance of any contractual provision by a Party (except to the extent caused by a Force Majeure event); (b) economic hardship or the absence of sufficient financial means to perform obligations or the failure to make payments in accordance with this Agreement; (c) late delivery or breakage of equipment or materials (except to the extent caused by a Force Majeure event); or (d) any labor disturbance, strike or dispute of the Administrator's workers or personnel or any its subcontractor's workers or personnel or any independent contractor engaged by the Administrator or any of its subcontractors (unless such event is part of a national or regional disturbance, strike or dispute).

"GAAP" shall mean United States generally accepted accounting principles in the version effective as of the date of this Agreement.

"GDPIPD" shall mean the Gross Domestic Product Implicit Price Deflator, as published by the Department of Commerce: Bureau of Economic Analysis immediately preceding the applicable date of adjustment, or such other index as mutually agreed upon between the Administrator and the Company.

"Governmental Authority" shall mean any court, tribunal, authority, agency, commission, official or other instrumentality, including regulatory authorities and bodies, of the United States or any state, county, city or other political subdivision, arbitrator or any judicial or quasi-judicial tribunal of competent jurisdiction.

"Holding Company" shall mean NRG West Holdings LLC.

"Initial Term" shall have the meaning set forth in Section 3.1(a).

"Law" shall mean any applicable constitutional provisions, statutes, acts, codes, laws, rules, regulations, ordinances, orders, decrees, rulings, judgments or decisions of a Governmental Authority or arbitral body.

"LLC Agreement" shall mean the Second Amended and Restated Limited Liability Company Agreement of El Segundo Energy Center LLC executed by NRG West, as amended, supplemented or modified from time to time in accordance with the terms thereof.

"Loss" shall mean any loss, liability, damage, claim, demand, cause of action, fine, penalty, expense and cost (including reasonable attorney's fees and expenses and court costs) whether based in tort, breach of contract or any other cause of action.

"Notice of Relationship" shall have the meaning set forth in Section 17.3(b).

"NRG West" shall mean NRG West Holdings LLC.

"O&M Agreement" shall mean the Operation and Maintenance Management Agreement to be entered into by El Segundo Energy Center LLC and NRG El Segundo Operations Inc., pursuant to which Operator agrees to provide certain operations and maintenance services for the Facility as set forth therein.

"Operator" shall mean such Person designated by the Company to act as the "Contractor" under the O&M Agreement.

"Party" or "Parties" shall have the meaning ascribed to such terms in the Preamble.

"Permit" shall mean any waiver, exemption, variance, franchise, certification, approval, permit, authorization, license, consent, or similar order of or from any Governmental Authority having jurisdiction over the matter in question that have been provided to the Administrator as listed in Exhibit C .

"Person" shall mean any individual, partnership (general or limited), limited liability company, joint stock company, corporation, trust, unincorporated association or joint venture, any Governmental Authority, or any other entity.

"Placed-in-Service Date" shall have the meaning ascribed to such term in the Construction Management Agreement, and refers to the point in time when the Facility is placed in commercial operation.

"Power Purchase Agreement" shall mean that Amended and Restated Power Purchase Tolling Agreement, dated as of August 24, 2010, between El Segundo Energy Center LLC and Southern California Edison Company for 550 MW, as the same may be amended or restated and in effect from time to time, and any other agreement for the sale of electricity and the environmental attributes thereto or ancillary services of the Facility.

"Project Agreements" shall mean the agreements listed in Exhibit D attached hereto, as such Exhibit D may be amended from time to time by mutual agreement of the Parties.

"Real Property Documents" shall mean those easements, leases or deeds entered into by the Company or its Affiliates and landowners, which evidence the land rights to the Facility Site and are listed on Exhibit B.

"Reimbursable Expenses" shall have the meaning given thereto in Section 7.2(a).

"Renewal Notice" shall have the meaning set forth in Section 3.1(a).

"Representatives", with respect to a Party, shall mean, collectively and individually, (i) the officers, directors, employees, shareholders, partners, agents, consultants, contractors (including, with respect to the Administrator, the Administrator's Subcontractors), advisors, lenders, underwriters, trustees of such Party and those of its Affiliates who have a need to know such information in connection with the exercise of such Party's rights and performance of such Party's obligations under this Agreement and (ii) directors, officers, and employees of bona fide prospective purchasers of an equity interest in such Party or any of its parent companies or of all or substantially all assets of such Party or any of its parent companies who are actively and directly participating in negotiations for such purchase transaction(s) and who otherwise need to know the Confidential Information for the purpose of evaluation or consummation of such potential purchase transactions (including their advisors, legal counsel, lenders and accountants who has a need to know in connection with such transaction and who have entered into a written undertaking of confidentiality not less restrictive than Article 16).

"Schedule of Definitions" shall mean this Schedule of Definitions.

"Services" shall have the meaning set forth in Article 4.

"Statement of Work" shall have the meaning set forth in Section 4.2(c).

"Subcontractors" shall have the meaning set forth in Section 2.3.

"Term" shall have the meaning set forth in Article 3.

"Terminating Party" shall have the meaning set forth in Article 10.

Exhibit 10.11

EXECUTION VERSION

OPERATION AND MAINTENANCE AGREEMENT

between

AVENAL SOLAR HOLDINGS LLC,

And

NRG ENERGY SERVICES LLC

Dated as of January 31, 2011

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OPERATION AND MAINTENANCE AGREEMENT

This OPERATION AND MAINTENANCE AGREEMENT (the "Agreement") is being entered into by and between NRG Energy Services LLC, a Delaware limited liability company ("Operator"), and Avenal Solar Holdings LLC, a Delaware limited liability company ("Owner"), as of January 31, 2011 (the "Effective Date").

RECITALS:

A. Owner owns three solar photovoltaic projects through its wholly-owned subsidiaries consisting of (i) the 20 MW-AC Sun City Project (the "Sun City Project") held through Sun City Project LLC, (ii) the 19 MW-AC Sand Drag Project (the "Sand Drag Project") held through Sand Drag LLC, and (iii) the 6 MW-AC Avenal Park Project (the "Avenal Park Project") held through Avenal Park LLC, all located in Kings County, California, as further described in Exhibit A (collectively, the "Plant")

B. Owner desires to hire Operator to operate and maintain the Plant in accordance with the terms of this Agreement.

C. Operator desires to operate and maintain the Plant for Owner in accordance with the terms of the Agreement.

AGREEMENT:

Accordingly, in consideration of the mutual covenants herein, and intending to be legally bound hereby, Owner and Operator hereby agree as follows:

1. DEFINITIONS AND RULES OF INTERPRETATION.

1.1 Definitions. The following capitalized terms, when used herein (and in the Appendices attached hereto), shall have the meanings specified in this Section.

"Additional Services" has the meaning specified in Exhibit B.

"Adjustment Date" has the meaning specified in Exhibit E.

"Administrator" means Eurus Avenal Affiliates LLC or, if applicable, its permitted assignee, in its capacity as Administrator under the Project Administration Agreement.

"Affiliate" means, with respect to a Person, any entity which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), when used with respect to a Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through ownership of voting securities, by contract or otherwise. For the avoidance of doubt, Operator shall be deemed to be an Affiliate of Owner if (i) Operator is an Affiliate of NRG and (ii) NRG holds, directly or indirectly, at least 50% of the membership interests in Owner.

"Agreement" has the meaning specified in the Preamble.

"Annual Maintenance Plan" means an annual plan for operation and maintenance of the Plant that is prepared and approved in accordance with Exhibit B, as the same may be revised from time to time pursuant to a Change Order provided in Section 4. Each Annual Maintenance Plan shall be substantially in the same form as the Annual Maintenance Plan for 2011 attached hereto as Exhibit D.

"Avenal Park Project" has the meaning specified in the Recitals.

"Books and Records" has the meaning specified in Section 14.

"Business Day" means any day other than a Saturday, Sunday, public holiday under the Laws of the State of New York or the State where the Plant is located or other day on which banking institutions in such jurisdictions are authorized or required to be closed.

"Change in Law" means the enactment, adoption, promulgation, modification (including a written change in interpretation by a Governmental Authority) or repeal after the Effective Date of any Law; provided that (i) a change in any national, federal, state, provincial or any other income or franchise tax law shall not be a Change in Law pursuant to this Agreement and (ii) any such enactment, adoption, promulgation or modification (including a written change in interpretation by a Governmental Authority) of a Law that is published prior to the Effective Date but that becomes effective after the Effective Date shall not be in a Change in Law pursuant to this Agreement.

"Change Order" has the meaning specified in Section 4.

"Claims" means, collectively, all claims, demands, actions, suits or proceedings (judicial, governmental or otherwise) asserted, threatened or filed against a Person, and any fines, penalties, losses, liabilities, damages and expenses incurred by such Person as a result thereof, including reasonable attorneys' fees and costs of investigation, litigation, settlement and judgment, and any contractual obligations of such Person to provide indemnity for any such claims, demands, actions, suits or proceedings, fines, penalties, losses, liabilities, damages and expenses to any other Person.

"Commencement Date" means the date that Owner delivers written notice to Operator to commence the performance of the Work.

"Compensation" means the amount to be paid to Operator by Owner, as determined pursuant to Exhibit E.

"Confidential Information" has the meaning specified in Section 18.3.

"CPI" means the "United States City Average All Items for All Urban Consumers (CPI-U, 1982-84=100)" published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of the Consumer Price Index of the U.S. Bureau of Labor Statistics is discontinued, comparable statistics on the purchasing power of the consumer dollar published by

a responsible financial periodical reasonably agreed by Operator and Owner shall be used for making such computations.

"Effective Date" has the meaning specified in the Recitals.

"Emergency" means any event or circumstance which (a) requires prompt action, and (b) in the reasonable opinion of a prudent operator, could be expected to have an adverse effect on the plant, endanger the health or safety of any Person, or cause significant damage to property.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, environmental release or threatened environmental release of any hazardous substance or to health and safety matters, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, as the same may be amended from time to time, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 3803 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. §§ 1801 et seq. and the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.; and any state and local counterparts or equivalents, in each case as amended from time to time.

"EPC Agreement" means each of the (i) Engineering, Procurement and Construction Agreement dated as of September 20, 2010 between Sand Drag LLC and the EPC Contractor with respect to the Sand Drag Project, (ii) Engineering, Procurement and Construction Agreement dated as of September 20, 2010 between Sun City Project LLC and the EPC Contractor with respect to the Sun City Project and (iii) Engineering, Procurement and Construction Agreement dated as of November 5, 2010 between Avenal Park LLC and the EPC Contractor with respect to the Avenal Park Project, as each such agreement may be amended from time to time in accordance with its terms.

"EPC Contractor" means The Ryan Company, Inc., as the "Contractor" under each EPC Agreement, and its permitted assigns.

"Event of Default" means, with respect to Owner, an Owner Event of Default and with respect to Operator, an Operator Event of Default.

"Financing Agreement" means that certain Financing Agreement, dated as of September 22, 2010 by and among Owner, as the Borrower thereunder, Natixis, New York Branch, as a Joint Bookrunner, Joint Mandated Lead Arranger, the Syndication Agent and an LC Issuing Bank, Unicredit Bank AG, New York Branch, as a Joint Bookrunner, Joint Mandated Lead Arranger, the Collateral Agent for the Lenders, the Administrative Agent for the Lenders, and an LC Issuing Bank, Crédit Agricole Corporate and Investment Bank, as Co-Documentation Agent and a Joint Mandated Lead Arranger, Mizuho Corporate Bank, Ltd., as Co-Documentation Agent

and a Joint Mandated Lead Arranger, Sumitomo Mitsui Banking Corporation, as Co-Documentation Agent and a Joint Mandated Lead Arranger, Santander Investment Securities Inc., as Co-Documentation Agent and a Joint Mandated Lead Arranger, and the financial institutions listed on Annex 1 thereto or that later become a party thereto, as Lenders.

"Financing Party" means any lender and/or equity investor (including any trustee or agent on behalf of Person) providing development, bridge, construction, direct or indirect tax equity and/or permanent equity and/or debt financing or refinancing of, or any other extension of credit for, the development, construction, ownership, leasing, operation or maintenance (including working capital) of the Plant, whether that financing or refinancing takes the form of private debt or equity, public debt or equity or any other form, including the Financing Parties under the Financing Agreement.

"Force Majeure Event" means any event or circumstance preventing a Party from performing its obligations under this Agreement that (a) is not within the reasonable control of such Party, (b) is not the result of any negligence or fault of such Party, and (c) could not have been reasonably avoided or overcome with the exercise of due diligence by such Party, including an act of God, or the public enemy, war (whether declared or undeclared), other armed conflict, terrorism, civil disturbance, explosion, riot, sabotage, blockade, vandalism, strike or other labor dispute, epidemic, material shortage, fire, explosion, flood, earthquake, hurricanes, tornados, tsunamis, hail, volcanic activity, landslides, drought, storm, lightning and other natural catastrophe, Change in Law, breakdown of equipment (provided such breakdown is caused by an event or circumstance that would otherwise constitute a Force Majeure Event), failure of a contractor or subcontractor (provided such failure is caused by an event or circumstance that would otherwise constitute a Force Majeure Event), or transportation delay or stoppage; provided, however, that in no event shall a Force Majeure Event include (i) lack or unavailability of funds or (ii) any strike or other labor dispute affecting Operator's personnel unless such strike or other labor dispute is national or regional in scope.

"Governmental Authority" means any federal, state, local, municipal or other governmental, regulatory, administrative, judicial, public or statutory instrumentality, court or governmental tribunal, agency, commission, authority, body or entity, or any political subdivision thereof, having legal jurisdiction over the matter or Person in question.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Indemnified Party" has the meaning specified in Section 10.5.

"Indemnifying Party" has the meaning specified in Section 10.5.

"Initial Term" has the meaning specified in Section 2.1.

"Interconnection Agreement" means each "Interconnection Agreement" as defined in the EPC Agreement for each Project.

"Inverter Supplier" means Control Techniques-Americas, LLC, an Affiliate of Emerson Electric Co., as counterparty to the Inverter Warranty Agreement for each Project.

"Inverter Warranty Agreement" means each "Inverter Warranty Agreement" as defined in the EPC Agreement for each Project.

"Laws" means all laws, ordinances, statutes, rules, regulations, orders, Permits, and decrees of any Governmental Authority having jurisdiction over the Parties hereto, the Plant or any part thereof or the Parties' obligations under this Agreement, as the same may be modified, amended or repealed from time to time, including Environmental Laws.

"Materials" means any and all material, equipment, and supplies, including consumable supplies, tools, spare parts and office supplies, necessary for the performance of the Work.

"Module Supplier" means Sharp Electronics Corporation, a New York corporation.

"MSA" means each Module Supply and Purchase Agreement dated as of September 8, 2010 by and between the Module Supplier and a Project Company relating to the supply of photovoltaic modules to each Project.

"MVA" has the meaning specified in Exhibit A.

"NRG" means NRG Solar PV LLC, a Delaware limited liability company.

"OEM Manuals" means each of the installation, maintenance and operating manuals relating to the Plant and the equipment forming a part of the Plant that has been provided to Operator by Owner, including those referenced in each Project Document as being applicable to the Plant or any part thereof, including the Operating Manual (as defined in each EPC Agreement), the SEC Installation Manual and the Site Module Installation Plan (as each is defined in each MSA) and the User Manual (as defined in each Inverter Warranty Agreement).

"Operator" has the meaning specified in the Preamble.

"Operator Event of Default" has the meaning specified in Section 16.1.

"Operator Indemnified Party" has the meaning specified in Section 10.4.

"Operator Representative" has the meaning specified in Section 6.4.

"Owner" has the meaning specified in the preamble.

"Owner Event of Default" has the meaning specified in Section 16.2.

"Owner Indemnified Party" has the meaning specified in Section 10.4.

"Owner Representative" has the meaning specified in Section 6.2.

"Party" or "Parties" means Operator, on the one hand, and Owner, on the other, and their respective successors and permitted assigns.

"Permit" means any valid waiver, consent, exemption, variance, certificate, franchise, permit, entitlement, authorization, plan, approval, license or similar order, judgment, declaration or decree of or from, or filing, submission or registration with, or notice to, any Governmental Authority having jurisdiction over the matter in question.

"Person" means an individual, corporation, partnership, limited liability company, trust, unincorporated association, joint venture, joint-stock company, Governmental Authority, or any other entity.

"Plant" has the meaning specified in the Recitals.

"Plant Personnel" means those employees of Operator or its subcontractors who are assigned to the Plant on a full time basis to perform the Work.

"PPA" means each "Power Purchase Agreement" as defined in the EPC Agreement for each Project.

"Project" means each of the Sun City Project, the Sand Drag Project and the Avenal Park Project.

"Project Administration Agreement" means that certain Project Administration Agreement between Owner and Eurus Avenal Affiliates LLC relating to certain administration activities to be performed by Eurus Avenal Affiliates LLC with respect to Owner and the Project Companies.

"Project Company" means each of Sun City Project LLC, Sand Drag LLC and Avenal Park LLC.

"Project Company Intellectual Property" has the meaning specified in Section 15.1.

"Project Documents" means each MSA, each EPC Agreement, each Inverter Warranty Agreement, each PPA, each Interconnection Agreement and each Real Property Agreement relating to a Project for which this Agreement shall be in effect; and such other agreements as Owner and Operator shall agree from time to time.

"Projects" means each of the Sun City Project, the Sand Drag Project and the Avenal Park Project.

"Prudent Operating Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the photovoltaic generation industry in the western United States during the relevant time period, that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good electric power generation practices,

reliability, safety, expedition and applicable Law, regulations, codes, standards and equipment manufacturer's recommendations. Prudent Operating Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to refer to a range of acceptable practices, methods and acts.

"Real Property Agreement" means each of the agreements constituting a part of the "Real Property Rights" set forth in the EPC Agreement for each Project.

"Renewal Term" has the meaning specified in Section 2.1.

"Requirements" has the meaning specified in Section 3.1.

"RMC" has the meaning specified in Exhibit B.

"Sand Drag Project" has the meaning specified in the Recitals.

"SCADA System" means the Plant's remote control and monitoring system, including central computer and remote PC system.

"Services Providers" means each of (i) the Operator; (ii) the Module Supplier, the EPC Contractor and the Inverter Supplier with respect to the performance by any such party of any Warranty Work; and (iii) each independent third party hired by Owner, a Project Company or Operator on behalf of Owner or a Project Company in accordance with Section 5.1 of this Agreement, in each case to perform Additional Services for the Owner or a Project Company with respect to the Plant or a Project.

"Site Rules" means those reasonable rules, regulations and procedures related to the safe performance of the work and security of the site promulgated by Owner from time to time.

"Sun City Project" has the meaning specified in the Recitals.

"Term" means the Initial Term and any Renewal Terms.

"Termination Costs" means all reasonable costs incurred by Operator arising out of or relating to an early termination of this Agreement, including expenses related to cancellation, preservation or demobilization, the reassignment or severance of Plant Personnel.

"Warranty Work" means the work required to be undertaken by each of (i) the Module Supplier under the MSAs, (ii) the EPC Contractor under the EPC Agreements and (iii) the Inverter Supplier under the Inverter Warranty Agreements (to the extent such work is not then performed by EPC Contractor under the EPC Agreements), in each case with respect to the warranties and any servicing and maintenance undertakings relating to the Plant given by such Services Providers under such agreements.

"Work" has the meaning specified in Section 3.3.

1.2 Rules of Interpretation. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require,

any pronoun shall include the corresponding masculine, feminine and neuter forms. The word "including" (and, with correlative meaning, "includes") shall mean "including without limitation." Unless the context otherwise requires, any references in this Agreement to any agreement, instrument or document shall be deemed to refer to such agreement, instrument or other document as from time to time amended, restated, supplemented, modified, renewed or extended; any references to any Laws shall be deemed to refer to such Laws as they may be amended from time to time after the Effective Date; any references to a Party shall be deemed to refer to such Party's permitted successors and assigns; the words "herein," "hereof", "hereunder" and words of similar import shall be deemed to refer to this Agreement in its entirety and not to any particular provision hereof; and all references to Sections or Appendices shall be deemed to refer to Sections of or Appendices to this Agreement. This Agreement shall be construed without regard to the identity of the Person who drafted its various provisions, and each and every provision of this Agreement shall be construed as though the Parties participated equally in drafting it. Consequently, the Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

2. TERM, EXPIRATION AND TERMINATION.

2.1 Initial Term; Renewal Terms. This Agreement shall be for an initial term of five (5) years commencing on the Commencement Date and ending on the fifth anniversary of the Commencement Date (the "Initial Term"). Upon expiration of the Initial Term, the term of this Agreement shall automatically be extended in one (1) year increments (each, a "Renewal Term") unless either Party delivers written notice of termination to the other Party no later than one hundred and eighty (180) days prior to the expiration of the Initial Term or the applicable Renewal Term, as the case may be.

2.2 Early Termination by Either Party. This Agreement may be (a) terminated in whole or with respect to any Project by Owner upon thirty (30) days' prior written notice to Operator in the event of the destruction, condemnation or other loss of all or substantially all of the Plant or of such Project, as the case may be, or (b) terminated by either Party upon thirty (30) days' prior written notice to the other Party upon the occurrence and continuation of an Event of Default by the other Party. In the event of a termination pursuant to this Section 2.2 or Sections 2.3 or 2.4, subject to Section 2.5, Owner shall pay to Operator:

2.2.1 All Compensation earned through such date that has not been paid by Owner through the effective date of termination, including a pro-rata portion of the Compensation earned during the month in which the Agreement is terminated calculated through the effective date of termination; and

2.2.2 Other than in the case of a termination by Owner pursuant to Section 2.2(b) for an Operator Event of Default or Section 2.3(ii) or upon a termination by Operator pursuant to Section 2.4, the Operator's Termination Costs.

2.3 Early Termination by Owner. In addition to its right to terminate this Agreement pursuant to Section 2.2, Owner may, in its sole discretion, terminate this Agreement (i) for its convenience in whole or with respect to any Project by providing Operator not less than three (3) months prior written notice of the effective date of such termination, (ii) upon not less than sixty

(60) days' prior written notice if the Operator is no longer an Affiliate of Owner. Termination for Owner's convenience pursuant to clause (ii) above, shall be effective on the date specified in the applicable written notice of termination delivered by Owner to Operator or, if earlier, the date upon which the Parties reasonably agree that Owner and Operator have completed all activities necessary to enable Owner to assume responsibility for operation and maintenance of the Plant, including transition to a replacement operator, if any, acceptable to Owner in its sole discretion. In the event this Agreement is terminated pursuant to this Section 2.3, subject to Section 2.5, Owner shall make the payments set forth in Section 2.2.

2.4 Early Termination by Operator. In addition to its right to terminate this Agreement pursuant to Section 2.2, Operator may, in its sole discretion, terminate this Agreement for its convenience if Operator is no longer an Affiliate of Owner. Termination for Operator's convenience shall be effective on the earlier of (i) one (1) year after written notice of such termination is received by Owner, or (ii) the date upon which the Parties reasonably agree that Owner and Operator have completed all activities necessary to enable Owner to assume responsibility for operation and maintenance of the Plant, including transition to a replacement operator, if any, acceptable to Owner in its sole discretion. In the event this Agreement is terminated pursuant to this Section 2.4, Owner shall make the payments set forth in Section 2.2.

2.5 Rights and Duties Upon Termination.

2.5.1 On the effective date of expiration or termination of this Agreement pursuant to this Section 2, Owner shall assume and become responsible for the operation and maintenance of the Plant or, in the case of a partial termination, the portion of the Plant for which the termination shall be effective, including entering into new contracts with third parties for the provision of goods and services. If the Plant (or any Project for which this Agreement shall be terminated) is to continue in operation, Owner and Operator shall cooperate with each other and with any new operator to effect an orderly transition, including (a) if permitted by the terms of the applicable contract or by the contractual counterparty, the assignment to Owner or its designee of all contracts relating to the Plant or affected Project entered into by Operator, (b) to the extent assignable, transfer to Owner or its designee all Permits required by a Governmental Authority to be held in Operator's name as a proxy for the Owner relating to the Plant or affected Project. Operator shall provide, and Owner shall, without duplication of any Operator's Termination Costs (which shall be payable solely pursuant to Section 2.2), pay or reimburse Operator for the reasonable costs of providing, all transition-related services requested by Owner, including any training and instruction of the new operator's personnel.

2.5.2 In the event of any partial termination of this Agreement with respect to one or more Projects, Operator shall notify Owner of whether Operator's expenses in performing the Work with respect to the remaining Project(s) have been or may be reduced as a result of the reduction in the capacity of the Plant. The Parties shall meet to discuss in good faith the impact of the reduction in the capacity of the Plant on Operator's expenses in performing the Work and whether a reduction to the Compensation is warranted. Upon the Parties mutual agreement upon any reduction to the Compensation that should be made as a result of cost savings realized by Operator as a result of the

reduced capacity of the Plant, Owner and Operator shall enter into a Change Order pursuant to Section 4.

2.6 Final Settlement. Within three (3) months after the effective date of expiration or termination of this Agreement, Operator shall provide to Owner a settlement statement which reconciles all payments received from Owner with fees and expenses compensable to Operator in accordance with this Agreement. Owner shall pay the undisputed amount owed to Operator as shown on the settlement statement within fifteen (15) days of receipt of the settlement statement, and such amount shall be subject to audit in accordance with Section 14. The Parties shall use reasonable commercial efforts to complete the audit and reach mutual agreement on all matters related to the settlement statement within three (3) months after it is presented to Owner.

3. SCOPE OF WORK.

3.1 Standard of Performance. During the Term, Operator shall perform the Work in accordance with the OEM Manuals, Annual Maintenance Plan, Prudent Operating Practices, applicable Law, all applicable Permits, the Project Documents, the Site Rules and the other requirements of this Agreement (the "Requirements"). If there are any conflicts between or among the standards of performance derived from the Requirements, Operator shall promptly notify Owner of the conflict and the Parties shall cooperate and negotiate in good faith such modifications to this Agreement as are necessary to resolve the conflict. Operator shall perform the Work in a manner that is reasonably intended to minimize downtime of the Plant or other impacts to the performance and operation of the Plant. Operator acknowledges that in the performance of the Work hereunder, the Operator shall be subject to the supervision of the Administrator, acting on behalf of Owner, until Owner shall have notified Operator in writing that the Project Administration Agreement with Administrator is no longer in effect, and that notices to the Owner Representative required hereunder with respect to the performance of the Work shall be delivered to the representative of the Administrator notified in writing to Operator. Operator shall cooperate with the EPC Contractor in connection with the turn-over of each Project to the Owner under the terms of the EPC Agreements.

3.2 Management of Employees and Services Providers. The exclusive management, direction and control of Plant Personnel and any other employees of Operator shall always reside in Operator. Operator shall be responsible for providing the on-site management of Owner's Services Providers (other than Operator) during their performance of Additional Services and the Warranty Work; provided that Owner may at any time notify in writing the Operator that the Owner has elected to provide the on-site management of a Services Provider, whereupon the Operator shall be relieved from the obligations of such management for the duration of the Owner's performance thereof. Notwithstanding the foregoing, Operator shall not be responsible for any Services Provider's failure or breach in the performance of its obligations to Owner. If Operator believes a Services Provider has failed to perform its obligations to Owner in accordance with the requirements of its agreement with Owner, Operator shall provide written notice of the same to Owner and Owner shall have responsibility for pursuing claims against such Services Provider. Operator shall assist Owner in connection with Owner's pursuit of any remedies that it may have against any Services Provider. Operator shall complete the Work according to Operator's own means and methods, which shall be in the exclusive charge and control of Operator and which shall not be subject to the control and supervision of Owner,

except as to the results of the Work; provided that Operator shall, in coordination with Owner, schedule all power outages and maintenance shutdowns to reasonably minimize revenue loss.

3.3 Specific Duties of Operator.

3.3.1 Operator shall perform the work and services set forth in Exhibit B as Operator's responsibility with respect to the operation and maintenance of the Plant (collectively, the "Work").

3.3.2 Operator shall obtain the Owner's permission before engaging in activities with respect to the Plant that are not either within the scope of this Agreement or the result of an Emergency, including scheduling non-emergency interruptions in the delivery of electricity that are not within the scope of this Agreement. Operator shall not in any case undertake any of the following actions, without the prior written approval of Owner and, in the case of clauses (a), (b), (c), (f), (g) and (h), the applicable Project Company:

(a) cause the creation or assumption by Owner or any Project Company of any indebtedness for borrowed money, or cause any mortgage, lien, security interest or encumbrance on any assets or properties of the Plant;

(b) cause Owner or any Project Company to act as surety, grant guaranties or incur similar liabilities on behalf of third parties, directly or indirectly, whether for borrowed money or otherwise;

(c) cause the conveyance, sale or other disposition of any part of the Plant;

(d) subcontract the Work;

(e) engage any third party in connection with Additional Services except as contemplated by, and in accordance with, Section 5.1 and Exhibit B;

(f) waive any of the rights of Owner or any Project Company under, or terminate or amend, any Project Document;

(g) make any modifications to the Plant that adversely impact the capacity or generation characteristics of the Plant; or

(h) cause the sale of electric energy from the Plant, other than as may be directed by the applicable Project Company, it being understood that the price, terms and availability of electricity for sale from a Project shall at all times remain within the discretion of the applicable Project Company.

3.4 Emergency. In the event of any Emergency, Operator shall perform the following (and shall be entitled to reimbursement for all reasonable costs, expenses and obligations incurred in connection therewith):

3.4.1 Operator shall take immediate and diligent action in light of the nature of the condition requiring such unscheduled repair in accordance with applicable Laws and Prudent Operating Practice to attempt to prevent such threatened damage, injury or loss and, as necessary, mitigate to the greatest extent reasonably practicable such damage, injury or loss;

3.4.2 Operator shall notify all third parties, including fire departments, government agencies, and national response centers, as required by Law; and

3.4.3 Operator shall notify the Owner Representative and Administrator of any emergency, by telephone, facsimile or electronic mail, as soon as practicable following the occurrence of such Emergency given the circumstances, which notice shall include detail with respect to any action being taken or instigated by Operator in response thereto.

3.5 Notification to Owner. Upon obtaining knowledge thereof, Operator shall promptly deliver notice of each of the following to the Owner Representative and Administrator:

3.5.1 Any pending or threatened litigation, claim, dispute, action, investigation or proceeding by any Person concerning the Plant or the Work;

3.5.2 Any refusal or threatened refusal to grant, renew, or extend any existing Permit, or any pending or threatened litigation, claim, dispute, action or proceeding that might adversely affect the granting, renewal or extension of any relevant Permit;

3.5.3 Any outage (i) for more than four (4) hours of more than twenty-five percent (25%) of the operating capacity of the Plant (other than as required to perform scheduled or routine maintenance) or (ii) for more than five (5) consecutive days of more than forty percent (40%) of the operating capacity of any individual Project, or any disconnect from service of any individual Project;

3.5.4 Any incidents at the Plant resulting in death, lost time injury or serious injury to any individual, with written notice to follow within twenty-four (24) hours;

3.5.5 Any discovery of any existing or concealed Hazardous Materials at the Plant, or the discovery of any Hazardous Materials that were brought to the Plant during the Term of this Agreement, with written notice to follow within twenty-four (24) hours; and

3.5.6 Any other event or circumstance that reasonably could be expected to adversely impact the operation of the Plant in any material manner including labor disputes, material violation of any Laws or Permits, or material damage to any of the major pieces of equipment comprising the Plant.

3.6 Safety. Operator shall take reasonable safety and other precautions consistent with Prudent Operating Practices to protect persons and property from damage, injury or illness arising out of the performance of the Work. Operator shall prepare for Owner's review a safety manual that shall incorporate the following elements: (i) identification of the Person(s)

responsible to implement and enforce the safety program; (ii) identification of safety hazards and correction procedures; (iii) requirements for safety meetings and safety training procedures; (iv) procedures for documenting safety infractions; and (v) general safety regulations and procedures. Operator shall maintain in form and content reasonably acceptable to Owner statistics regarding jobsite accidents, injuries and illnesses at the Plant as required by Law, which shall be available for inspection by and submitted to Owner upon its written request.

4. CHANGE ORDERS. If Owner and Operator agree that Operator's scope of responsibilities under this Agreement shall be or has been increased or, consistent with Prudent Operating Practices, decreased, or if it appears to either Party that a change is required to the Annual Maintenance Plan to conform the Annual Maintenance Plan to actual circumstances or events, Owner and Operator shall agree upon such amendments to this Agreement, or the Annual Maintenance Plan, as the case may be. Such amendments shall be reflected in a document executed by both Owner and Operator (a "Change Order"). Without limiting the generality of the foregoing, if Owner and Operator agree that Operator's costs of performing the Work are materially increased or decreased as a result of any Change in Law or any change to any agreement, instrument or document referred to herein relating to the Plant, in each case occurring after the date hereof and affecting the scope of Operator's responsibilities under this Agreement, then Owner and Operator shall agree upon an equitable adjustment to Operator's Compensation whereby, as applicable, either (i) Operator shall be entitled, upon submission of proper invoices and supporting documentation, to be reimbursed for such increased costs or (ii) the Compensation shall be reduced by the amount of such decreased costs, which adjustment shall, in each case, be reflected in a written Change Order. If any such change in scope is initiated by Operator, Operator shall notify Owner of its estimate of the increased or decreased costs caused by such change in scope at or prior to the time the relevant Change Order is submitted to Owner for approval.

5. ADDITIONAL SERVICES.

5.1 Operator's Authority. Operator shall have the authority to enter into purchase orders on behalf of Owner or a Project Company in a form approved by Owner, as the agent of Owner or such Project Company, in order to obtain the performance of Additional Services for the Plant from independent third parties; provided that such purchase order is not expected to be in excess of $10,000 and that the amount of such purchase order will not exceed the budgeted amount for such Additional Service set forth in the Annual Maintenance Plan by more than $2,000. If a purchase order would result in expenditures in excess of $10,000 or cause the budgeted amount for such Additional Services to exceed the amount set forth in the Annual Maintenance Plan by more than $2,000 or if the Additional Service requires an agreement in a form substantially different from the form of purchase order approved by Owner, Operator shall not enter into such purchase order without Owner's prior written consent. Owner shall pay, or shall cause the applicable Project Company to pay, the contractor performing under any such purchase order directly, and Operator shall have no liability or responsibility to pay any such contractor out of its own funds. Notwithstanding the foregoing, during an Emergency, Operator is authorized to make such expenditures and take such other actions, whether budgeted or not, as Operator shall reasonably determine to be necessary in order to comply with this Agreement, applicable Permits, Laws or to otherwise protect the Plant, individuals or other property and to maintain the Plant in a safe condition consistent with Prudent Operating Practices. If any such

unbudgeted costs and expenditures are incurred, Operator shall promptly notify Owner of such action, specifying the particulars of the events giving rise to such costs and expenditures, and shall promptly submit a revision to the Annual Maintenance Plan to encompass the costs and expenditures incurred, as well as those expected to be incurred, as a result of such Emergency or other unexpected event, and such costs and expenditures shall be paid directly by Owner or the applicable Project Company or reimbursed to Operator if incurred directly by Operator.

5.2 Parts. Materials, equipment and parts procured by Operator on Owner's behalf shall be inspected and tested by Operator in accordance with Prudent Operating Practices and any obvious defects shall be noted and handled appropriately.

6. COOPERATION.

6.1 General. During the term of this Agreement, each Party shall provide such reasonable assistance and cooperation as the other Party may request in connection with the performance of their respective duties and obligations under this Agreement.

6.2 Owner Representative. From time to time during the Term, Owner shall designate, by written notice signed by an executive officer of Owner delivered to Operator, an individual and an alternate (to act in the absence of such representative) (each, an "Owner Representative") with authority to act for Owner in all matters pertaining to this Agreement and the Plant, to receive notices and communications from Operator with respect to this Agreement and the Plant, and to deliver to Operator, on behalf of Owner, notices, communications, decisions and approvals with respect to this Agreement and the Plant. The name of the Owner Representative (including the alternate) as of the date hereof are attached hereto as Exhibit G. In the event that Owner replaces an Owner Representative (or such alternate), Owner shall promptly notify Operator and Operator shall prepare and distribute a new Exhibit G reflecting such changes.

6.3 Actions by Owner. The manner of making any decision or giving any approval by Owner shall be determined by Owner for itself, but any communication received by Operator from a Person designated by Owner as its Owner Representative (unless such designation shall have been previously revoked) may be conclusively relied upon by Operator as having been authorized by Owner.

6.4 Operator Representative. From time to time during the Term, Operator shall designate, by written notice signed by an executive officer of Operator delivered to Owner an individual and an alternate (to act in the absence of such representative) (each, an "Operator Representative") with authority to act for Operator in all matters pertaining to this Agreement and the Plant, to receive notices and communications from Owner with respect to this Agreement and the Plant, and to deliver to Owner, on behalf of Operator, notices, communications, decisions and approvals with respect to this Agreement and the Plant. The name of the Operator Representative (including the alternate) as of the date hereof are attached hereto as Exhibit G. In the event that Operator replaces an Operator Representative (or such alternate), Operator shall promptly notify Owner and Operator shall prepare and distribute a new Exhibit G reflecting such changes.

6.5 Actions by Operator. The manner of making any decision or giving any approval by Operator shall be determined by Operator for itself, but any communication received by Owner from a Person designated by Operator as its Operator Representative (unless such designation shall have been previously revoked) may be conclusively relied upon by Owner as having been authorized by Operator.

6.6 Access to Information; Special Assistance. Operator shall provide Owner access to all documents, data, logs, reports, information and records that relate to operation and maintenance of the Plant and the performance by Operator of its obligations hereunder; provided, however, that Operator shall not be required to provide any privileged or proprietary information, personnel information, or other information that does not relate to the Plant or the Work and otherwise is not required to operate and maintain the Plant in accordance with Prudent Operating Practices. At the request of Owner from time to time, Operator shall provide Owner with such data and assistance as may be reasonably requested by Owner to enable Owner to discharge satisfactorily its responsibilities as Owner of the Plant, including its responsibilities to its Financing Parties, security holders, regulatory authorities and others, including by making the Operator's personnel available for consultation.

7. OWNER'S RESPONSIBILITIES.

7.1 Responsibilities of Owner. Owner shall be responsible for the following:

(a) Providing Operator and its subcontractors with access to and within the Plant at all times and without prior notice as reasonably necessary for Operator to perform the Work;

(b) If Owner brings third parties onto the Plant site, Owner shall give Operator at least two (2) Business Days' prior written notice of such third party visit, and Owner shall comply, and be responsible for each third party's compliance, with the safety requirements of the Plant site and any operating or other procedures or protocols related to the Plant.

(c) Power sales, including all communications, contracting, bidding, scheduling and accounting in connection therewith;

(d) Providing facilities for Operator's Plant Personnel and any Services Providers' personnel, including adequate storage, work areas and restrooms;

(e) Obtaining all Permits or licenses required by a Governmental Authority to be in Owner's name which are necessary to enable Operator or its subcontractors to operate and maintain the Plant;

(f) Water supply, telephone service, public address system, local data network, in—plant radio system, water and waste disposal (other than Hazardous Materials) and all other utilities as deemed desirable by mutual agreement of Owner and Operator for the execution of the Work; and

(g) Paying all amounts owed to third party Services Providers in connection with their provision of Additional Services, including any such contracts signed on Owner's behalf pursuant to Section 5.1.

8. COMPENSATION AND PAYMENTS.

8.1 Compensation. During the term of this Agreement, Owner shall pay to Operator in twelve (12) equal monthly installments, as compensation for performance of its duties and obligations hereunder, the Compensation determined and payable pursuant to Exhibit E.

8.2 Invoices. At the end of each month during the Term, Operator shall invoice Owner for the Compensation owed for such month; provided that with respect to any partial month during the Term, such payment shall be made *pro rata* based on the number of days in such month. At Owner's request, Operator shall allocate such Compensation among the Projects pro rata based on the MW capacity of each Project. Owner shall pay, or cause each Project Company to pay its share of, Contractor's invoice within fifteen (15) days after its receipt of such invoice.

8.3 Interest on Delinquent Funds. Any delinquent payment under this Agreement shall bear interest, from the date due until paid, at a rate per annum equal to the prime rate from time to time published in The Wall Street Journal (or such successor publication as shall be agreed by Owner and Operator) as the prime lending rate or "prime rate", plus one percent (1%), but not in excess of the maximum lawful rate of interest permitted by any applicable Laws. Each change in the interest rate payable on delinquent payments hereunder shall become effective on the date of each such change in the prime rate. The payment of any such interest shall not excuse or cure any delinquent payment due to either Party under this Agreement.

8.4 No Waiver. No payment by Owner shall prejudice or constitute a waiver of its right, within the time frame set forth in Section 14, to audit or make a Claim in respect of the correctness of any billing submitted by Operator.

9. COMPLIANCE WITH LAWS AND PERMITS.

9.1 Requirements of Law Generally. Operator shall comply with all Laws applicable to Operator's performance of the Work. Owner shall comply with all Laws applicable to its obligations hereunder and otherwise applicable to the ownership by the Project Companies of the Plant.

9.2 Environmental Compliance. Operator shall be responsible for the on—site management of all Hazardous Materials generated by or used in the operation or maintenance of the Plant. Each Project Company shall be identified to any Governmental Authority as the party responsible for the generation, treatment, storage and disposal of all hazardous or toxic wastes (including waste Hazardous Materials) generated by or used in the operation or maintenance of the portion of the Plant relating to the Project owned by such Project Company (and, therefore, such Project Company shall be designated as the "generator" on all manifests relating to all such hazardous or toxic wastes). Operator shall use commercially reasonable and diligent efforts to prevent the release of any Hazardous Materials into the air, soil, surface water or groundwater at

the Plant (other than as permitted by applicable Environmental Laws), but Operator shall not be responsible for any Hazardous Materials introduced into the air, soil, surface water or groundwater at or from the Plant, unless such introduction or release of Hazardous Materials was caused by Operator's willful action, negligence or a breach by Operator of its obligations hereunder. Owner shall indemnify, defend, and hold harmless Operator, its Affiliates and all of their respective officers, directors, employees and representatives (other than the Owner) from and against any Claims (i) arising out of or related to the performance of

Operator's obligations under this Section 9.2 or its procurement and management of Additional Services contracted pursuant to Section C(1)(vii) of Exhibit B or (ii) directly or indirectly related to or arising out of the actual or alleged existence, generation, use, collection, treatment, storage, transportation, recovery, removal, discharge or disposal of Hazardous Material at the Plant, except with respect to any such Claims arising from the willful misconduct, negligence or a breach by Operator of its obligations hereunder. Operator shall indemnify, defend and hold harmless Owner, each Project Company and their respective Affiliates and all of their respective officers, directors, employees and representatives (including the Administrator, but excluding the Operator) from and against any Claims (i) arising out of or related to the performance of Operator's obligations under this Section 9.2 or its procurement and management of Additional Services contracted pursuant to Section C(1)(vii) of Exhibit B or (ii) directly or indirectly related to or arising out of the actual or alleged existence, generation, use, collection, treatment, storage, transportation, recovery, removal, discharge or disposal of Hazardous Material at the Plant, in each case, to the extent such Claims arise from the willful misconduct, negligence or a breach by Operator of its obligations hereunder.

9.3 Compliance with Permits. Operator shall comply with all Permits, and the terms and conditions thereof, applicable to the Plant (whether such Permits are issued in the name of Operator or Owner).

10. INDEMNIFICATION AND LIMITATION OF DAMAGES.

10.1 Basis of Compensation. Operator is willing to perform Work for Owner and the Project Companies under this Agreement only if Operator has no exposure to loss, risk or liability other than as set forth in Section 9.2, this Section 10 and Section 11. Notwithstanding any other provision of this Agreement, Operator's total liability to Owner and its Affiliates for any reason whatsoever shall be strictly limited in accordance with Section 10.3.

10.2 Disclaimers. Operator agrees to perform the Work under this Agreement in accordance with the standards and requirements set forth in Section 3 and otherwise in accordance with the terms of this Agreement. Operator's liability for failure to comply with such standards and requirements shall be limited as set forth in Section 9.2, this Section 10 and Section 11. Operator makes no other guarantees or warranties of any kind in connection with the performance of the Work. **OPERATOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Except to the extent expressly provided otherwise in this Section 10 (but subject to Section 10.3 hereof) and Owner's right to terminate this Agreement under Section 2.2, Operator shall have no liability under this Agreement for any failure, breach or default of its obligations.

10.3 Total Limitation of Operator's Liability. The maximum aggregate liability of Operator for any action taken or omitted to be taken by Operator or its employees which arises out of or relates to the Work performed under this Agreement, or any action taken or omitted to be taken by Operator or its employees in connection with this Agreement shall not exceed an amount, at any time, in excess of the aggregate amount of Compensation paid (or then payable) to Operator as of such time; provided, however, the foregoing limitation on liability shall not apply to (i) damage to Owner caused by the gross negligence or willful misconduct of Operator with respect to the subject matter of this Agreement, (ii) amounts owed to third parties for which Operator is obligated to indemnify an Owner Indemnified Party under this Agreement, but only to the extent any such amount is contemplated to be covered by insurance required to be obtained by Operator pursuant to Section 12 hereof, and does not exceed the amount of insurance required to be obtained thereby, or (iii) any amounts recoverable by Operator as an insurance payment.

10.4 Indemnifications.

10.4.1 Operator shall defend and indemnify and hold harmless Owner, each Project Company and their respective shareholders, members, directors, managers, officers and employees (each, an "Owner Indemnified Party") from and against any and all Claims asserted by or against such Owner Indemnified Party (i) in respect of any taxes imposed on or attributable to the income or property of the Operator, (ii) in respect of liens or encumbrances arising by, through or under Operator in violation of Section 15.2, (iii) in respect of the employer/employee-related responsibilities with respect to any Plant Personnel, including specifically payroll taxes, workers' compensation claims, any withholdings required by Law, and health and welfare benefits, including COBRA benefits, (iv) relating to the injury or death of any person, including employees of Operator, (v) resulting from loss or damage to property or (vi) relating to the failure of Operator to comply with the terms of this Agreement; provided, however, in the case of clauses (iv), (v) and (vi) only to the extent the Claim results from the willful misconduct, negligence or a breach by Operator of its obligations hereunder.

10.4.2 Owner shall defend and indemnify and hold harmless Operator and its shareholders, members, directors, managers, officers and employees (each, an "Operator Indemnified Party") from and against any and all Claims asserted by or against such Operator Indemnified Party, including Claims in favor of any Project Company's electric customers (or any Person claiming by, through or under any Project Company's electric customers), (i) in respect of any taxes imposed on or attributable to the income or property of the Owner or any Project Company, (ii) relating to the injury or death of any person, including employees of Owner or any Project Company, (iii) resulting from loss or damage to property, (iv) relating to the failure of Owner to comply with the terms of this Agreement or (v) arising out of or related to Operator's performance of the Work, except, in the case of clauses (ii), (iii), and (v), to the extent resulting from the willful misconduct, negligence or a breach by Operator of its obligations hereunder.

10.4.3 For the avoidance of doubt, no claim or liability for indemnification for environmental claims or any nature shall be made or incurred under this Section 10.4, and such claim or liability shall only be made or incurred pursuant to Section 9.2.

10.5 Indemnification Procedure. When required to indemnify an indemnified Party (the "Indemnified Party") in accordance with Section 9.2 or this Section 10, the Operator or the Owner, as applicable (in such capacity, the "Indemnifying Party") shall assume on behalf of such Indemnified Party and conduct with due diligence and in good faith the defense of any Claim against such Indemnified Party and shall bear the expense thereof, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Party shall cooperate with the Indemnifying Party in such defense. The Indemnifying Party shall have charge and direction of the defense and settlement of such Claim, provided, however, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party's right to control the defense or settlement thereof, the Indemnified Party may elect to participate through separate counsel in the defense of any such Claim, but the fees and expenses of such counsel by such Indemnified Party shall be at the expense of such Indemnified Party unless (a) the employment of counsel by such Indemnified Party has been authorized in writing by the Indemnifying Party, (b) the Indemnified Party shall have reasonably concluded that there exists a material conflict of interest between the Indemnifying Party and such Indemnified Party in the conduct of the defense of such Claim (in which case the Indemnifying Party shall not have the right to control the defense or settlement of such Claim on behalf of such Indemnified Party) or (c) the Indemnifying Party shall not have employed counsel reasonably acceptable to the Indemnified Party to assume the defense of such Claim within a reasonable time after notice of the commencement thereof. In each of such cases set forth in the second sentence of this paragraph, the reasonable fees and expenses of counsel

shall be at the expense of the Indemnifying Party except where the Indemnifying Party is ultimately deemed not to have been required to provide the indemnity sought by the Indemnified Party.

10.6 Exculpation. **OWNER ACKNOWLEDGES TO OPERATOR THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN SECTIONS 9.2, 10.3, 10.4 AND 10.5, THE PROVISIONS OF THIS SECTION 10 WHICH RELEASE OPERATOR FROM LIABILITY OR PROVIDE FOR THE INDEMNIFICATION OF OPERATOR BY OWNER ARE INTENDED BY OWNER, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TO RELEASE AND SAVE AND HOLD HARMLESS OPERATOR FROM ANY STRICT LIABILITY ARISING OUT OF OR RELATING TO THE FURNISHING OF SERVICES OR WORK UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY ACTION TAKEN OR OMITTED TO BE TAKEN BY OPERATOR OR ITS EMPLOYEES IN CONNECTION WITH THIS AGREEMENT.**

10.7 Availability of Insurance. Notwithstanding anything to the contrary in Section 9.2 or this Section 10, the obligation of either Party to indemnify any other party for any Claims will be reduced to the extent of any insurance proceeds received by the Indemnified Party with respect to the indemnified Claims.

10.8 Survival. Notwithstanding any other provision of this Agreement, the provisions of Section 9.2, this Section 10 and Section 11 are intended to and shall survive the termination of this Agreement so as to cover all Claims instituted within the period set forth in the applicable statute of limitations.

11. CONSEQUENTIAL DAMAGES; DISCLAIMER. Neither Party (nor its officers, member, directors or employees) shall be liable to the other Party for any punitive, incidental,

indirect, special or consequential loss or damage, including loss of revenues, income or profits, cost of capital, loss of goodwill or reputation connected with or resulting from performance or non-performance of any obligations under this Agreement. The Parties further agree that this waiver and disclaimer of liability shall apply at all times, whether in contract, equity, tort or otherwise, regardless of the fault, negligence (in whole or in part), strict liability, breach of contract or breach of warranty of the Party whose liabilities are so limited.

12. INSURANCE. Operator and Contractor shall each maintain the types and amounts of insurance coverages described in Exhibit C and shall otherwise comply with the terms and conditions set forth in Exhibit C.

13. FORCE MAJEURE. If Operator is delayed, limited or unable to perform its obligations under this Agreement due to a Force Majeure Event, Operator shall promptly notify Owner of the occurrence of such Force Majeure Event. Operator shall be relieved from its obligations under this Agreement, when and to the extent Operator's inability or failure to perform its obligations is caused by a Force Majeure Event, provided that the relief from performance is of no greater scope and of no longer duration than is required by such Force Majeure Event. Operator shall use all reasonable efforts to remedy its inability or failure to perform as a result of such Force Majeure Event and to mitigate the consequences of any such Force Majeure Event. Operator shall advise Owner of its effort to remedy its inability to perform caused by, and to mitigate the consequences of, any such Force Majeure Event, and shall promptly notify Owner Representative and Administrator when it will be able to resume performance of its obligations under this Agreement.

14. BOOKS AND RECORDS. Operator shall maintain on a current basis proper, accurate, detailed and complete books, records and accounts relating to the operation and maintenance of the Plant and the performance of the Work (collectively referred to as "Books and Records"), including all operating data and operating logs maintained pursuant to Section 3.3, which Books and Records shall remain the property of Owner. Operator shall ensure that such Books and Records are kept in a manner that enables them to be separated from Operator's own corporate books and records of account. Throughout the Term, Owner shall have the right, upon three (3) Business Days' prior written notice and during normal business hours, to inspect and review the Books and Records in the possession of Operator. Upon the expiration of the Term or the early termination of this Agreement, Operator shall transfer the possession of all Books and Records held by it to Owner.

15. TITLE; LIENS.

15.1 Project Company Intellectual Property. The Operator hereby acknowledges and agrees that each Project Company shall hold free and clear title to all specialized equipment, tools, spare parts, Materials, reports, records, books, plans, designs, papers or print outs, or other information used by Operator exclusively in connection with the performance of the Work under this Agreement with respect to the Project held by such Project Company, including without limitation those which the Operator has generated or received (including from Service Providers) in the course of performing its duties hereunder, but excluding any Operator owned software or other intellectual property developed by Operator outside of the Work provided under this Agreement, and personnel records of Operator (collectively, the "Project Company Intellectual

Property"). Owner hereby agrees to cause each Project Company to grant to Operator a license to use the Project Company Intellectual Property in the performance of the Work under this Agreement. Such license shall automatically expire immediately upon the termination or expiration of this Agreement.

15.2 Title to Project Company Intellectual Property and Materials. Title to any Materials and the license to use any Project Company Intellectual Property shall pass or be granted, as the case may be, directly from the provider or supplier thereof to Owner when purchased or acquired and shall be free and clear of all liens and encumbrances created or imposed by, through or under Operator. Operator shall keep and maintain the Plant free and clear of all liens and encumbrances resulting by, through or under Operator, other than liens and encumbrances which are being diligently contested in good faith and by appropriate proceedings; provided that Operator shall pay or discharge of record any such contested lien or encumbrance within such period of time so as to avoid a default by Owner or any Project Company under any applicable financing agreement (including the Financing Agreement and related documents) or Project Document, including by recording a bond to the extent permitted by and in accordance with applicable Law. Upon the failure of Operator to promptly discharge or cause to be released any such lien or encumbrance subject to this Section 15.2, Owner (or the applicable Project Company) may, but shall not be obligated to, pay, discharge or obtain a surety bond for such lien or encumbrance and, upon such payment, discharge or posting of surety bond therefore, shall be entitled to immediately recover from Operator the amount thereof together with all expenses incurred by Owner (or such Project Company) in connection with such payment, discharge or posting, or set off all such amounts against any Compensation owed by Owner to Operator. Notwithstanding the foregoing, Operator shall not be responsible for preventing liens and encumbrances that result from Owner's failure to timely pay amounts owing to Operator under this Agreement.

16. EVENTS OF DEFAULT.

16.1 Operator Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Operator hereunder (an "Operator Event of Default"):

16.1.1 Operator fails to pay to Owner any payment required under this Agreement that is not in dispute, and such failure continues for thirty (30) days after receipt of written notice of such failure;

16.1.2 Except as otherwise expressly addressed in this Section 16.1, Operator is in material breach of its obligations under this Agreement and such material breach continues uncured for thirty (30) days after receipt of written notice from Owner;

16.1.3 Operator voluntarily commences or acquiesces to bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors; or

16.1.4 Insolvency, receivership, reorganization, bankruptcy, or similar proceedings shall have been commenced against Operator and such proceedings remain undismissed or unstayed for a period of sixty (60) days.

16.2 Owner Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Owner hereunder (an "Owner Event of Default"):

16.2.1 Owner fails to pay to Operator any payment required under this Agreement that is not in dispute, and such failure continues for thirty (30) days after receipt of written notice of such failure;

16.2.2 Except as otherwise expressly addressed in this Section 16.2, Owner is in material breach of its obligations under this Agreement and such material breach continues uncured for thirty (30) days after receipt of written notice from Operator;

16.2.3 Owner voluntarily commences or acquiesces to bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors; or

16.2.4 Insolvency, receivership, reorganization, bankruptcy, or a similar proceeding shall have been commenced against Owner and such proceeding remains undismissed or unstayed for a period of sixty (60) days.

16.3 Financing Party Cure Rights. Operator's right to exercise the option to terminate this Agreement pursuant to Section 2.2 is subject to Operator first delivering to the Financing Parties, simultaneously with delivery thereof to Owner, written notice of Owner's failure to cure the default and Operator's intent to terminate as a result thereof. Each Financing Party shall have the option to cure such Owner Event of Default within thirty (30) days after the cure period otherwise provided in Section 16.2 or such additional period as may reasonably be required or to cause the Financing Parties' designee to assume this Agreement but in no event to exceed ninety (90) days; provided, however, that the Owner Event of Default described in Section 16.2.1 shall only be curable within thirty (30) days from the receipt by the Financing Parties of such notice to cure such payment default. In any such case, Operator's right to terminate this Agreement shall be of no further force and effect upon the cure by the Financing Parties of such default. If the Financing Parties desire to cause their designee to assume all rights and obligations of this Agreement, they shall provide written notice to that effect within the cure period permitted by this Section 16.3.

16.4 Event of Default Remedies. Without limiting the provisions of Sections 9.2, 10 and 11, the sole and exclusive remedy of each Party upon the occurrence and continuation of an Event of Default by the other Party is the termination of this Agreement and payment of the amounts required to be paid under and in accordance with Section 2.2 and, if applicable, such Sections 9.2, 10 and 11.

17. ASSIGNMENT.

17.1 Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of Owner and Operator. Without the prior written notice to or consent of Operator, this Agreement may be assigned by Owner to Financing Parties (in their capacities as Financing Parties) and such Financing Parties may further assign such rights or obligations. The rights and obligations of Owner under this Agreement with respect to any Project may be assigned without the consent of Operator to the Project Company for such Project, and, upon the request of Owner, Operator shall enter into a separate agreement with respect to the Work related to such Project with such Project Company on the same terms and conditions as set forth in this Agreement, and upon the entry into and effectiveness of such separate agreement, the rights and obligations of Owner and Operator with respect to such Project under this Agreement shall terminate as provided in such separate agreement. Except as expressly provided in this Section 17.1, neither Party may assign or transfer this Agreement, in whole or in part, except upon the prior written consent of the other Party hereto, which consent shall not be unreasonably withheld.

17.2 Financing Cooperation; Subordination Agreement. Operator shall execute and deliver such consent forms, acknowledgments and other documents and deliver such legal opinions of counsel to Operator as are reasonably requested by Owner or reasonably required by a Financing Party to effect and/or to evidence a collateral assignment by Owner of this Agreement to such Financing Party. Upon the request of the Financing Parties under the Financing Agreement, Operator agrees to deliver a subordination agreement in favor of such Financing Parties pursuant to which Operator agrees that any fee or payment (other than reimbursements for documented expenses to the extent contemplated hereunder) made to Operator by Owner in excess of such fee or payment set forth in the "Base Case Model" or the "Schedule and Budget" set forth in the Financing Agreement, shall be subordinated to the obligations of Owner to the Financing Parties under such Financing Agreement, which subordination agreement shall be in form and substance substantially similar to the Subordination Agreement (as defined in the Financing Agreement).

18. MISCELLANEOUS.

18.1 Notices. All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing and shall be considered properly served, given or made if delivered either in person, by facsimile or other electronic means (including email), by overnight courier or by U.S. mail, first class postage prepaid, directed to the Parties or their permitted assignees at the addresses set forth in Exhibit G. Notice by facsimile or other electronic means

(including email), or by hand delivery, shall be effective at the close of business on the day actually received, if received during business hours on a Business Day. Notice by overnight U.S. mail or courier shall be effective on the next Business Day after it was sent, and notice by regular U.S. mail shall be effective when received. Any Party may, at any time, by written notice to the other Party, designate different Persons or addresses for the receipt of notices hereunder.

18.2 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under applicable Law. In the event that any of the terms, covenants or conditions hereof or the application thereof to either Party or any circumstance shall be held by a court of competent jurisdiction to be invalid in any

jurisdiction, the remaining terms, covenants and conditions hereof and the application thereof to either Party or any other circumstance, or in any other jurisdiction, shall not be affected thereby.

18.3 Confidentiality. Each Party agrees that it shall not disclose (and shall cause its directors, officers, attorneys, employees and agents not to disclose), without the prior consent of the other Party, any information with respect to such other Party that is furnished pursuant to this Agreement or learned during the course of performance of the Work, including any information that would constitute confidential information under the terms of any Project Document ("Confidential Information"), provided that any Party may disclose, or allow the disclosure of, any Confidential Information (a) to its directors, officers, attorneys, employees, agents, auditors, professional advisors, consultants and lenders as necessary to perform a Party's obligations under this Agreement, (b) as has become generally available to the public other than as a result of breach of this Section 18.3, (c) as may be required or appropriate in any report, statement or testimony submitted to any Governmental Authority having or claiming to have jurisdiction over such disclosing Party; provided, however, that to the extent such Confidential Information may be excluded from any such report, statement or testimony, or may be submitted subject to administrative confidentiality protection, in each case without prejudicing in any manner the position of the potentially disclosing Party, such Party shall exclude the information or submit it subject to confidentiality protection, (d) which was otherwise known by the receiving Party prior to disclosure or is disclosed to the receiving Party by a third party not in violation of any duty of confidentiality, other than, in each case, from a source other than an Affiliate of Owner, (e) as may be required or appropriate in response to any summons or subpoena from a Governmental Authority or in connection with any litigation, or (f) to comply with any Permit or applicable Law. Confidential Information shall not be deemed to include information acquired by or disclosed to Operator's employees who may be transferred to other facilities operated by Operator, provided such information is limited to general knowledge useful to allow such employees to better perform their work at such other facilities and does not include commercially sensitive or Plant-specific operating data. The Parties' obligations under this Section 18.3 shall expire two (2) years after the expiration or termination of this Agreement. Upon expiration or termination of this Agreement, all written or other tangible Confidential Information held by a Party shall, if requested by the Party who owns such Confidential Information, be returned to such owning Party. Notwithstanding anything to the contrary set forth in this Agreement, Operator agrees to abide by the terms and conditions of the confidentiality undertakings of Owner or any Project Company set forth in any of the Project Documents.

18.4 Public Release of Information. Neither Operator nor Owner shall issue a press release or make a statement intended for release to the general public with respect to the transactions contemplated by this Agreement, including the terms and conditions hereof, without the consent of the other Party, unless the Party desiring to make a statement or press release is advised by legal counsel that such statement or press release is mandated by a Permit or Law (in which case the Party making the statement or press release shall notify the other Party in advance of such statement or press release).

18.5 Headings. Captions and paragraph headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

18.6 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

18.7 Governing Law; Dispute Resolution.

18.7.1 This Agreement, and the rights and obligations of the Parties and any dispute arising under or relating thereto (whether in contract, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the conflict of law rules thereof (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law) or any other statute or doctrine that might call for the application of the laws of any other jurisdiction.

18.7.2 The Parties shall attempt, in good faith, to resolve or cure all disputes (including disputes with respect to claimed Events of Default) by mutual agreement in accordance with this Section 18.7 before initiating any legal action or attempting to enforce any rights or remedies hereunder (including termination), at law or in equity (regardless of whether this Section 18.7 is referenced in the provision of this Agreement which is the basis for any such dispute). If there is a dispute as to whether an Event of Default has occurred or if any other dispute under this Agreement has arisen, either Party may give notice thereof to the other Party which notice shall describe in reasonable detail the basis and specifics of the alleged Event of Default or dispute. Within five (5) days after delivery of such notice, the designated representatives of both Parties shall meet to discuss and attempt to resolve or cure such dispute or claimed Event of Default. If such representatives are unable to resolve the dispute or claimed Event of Default within fifteen (15) days after delivery of such notice, the matter shall be referred to a senior officer of the Operator and a senior officer of the Owner. If such Senior Officers are unable to agree on an appropriate cure or resolution within ten (10) days after the matter has been referred to them, either Party may inform in writing the other Party thereof and the Parties may have recourse to mediation, arbitration, or other alternative dispute resolution device of their mutual selection. If the Parties cannot agree on an alternative dispute resolution device, each Party may pursue its legal remedies.

18.7.3 Pending final resolution of any dispute, the Parties shall continue to fulfill their respective obligations under this Agreement; provided, however, that the Owner may withhold any amount which is the subject of dispute from any payment otherwise due hereunder during the pendency of any dispute resolution proceeding. If the Operator prevails in such dispute, the Owner shall immediately pay to the Operator the unpaid amount in dispute with interest thereon, which interest shall accrue, at the rate specified in Section 8.5, for each day from and including the date on which such amount was originally due to, but excluding, the date of actual payment thereof.

18.8 Entire Agreement. This Agreement (including the Exhibits hereto) contains the entire understanding between the Parties concerning the subject matter hereof and, except as expressly provided herein, supersedes all prior understandings and agreements, whether oral or

written, between the Parties with respect to the subject matter hereof. This Agreement may be amended, supplemented or modified only by an agreement in writing signed by each Party.

18.9 No Partnership Created. Operator is an independent contractor with respect to the performance of its obligations hereunder. Neither the Operator nor any of its Affiliates, employees, subcontractors, vendors or suppliers, or any of their respective employees, shall be deemed to be agents, representatives, employees or servants of Owner or a Project Company as a result of this Agreement or of performing any duties hereunder, and no such Person as a result of entering into this Agreement or of performing any duties hereunder shall have the right, authority, obligation or duty to assume, create or incur any liability or obligation, express or implied, against, in the name or, or on behalf of Owner or a Project Company; provided that Operator shall have the right to act for and on behalf of Owner or a Project Company to the extent expressly contemplated by and in accordance with this Agreement. In no case shall this Agreement be construed to create any relationship whatsoever including employer/employee, partners or joint venture parties, between Owner or any Project Company, on the one hand, and Operator or any of its Affiliates, employees, subcontractors, vendors or suppliers, or any of their respective employees, on the other hand, or between Owner and any Project Company.

18.10 No Third Party Rights. Except with respect to the Project Companies and indemnities set forth in Sections 9.2 and 10, the Parties do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation or understanding established under this Agreement.

18.11 Representations and Warranties. Each Party hereby represents and warrants to the other Party as of the date of this Agreement that:

18.11.1 Such Party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;

18.11.2 The execution, delivery and performance by such Party of this Agreement have been duly authorized by all necessary limited liability company action, and do not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on such Party;

18.11.3 All government approvals necessary for the execution, delivery and performance by such Party of its obligations under this Agreement have been obtained and are in full force and effect, except for those governmental approvals to be obtained by such Party in the course of performance of its obligations under this Agreement; and

18.11.4 This Agreement is the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms except as enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights in general and except to the extent that the availability of

equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

18.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signatures begin on next page]

IN WITNESS WHEREOF, the Parties hereto have caused this Operation and Maintenance Agreement to be effective as of the date first above written.

OPERATOR:

NRG ENERGY SERVICES LLC

By: /s/ Don Poe

Name: Don Poe

Tltle**:** Vice President

OWNER:

AVENAL SOLAR HOLDINGS LLC

By: EURUS AVENAL AFFILIATES LLC,
its Managing Member

By: /s/ Mark E. Anderson

Name: Mark E. Anderson

Title: President

Exhibit 10.12

EXECUTION VERSION

ASSET MANAGEMENT AGREEMENT

By and between

NRG SOLAR AVRA VALLEY LLC,
as the Owner,

and

NRG SOLAR ASSET MANAGEMENT LLC,
as Administrator

August 30, 2012

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ASSET MANAGEMENT AGREEMENT

THIS ASSET MANAGEMENT AGREEMENT (this "Agreement") is made as of this 30th day of August, 2012 (the "Effective Date"), by and between **NRG SOLAR AVRA VALLEY LLC**, a Delaware limited liability company (as further defined below, the "Owner"), and **NRG SOLAR ASSET MANAGEMENT LLC**, a Delaware limited liability company (as further defined below, the "Administrator").

WITNESSETH:

The Owner shall enter into this Agreement with the Administrator to provide for, among other things, certain asset management and administrative services for the Project, on behalf of the Owner.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS AND USAGE

1.1 Definitions. Unless the express terms of this Agreement shall otherwise provide, capitalized terms used in the recitals hereto shall have the meanings given to them in the recitals and capitalized terms used in this Agreement shall have the following meanings:

"Adjustment Date" is defined in Section 4.1(1).

"Administrative Services" means the responsibilities of the Administrator under Article II of this Agreement.

"Administrator" means NRG Solar Asset Management LLC, a Delaware limited liability company in its capacity of providing Administrative Services under this Agreement.

"Administrator Indemnified Party" is defined in Section 9.4(2).

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly: (a) owns or controls such Person; (b) is owned or controlled by such Person; or (c) is under common ownership or control with such Person. For purposes of this definition, "control" shall mean, when used with respect to any specified Person, possession of the power to direct the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" is defined in the preamble.

"Approved Budget" is defined in Section 2.2(10).

"Claims" means, collectively, all claims, demands, actions, suits or proceedings (judicial, governmental or otherwise) asserted, threatened or filed against a Person, and any fines, penalties, losses, liabilities, damages and expenses incurred by such Person as a result thereof, including reasonable attorneys' fees and costs of investigation, litigation, settlement and judgment, and any contractual obligations of such Person to provide indemnity for any such claims, demands, actions, suits or proceedings, fines, penalties, losses, liabilities, damages and expenses to any other Person.

"Commencement Date" means the Effective Date.

"Confidential Information" is defined in Section 11.9.

"Construction Management Agreement" means the Construction Management Agreement between Owner and Construction Manager, dated as of the date hereof.

"Construction Manager" means NRG Construction LLC, a Delaware limited liability company.

"Core Duties" shall consist of the following services to be provided hereunder with respect to the Project: (i) supervision, monitoring and administration of the Project Documents, (ii) supervising and monitoring compliance with the Financing Documents, (iii) bookkeeping, record keeping and preparation of financial statements as set forth in Section 2.2, (iv) overall coordination of the administrative activities of the Owner, (v) reporting to and communication with the Owner, (vi) administration of environmental reviews and audits in the ordinary course of business and (vii) supervision and administration of operating performance reviews.

"Effective Date" is defined in the preamble.

"Emergency Expenditure" means an expense which, in the reasonable judgment of the Administrator, is necessary to avoid or to mitigate any material risk of physical injury to any person, or a material loss or damage to the Owner or the Project.

"EPC Agreement" means the Engineering, Procurement and Construction Contract, dated as of December 19, 2011, by and between the Owner and First Solar Electric, LLC, as amended by that certain First Amendment to Engineering, Procurement and Construction Contract, dated as of May 24, 2012, between Owner and First Solar Electric, LLC, which provides for the design, engineering, procurement, site preparation, construction, testing and start-up of the Project.

"EPC Contractor" means First Solar Electric, LLC, as the "Contractor" under the EPC Agreement, and its permitted assigns.

"Events of Default" is defined in Section 8.1.

"FERC" means the Federal Energy Regulatory Commission and any successor thereto.

"Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, interest rate exchanges, or swap

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agreements, and any other documents relating to the development, bridge construction or the permanent financing for the Project, even if more than one financing arrangement exists at any time and even if the financing arrangements are of different tiers or tranches, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications or supplements to the foregoing that may be entered into from time to time.

"Fiscal Year" means in the case of the initial Fiscal Year the period beginning on the Effective Date and ending on December 31, 2012, and in the case of each subsequent Fiscal Year, the calendar year ending on each successive December 31st.

"Foreign Asset Control Regulations" is defined in Section 10.1(1).

"GAAP" means generally accepted accounting principles in the United States in effect from time to time, applied on a consistent basis.

"Indemnified Party" is defined in Section 9.4(3).

"Indemnifying Party" is defined in Section 9.4(3).

"Initial Term" is defined in Section 7.1.

"Laws" means all applicable federal, state, local, municipal, foreign or other laws, constitutions, statutes, rules, regulations, ordinances, Orders, treaties, codes and other legal requirements issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority, including the common law and Environmental Laws.

"LLC Agreement" means the Amended and Restated Limited Liability Company Agreement of NRG Solar Avra Valley LLC by NRG Solar AV Holdco, LLC, dated as of June 1, 2012, as amended from time to time.

"Management Fee" is defined in Section 4.l(1).

"MW" means megawatt AC.

"OFAC" is defined in Section 10.1(1)

"Order" means any legally binding order, injunction, judgment, decree, ruling, writ or assessment of a Governmental Authority or decision of an authorized arbitrator.

"O&M Agreement" means the Operation and Maintenance Agreement, dated as of May 24, 2012, between the Owner and First Solar Electric, LLC, which provides for the operation, maintenance and repair of the Project by First Solar Electric, LLC by and for the benefit of the Owner.

"Operator" means First Solar Electric, LLC a Delaware limited liability company.

"Owner" means NRG Solar Avra Valley LLC, a Delaware limited liability company.

"Owner Indemnified Party" is defined in Section 9.4(1).

"Patriot Act" is defined in Section 10.1(1).

"Person" means any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust, unincorporated organization or governmental authority.

"Power Purchase Agreement" means that certain Solar Power Purchase Agreement by and between NRG Solar Green Valley LLC and Tucson Electric Power Company, dated as of April 29, 2010 (as assigned to Owner pursuant to that certain Assignment and Assumption of Solar Power Purchase Agreement, dated June 25, 2011, between NRG Solar Green Valley LLC (as assigned to NRG Solar Green Valley LLC pursuant to that certain Assignment and Assumption of Solar Project Power Purchase Agreement, dated as of April 6, 2011, between NRG Solar Green Valley LLC and NRG Solar LLC) and Owner), as amended by that certain First Amendment to Solar Project Power Purchase Agreement, dated as of July 2011, as further amended by that certain Second Amendment to Solar Project Power Purchase Agreement, dated as of August 23, 2011, as further amended by that certain Third Amendment to Solar Project Power Purchase Agreement, dated as of September 23, 2011, and as further amended by that certain Fourth Amendment to Solar Project Power Purchase Agreement, dated as of January 19, 2012.

"Project Documents" means those agreements listed on Exhibit B attached hereto as amended, modified or supplemented from time to time.

"Project" means the approximately 26.46 MW solar electric generating facility, and all accessories and ancillary facilities associated therewith, owned by the Owner, to be located in Pima County, Arizona.

"Prudent Industry Practices" means these practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly accepted in the utility-scale photovoltaic industry in the United States as good, safe and prudent practices in connection with the design, construction, operation, maintenance, repair and use of the Project. "Prudent Industry Practice" as defined herein does not necessarily mean one particular practice, method, equipment specification or standard in all cases, but is, instead, intended to encompass a broad range of acceptance practices, methods, equipment specifications and standards.

"Reference Rate" means the rate as published, from time to time, in The Wall Street Journal as the prime lending rate or "prime rate" plus two percent (2%), but not in excess of the maximum lawful rate of interest permitted by any applicable laws. Each change in the Reference Rate shall become effective on the date of such change in the prime rate.

"Renewal Term" is defined in Section 7.2.

"Service Providers" means the EPC Contractor, Operator, Warranty Provider and each independent third party hired by the Owner, or by the Administrator on behalf of the Owner, to perform services for the Owner or with respect to the Project, including other providers of

maintenance, repair and warranty services, certified public accountants, tax return preparers, law firms, engineering firms, and other professional advisors and consultants.

"Subsidiaries" of the Owner means, collectively, each entity (i) of which the Owner (either alone or through or together with one or more other Subsidiaries) owns, directly or indirectly, more than 50% of the capital stock or other equity securities of such entity, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of, or otherwise control the business and affairs of, such entity, or (ii) the operations of which are consolidated with the Owner for financial reporting purposes.

"Term" means the Initial Term and any Renewal Term.

"Warranty Provider" means First Solar, Inc., a Delaware corporation.

ARTICLE II
ADMINISTRATOR'S RESPONSIBILITIES

2.1 Engagement. So long as this Agreement remains in effect, the Administrator shall be responsible for performing the Administrative Services in accordance with the terms and conditions of this Agreement.

2.2 Responsibilities On and After the Effective Date. Commencing on the Effective Date and continuing through the remainder of the Term, the Administrator shall provide the following Administrative Services on behalf of the Owner and its Subsidiaries:

1. Maintain bank accounts of Owner;

2. Maintain complete and accurate financial books and records in accordance with GAAP for Owner;

3. Perform all of the Owner's reporting, notice and other administrative responsibilities required under and/or in connection with the Project Documents, the Financing Documents, and all required governmental approvals and permits;

4. Administer the Financing Documents on behalf of the Project;

5. Maintain complete and accurate financial books and records of the operations of the Project in accordance with the Financing Documents, prudent business practices and GAAP and make such books and records available for inspection and copying during normal business hours on its premises by the Owner or any other Person authorized by the Owner to inspect or copy such books and records, subject to appropriate confidentiality safeguards;

6. Provide to the Owner copies of (i) monthly financial statements, (ii) unaudited quaraterly financial statements within sixty (60) days after the end of each quarter of each Fiscal Year, and (iii) audited annual financial statements within (120) days after the end of each Fiscal Year, for the Owner and its Subsidiaries, but only if and to the extent such financial statements are prepared as required under the Financing Documents or are prepared and provided to Owner;

7. Administer the Project Documents; coordinate and liaise with each counterparty under the Project Documents and arrange for the performance of the Owner's obligations thereunder; and administer and monitor the Owner's and each counterparty's compliance with the Project Documents, which shall include (i) monitoring each counterparty's performance of its services for the Project, (ii) enforcing compliance (or correcting failures to comply) with the Project Documents and (iii) informing Owner of non-compliance of which it becomes aware;

8. Prepare and file or cause to be prepared and filed by certified public accountants acting on behalf of the Owner and the Project, on a timely basis, all federal, state and local tax returns and related information and filings required to be filed by the Owner and the Project; pay out of the Owner's funds in accordance with the Financing Documents all taxes and other governmental charges shown to be due thereon before they become delinquent and, subject to the terms of the LLC Agreement, make all tax elections believed by the Administrator to be necessary or desirable for the Owner;

9. Supervise and monitor the Service Providers with respect to their performance of services for the Project, and maintain detailed records and otherwise account for all expenditures made on behalf of the Project;

10. On or prior to November 1 of each Fiscal Year, prepare, or cause to be prepared, and submit to the Owner an operating budget for the Project for the immediately following Fiscal Year and an operating budget forecast for the five (5) years thereafter, based on the form attached as Exhibit A hereto (each, an "Approved Budget" and collectively, the "Approved Budget"); it being understood that the Annual Operating Budget attached as Exhibit A shall comprise the Approved Budget for the initial Fiscal Year;

11. Notify the Owner of any material variance from the applicable Approved Budget promptly after learning of such variance;

12. (A) Assist Owner with procuring and maintaining all commercially available insurance required to be maintained by Owner and the Project in accordance with the Financing Documents and the Project Documents and (B) on an annual basis, assist the Owner with obtaining certificates from the insurance broker verifying the insurance maintained with respect to the Owner and the Project and setting forth the details of all active insurance policies in connection therewith;

13. Administrator, at its sole cost and expense, agrees to provide the Owner with acceptable evidence (in form and substance reasonably satisfactory to the Owner) of the existence of the following insurance types, with the following policy limits: (a) commercial general liability insurance written on an occurrence based form, covering bodily injury and property damage, premises and operations, products and completed operations, contractual liability, independent contractors, cross liabilities/separation of insureds, and personal injury liability, with limits of not less than $1,000,000 per occurrence and a $2,000,000 annual aggregate; (b) if applicable, automobile liability insurance, including coverage for owned, non-owned and hired automobiles for both bodily injury and property damage in accordance with applicable state legal requirements, with combined single limits of no less than $1,000,000 with

respect to bodily injury, property damage or death; (c) all forms and types of insurance required by applicable law with respect to employees, including statutory workers compensation and disability benefits insurance (where applicable) and employers liability insurance, with limits of $1,000,000 per accident/per employee; and (d) excess liability insurance or equivalent form with a minimum of $20,000,000 per occurrence limit for any occurrence following the terms of the primary insurance set forth in clauses (a), (b) and (c) (with respect to employer's liability only) above. Administrator's commercial general liability, insurance shall be primary to, and shall not seek contribution from, any similar insurance being maintained by Owner and/or its affiliates;

14. Ensure that each policy of insurance required by Section 2.2(13) shall: (a) be procured and maintained with responsible insurers rated "A- X" or better by A.M. Best (provided that, if such coverage is not available from an insurer rated "A- X" or better by A.M. Best on commercially reasonable terms, such insurance shall be procured and maintained with responsible and reputable insurers rated less than "A- X" and as reasonably acceptable to the Owner) and that are authorized to do business in Arizona; (b) if commercially available, provide that the coverage provided shall not lapse or be canceled or not renewed without at least thirty (30) days' prior written notice (or ten (10) days' prior notice if such cancellation is due to failure to pay premiums); (c) provide that none of the Owner, its Subsidiaries or any of their assignees, shall have any liability for the payment of any premiums or commissions for the policies noted in Section 2.2(13); (d) upon Plant Substantial Completion (as defined in the EPC Agreement), include an endorsement to the commercial general liability, automobile liability and excess liability policies noted in Section 2.2(13) naming the Owner and its Subsidiaries, and their respective successors, assigns, partners, directors, officers, members, managers, and employees as additional insureds (blanket additional insured endorsements and policy language designating same are acceptable); and (e) with respect to general liability insurance, include a severability of interest clause and cross-liability clause;

15. Ensure that certificates of insurance for policies required by Section 2.2(13) shall be provided to the Owner on or prior to the Effective Date and thereafter annually, at each renewal, or upon request. All insurance policies specified in Section 2.2(13) shall include a waiver of any right of subrogation of the insurers thereunder (where permitted by law in the case of the insurance specified in Section 2.2(13)(a), (b) and (c)) in favor of Owner and its affiliates;

16. Engage Service Providers as reasonably believed by the Administrator to be necessary or desirable, or as instructed by the Owner, to represent or perform services for the Owner, provided that the Administrator shall be entitled to request and rely upon instructions from the Owner with respect to the engagement of any Service Provider and provided further that, subject to the next following sentence, it is understood that to the extent the Administrator engages a Service Provider (other than the Operator or any Service Providers procured by the Operator pursuant to the O&M Agreement) to perform a Core Duty, the Administrator shall bear the cost and expense associated with engaging such Service Provider and shall remain responsible for the proper performance of such Core Duty by such Service Provider. Notwithstanding the foregoing provisions of this Section 2.2(16), any costs of Service Providers (whether providing a Core Duty or other services) anticipated as being provided by third parties other than Administrator under the Approved Budget, shall be excluded from the cost and expense to be borne by the Administrator;

17. (A) Procure and maintain all required governmental approvals and permits and prepare and submit all filings of any nature which are required to be made thereunder, (B) prepare and submit all filings of any nature which are required to be made by the Owner under any laws, regulations, or ordinances applicable to the Owner or the Project, (C) upon becoming aware of any adverse change or possible adverse change to the Owner's status as an "exempt wholesale generator" under the Public Utility Holding Company Act of 2005 and FERC's current regulations and their successors, take all reasonable steps, in consultation with the Owner necessary to maintain or re-obtain, as applicable, such status;

18. Not take any affirmative action as would cause the Owner in any material respect to violate any federal, state or local laws and regulations, including environmental laws and regulations, and to the extent that the Administrator has knowledge of any such existing or prospective violation take, or direct Service Providers to take, commercially reasonable actions, at the sole expense (but subject to Section 4.1(3)) of the Owner (unless such existing or prospective violation arises from breach of the Administrator's duties hereunder), to redress or mitigate any such violation;

19. (A) Give prompt written notice, but in no event more than 72 hours, to the Owner of any litigation, material disputes with governmental authorities, material defaults or material *force majeure* events under the Project Documents and material losses suffered by the Project after learning of the same, and (B) furnish to the Owner, or direct a Service Provider to so furnish, copies of all material documents furnished to the Owner or the Administrator by any governmental authority or furnished to any governmental authority by the Owner;

20. Subject to the Financing Documents, make distributions out of available cash as provided under the relevant provisions of the LLC Agreement; and

21. Perform such other administrative tasks as the Owner may reasonably request from time to time in connection with or related to the Project, subject to appropriate exculpatory provisions as the Administrator may reasonably request, consistent with the terms of this Agreement.

ARTICLE III
STANDARD OF PERFORMANCE

Throughout the term of this Agreement, the Administrator shall perform the services and all other obligations hereunder in accordance with the Project Documents, the Financing Documents, Prudent Industry Practices, and all Laws, including all applicable governmental approvals and permits, regulations, and orders. For the avoidance of doubt, if there is any conflict between the scope of services under this Agreement and the Construction Management Agreement, this Agreement shall control.

The Administrator shall have no liability under this Agreement (i) for failure to take actions which require Owner's consent and as to which it has requested the consent of the Owner for the Administrator to perform if such consent is not timely given (including actions requiring a variance from the Approved Budget for which a request for variance by the Administrator has been made and not timely approved), (ii) for actions taken at the direction of the Owner,

provided, that the liability is caused by such direction and the Administrator has notified the Owner reasonably in advance of taking such action that in the judgment of the Administrator the action to be taken at the direction of the Owner will breach the Financing Documents or violate applicable Laws, Prudent Industry Practices for the Project or other technical specifications or is otherwise incompatible with the Project and the Owner has directed the Administrator to

take such action notwithstanding such notice or (iii) for actions requiring the expenditure of funds of the Owner if such funds are not available and the Owner after notice from the Administrator, fails to timely provide such funds.

ARTICLE IV
COMPENSATION AND PAYMENT

4.1 Management Fees and Expenses. Following the Effective Date, the Owner shall pay to the Administrator the following fees for the Administrative Services and pay or reimburse the following expenses:

1. Services. For each Fiscal Year (prorated to the extent that such year consists of more or less than twelve (12) months) the Administrator shall be paid an amount equal to Seventy Thousand Dollars ($70,000) per annum (the "Management Fee"). The Management Fee shall be payable in twelve (12) equal monthly increments, in arrears; provided that with respect to any partial month during the Term, such payment of the Management Fee shall be made pro rata based on the number of days in such month. On January 1st of each Fiscal Year beginning with January 1, 2013 (each, an "Adjustment Date"), the Management Fee shall be increased by an amount to equal the product of (x) the amount of the Management Fee prior to such Adjustment Date and (y) 2.5%. For the avoidance of doubt, the Management Fee constitutes payment for the Administrative Services and does not include amounts associated with the direct costs for the Project (including, without limitation, permit expenses, regulatory fees, auditing fees and direct compliance costs), all of which amounts shall be borne by Owner.

2. Expenses. It is understood by the Owner that the Management Fee is inclusive of the Administrative Services. No additional fees for the performance of the Administrative Services shall be charged to the Owner in addition to the Management Fee. If the Administrator, at the request of the Owner, performs services not contemplated by the Administrative Services, the fee for such additional services shall be such amounts payable at such times as the Administrator and the Owner shall agree. It is understood that all out-of-pocket expenses incurred in the administration and operation of the Project are solely for the account of the Owner and may be disbursed by the Administrator from the funds of the Owner, subject to the consent of the Owner as outlined in Section 4.1(3) and subject to the requirements of the Financing Agreement. The Administrator shall be reimbursed for all reasonable other expenses which the Administrator incurs in connection with performance of its obligations under this Agreement, (not including internal general and administrative overhead expenses, or the salaries of or benefits provided to any of the Administrator's employees), subject to the consent of the Owner as outlined in Section 4.1(3).

3. Owner Consent for Expenses. The Administrator shall have the authority to incur expenses on behalf of the Project, as the agent of the Owner, in the performance of the Administrative Services from independent third parties; provided that the amount of such

expense is not expected to be in excess of Five Thousand Dollars ($5,000) and that the amount of such expense will not exceed the budgeted amount for such expense set forth in the Approved Budget by more than Two Thousand Dollars ($2,000). If the amount of such expense would exceed either of those thresholds, the Administrator shall not incur such expense without the Owner's prior written consent, subject to the Financing Documents. The Owner shall directly pay the Services Provider or other counterparty to which any such expense shall be payable, and the Administrator shall have no liability or responsibility to pay any such Services Provider or counterparty out of its own funds. Notwithstanding the foregoing, the consent of the Owner pursuant to this Section 4.1(3) shall not be required (i) as to any Emergency Expenditure, or (ii) for reimbursement of the Administrator for any expense of a Service Provider which, for the convenience of the Owner, performs services by contract with the Administrator rather than directly with the Owner, provided that the Owner has consented to such arrangement.

4.2 Billing and Payment. At the end of each month during the Term, the Administrator shall invoice the Owner for any expenses due and payable by the Owner (and including materials identifying and substantiating, in reasonable detail, the nature of such expenses and the basis for reimbursement thereof), and for the portion of the Management Fee due with respect to such month. Within thirty (30) days following its receipt of such invoice, the Owner shall:

1. Approve and make such payment to the Administrator of the expenses plus the portion of the Management Fee specified in such invoice, less any portion of such expenses that the Owner disputes in good faith; and

2. With respect to any disputed portion of such invoice, provide the Administrator with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with Article VI hereof.

4.3 Default Interest. Any amount owed hereunder which remains unpaid more than ten (10) days after the date such amount is due and payable under this Agreement shall accrue interest at the Reference Rate beginning on the first (1st) day after such amount became due and payable.

4.4 Records. The Administrator shall retain copies of invoices submitted by it under Section 4.2, and of any third party invoices or similar documentation relating to expenses incurred by the Administrator in the performance of Administrative Services for a minimum period of three (3) years or such longer period to the extent required by law.

ARTICLE V
DELAYS

If the Administrator becomes aware of any event or circumstance which could prevent its performance of any of its obligations under this Agreement, the Administrator shall give prompt notice thereof to the Owner. The Administrator shall attempt in good faith to minimize any such delay, provided, however, that the Administrator shall not be obligated to undertake or perform any actions which are prohibited by any Project Document, any Financing Document or any

applicable law or that would expose the Administrator to any liability or to any expense which is not reasonably expected to be promptly reimbursed or indemnified hereunder.

ARTICLE VI
DISPUTE RESOLUTION

6.1 Procedure. The parties shall attempt, in good faith, to resolve or cure all disputes (including disputes with respect to claimed Events of Default) by mutual agreement in accordance with this Article VI before initiating any legal action or attempting to enforce any rights or remedies hereunder (including

termination), at law or in equity (regardless of whether this Article VI is referenced in the provision of this Agreement which is the basis for any such dispute). If there is a dispute as to whether an Event of Default has occurred or if any other dispute under this Agreement has arisen, either party may give notice thereof to the other party which notice shall describe in reasonable detail the basis and specifics of the alleged Event of Default or dispute. Within five (5) days after delivery of such notice, the designated representatives of both parties shall meet to discuss and attempt to resolve or cure such dispute or claimed Event of Default. If such representatives are unable to resolve the dispute or claimed Event of Default within fifteen (15) days after delivery of such notice, the matter shall be referred to a "Senior Officer" of the Administrator and a "Senior Officer" of the Owner. If such Senior Officers are unable to agree on an appropriate cure or resolution within ten (10) days after the matter has been referred to them, the Owner shall be so informed by the Administrator and the parties may have recourse to mediation, arbitration, or other alternative dispute resolution device of their mutual selection. If the parties cannot agree on an alternative dispute resolution device, each party may pursue its legal remedies.

6.2 Continuation of Work. Pending final resolution of any dispute, the parties shall continue to fulfill their respective obligations under this Agreement; provided, however, that the Owner may withhold any amount which is the subject of dispute from any payment otherwise due hereunder during the pendency of any dispute resolution proceeding. If the Administrator prevails in such dispute, the Owner shall immediately pay to the Administrator the unpaid amount in dispute with interest thereon, which interest shall accrue, at the Reference Rate, for each day from and including the date on which such amount was originally due to, but excluding, the date of actual payment thereof.

ARTICLE VII
COMMENCEMENT AND TERMINATION

7.1 Term. Except as may otherwise be provided herein, this Agreement shall commence on the Commencement Date and remain in full force and effect following the Commencement Date until and including the earlier of (A) the sale to a third party of the Project by the Owner or the sale of all of the membership interests in Owner and, in each case, the completion of all administrative duties necessary or desirable in connection with the winding up of the Owner's and its Subsidiaries' affairs and (B) the date falling ten (10) years after the Final Commercial Operation Date (as defined in the Power Purchase Agreement) (the "Initial Term"). In connection with the expiration of the Term or any termination pursuant to Section 7.3, the Administrator shall cooperate with all reasonable requests of the Owner in connection with the

transition of administrative services performed by the Administrator to the entity selected by the Owner to undertake such services after such expiration or termination of the Term.

7.2 Renewals. Upon the expiration of the Initial Term, the term of this Agreement shall automatically be extended in one (1) year increments (each, a "Renewal Term") unless the Administrator delivers written notice of termination to Owner no later than one hundred and eighty (180) days prior to the expiration of the Initial Term or the applicable Renewal Term, as the case may be.

7.3 Early Termination. Subject to Section 7.1 above, this Agreement may not be terminated in all or in part except:

1. by mutual agreement of the parties;

2. pursuant to the remedy provisions of Section 8.3;

3. a termination in its entirety at the Owner's option upon not less than sixty (60) days' prior written notice to Administrator if the Owner is no longer an Affiliate of the Administrator;

4. a termination in its entirety at the Administrator's option if the Owner is no longer an Affiliate of the Administrator; or

5. a termination in its entirety at the Owner's option upon thirty (30) days' prior written notice to the Administrator in the event of the destruction, condemnation or other loss of all or substantially all of the Project.

An early termination pursuant to Section 7.3(3) or Section 7.3(5) shall be effective on the date specified in the applicable written notice of termination delivered by the Owner to the Administrator or, if earlier, the date upon which the parties reasonably agree that the Owner and the Administrator have completed all activities necessary to enable the Owner to assume responsibility for the Administrative Services, including transition to a replacement administrator, if any acceptable to Owner in its sole discretion. An early termination pursuant to Section 7.3(4), shall be effective on the earlier of (i) one hundred and eighty (180) days after the written notice of such termination is received by the Owner, or (ii) the date upon which the parties reasonably agree that the Owner and the Administrator have completed all activities necessary to enable the Owner to assume responsibility for the Administrative Services, including transition to a replacement administrator, if any acceptable to the Owner in its sole discretion.

7.4 Termination Payment. In the event of a termination pursuant to Section 7.3, the Owner shall pay to the Administrator:

1. All Management Fees earned through the date of termination that have not been paid by the Owner through the effective date of termination; and

2. Other than in the case of a termination by the Owner pursuant to Section 7.3(2) for an Event of Default of the Administrator or a termination pursuant to Section 7.3(3),

(4) or (5), the reasonable costs incurred by the Administrator arising out of or relating to such early termination of this Agreement.

ARTICLE VIII
DEFAULT

8.1 Events of Default. Except as provided for in Article VI, Dispute Resolution, the following events shall be deemed to be events of default ("Events of Default") by a party under this Agreement regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceeding

which has or might have the effect of preventing such party from complying with the terms of this Agreement:

1. Failure by a party hereto to make any payment required to be made hereunder (including, for the avoidance of doubt, payments to be made by such party to a third party), if such failure shall continue for thirty (30) days after written notice thereof has been given to the non-paying party; or

2. Failure to comply in any material respect with any material term, provision or covenant of this Agreement (other than the payment of sums to be paid by a party hereunder (including, for the avoidance of doubt, payments to be made by such party to a third party)), if such failure continues for thirty (30) days after written notice thereof has been given to the non-performing party; provided, however, if such failure cannot reasonably be cured within such thirty (30) days and the non-performing party has commenced, and is diligently pursuing in good faith, to cure such failure, such thirty (30) day period shall be extended for such longer period as shall be necessary for such party to cure the failure, but in no event shall be extended for more than ninety (90) days without the prior written mutual agreement of the parties.

8.2 Bankruptcy. Subject to the rights or remedies it may have, the Administrator, on the one hand, and the Owner, on the other hand, shall have the right to terminate this Agreement, effective immediately, if, at any time, (i) the other party hereto shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency, or other relief for debtors, whether federal or state, or shall seek, consent to, or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of such party or of all or any substantial part of its properties, or (ii) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the other party hereto seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief for debtors, whether federal or state, and such party shall consent to or acquiesce in the entry of such order, judgment or decree, or the same shall remain unvacated and unstayed for an aggregate of sixty (60) days from the date or entry thereof, or any trustee, receiver, conservator or liquidator of such party or of all or any substantial part of its properties shall be appointed without the consent of or acquiescence of such party and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days. The terms “acquiesce” and “acquiescence”, as used herein, include, but are not limited to, the failure to file a petition or motion to vacate or

discharge any order, judgment or decree providing for such appointment within the time specified by law.

8.3 Remedies. If (i) an Event of Default occurs hereunder and such Event of Default is not cured in accordance with the requirements of Section 8.1, or (ii) an event described in Section 8.2 occurs and such event is not cured in accordance with Section 8.2, then subject to resolution pursuant to Section 6.1 of any dispute as to the existence of such event (in the case of Section 8.2) or Event of Default (in the case of Section 8.1), this Agreement may be terminated immediately by the non-defaulting party, without obligation to or recourse by the defaulting party. Without limiting the provisions of Article IX, the sole and exclusive remedy of each party upon the occurrence and continuation of an Event of Default by the other party is the termination of this Agreement and the payments of the amounts required to be paid in accordance with Section 7.4 and, if applicable, Article IX.

ARTICLE IX
INDEMNIFICATION AND LIMITATION OF DAMAGES

9.1 Basis of Compensation. The Administrator is willing to perform the Administrative Services for the Owner under this Agreement only if Administrator has no exposure to loss, risk or liability other than as set forth in this Article IX. Notwithstanding any other provision of this Agreement, the Administrator’s total liability to Owner and its Affiliates for any reason whatsoever shall be strictly limited in accordance with Section 9.3.

9.2 Disclaimers. The Administrator agrees to perform the Administrative Services under this Agreement in accordance with the standards and requirements set forth in Article III and otherwise in accordance with the terms of this Agreement. The Administrator’s liability for failure to comply with such standards and requirements shall be limited as set forth in this Article IX. The Administrator makes no other guarantees or warranties of any kind in connection with the performance of the Administrative Services. **THE ADMINISTRATOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Except to the extent expressly provided otherwise in this Article IX (but subject to Section 9.3 hereof) and Owner’s right to terminate this Agreement under Section 7.3 and Section 8.3, the Administrator shall have no liability under this Agreement for any failure, breach or default of its obligations.

9.3 Total Limitation of Administrator’s Liability. The maximum aggregate liability of the Administrator pursuant to Section 9.4(1) shall not exceed an amount, at any time, in excess of the aggregate amount of Management Fees to be paid to the Administrator over a three (3) year period ($210,000); provided, however, the foregoing limitation on liability shall not apply to (i) amounts owed to third parties for which the Administrator is obligated to indemnify an Owner Indemnified Party under this Agreement, (ii) any amounts recoverable by the Administrator as an insurance payment, or (iii) damage to the Owner caused by the gross negligence or willful misconduct of the Administrator with respect to the subject matter of this Agreement.

9.4 Indemnifications.

1. The Administrator shall defend and indemnify and hold harmless the Owner and its shareholders, members, directors, managers, officers and employees (each, an “Owner Indemnified Party”) from and against any and all Claims asserted by or against such Owner Indemnified Party (i) in respect of any taxes imposed on or attributable to the income or property of the Administrator, (ii) in respect of the employer/employee-related responsibilities with respect to any personnel of the Administrator, including specifically payroll taxes, workers’ compensation claims, any withholdings required by applicable law, and health and welfare benefits, including COBRA benefits, (iii) relating to the injury or death of any person, including employees of the Administrator, (iv) resulting from loss or damage to property or (v) relating to the failure of Administrator to comply with the terms of this Agreement; provided, however, that in the case of clauses (iv) and (v), only to the extent the Claim results from the Administrator’s willful misconduct or gross negligence or a breach by the Administrator of its obligations hereunder.

2. The Owner shall defend and indemnify and hold harmless the Administrator and its shareholders, members, directors, managers, officers and employees (each, an “Administrator Indemnified Party”) from and against any and all Claims asserted by or against such Administrator Indemnified Party, (i) in respect of any taxes imposed on or attributable to the income or property of the Owner, (ii) relating to the injury or death of any person, including employees of the Owner, (iii) resulting from loss or damage to property, or (iv) relating to the failure of the Owner to comply with the terms of this Agreement,

except, in the case of clauses (ii) and (iii), to the extent the Claim results from the Administrator's willful misconduct or gross negligence or a breach by the Administrator of its obligations hereunder.

3. When required to indemnify an indemnified Party (the "Indemnified Party") in accordance with this Section 9.4, the Administrator or the Owner, as applicable (in such capacity, the "Indemnifying Party") shall assume on behalf of such Indemnified Party and conduct with due diligence and in good faith the defense of any Claim against such Indemnified Party and shall bear the expense thereof, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Party shall cooperate with the Indemnifying Party in such defense. The Indemnifying Party shall have charge and direction of the defense and settlement of such Claim, provided, however, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party's right to control the defense or settlement thereof, the Indemnified Party may elect to participate through separate counsel in the defense of any such Claim, but the fees and expenses of such counsel by such Indemnified Party shall be at the expense of such Indemnified Party unless (a) the employment of counsel by such Indemnified Party has been authorized in writing by the Indemnifying Party, (b) the Indemnified Party shall have reasonably concluded that there exists a material conflict of interest between the Indemnifying Party and such Indemnified Party in the conduct of the defense of such Claim (in which case the Indemnifying Party shall not have the right to control the defense or settlement of such Claim on behalf of such Indemnified Party) or (c) the Indemnifying Party shall not have employed counsel reasonably acceptable to the Indemnified Party to assume the defense of such Claim within a reasonable time after notice of the commencement thereof. In each of such cases set forth in the second sentence of this paragraph, the reasonable fees and expenses of counsel shall be at the expense of the Indemnifying Party except where the Indemnifying Party is

ultimately deemed not to have been required to provide the indemnity sought by the Indemnified Party.

9.5 Exclusion of Consequential Damages. Neither party (nor its officers, members, directors or employees) shall be liable to the other party for any punitive, incidental, indirect, special or consequential loss or damage, including loss of revenues, income or profits, cost of capital, loss of goodwill or reputation (provided that the foregoing shall not include liabilities to third parties) connected with or resulting from performance or non-performance of any obligations under this Agreement. The parties further agree that this waiver and disclaimer of liability shall apply at all times, whether in contract, equity, tort or otherwise, regardless of the fault, negligence (in whole or in part), strict liability, breach of contract or breach of warranty of the party whose liabilities are so limited, provided, however, that this waiver and disclaimer of liability shall not apply to claims of, or causes of action arising from, intentional fraud of any party hereto.

9.6 Availability of Insurance. Notwithstanding anything to the contrary set in this Article IX, the obligation of either party to indemnify any other party for any Claims will be reduced to the extent of any insurance proceeds received by the Indemnified Party with respect to indemnified Claims.

9.7 Survival. Notwithstanding any other provision of this Agreement, the provisions of this Article IX are intended to and shall survive the termination of this Agreement so as to cover all Claims instituted within the period set forth in the applicable statute of limitations.

ARTICLE X
REGULATORY

10.1 Foreign Asset Control.

1. To the extent applicable, Administrator and its Affiliates are, and shall at all times be, in compliance, in all material respects, with (i) The United States Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the U.S. Department of Treasury (31 C.F.R. Subtitle B, Chapter V, as amended), or any ruling issued thereunder or any enabling legislation or Presidential Executive Order granting authority therefor (the "Foreign Asset Control Regulations"), (ii) all applicable orders, rules and regulations of The Office of Foreign Asset Control of the U.S. Department of Treasury ("OFAC"), and (iii) the USA PATRIOT Act of 2001, as amended from time to time ("Patriot Act").

2. The performance of this Agreement and payment of any amounts due hereunder will not violate any Foreign Asset Control Regulations or any anti-boycott laws and regulations.

ARTICLE XI
MISCELLANEOUS

11.1 Assignment.

1. By the Administrator: The Administrator may not assign this Agreement without the prior written consent of the Owner, which consent may not be unreasonably withheld, except that the Administrator may, without such consent, assign or delegate any of its rights or obligations under this Agreement to any of its Affiliates (subject to any applicable requirements under the Financing Documents or Project Documents).

2. By the Owner: Subject to Section 11.1(3), the Owner may not assign this Agreement without the prior written consent of the Administrator, which consent may not be unreasonably withheld or delayed; provided, however, that the Owner may, without the prior written consent of the Administrator, collaterally assign this Agreement to its lenders and financing parties (in their capacities as lenders and financing parties).

11.2 Authorization. Except as expressly authorized in writing by the Owner, or contemplated under the Administrative Services, the Administrator shall not have the right or the obligation to create any obligation or to make any representation on behalf of the Owner.

11.3 Governing Law; Jurisdiction. This Agreement, and the rights and obligations of the parties thereunder and any dispute arising under or relating thereto (whether in contract, tort or otherwise) shall be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to the conflict of law rules thereof (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law) or any other statute or doctrine that might call for the application of the laws of any other jurisdiction. Each of the Administrator and Owner (a) hereby irrevocably consents to the exclusive jurisdiction of the courts of the State of New York and of any federal court located in the Southern District of New York in connection with any suit, action or other proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (b) hereby agrees to waive any objection to venue in the State and County of New York and (c) agrees that, to the extent permitted by Law, service of process in connection with any such proceeding may be effected by mailing in the same manner provided in Section 11.5.

11.4 Independent Contractor. Nothing contained in this Agreement and no action taken by a party to this Agreement shall be (A) deemed to constitute a party or any of such party's employees, agents or representatives to be an employee, agent or representative of any other party; (B) deemed to create any company, partnership, joint venture, association or syndicate among or between the parties; or (C) except as contemplated under the Administrative Services, deemed to confer on a party any express or implied right, power or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability on behalf of the other party or on behalf of the Owner, except as expressly authorized in writing.

11.5 Notice. All notices, requests, consents, demands and other communications (collectively "notices") required or permitted to be given under this Agreement shall be in writing signed by the party giving such notice and shall be given to the other party at its address

or fax number set forth in this Section 11.5 or at such other address or fax number as such party may hereafter specify for the purpose of notice to the other party and shall be either delivered personally or sent by fax or telegraph or registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service. A notice shall be deemed to have been given (i) when transmitted if given by fax or telegraph or (ii) when delivered, if given by any other means. Notices shall be sent to the following addresses:

To the Administrator:

NRG Solar Asset Management LLC
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Attention: John Karam
Phone: 760-710-2147
Fax 760-710-2158
Email: john.karam@nrgenergy.com

With copies to:

NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
Attention: General Counsel
Facsimile No.: 609-524-4589

To the Owner:

NRG Solar Avra Valley LLC
c/o NRG Solar LLC
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Attention: Director -Asset Management
Phone: 760-710-2210
Fax: 760-710-2158
Email: randall.hickok@nrgenergy.com

With copies to:

NRG Solar Avra Valley LLC
c/o NRG Solar LLC
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Attention: Legal Department
Telephone: 760-710-2140
Facsimile: 760-918-0310

E-mail: Jennifer.Hein@nrgenergy.com

11.6 Usage. This Agreement shall be governed by the following rules of usage: (i) a reference in this Agreement to a Person includes, unless the context otherwise requires, such Person's permitted successors and assignees; (ii) a reference in this Agreement to a law, license, or permit includes any amendment, modification or replacement to such law, license or permit; (iii) accounting terms used in this Agreement shall have the meanings assigned to them by GAAP; (iv) a reference in this Agreement to an article, section, exhibit, schedule or appendix is to an article, section, exhibit, schedule or appendix of this Agreement unless otherwise stated; (v) a reference in this Agreement to any document, instrument or agreement shall be deemed to include all appendices, exhibits, schedules and other attachments thereto and all documents, instruments or agreements issued or executed in substitution thereof, and shall mean such document, instrument or agreement, or replacement thereof, as amended, modified and supplemented from time to time in accordance with its terms and as the same is in effect at any given time; (vi) unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and (vii) the words "include" and "including" and words of similar import used in this Agreement are not limiting and shall be construed to be followed by the words "without limitation", whether or not they are in fact followed by such words.

11.7 Entire Agreement. This Agreement (including all appendices and exhibits thereto) constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

11.8 Amendment. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by a document in writing signed by the party against which the enforcement of such termination, amendment, supplement, waiver or modification is sought.

11.9 Confidential Information. Each party agrees that it shall not disclose (and shall cause its directors, officers, attorneys, employees and agents not to disclose), without the prior consent of the other party, any information with respect to such other party that is furnished pursuant to this Agreement or learned during the course of performance of the Administrative Services, including any information that would constitute confidential information under the terms of any Project Document ("Confidential Information"), provided that any party may disclose, or allow the disclosure of, any Confidential Information (a) to its directors, officers, attorneys, employees, agents, auditors, professional advisors, consultants and lenders as necessary to perform a party's obligations under this Agreement, (b) as has become generally available to the public other than as a result of breach of this Section 11.9, (c) as may be required or appropriate in any report, statement or testimony submitted to any governmental authority having or claiming to have jurisdiction over such disclosing party; provided, however, that to the extent such Confidential Information may be excluded from any such report, statement or testimony, or may be submitted subject to administrative confidentiality protection, in each case without prejudicing in any manner the position of the potentially disclosing party, such party shall exclude the information or submit it subject to confidentiality protection, (d) which was

otherwise known by the receiving party prior to disclosure or is disclosed to the receiving party by a third party not in violation of any duty of confidentiality, other than, in each case, from a source other than an Affiliate of the Owner, (e) as may be required or appropriate in response to any summons or subpoena from a governmental authority or in connection with any litigation, or (f) to comply with any permit or applicable law. The parties' obligations under this Section 11.9 shall expire two (2) years after the expiration or termination of this Agreement. Upon expiration or termination of this Agreement, all written or other tangible Confidential Information held by a party shall, if requested by the party who owns such Confidential Information, be returned to such owning party. Notwithstanding anything to the contrary set forth in this Agreement, the Administrator agrees to abide by the terms and conditions of the confidentiality undertakings of the Owner set forth in any of the Project Documents.

11.10 Discharge of Obligations. With respect to any duties or obligations discharged hereunder by the Administrator, the Administrator may discharge such duties or obligations through the personnel of an Affiliate of the Administrator; provided that, notwithstanding the foregoing, the Administrator shall remain fully liable hereunder for such discharged duties and obligations.

11.11 Third Party Beneficiaries. Except with respect to the indemnities set forth in Article IX, the parties do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation or understanding established under this Agreement.

11.12 Severability. Any provision of this Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

11.13 Binding Effect. The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and permitted assigns.

11.14 Representations and Warranties. Each party hereby represents and warrants to the other party as of the date of this Agreement that:

1. Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;

2. The execution, delivery and performance by such party of this Agreement have been duly authorized by all necessary limited liability company action, and do not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on such party;

3. All government approvals necessary for the execution, delivery and performance by such party of its obligations under this Agreement have been obtained and are in full force and effect, except for those governmental approvals to be obtained by such party in the course of performance of its obligations under this Agreement; and

4. This Agreement is the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms except as enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights in general and except to the extent that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

11.15 Counterparts. This Agreement may be executed by the parties hereto electronically and in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Owner and the Administrator have caused this Agreement to be executed as of the date first above written.

NRG SOLAR AVRA VALLEY LLC

By: /s/ [ILLEGIBLE]
Name: [ILLEGIBLE]
Title: [ILLEGIBLE]

NRG SOLAR ASSET MANAGEMENT LLC

By: /s/ [ILLEGIBLE]
Name: [ILLEGIBLE]
Title: [ILLEGIBLE]

Exhibit 10.13

EXECUTION VERSION

OPERATION AND MAINTENANCE AGREEMENT

between

NRG Energy Services LLC

and

NRG Solar Borrego I LLC

Dated as of August 1, 2012

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EXHIBIT LIST

OPERATION AND MAINTENANCE AGREEMENT

This OPERATION AND MAINTENANCE AGREEMENT (as amended from time to time, the "Agreement") is being entered into by and between NRG Energy Services LLC, a Delaware limited liability company ("Operator"), and NRG Solar Borrego I LLC, a Delaware limited liability company ("Owner"), as of August 1, 2012 (the "Effective Date"). Each of the Owner and the Operator are sometimes hereinafter designated as a "Party," and they are collectively designated as the "Parties."

RECITALS:

A. Owner owns that certain 26 MW solar power generation plant located in Borrego Springs, California, as further described in Exhibit A (the "Plant").

B. Owner desires to hire Operator to operate and maintain the Plant in accordance with the terms of this Agreement.

C. Operator desires to operate and maintain the Plant for Owner in accordance with the terms of the Agreement.

AGREEMENT:

Accordingly, in consideration of the mutual covenants herein, and intending to be legally bound hereby, Owner and Operator hereby agree as follows:

1. DEFINITIONS AND RULES OF INTERPRETATION.

1.1 Definitions. The following capitalized terms, when used herein (and in the Appendices attached hereto), shall have the meanings specified in this Section 1.1.

"Adjustment Payment" has the meaning specified in Exhibit E.

"Affiliate" means, with respect to a Person, any entity which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), when used with respect to a Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through ownership of voting securities, by contract or otherwise.

"Agreement" has the meaning specified in the Preamble.

"Annual Maintenance Plan" means an annual plan for operation and maintenance of the Plant that is approved by Owner pursuant to Section 3.4.12, as the same may be revised from time to time pursuant to a Change Order. Each Annual Maintenance Plan shall be substantially in the same form as the Annual Maintenance Plan for 2012 attached hereto as Exhibit D-1.

"Annual O&M Budget" means a budget detailed by month of anticipated revenues and anticipated expenditures of the Owner with respect to the Plant and execution of the Annual Maintenance Plan, such budget to include debt service, proposed distributions, maintenance, repair and operation expenses (including reasonable allowance for contingencies), capital expenditures, costs and expenses related to the purchase of parts or other personal property of any nature necessary or useful to the operation, maintenance, service or repair of the Plant, management expenses and fees, taxes, insurance premiums, reserves and all other anticipated operating costs for each applicable fiscal year of Owner for the Plant.

"Annual Profit Fee" has the meaning specified in Exhibit E.

"Applicable Law" means any law, ordinance, statute, regulation, decision, ruling, or other similar requirement issued by any Governmental Authority (including CAISO) having jurisdiction over a Party or the Plant, including actions by regulatory and judicial agencies or tribunals, as the same may be modified, amended or repealed from time to time, including all Environmental Laws and the U.S. Federal Corrupt Practices Act.

"Associated Parties" means the directors, officers, partners, shareholders, members, managers, trustees, employees, Affiliates, controlling Persons, representatives and agents (including financial advisors, attorneys and accountants) of any Party or Person.

"Basic Corporate Overhead Expense" has the meaning specified in Exhibit E.

"Books and Records" has the meaning specified in Section 14.

"Business Day" means any day other than a Saturday, Sunday, public holiday under the Applicable Laws of the State of California or other day on which banking institutions in California are authorized or required by Applicable Law to be closed.

"CAISO" means the California Independent System Operator Corporation or successor entity.

"Capital Improvement Expenses" has the meaning specified in Exhibit E.

"Change Order" has the meaning specified in Section 4.

"Change of Law" means the enactment, re-enactment, adoption, promulgation, amendment, modification, repeal or other change of any Applicable Law after the Effective Date affecting the Work or the Plant; provided, however, a change in the interpretation or application of any Applicable Law by any Governmental Authority after the Effective Date shall not be considered a "Change of Law" unless the interpretation was a formal published interpretation by the applicable Governmental Authority.

"Claims" means, collectively, all claims, demands, actions, suits or proceedings (judicial, governmental or otherwise) asserted, threatened or filed against a Person, and any fines, penalties, losses, liabilities, damages and expenses incurred by such Person as a result thereof, including reasonable attorneys' fees and costs of investigation, litigation, settlement and judgment, and any contractual obligations of such Person to provide indemnity for any such

claims, demands, actions, suits or proceedings, fines, penalties, losses, liabilities, damages and expenses to any other Person.

"Compensation" means the amount to be paid to Operator by Owner, as determined pursuant to Exhibit E.

"Confidential Information" has the meaning specified in Section 19.3.1.

"Contingency" means the budgeted amount identified as "Contingency" in the Annual Maintenance Plan to be determined by Owner and Operator as provided in Section 3.4.12.

"CPI" means the "United States City Average All Items for All Urban Consumers (CPI-U, 1982-84=100)" published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of the Consumer Price Index of the U.S. Bureau of Labor Statistics is discontinued, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical reasonably agreed by Operator and Owner shall be used for making such computations.

"Day" means a calendar day; provided, however, that, if any period of Days referred to in this Agreement shall end on a Day that is not a Business Day, then the expiration of such period shall be automatically extended until the end of the first succeeding Business Day.

"Direct Labor Expenses" has the meaning specified in Exhibit E.

"Direct Operating Expenses" has the meaning specified in Exhibit E.

"Disclosing Party" has the meaning specified in Section 19.3.1.

"Early Termination Costs" means the actual reasonable out of pocket costs incurred by Operator arising out of or relating to an early termination of this Agreement, as agreed by the Parties (such agreement not to be unreasonably withheld, delayed or conditioned) and which may include expenses of demobilization, the reassignment or severance of Plant Personnel, and the discontinuance of support functions which have performed Work and for which Operator has not already received Compensation during the Term of this Agreement, including all costs related to transitioning the Operator's role to a new operator, including costs for terminating Subcontractors that are not assigned to Owner, costs for terminating any employees of Operator that are not retained by Owner or the new Operator and operating costs incurred by Operator arising from or as a result of the termination, assistance with the transfer of Permits and for costs arising from or as a result of the termination, acquisition or assignment of software and other licenses, data file and record system conversions, the purchase of supplier inventories maintained for the benefit of the Plant, training and instruction of the new operator's personnel, to the extent not already paid for by Owner as part of the Direct Operating Expenses or Capital Improvement Expense.

"Effective Date" has the meaning specified in the Recitals.

"Emergency" means any event or circumstance which (a) requires prompt action, and (b) in the reasonable opinion of a prudent operator, could be expected to have an adverse effect on the Plant, endanger the health or safety of any Person, or cause significant damage to property.

"Environmental Allocation" has the meaning specified in the Exhibit E.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to (i) the environment, (ii) the preservation or reclamation of natural resources, (iii) the management, environmental release or threatened environmental release of any hazardous substance or (iv) health and safety matters, including the California Environmental Quality Act, California Public Resource Code §§ 21000 et seq.; Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, as the same may be amended from time to time, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.; the Endangered Species Act, 16 U.S.C. §§ 1531 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 3803 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. §§ 1801 et seq. and the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.; and any state and local counterparts or equivalents, in each case as amended from time to time.

"EPC Agreement" means that certain Engineering, Procurement and Construction Agreement between EPC Contractor and Owner, dated as of November 30, 2011.

"EPC Contractor" means Sunora.

"Event of Default" means, with respect to Owner, an Owner Event of Default and with respect to Operator, an Operator Event of Default.

"Financing" means any development, bridge, construction, direct or indirect tax equity, lease equity, and/or permanent equity and/or debt financing or refinancing of (including any prospective sale-leaseback transaction), or any other extension of credit for, the development, construction, ownership, leasing, operation or maintenance (including working capital) of the Plant, whether that financing or refinancing takes the form of private debt or equity, public debt or equity or any other form.

"Financing Agreements" means any agreement entered into by Owner evidencing a Financing (and any documents relating to or ancillary to the foregoing).

"Financing Party" means any Person providing Financing and any trustee or agent acting on any such Person's behalf, and their successors and assigns.

"Fiscal Year" means a calendar year beginning on January 1st and ending on December 31st.

"Force Majeure Event" means any event or circumstance or combination of events or circumstances that (i) adversely affects, prevents or delays any Party (including such Party's Subcontractors) in the performance of its obligations hereunder, (ii) is beyond the reasonable control of the affected Party, and (iii) is the type of event customarily recognized as a force majeure event including earthquake, fire, flood, hurricane, storm, tornado, or other act of God, civil disturbance, war (declared or not), terrorism, hostilities, blockade, revolution, regional or national strike, insurrection or riot that prevents the affected Party from securing requisite equipment, supplies, materials or labor or otherwise performing its obligations (other than the payment of money). Material, equipment, labor or supply price escalation shall not be considered a Force Majeure Event. Economic hardship including lack of money or credit resulting in the inability to make payments shall not be considered a Force Majeure Event. For clarity, Change of Law and the inability to obtain Financing for the Plant shall not be considered a Force Majeure Event.

"Forecast Budget" has the meaning specified in Section 3.4.12.

"Foreign Asset Control Regulations" has the meaning given such term in Section 21(e).

"Governmental Authority" means any federal, state, local, municipal or other governmental, regulatory, administrative, judicial, public or statutory instrumentality, court or governmental tribunal, agency, commission, authority, body or entity, or any political subdivision thereof, having legal jurisdiction over the matter or Person in question.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Indemnified Party" has the meaning specified in Section 10.3.

"Initial Term" has the meaning specified in Section 2.1.

"Intellectual Property" or, interchangeably, "IP", shall mean all intellectual property and similar proprietary rights held by any Person in any jurisdiction, including all such rights in and to (i) computer software or hardware, whether or not copyrightable, including all databases, source codes, object codes, programs, applications, tables, models, repositories, specifications and documentation; (ii) original works of authorship, whether copyrightable or not, copyrights, and all renewals, modifications, translations thereof, and any Moral Rights relating thereto; (iii) patents; (iv) trademarks, service marks, brand names, certification marks, trade dress, assumed names, trade names and other indications of origin; and (v) know-how and other business information, trade secrets, ideas, concepts, methodologies, processes, development tools, techniques, inventions, innovations, diagrams, sketches, drawings, models, manuals, photographs, calculations, maps, notes, reports, data, models, samples and documentation, in each case to the extent proprietary, confidential and not in the public domain.

"Licensed Materials" means the drawings, specifications, documents, designs, plans or software prepared by or on behalf of Operator and/or the Subcontractors in connection with or used in the performance of Operator's obligations hereunder.

"Materials" means any and all material, equipment, and supplies, including consumable supplies, tools, spare parts and office supplies, necessary for the performance of the Work.

"Moral Rights" shall mean certain rights of authors of original works subject to copyright, including but not limited to all rights of integrity, paternity, attribution, disclosure and withdrawal with respect to any original work, and any other rights that may be known or referred to as "moral rights."

"NOVs" has the meaning specified in the Exhibit E.

"OEM Manuals" means the manuals attached hereto as Exhibit F.

"Operating Year" has the meaning specified in Exhibit E.

"Operator" has the meaning specified in the Preamble.

"Operator Event of Default" has the meaning specified in Section 16.1.

"Operator Indemnified Party" means Operator, its successors and assigns, and each of their Associated Parties.

"Operator Related Parties" means Operator and its Affiliates, and their respective members, shareholders, partners, directors, officers and employees.

"Operator Representative" has the meaning specified in Section 6.4.

"Overtime" has the meaning specified in Exhibit E.

"Owner" has the meaning specified in the preamble.

"Owner Event of Default" has the meaning specified in Section 16.2.

"Owner Indemnified Party" means Owner, the Financing Parties, each of their successors and assigns, each of their Associated Parties.

"Owner Representative" has the meaning specified in Section 6.2.

"Paid Absences" has the meaning specified in Exhibit E.

"Party" or "Parties" has the meaning specified in the Preamble.

"Payroll Additives" has the meaning specified in Exhibit E.

"Payroll Taxes" has the meaning specified in Exhibit E.

"Permit" means the permission granted by any Governmental Authority to do an act that would otherwise be impermissible, including all licenses, permits, consents, authorizations, approvals, ratifications, certifications, registrations, exemptions, variances, exceptions and similar consents granted or issued by any Governmental Authority, and, with respect to the Plant, the Permits set forth on Exhibit J.

"Permitted Excess Expenditures" means expenditures that do not exceed ten percent, (10%) when considered individually, of the amount allocated for such expenditures, or five percent (5%) when considered in the aggregate of the entire amount of the applicable Annual O&M Budget.

"Person" means an individual, corporation, partnership, limited liability company, trust, unincorporated association, joint venture, joint-stock company, Governmental Authority, or any other entity.

"Plant" has the meaning specified in the Recitals.

"Plant Budget Allocation" has the meaning specified in the Exhibit E.

"Plant Control Systems" means remote monitoring systems used by Operator in compliance with Prudent Operating Practices, which may include a SCADA System and/or "Solar Field Integrated Control" systems.

"Plant Availability Allocation" has the meaning specified in the Exhibit E.

"Plant Personnel" means the personnel of Operator or its Affiliates or the Subcontractors of any of them who are assigned to the Plant on a full time basis to perform the Work.

"Post-Project Substantial Completion Work" has the meaning specified in Section 3.4.

"PPA" means the Power Purchase and Sale Agreement between Owner and San Diego Gas and Electric Company, a California corporation ("SDG&E"), dated as of January 25, 2011, as amended.

"Pre-Project Substantial Completion Work" has the meaning specified in Section 3.3.

"Project Agreements" means the agreements listed on Exhibit G.

"Project Records" means all records relating to the Plant accumulated, prepared or maintained by the Operator per request of or for Owner as part of the Work under this Agreement during the Term, whether prepared on paper, stored electronically, or by any other media.

"Project Substantial Completion" has the meaning set forth in the EPC Agreement.

"Prudent Operating Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the photovoltaic solar power generation industry in the United States during the relevant time period, or any of the practices, methods and acts which, in

the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good electric power generation practices, reliability, safety and expedition. Prudent Operating Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to refer to a range of acceptable practices, methods and acts.

"Receiving Party" has the meaning specified in Section 19.3.1.

"Reconciliation Amount" has the meaning specified in Section 8.2

"Recordable Injury or Illness" means any injury or illness that, in accordance with the California Occupational Safety and Health Act of 1973, as amended, and the CalOSHA standards at 8 CCR 14300 - 14300.48, is required to recorded on an employer's Cal/OSHA Form 300.

"Renewal Term" has the meaning specified in Section 2.1.

"Requirements" has the meaning specified in Section 3.1.

"Safety Allocation" has the meaning specified in the Exhibit E.

"Salary and Wages" has the meaning specified in Exhibit E.

"SCADA System" means the Plant's remote control and monitoring system, including central computer and remote PC system.

"Site Rules" means those reasonable rules, regulations and procedures related to the safe performance of the work and security of the site developed by Operator for Owner's review and approval.

"Straight Time" has the meaning specified in Exhibit E.

"Subcontractor" means subcontractor, consultant or supplier.

"Sunora" means Sunora Energy Solutions I LLC, a Delaware limited liability company.

"Support Personnel" means the personnel of Operator or its Affiliates or the contractors of any of them who are assigned, as their principal work location, to work sites other than the Plant. The Direct Labor Expenses of Support Personnel while working on a project for the Plant are billed directly to Owner. Support Personnel may perform Work on a part time basis. Table E-1 of Exhibit E provides a matrix of the positions and functions in the Support Personnel classification and the positions and functions included in the Basic Corporate Overhead Expense. Support Personnel shall not include Plant office personnel.

"Term" means the Initial Term and any Renewal Terms.

"Work" means the duties and obligations of Operator required under this Agreement, including the Post-Project Substantial Completion Work and the Pre-Project Substantial Completion Work.

1.2 Rules of Interpretation.

(a) Whenever the context may require, any pronoun used in this Agreement includes the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs include the plural and vice versa.

(b) As used in this Agreement, accounting terms not defined in this Agreement shall have the respective meanings given to them under generally accepted accounting principles in the United States of America.

(c) The words "hereof," "herein," "hereunder," and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as expressly set forth herein, a reference to a Section, an Article, an Exhibit or a Schedule means a Section in, an Article of, an Exhibit to or a Schedule to, this Agreement.

(d) The terms "include," "includes" and "including" shall be construed as followed by the words "without limitation."

(e) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(f) Any agreement, instrument or Applicable Law defined or referred to herein (or provision thereof) means such agreement, instrument or Applicable Law (or provision thereof) as from time to time amended, supplemented or otherwise modified and includes references to all attachments thereto and provisions incorporated therein.

(g) Any references to a Person are also to its successors and permitted assigns and, in the case of any Governmental Authority, shall be construed as including a reference to any Governmental Authority succeeding to its functions and capacities.

(h) The descriptive headings of all Articles and Sections of this Agreement are formulated and used for convenience only and are not be deemed to affect the meaning or construction of any such Article or Section.

(i) All Exhibits, Appendices and Schedules attached hereto are incorporated herein and made a part hereof.

2. TERM, EXPIRATION AND TERMINATION.

2.1 Initial Term; Renewal Terms. This Agreement shall be for an initial term of five (5) years commencing on the Effective Date (the "Initial Term"). Upon expiration of the Initial Term, the term of this Agreement shall automatically be extended in one (1) year increments

(each, a "Renewal Term"), unless either Party delivers written notice of termination to the other Party no later than 180 days prior to the expiration of the Initial Term or the applicable Renewal Term, as the case may be.

2.2 Early Termination by Either Party. This Agreement may be terminated by either Party upon thirty (30) Days' prior written notice to the other Party upon the occurrence and continuation of an Event of Default by the other Party which remains uncured beyond all applicable notice and cure periods,

subject, however, to any and all the rights of Financing Parties hereunder. In the event of termination pursuant to this Section 2.2, Section 2.3, Section 2.4 or Section 16, Owner shall pay to Operator to the extent not yet paid:

2.2.1 All Direct Operating Expenses and Capital Improvement Expenses incurred by Operator that have not been paid or reimbursed by Owner through the effective date of termination;

2.2.2 Any Basic Corporate Overhead Expenses and Annual Profit Fees earned but not paid through the effective date of termination (provided that, if such termination is due to an Operator Event of Default, Operator shall forfeit any Annual Profit Fees earned after the Event of Default giving rise to such termination); and

2.2.3 Unless such termination is due to an Operator Event of Default or pursuant to Section 2.4, Operator's Early Termination Costs.

2.3 Early Termination by Owner. In addition to its right to terminate this Agreement pursuant to Section 2.2, Owner may terminate this Agreement for its convenience, subject to the prior written consent of each Financing Party, by providing Operator not less than 180 days' prior written notice of the effective date of termination. Owner will also be entitled to terminate this Agreement by delivery of thirty (30) days' written notice of termination to the Operator (i) if the existence of a Force Majeure Event continues for more than one hundred twenty (120) days or if the cumulative aggregate duration of Force Majeure Event exceeds one hundred fifty (150) days or (ii) in the event of the destruction, condemnation or other loss of all or substantially all of the Plant without reconstruction or repair so as to effectively terminate the operation of the entire Plant permanently.

2.4 Early Termination by Operator. In addition to its right to terminate the Agreement pursuant to Section 2.2, Operator may terminate this Agreement if Operator ceases to be an Affiliate of any member of Owner; provided that termination pursuant to this Section 2.4 shall be effective 180 days after written notice of such termination is received by Owner.

2.5 Rights and Duties Upon Termination. On the effective date of expiration or termination of this Agreement by Owner or Contractor, Owner shall assume and become responsible for the operation and maintenance of the Plant, including entering into new contracts with third parties for the provision of goods and services. If the Plant is to continue in operation, Owner and Operator shall cooperate with each other and with any new operator to achieve an orderly transition, including (a) if permitted by the terms of the applicable contract or by the contractual counterparty, the assignment to Owner or its designee of all contracts relating to the Plant entered into by Operator, and (b) to the extent assignable, the transfer to Owner or its

designee of all Permits required by a Governmental Authority to be held in Operator's name as a proxy for the Owner.

2.6 Final Settlement. Within three (3) months after the effective date of expiration or termination of this Agreement, Operator shall provide to Owner a settlement statement which reconciles all payments received from Owner with fees and expenses compensable to Operator in accordance with this Agreement. Owner shall pay the amount owed to Operator as shown on the settlement statement within thirty (30) Days of receipt of the settlement statement, and such amount shall be subject to audit in accordance with Section 14. The Parties shall use reasonable commercial efforts to complete the audit and reach mutual agreement on all matters related to the settlement statement within three months after it is presented to Owner.

3. SCOPE OF WORK.

3.1 Standard of Performance. During the Term, Operator shall perform the Work in accordance with the OEM Manuals, Annual Maintenance Plan, Prudent Operating Practices, Applicable Law, all applicable Permits, the Site Rules, the Project Agreements and the other requirements of this Agreement (the "Requirements"). If there are any conflicts between or among the standards of performance derived from the Requirements, Operator shall promptly notify Owner of the conflict, and Operator shall request Owner's instructions as to how to reconcile the conflict. The Parties shall cooperate and negotiate in good faith to make such modifications to this Agreement to the extent such a modification is necessary to resolve the conflict.

3.2 Management of Employees. The exclusive management, direction and control of Plant Personnel, Support Personnel and any other employees of Operator shall always reside in Operator. Subject to compliance with the Requirements, Operator shall complete the Work according to Operator's own means and methods, which shall be in the exclusive charge and control of Operator.

3.3 Duties of Operator Prior to Project Substantial Completion. Prior to Project Substantial Completion, Operator shall perform the following activities ("Pre-Project Substantial Completion Work"):

3.3.1 Operator shall familiarize itself with the Plant, review all relevant Plant related agreements, prepare operations and maintenance plans and manuals conforming to the OEM Manuals (to the extent such OEM Manuals are available) and all other specific operation and maintenance manuals received from major equipment vendors, prepare training procedures, provide adequately trained Plant Personnel and Support Personnel, assist with plant commissioning and the acceptance and performance tests under the supervision, direction and control of the EPC Contractor and other major equipment suppliers pursuant to the respective Project Agreements, and prepare for operation and maintenance of the Plant and conduct of the Post-Project Substantial Completion Work following Project Substantial Completion. The Pre-Project Substantial Completion Work shall also include the work described in Exhibit H attached hereto.

3.3.2 No later than three months before the expected date of Project Substantial Completion, Operator shall submit the final Annual Maintenance Plan for the first Operating Year for approval by Owner. The preliminary Annual Maintenance Plan is set forth in Exhibit D-1.

3.4 Specific Duties of Operator During Operations. Following Project Substantial Completion, Operator shall perform the following activities with respect to the operating Plant in conformity with the Annual Maintenance Plan (the "Post-Project Substantial Completion Work"):

3.4.1 Supervise and manage the day-to-day operation of the Plant, Plant Personnel and Support Personnel, and provide contractual administration on behalf of Owner with respect to any other contractor of Owner performing any function or services at or in connection with the Plant in accordance with the terms and conditions of applicable purchase orders and contracts. If Operator becomes aware of any breach or failure of any other contractor of Owner in the performance of its duties or obligations under any purchase order or contract, Operator shall provide prompt written notice of

the same to Owner. Owner shall be responsible for taking any legal or other action necessary to cause its other contractors to comply with their obligations or responsibilities.

3.4.2 Provide training required to enable Operator's employees to obtain, develop or maintain the skills and techniques necessary to enable Operator to perform its obligations under this Agreement in accordance with the Requirements.

3.4.3 Repair and maintain the Plant, including all scheduled and unscheduled maintenance and repairs required to keep the Plant in safe and efficient operating condition. Operator shall conduct scheduled outages for periodic maintenance as provided for in the Annual Maintenance Plan. Operator shall diligently conduct repair efforts related to unplanned outages and restore the Plant to operation as soon as is reasonably practicable in accordance with Prudent Operating Practices. At the reasonable request of Owner, Operator shall use all reasonable efforts to reschedule any previously scheduled outage and minimize any attendant costs to Owner.

3.4.4 Provide all engineering and technical services required to support the operation and maintenance of the Plant. In connection therewith, Operator shall use, and shall be entitled to reasonably rely on, the most recent technical data and other information (including any Intellectual Property) which Owner has furnished to Operator.

3.4.5 Provide environmental services in accordance with Section 9.2 as required to support operation and maintenance of the Plant in a manner consistent with all Requirements, including all Permits and the requirements of cognizant Governmental Authorities, and in accordance with all Applicable Laws, including obtaining and maintaining such Permits as are required by a Governmental Authority to be in Owner's name (to the extent possible and lawful, otherwise Permits shall be held in Operator's name) and documenting use, on-site storage, and coordination of disposition of Hazardous Materials and wastes in accordance with applicable Environmental Laws. Operator shall assist Owner in obtaining and maintaining any Permits, registrations or

authorizations necessary for operation of the Plant that are required by a Governmental Authority to be held in Owner's name.

3.4.6 Operate and maintain the Plant in a manner consistent with the Requirements, including with respect to personnel safety and equipment protection.

3.4.7 Maintain records of the operations and maintenance of the Plant (including operating logs and other information required by the PPA), maintain financial books and records relative to the costs of operating and maintaining the Plant in accordance with U.S. generally accepted accounting principles, consistently applied, and make such records available for inspection by Owner or any designees of Owner during normal business hours.

3.4.8 Provide to Owner within fifteen (15) Business Days after the end of each month a report in respect of Direct Operating Expenses and Capital Improvement Expenses, comparing the actual expenses to the approved Annual Maintenance Plan's Annual O&M Budget for the preceding month and for the applicable year through the end of such preceding month.

3.4.9 Use commercially reasonable efforts to secure and enforce all warranties (including any availability or other performance guarantees) for Materials and services purchased for the Plant and administer any Claims related thereto, including those provided by any Subcontractor of Operator.

3.4.10 Provide security and property management services, such as janitorial, landscaping, weed abatement, road maintenance, drainage control, perimeter fence repairs, gate maintenance and building maintenance services, in accordance with Prudent Operating Practices.

3.4.11 Provide to Owner by the fifteenth (15th) Business Day of each month a report for the prior month based on the components set forth in Exhibit B. Operator shall also provide to Owner any other information regarding the operation and maintenance of the Plant reasonably requested by Owner. Upon the reasonable request of Owner, Operator's Representative shall meet with Owner to discuss the performance of the Work and operation of the Plant.

3.4.12 On or before October 1st of each calendar year, prepare and submit to Owner a proposed Annual Maintenance Plan for approval by Owner. This plan shall include the following items as further described below.

- Planned outages for the following year in the form required under the PPA;
- The proposed Annual O&M Budget for next calendar year;
- The Forecast Budget (as defined below); and
- Support for the Annual O&M Budget and the Forecast Budget.

The proposed Annual O&M Budget for the next calendar year will be based on Operator's assessment of the Work to be performed during such year and the proposed means of performing such Work in accordance with the Requirements. The proposed Annual O&M Budget shall include line item budget appropriations for Direct Operating Expenses, Capital Improvement Expenses, the recommended amount for the Contingency, expenses of Operator's Subcontractors and anticipated cash flow requirements for such year.

In addition, as part of the Annual Maintenance Plan the Operator shall also provide a Forecast Budget for the following five years (the "Forecast Budget"). As support of the Annual O&M Budget and the Forecast Budget, the Operator shall provide descriptions of Operator's underlying assumptions relating to, and Operator's recommendations regarding, scheduled and unplanned outages (as set forth in Exhibit D-1)), major maintenance and capital repairs, and improvements and additions, which are included in such proposed Annual Maintenance Plan.

Owner shall indicate in writing its comments on the proposed Annual Maintenance Plan, and submit any recommended changes thereto, within fifteen (15) Days after its receipt of the proposed Annual Maintenance Plan; provided that Owner may submit changes to planned outage

schedule after such date if Owner receives comments from SDG&E under the PPA after such date. Operator shall confer with Owner about such comments or recommended changes and submit a revised Annual Maintenance Plan (accompanied by a written statement of Operator's reasons for accepting or rejecting any such comments or recommended changes) promptly following receipt of such comments or recommended changes. This process shall continue until the Annual Maintenance Plan is approved. If Owner fails to approve an Annual Maintenance Plan for any calendar year prior to the commencement of such year, the Parties shall use the prior year's Annual Maintenance Plan with respect to Direct Operating Expenses and other expenses less than $100,000 per project item, including Capital Improvement Expenses, until a new Annual Maintenance Plan is agreed, except that the Annual O&M Budget for the prior year shall be increased annually for inflation (but not decreased for deflation) based on the CPI.

Operator shall operate and maintain the Plant in accordance with the Annual Maintenance Plan approved by Owner for the period in question. Operator shall make recommendations to Owner with respect to budget and scope adjustments that may be required to maintain overall compliance with the Annual Maintenance Plan, and Owner may consider such recommendations in its sole discretion.

3.4.13 Operator shall maintain a continuous improvement program (including steps to maintain improvement of budget development and outage management processes) that is designed to target improving Plant performance metrics such as reliability and availability. Operator shall also make system performance enhancement recommendations as part of the performance reporting process for any changes, adjustments or modifications that should be made to Plant.

3.4.14 Operator shall continuously monitor the Plant remotely through the SCADA System. If Operator detects an alarm or error message or observes that a piece of equipment is not operating properly in the course of such monitoring, it shall take such actions remotely through the SCADA System or at the Plant as are reasonably necessary to respond to such alarm or error message, including effecting remote resets, when possible, or by performing manual resets at the Plant, in each case, as soon as reasonably practicable. Promptly after taking any such actions, Operator shall make its personnel at the Plant and Owner aware of the existence and nature of such actions and the related error or alarm codes. Operator shall also provide analytical services to analyze generation shortfalls, including the cause of such shortfall and propose resolutions for equipment operating below expected standards of operation.

3.4.15 Administer all Project Agreements and other service contracts relating to the operation and/or maintenance of the Plant, including the following with regard to Owner's obligations under the PPA: communications with or related to CAISO including notices of emergencies and outages required to be provided to CAISO, provide accounting and reports of electric production in connection with the power sales, provide all planned outage and forced outage notifications to SDG&E required under the +PPA and all forecasts of energy and Plant availability required to be delivered to SDG&E under the PPA.

3.4.16 Perform any such additional services related to the operation, maintenance, renewals, replacements, additions and retirements pertaining to the Plant as Owner, by written notice to Operator, requests Operator to undertake and as Operator agrees in writing to undertake.

3.5 Emergency. In the event of any Emergency, Operator shall perform the following (and, unless such Emergency is caused by Operator's acts or omission, shall be entitled to reimbursement for all reasonable costs, expenses and obligations incurred in connection therewith):

3.5.1 Operator shall take immediate and diligent action in accordance with Applicable Laws and Prudent Operating Practice to attempt to prevent such threatened damage, injury or loss and, as necessary, mitigate to the greatest extent reasonably practicable such damage, injury or loss;

3.5.2 Operator shall notify all third parties, including fire departments, government agencies, and national response centers, as required by Applicable Law; and

3.5.3 Operator shall notify the Owner's Representative of any emergency, by telephone, facsimile or electronic mail, as soon as practicable following the occurrence of such Emergency given the circumstances, which notice shall include detail with respect to any action being taken or instigated by Operator in response thereto.

3.6 Notification to Owner. Upon obtaining knowledge thereof, Operator shall promptly deliver Notice of each of the following to Owner's Representative:

3.6.1 Any pending or threatened litigation, claim, dispute, action, investigation or proceeding by any Person concerning the Plant or the Work;

3.6.2 Any refusal or threatened refusal to grant, renew, or extend any existing Permit, or any pending or threatened litigation, claim, dispute, action or proceeding that might adversely affect the granting, renewal or extension of any relevant Permit;

3.6.3 Copies of any outage or other notifications required to be delivered to CAISO or SDG&E under Section 3.4.15;

3.6.4 Any incidents at the Plant resulting in death, lost time injury or serious injury to any individual, with written notice to follow within twenty-four (24) hours;

3.6.5 Any discovery of Hazardous Materials at the Plant that are not already recorded on the logs Operator is required to maintain in accordance with Applicable Law and previously notified to Owner or any incident the occurrence of which might reasonably require Operator to provide notification to a Governmental Authority under Applicable Law or Permits or which otherwise may reasonably be expected to result in any regulatory liability to Owner; and

3.6.6 Any other event or circumstance that reasonably could be expected to adversely impact the operation of the Plant in any material manner including labor disputes, material violation of any Applicable Laws or Permits, or material damage to any of the major pieces of equipment comprising the Plant.

3.7 Safety. Operator shall take reasonable safety and other precautions consistent with Prudent Operating Practices to protect persons and property from damage, injury or illness arising out of the performance of the Work. Operator shall prepare for Owner's review and approval a safety manual that shall incorporate the following elements: (i) identification of the Person(s) responsible to implement and enforce the safety program; (ii) identification of safety hazards and correction procedures; (iii) requirements for safety meetings and safety training procedures; (iv) procedures for documenting safety infractions; and (v) general safety regulations and procedures. Operator shall maintain in form and content reasonably acceptable to Owner statistics regarding jobsite accidents, injuries and illnesses at the Plant as required by Applicable Law, which shall be available for inspection by and submitted to Owner upon its written request.

4. CHANGE ORDERS. If Owner and Operator agree that Operator's scope of responsibilities under this Agreement shall be or has been increased or, consistent with Prudent Operating Practices, decreased, or if it appears to either Party that a change is required to the Annual Maintenance Plan to conform the Annual Maintenance Plan to actual circumstances or events, Owner and Operator may in their respective discretion agree upon such amendments to this Agreement, or the Annual Maintenance Plan, as the case may be. Such amendments shall be reflected in a document executed by both Owner and Operator (a "Change Order"). Without limiting the generality of the foregoing, if Owner and Operator agree that Operator's costs of performing the Work are materially increased as a result of any change in Applicable Law, any change to any agreement, instrument or document referred to herein relating to the Plant or any expenditures or services required of Operator in connection with any cooperation provided under

Section 6.1 that would not otherwise be required to operate or maintain the Plant, in each case occurring after the date hereof, occurring as a result of actions outside Operator's control, and affecting the scope of Operator's responsibilities under this Agreement, then Owner and Operator shall agree upon an equitable adjustment to the Basic Corporate Overhead Expense and/or an adjustment to Operator's Compensation whereby Operator shall be entitled, upon submission of proper invoices and supporting documentation, to be reimbursed for such increased costs and shall reflect such adjustment in a written Change Order. In addition and without limiting the generality of the foregoing, if Operator's costs of performing the Work are materially increased as a result of any expenditures or services required of Operator in connection with any cooperation provided under Section 6.1 in furtherance of the contracts listed in such section that would not otherwise be required to operate or maintain the Plant, then Owner and Operator shall agree upon an equitable adjustment to the Basic Corporate Overhead Expense and/or an adjustment to Operator's compensation whereby Operator shall be entitled, upon submission of proper invoices and supporting documentation, to be reimbursed for such increased costs and shall reflect such adjustment in a written Change Order. If any such change in scope is initiated by Operator, Operator shall notify Owner of its estimate of the increased costs caused by such change in scope at or prior to the time the relevant Change Order is submitted to Owner for approval.

5. OPERATOR'S AUTHORITY; SUBCONTRACTING; PARTS.

5.1 Operator's Authority. Operator shall have the authority to procure and make expenditures for such items, parts, materials and services as are deemed necessary by Operator in completing the Work, provided that such procurement and expenditures comply with the Annual Maintenance Plan, the Requirements, and the other terms and conditions of this Agreement. In doing so, Operator shall keep Owner timely informed and obtain Owner's prior approval for any expenditures that are not set forth in the Annual Maintenance Plan or that do not qualify as Permitted Excess Expenditures. Operator shall not require Owner's prior approval, and Owner shall reimburse Operator for, any Permitted Excess Expenditures. Notwithstanding the foregoing, during an Emergency or other unexpected contingency, Operator is authorized to make such expenditures and take such other actions, whether budgeted or not, as Operator shall determine to be reasonably necessary in order to comply with this Agreement, applicable Permits, Applicable Laws or to otherwise protect the Plant, individuals or other property and to maintain the Plant in a safe condition consistent with Prudent Operating Practices. If any such unbudgeted costs and expenditures are incurred, Operator shall promptly notify Owner of such action, specifying the particulars of the events giving rise to such costs and expenditures, and shall promptly submit a revision to the Annual Maintenance Plan to encompass the costs and expenditures incurred, as well as those expected to be incurred, as a result of such Emergency or other unexpected event, and such costs and expenditures reasonably incurred shall be reimbursed in accordance with Exhibit E.

5.2 Subcontracts. No subcontract entered into by Operator shall prohibit or restrict assignment of such agreement by Operator to Owner. Operator shall not be relieved of any of its obligations or liabilities under this Agreement by reason of any subcontract and shall be responsible for the acts and omissions of its Subcontractors in their performance of the Work to the same extent as if such acts and omissions were performed or made by Operator.

5.3 Parts. Operator may not, in performing the Work, procure and employ used, non-OEM or reverse engineered equipment and parts without the express approval and permission of Owner. Materials, equipment and parts procured by Operator shall comply with all Requirements including any conditions required to maintain warranties covering the Plant or any portion or component thereof in effect, and shall be inspected and tested by Operator in accordance with Prudent Operating Practices and any obvious defects shall be noted and handled appropriately.

6. COOPERATION.

6.1 General. During the Term of this Agreement, each Party shall act in good faith and provide such reasonable assistance and cooperation as the other Party may request in connection with the performance of their respective duties and obligations under this Agreement.

6.2 Owner Representative. From time to time during the Term, Owner shall designate, by written notice to Operator, an individual and an alternate (to act in the absence of such representative) (each, an "Owner Representative") with authority to act for Owner in all matters pertaining to this Agreement and the Plant, to receive notices and communications from Operator with respect to this Agreement and the Plant, and to deliver to Operator, on behalf of Owner, notices, communications, decisions and approvals with respect to this Agreement and the Plant. The name of the Owner Representative (including the alternate) as of the date hereof is attached hereto as Exhibit I. In the event that Owner replaces an Owner Representative (or such alternate), Owner shall promptly notify Operator and Operator shall prepare and distribute a new Exhibit I reflecting such changes, and Exhibit I shall be deemed revised.

6.3 Actions by Owner. The manner of making any decision or giving any approval by Owner shall be determined by Owner for itself, but any communication received by Operator from a Person designated by Owner as its Owner Representative (unless such designation shall have been previously revoked) may be conclusively relied upon by Operator as having been authorized by Owner.

6.4 Operator Representative. From time to time during the Term, Operator shall designate, by written notice to Owner an individual and an alternate (to act in the absence of such representative) (each, an "Operator Representative") with authority to act for Operator in all matters pertaining to this Agreement and the Plant, to receive notices and communications from Owner with respect to this Agreement and the Plant, and to deliver to Owner, on behalf of Operator, notices, communications, decisions and approvals with respect to this Agreement and the Plant. The name of the Operator Representative (including the alternate)

as of the date hereof is attached hereto as Exhibit I. In the event that Operator replaces an Operator Representative (or such alternate), Operator shall promptly notify Owner and Operator shall prepare and distribute a new Exhibit I reflecting such changes, and Exhibit I shall be deemed revised.

6.5 Actions by Operator. The manner of making any decision or giving any approval by Operator shall be determined by Operator for itself, but any communication received by Owner from a Person designated by Operator as its Operator Representative (unless such

designation shall have been previously revoked) may be conclusively relied upon by Owner as having been authorized by Operator.

6.6 Access to Information and Plant; Special Assistance. Operator shall provide Owner access to all documents, reports data, information and records that relate to operation and maintenance of the Plant; provided, however, that Operator shall not be required to provide any privileged or proprietary information, personnel information, or other information that does not relate to the Plant and otherwise is not required to operate and maintain the Plant in accordance with Prudent Operating Practices, the Requirements and this Agreement. At the request of Owner from time to time, Operator shall provide Owner with such data and assistance as may be reasonably requested by Owner to enable Owner to discharge satisfactorily its responsibilities as Owner of the Plant, including its responsibilities to its lenders, security holders, regulatory authorities and others. At all times during the Term of this Agreement, Owner and any Affiliates approved by Owner or other Owner designees shall have access to the Plant to inspect and observe any and all aspects of its construction, operation, maintenance, repair, and overall condition, including any command and control facilities for the Plant, subject only to reasonable health and safety rules and regulations which shall be provided to by Operator and Owner and approved by Owner in its reasonable discretion (including any changes made from time to time).

7. OWNER'S RESPONSIBILITIES.

7.1 Responsibilities of Owner. Owner shall be responsible for the following:

(a) Providing Operator and its Subcontractors with access to and within the Plant at all times and without prior notice as reasonably necessary for Operator to perform the Work;

(b) If Owner brings third parties onto the Plant site, Owner shall comply, and be responsible for each third party's compliance, with the safety requirements of the Plant site and any operating or other procedures or protocols related to the Plant. Owner shall not give Plant access to any competitor of the vendor supplying the major generation equipment to the Plant, without first obtaining Operator's consent;

(c) All communications regarding power sales (except as specified in Section 3.4.15), contracting regarding power sales, and bidding regarding power sales;

(d) Providing all facilities and infrastructure required for Operator's and its Subcontractors' performance of the Work;

(e) Obtaining all Permits or licenses required by a Governmental Authority to be in Owner's name which are necessary to enable Operator or its Subcontractors to operate and maintain the Plant;

(f) Water supply, telephone service, public address system, local data network, in—plant radio system, water and waste disposal (other than

Hazardous Materials) and all other utilities as deemed desirable by mutual agreement of Owner and Operator for the execution of the Work;

(g) Providing Operator with reasonably prompt written notice of any changes in the expected date of Project Substantial Completion when compared to that set forth in the schedule for such event set forth in the EPC Agreement; and

(h) Providing Operator with copies, within a reasonable time period following any request from Operator, of any agreements or other documentation the review of which is part of Operator's Work hereunder.

8. COMPENSATION AND PAYMENTS.

8.1 Compensation. During the Term of this Agreement, Owner shall pay to Operator, as compensation for performance of its duties and obligations hereunder, the Compensation determined and payable pursuant to Exhibit E.

8.2 Invoices and Reconciliation. On the Effective Date, Operator shall invoice Owner for the Compensation anticipated to be owed for the Work to be performed during the remainder of the month in which the Effective Date occurs and the following month of the Term, based on the budget for such period set forth in the Annual Maintenance Plan. Thereafter, by the eighth (8th) Business Day of each month during the Term, Operator shall invoice Owner for Compensation anticipated to be owed for the Work to be performed during the following month based on the budget included in the Annual Maintenance Plan plus any Reconciliation Amount owed to Operator as a result of the Compensation paid in the month prior to the issuance of the invoice being less than the actual Compensation earned during such month in accordance with Exhibit E or minus any Reconciliation Amount owed to Owner as a result of the Compensation paid in such prior month being in excess of the actual Compensation earned during such month in accordance with Exhibit E. Operator shall determine at the end of each month, whether the anticipated Compensation invoiced to Owner for such month was less than or in excess of the actual amount of Compensation earned during such month, as determined pursuant to Exhibit E (such amount, the "Reconciliation Amount"). Owner shall pay all undisputed invoiced amounts of such Compensation to Operator no later than thirty (30) Days following the date of receipt by Owner of the applicable invoice. To the extent not otherwise set off against amounts owed by Owner, Operator shall pay all undisputed amounts owed by Operator to Owner under this Agreement no later than thirty (30) Days following the date of receipt by Operator of Owner's invoice for the same. Notwithstanding the provisions of Section 19.1, invoices sent to Owner pursuant to this Section 8.2 shall be addressed to "Accounts Payable" and sent by e-mail (with a follow-up paper invoice to be sent pursuant to the notice provisions of Section 19.1 hereto) to the e-mail address indicated by notice by Owner from time to time.

8.3 Cash Requirements.

8.3.1 If at any time during any month Operator requires additional sums from Owner for unanticipated expenses in excess of 10% over the amounts for Direct Operating Expenses and Capital Improvement Expenses pre-funded by Owner in

accordance with Section 8.2, Operator shall promptly notify Owner. Subject to Section 5.1, Owner shall pay by electronic funds transfer the amount of such shortfall to Operator by the later to occur of (a) fifteen (15) Business Days after receipt of such notice, or (b) as soon as allowed by the Financing Agreements.

8.3.2 Operator shall not be under any obligation to use its own funds to pay any Subcontractors or vendors any amounts included in the Compensation that have not been paid by Owner and shall be indemnified by Owner, beginning on the Effective Date, for Claims suffered by Operator as a result of Owner's failure to provide funds in accordance with this Section 8.

8.4 Cash Neutral. Notwithstanding any provision in this Section 8 to the contrary, all payments to be made by Owner under this Section 8 are due and are to be received by Operator in advance of Operator's incurrence of the expense to which such payments from Owner are to be applied. The Parties acknowledge and agree that the Work, including the procurement of any equipment, supplies and other services, are being performed hereunder on a cost pass-through basis to the Owner.

8.5 Interest on Delinquent Funds. Any delinquent payment under this Agreement shall bear interest, from the date due until paid, at a rate per annum equal to the prime rate from time to time charged by JPMorgan Chase Bank, N.A. in New York City, or any successor institution, plus two percent (2%), but not in excess of the maximum lawful rate of interest permitted by any Applicable Laws. Each change in the interest rate payable on delinquent payments hereunder shall become effective on the date of each such change in the prime rate. The payment of any such interest shall not excuse or cure any delinquent payment due to either Party under this Agreement.

8.6 No Waiver. No payment by Owner shall prejudice or constitute a waiver of its right, within the time frame set forth in Section 14, to audit or make a Claim in respect of the correctness of any billing submitted by Operator.

9. COMPLIANCE WITH LAWS AND PERMITS.

9.1 Requirements of Law Generally. Operator shall comply with all Applicable Laws (including Environmental Laws) applicable to Operator's performance of the Work. Owner shall comply with all Applicable Laws (including Environmental Laws) applicable to its obligations hereunder and otherwise applicable to the ownership of the Plant.

9.2 Hazardous Materials Management. Following Project Substantial Completion, Operator shall be responsible for the on-site management of all Hazardous Materials generated by or used in the operation or maintenance of the Plant. Following Project Substantial Completion, Owner shall be identified to any Governmental Authority as the party responsible for the generation, treatment, storage and disposal of all hazardous or toxic wastes (including waste Hazardous Materials) generated by or used in the operation or maintenance of the Plant (and, therefore, Owner shall be designated as the "generator" on all manifests relating to all such hazardous or toxic wastes). Operator shall use commercially reasonable and diligent efforts to prevent the release of any Hazardous Materials into the air, soil, surface water or groundwater at

the Plant (other than as permitted by applicable Environmental Laws). Owner shall indemnify, defend, and hold harmless the Operator Indemnified Parties from and against any Claims arising from (i) unpermitted releases of Hazardous Materials into the air, soil, surface water or groundwater at the Plant caused by Owner or any its representatives, employees or agents (excepting Operator, its representatives, employees, agents, contractors or Subcontractors including any Plant Personnel or Support Personnel) or (ii) Hazardous Materials existing at the Plant site prior to the date Contractor mobilizes to the Plant site. Operator shall defend, indemnify and hold the Owner Indemnified Parties harmless against, and shall reimburse Owner for any Claims resulting from or related to any unpermitted releases of Hazardous Materials into the air, soil, surface water or groundwater at or from the Plant caused by the acts or omissions of Operator, its representatives, employees, agents, contractors or Subcontractors (including any Plant Personnel or Support Personnel), except for Hazardous Materials existing at the Plant site prior to the date Contractor mobilizes to the Plant site. The amount of any indemnity payable under this Section 9.2 shall be reduced by the amount of all net insurance proceeds received by the indemnified parties in respect of the occurrence of the event giving rise to the indemnification obligation hereunder.

9.3 Compliance with Permits. Operator shall comply with all Permits, and the terms and conditions thereof, applicable to the Plant (whether such Permits are issued in the name of Operator or Owner).

10. ALLOCATION OF RISKS AND LIABILITY.

10.1 General Indemnity by Operator. Operator shall indemnify, defend and hold harmless the Owner Indemnified Parties from and against any and all Claims of whatsoever kind or character, that could be brought by Operator or that are brought by any of Operator's directors, officers, managers or employees or by any Person other than Owner or any of its Affiliates (other than Operator), including reasonable attorneys' fees and expenses, for injury or death of persons or physical loss of or damage to property of Persons arising from (1) Operator's (including it employees' or agents') fraud, gross negligence or willful misconduct, (2) claims from Governmental Authorities related to the failure of Operator or any Operator Related Party to pay taxes for which any such party is responsible, or (3) the violation of any Applicable Law by Operator or any Operator Related Party, except to the extent such injury, death, loss or damage arises from: (i) the fraud, gross negligence or willful misconduct of any Owner Indemnified Party; or (ii) the breach of this Agreement by Owner; or (iii) the violation of any Applicable Law by any Owner Indemnified Party.

The amount of any such indemnity payable by the Operator shall be reduced by the amount of all net insurance proceeds received by the Owner Indemnified Parties in respect of the occurrence of the event giving rise to the indemnification obligation hereunder.

10.2 General Indemnity by Owner. Owner shall indemnify, defend and hold harmless the Operator Indemnified Parties from and against any and all Claims of whatsoever kind or character that are related to the Work or the Plant, that could be brought by Owner or that are brought by any of Owner's directors,

officers, managers or employees or by any Person other than an Operator Related Party or an Operator's Subcontractor of any tier, including reasonable attorneys' fees and expenses, for injury or death of persons or physical loss of or damage to

property of Persons, arising from (1) the fraud, gross negligence or willful misconduct of any Owner Indemnified Party, (2) claims from Governmental Authorities related to the failure of any Owner Indemnified Party to pay taxes for which any such party is responsible, or (3) the violation of any Applicable Law by any Owner Indemnified Party, except to the extent such injury, death, loss or damage arises from: (i) the fraud, gross negligence or willful misconduct of any Operator Related Party or any Operator Subcontractor of any tier in connection with performance of the Work; or (ii) the breach of this Agreement by the Operator; or (iii) the violation of any Applicable Law by Operator's Related Parties or Operator's Subcontractors of any tier.

The amount of any such indemnity payable by the Owner shall be reduced by the amount of all insurance proceeds received by the Operator Indemnified Party in respect of the occurrence of the event which gave rise to the indemnification obligation hereunder.

10.3 Cooperation Regarding Claims. If any Party (each an "Indemnified Party") shall receive notice or have knowledge of any claim that may result in a claim for indemnification by such Indemnified Party against a Party pursuant to this Section 10, such Indemnified Party shall, as promptly as possible, give the indemnifying Party notice of such claim, including a reasonably detailed description of the facts and circumstances relating to such claim, and a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its potential claim for indemnification with respect thereto; provided that failure promptly to give such notice or to provide such information and documents shall not relieve the indemnifying Party from the obligation hereunder to respond to or to defend the Indemnified Party failing to give such notice against such claim. The Party against whom indemnification is claimed shall, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party seeking indemnification, be entitled to assume the defense or to represent the interests of the Indemnified Party seeking indemnification in respect of such claim, which shall include the right to select and direct legal counsel and other consultants reasonably acceptable to the Indemnified Party, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost, in consultation with the Indemnified Party and provided, however, that without the Indemnified Party's consent, which consent may not be unreasonably withheld, the indemnifying Party may only consent to entry of a judgment or settlement that does not provide for injunctive or other nonmonetary relief affecting the Indemnified Party or the Plant.

10.4 Limitations of Liability. Except in the case of fraud or willful misconduct, the total aggregate liability of Operator arising out of, connected with or resulting from this Agreement or from the performance or breach hereof, or from any Work performed by Operator, whether based in contract, in tort (including negligence and strict liability) under warranty or otherwise, and notwithstanding any other provisions of this Agreement, shall be limited to the Annual Profit Fee (without any adjustment through the Adjustment Payment) and the Basic Corporate Overhead Expenses for the year in which such liability arose (or, for any year prior to the commencement of commercial operations at the Plant, $100,000 in the aggregate); provided that such limitation of liability shall not apply to damages to the extent insurance proceeds are received from insurance required under this Agreement, it being the Parties specific intent that the limitation of liability will not relieve insurers' obligations for such insured risks.

11. CONSEQUENTIAL DAMAGES; DISCLAIMER. Neither Party shall be liable to the other Party for any punitive, incidental, indirect, special or consequential loss or damage, including loss of revenues, income or profits, cost of capital, loss of goodwill or reputation connected with or resulting from performance or non-performance of any obligations under this Agreement, except (a) to the extent arising from the gross negligence, fraud or willful misconduct of the liable Party, or (b) any indemnification obligations of either Party hereunder for third party Claims. The Parties further agree that this waiver and disclaimer of liability shall apply at all times, whether in contract, equity, tort or otherwise, regardless of the fault, negligence (in whole or in part), strict liability, breach of contract or breach of warranty of the Party whose liabilities are so limited.

12. INSURANCE.

12.1 Operator's Insurance. At its own expense Operator shall secure and maintain, or cause to be secured and maintained, the insurance policies required to be maintained by it under Exhibit C in accordance with the terms and conditions set forth therein. Operator shall, within five (5) days after each request by Owner, provide certificates of insurance to Owner, evidencing all insurance policies required pursuant to this Section 12.1. Operator shall also provide detailed summaries (reasonably acceptable to Owner) of all insurance policies required by this Section 12.1, upon reasonable advance notice by Owner.

12.2 Owner's Insurance. The Owner shall procure, or cause to be procured, at the expense of the Owner, the insurance policies required to be maintained by it under Exhibit C in accordance with the terms and conditions set forth therein. Owner shall, within five (5) Days after each request by Operator provide certificates of insurance to Operator, evidencing all insurance policies required pursuant to this Section 12.2. Owner shall also provide detailed summaries (reasonably acceptable to Operator) of all insurance policies required pursuant to this Section 12.2 upon reasonable advance notice by Operator.

13. FORCE MAJEURE.

13.1 Excused Performance; Duty to Mitigate. Notwithstanding any other provision of this Agreement (excepting Section 13.2), any obligation of either Party under this Agreement shall be excused to the extent that such Party's inability to perform is caused by a Force Majeure Event. Both Parties shall make all commercially and technically reasonable efforts to cure, mitigate or remedy the effects of a Force Majeure Event.

13.2 Obligations to Pay Monies. Notwithstanding that a Force Majeure Event may otherwise exist, the provisions of this Section 13 shall not excuse the payment of money due by any Party; provided, however, that Owner shall have no obligation to pay for Work that is not performed during a Force Majeure Event.

13.3 Notice of Force Majeure Event. The Party claiming a Force Majeure Event shall, as a condition precedent for relief for the Force Majeure Event, give notice to the other Party of any Force Majeure Event as soon as reasonably practicable, but not later than ten (10) Days after the date on which such Party knew of the commencement of the Force Majeure Event. Notwithstanding the above, if the Force Majeure Event results in a breakdown of

communications rendering it not reasonably practicable to give notice within the applicable time limit specified herein, then the Party claiming a Force Majeure Event shall give such notice as soon as reasonably practicable after the reinstatement of communications, but not later than five (5) Days after the reinstatement of such communications.

13.4 Notice of Cessation of Force Majeure Event. The Party claiming a Force Majeure Event shall give notice to the other Party of (a) the cessation of the relevant Force Majeure Event and (b) the cessation of the effects of such Force Majeure Event, and such Party shall resume performance of its obligations as soon as reasonably practicable thereafter.

14. BOOKS AND RECORDS. All Project Records shall be and remain the sole and exclusive property of the Owner, which shall have and retain all rights, including any Intellectual Property rights, therein. Operator shall maintain on a current basis proper, accurate, detailed and complete books, records and accounts relating to the operation and maintenance of the Plant (including logs of all repairs, parts and materials used and any other data to be maintained under the Requirements) and the performance of the Work (collectively referred to as "Books and Records"), including all operating data and operating logs maintained pursuant to Section 3.4, and as necessary to document Compensation earned by Operator. Operator shall ensure that such Books and Records are kept in a manner that enables them to be separated from Operator's own corporate books and records of account. Throughout the Term and for a period of one (1) year (or such longer period as required by Governmental Authority) following the end of the Term, Owner shall have the right, upon three (3) Business Days' prior written notice and during normal business hours, to inspect and audit the Books and Records. If any overpayments of Compensation are identified in such audit, the undisputed amount of the overpayment shall be refunded to Owner within thirty (30) Days after Operator receives Owner's invoice for the same.

15. INTELLECTUAL PROPERTY. Any Licensed Materials, and all Intellectual Property, if any, contained in the Licensed Materials or otherwise owned by Operator or its Subcontractors and incorporated into the Plant by Operator or its Subcontractors in connection with the performance of the Work, are and shall remain the exclusive property of Operator or its Subcontractors, as the case may be. Operator hereby grants a fully paid-up, non-exclusive, perpetual, irrevocable, world-wide license for Owner to use the Licensed Materials and all Intellectual Property therein and such Intellectually Property so incorporated into the Plant (the "Operator IP), as set forth below:

(a) Owner shall not, without the prior written consent of Operator, use the Licensed Materials or Operator IP, in relation to any project other than the Plant or for any expansion of the Plant; and

(b) Owner may use such Licensed Materials and Operator IP solely for and to the extent required for the operation, maintenance, repair and service of the Plant.

The Licensed Materials covered by the license set forth in this Article 15 are inseparable from the Materials and Work being furnished pursuant to this Agreement. As a result, this license, and all rights and obligations contained in this license, (i) shall continue with respect to the Plant for so long as the Plant remains in service and (ii) shall transfer with any transfer of the Plant or any portion thereof to any Person. All copies, but not the Intellectual Property therein, of the

Licensed Materials that are provided to Owner by Operator or its Subcontractors in connection with the performance of the Work shall become the property of Owner.

16. EVENTS OF DEFAULT.

16.1 Operator Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Operator hereunder (an "Operator Event of Default"):

16.1.1 Except as otherwise expressly addressed in this Section 16.1, Operator is in material breach of its obligations or its representations and warranties under this Agreement and such material breach continues uncured for thirty (30) Days after receipt of written notice from Owner, provided that Operator's cure period may be extended for such breaches not reasonably susceptible to cure within thirty (30) Days and Operator commences to cure such breach within such thirty (30) Day period and thereafter continuously and diligently pursues the cure of the breach to completion;

16.1.2 Operator assigns this Agreement and its obligations hereunder, except as permitted under Section 17.1;

16.1.3 Operator terminates its existence (except in the case of merger or other corporate reorganization to the extent permitted under the Financing Agreements) or voluntarily commences or acquiesces to bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings; or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors; or

16.1.4 Insolvency, receivership, reorganization, bankruptcy, or similar proceedings shall have been commenced against Operator and such proceedings remain undismissed or unstayed for a period of ninety (90) Days.

16.2 Owner Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Owner hereunder (an "Owner Event of Default"):

16.2.1 Owner fails to pay to Operator any payment required under this Agreement that is not in dispute, and such failure continues for thirty (30) Days after receipt of written notice of such failure;

16.2.2 Except as otherwise expressly addressed in this Section 16.2, Owner is in material breach of its obligations or its representations and warranties under this Agreement and such material breach continues uncured for thirty (30) Days after receipt of written notice from Operator, provided that Owner's cure period may be extended for such breaches not reasonably susceptible to cure within thirty (30) Days and Owner commences to cure such breach within such thirty (30) Day period and thereafter continuously and diligently pursues the cure of the breach to completion;

16.2.3 Owner terminates its existence (except in the case of merger or other corporate reorganization to the extent permitted under the Financing Agreements) or voluntarily commences or acquiesces to bankruptcy, insolvency, reorganization, stay,

moratorium or similar debtor-relief proceedings, or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors; or

16.2.4 Insolvency, receivership, reorganization, bankruptcy, or a similar proceeding shall have been commenced against Owner and such proceeding remains undismissed or unstayed for a period of ninety (90) Days.

16.3 Event of Default Remedies. The sole and exclusive remedy of each Party upon the occurrence and continuation of an Event of Default by the other Party is the termination of this Agreement and payment of the amounts required to be paid under and in accordance with Section 2.2, provided however, that this provision shall not limit the indemnity obligations of the Parties hereunder.

17. ASSIGNMENT.

17.1 Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of Owner and Operator. Neither Owner nor Operator shall, without the written consent of the other Party, assign or transfer this Agreement, which consent shall be at such other Party's sole discretion. Notwithstanding the foregoing, without the written consent of Operator, (a) Owner may assign all of its rights and obligations under this Agreement to a Financing Party as collateral security in connection with obtaining or arranging any Financing for the Plant; provided, however, Owner shall deliver, at least ten (10) Days prior to any such assignment to Operator (i) written notice of such assignment and (ii) a copy of the instrument of assignment and (b) the Financing Party or the Financing Party's agent may assign this Agreement or their right under this Agreement, including in connection with any foreclosure or other enforcement of their security interest. If Operator executes a consent to assignment or other direct agreement with a Financing Party, the notice requirement set forth in Section 17.1(a) shall be deemed satisfied. Any assignment which does not comply with the requirements of this Section 17.1 shall be null and void; provided, however, that no assignment by Owner to a Financing Party otherwise permitted by this Section 17.1 shall be void or nullified solely due to a failure to give the notice required by this Section 17.1.

17.2 Financing Cooperation. Operator shall provide such cooperation as Owner may reasonably request in connection with obtaining Financing for the Plant; provided, however, that such cooperation does not (a) adversely affect the rights or increase the duties and obligations of Operator under this Agreement in any material respect or (b) cause Operator to incur any additional third party expenses in the performance of its obligations hereunder. At any time and from time to time during the Term of this Agreement, after receipt of a written request by Owner, Operator shall (x) execute and deliver to Owner and/or the Financing Parties, estoppel statements reasonably acceptable to Operator certifying to its knowledge whether or not (i) this Agreement is in full force and effect, (ii) any modifications have been made hereto, (iii) whether there exist any defaults hereunder or any disputes hereunder between the Parties, (iv) any events have occurred that would, with the giving of notice or the passage of time, constitute a default hereunder, and (v) all amounts then due and owing hereunder have been paid, (y) execute customary consents, at expense of Owner, in a form reasonably acceptable to Operator, to Owner's assignment of this Agreement to a Financing Party as collateral security and (z) provide

such legal opinions at the expense of Owner as may reasonably be requested in connection with any collateral assignment and consent.

18. TITLE TO MATERIALS. Title to any Materials shall pass directly from the supplier to Owner when purchased and shall be free and clear of all liens and encumbrances created or imposed by Operator. Operator shall keep and maintain the Plant free and clear of all liens and encumbrances resulting from the action or inaction of Operator or its Subcontractors hereunder or from any Work done hereunder at the request of Operator or its Subcontractors, other than (a) liens and encumbrances arising by, through or under Owner; and (b) liens and encumbrances which are being diligently contested in good faith and by appropriate proceedings for which appropriate reserves have been established. Notwithstanding the foregoing, Operator shall not be responsible for preventing liens and encumbrances that result from Owner' failure to timely pay amounts owing to Operator under this Agreement.

19. MISCELLANEOUS.

19.1 Notices. All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing and shall be considered properly served, given or made if delivered either in person, by electronic delivery, by facsimile, by overnight courier or by U.S. mail, first class postage prepaid, directed to the Parties or their permitted assignees at the addresses set forth in Exhibit I. Notice by electronic delivery, facsimile, or by hand delivery, shall be effective at the close of business on the day actually received, if received during business hours on a Business Day. Notice by overnight U.S. mail or courier shall be effective on the next Business Day after being sent, and notice by regular U.S. mail shall be effective three (3) Business Days after being sent. Any Party may, at any time, by written notice to the other Party, designate different Persons or addresses for the receipt of notices hereunder.

19.2 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under Applicable Law. In the event that any of the terms, covenants or conditions hereof or the application thereof to either Party or any circumstance shall be held by a court of competent jurisdiction to be invalid in any jurisdiction, the remaining terms, covenants and conditions hereof and the application thereof to either Party or any other circumstance, or in any other jurisdiction, shall not be affected thereby.

19.3 Confidentiality.

19.3.1 Confidential Information. For purposes of this Agreement, the term "Confidential Information" means proprietary information concerning the business, operations and assets of Operator or Owner (as the case may be), their respective parent companies, subsidiaries or affiliates (collectively, the "Disclosing Party") that is clearly marked "Proprietary" or "Confidential" if disclosed in writing, and, if disclosed orally or visually, is communicated to be confidential at the time of disclosure and reduced to a writing marked "Proprietary" or "Confidential" within a period of thirty (30) days after the initial oral or visual disclosure by the Disclosing Party to the Party receiving the information ("Receiving Party"). Subject to the preceding sentence, Confidential Information may include information or materials prepared in connection with the performance of the Services under this Agreement, or any related subsequent agreement,

designs, drawings, specifications, techniques, models, data, documentation, manuals, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, business plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible

form (provided the requirements of the preceding sentence are satisfied), and any other trade secrets. In no event, shall Confidential Information include (a) information known to Receiving Party prior to obtaining the same from Disclosing Party (provided that such knowledge did not involve a breach of confidentiality obligations by any Person from whom such knowledge was directly or indirectly obtained) as reflected by the written records of Receiving Party; (b) information in the public domain at the time of disclosure by Disclosing Party; (c) information obtained by Receiving Party from a third party rightfully in the possession of such information and who did not receive same, directly or indirectly, from Disclosing Party; or (d) information approved for public release by express prior written consent of an authorized officer of Disclosing Party.

19.3.2 Use of Confidential Information.

(a) General. Receiving Party hereby agrees that it shall use the Confidential Information for the purposes of this Agreement and/or the Plant. Receiving Party agrees to use the same degree of care Receiving Party uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Receiving Party shall keep confidential and not disclose the Confidential Information. Operator and Owner shall cause each of their directors, officers, managers, employees, agents, partners, representatives, Subcontractors, successors and permitted assigns to become familiar with, and abide by, the terms of this Section 19.3.2.

(b) Disclosures Required under Applicable Law. Notwithstanding the provisions of this Section 19.3, a Receiving Party may disclose any of the Confidential Information of the Disclosing Party to the extent required by Applicable Law. Prior to making or permitting any such disclosure, Receiving Party shall provide Disclosing Party with prompt Notice of any such requirement so that Disclosing Party (with Receiving Party's assistance, if requested) may seek a protective order or other appropriate remedy. In any such event, the Receiving Party shall use commercially reasonable efforts, at the sole cost and expense of the Disclosing Party, to ensure that all Confidential Information that is so disclosed shall be accorded confidential treatment, to the extent possible, and shall so disclose only that portion of the Confidential Information that is legally required to be disclosed.

(c) Permitted Disclosures. Notwithstanding the foregoing, each Party has the right to disclose Confidential Information without the consent of the Disclosing Party; (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed; (ii) as required in connection with any

government or regulatory filings, including filings with any regulating authorities covering the relevant financial markets; (iii) to its attorneys, accountants, financial advisors or other agents that require such information in connection with their work; (iv) to actual and prospective lenders, investors and other financing sources and their advisors, in each case to the extent necessary or advisable in connection with any Person obtaining financing for the Plant; (v) in connection with an actual or prospective merger or acquisition or similar transaction involving such Party or the parent entity of such Party, (vi) in the case of disclosures by Operator, to its Subcontractors (of any tier), and (vii) in the case of disclosures by Owner, Affiliates of Owner and any Person that has an equity interest in the Plant. In each of cases (iii) through (vii) above, the Disclosing Party shall obtain from the third party to whom it seeks to disclose or to whom it has disclosed Confidential Information a binding confidentiality undertaking in writing agreeing to keep and use such information in confidence that is substantially similar to the undertakings of the Parties in this Article XIV (provided that no such agreement in writing shall be required from third parties who are in any event bound by legal or professional ethical obligations to maintain such confidentiality).

19.3.3 Return of Confidential Information. At any time upon the request of Disclosing Party, Receiving Party shall promptly deliver to Disclosing Party or destroy if so directed by Disclosing Party (with such destruction to be certified by Receiving Party) all documents (and all copies thereof, however stored) furnished to or prepared by Receiving Party that contain Confidential Information; provided, however, that the Receiving Party may retain one copy of such Confidential Information; and provided, further, that all such retained Confidential Information shall be held subject to the terms and conditions of this Agreement.

19.3.4 Termination of Confidentiality. The confidentiality provisions set forth in this Agreement shall remain in full force and effect, until the date that is two (2) years after the end of the Term. After such date, unless otherwise agreed in writing by the Parties, no information previously designated as Confidential Information under this Section 19.3.5 shall need to be treated as confidential by the Receiving Party.

19.3.5 Remedies for Breach of Confidentiality Obligations. The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of the obligations set forth in this Section 19.3 and the obligations of each Party under this Section 19.3 are specifically enforceable. Accordingly, the Parties agree that a breach or threatened breach of this Section 19.3 by either Party, shall entitle the other Party to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to such Party, its direct and indirect parent companies, subsidiaries or Affiliates.

19.4 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of California, exclusive of any conflict of laws provisions that would apply the laws of another jurisdiction.

19.6 Entire Agreement; Conflicts. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, representations, communications and understandings, written or oral, express or implied, pertaining thereto. Any modifications, amendments, or changes to this Agreement shall be binding upon the Parties only if agreed upon in writing and signed by the authorized representatives of the Parties. In the event of any conflict between the provisions of Sections 1 through 25 of this Agreement and the exhibits and schedules attached hereto, the provisions of Sections 1 through 25 shall control.

19.7 No Partnership Created. Operator is an independent contractor and nothing contained herein shall be construed as constituting any relationship with Owner other than that of purchaser and independent contractor, nor shall it be construed as creating any relationship whatsoever including employer/employee, partners or joint venture parties, between Owner and Operator's employees.

19.8 No Third Party Rights. Except with respect to the indemnities set forth in this Agreement, the Parties do not intend to create rights in, or grant remedies to, any third Party as a beneficiary of this Agreement or of any duty, covenant, obligation or understanding established under this Agreement.

19.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, notwithstanding that both of the Parties are not signatories to the original or to the same counterpart. A copy of this Agreement signed by a Party and delivered by facsimile, email or other electronic transmission to the other Party shall have the same effect as the delivery of an original of this Agreement containing the original signature of such signing Party.

19.10 No Liens. The Operator will not create, permit or suffer to exist any liens created by through or under the Operator (or its employees, agents, representatives, contractors, Subcontractors or vendors) on the Work or other facilities, equipment or materials used to provide or incorporated into the Work, as applicable. However, and for the avoidance of doubt, the Operator may enter into agreements with third parties, within the scope of the Work, that could result in liens and encumbrances against the Plant, including liens and encumbrances in favor of carriers', warehouseman's, mechanics', materialmen's, repairmen's or other like liens arising in the ordinary course of business and within the scope of the authority of the Operator hereunder. In the event such a lien is made against the Plant and the Owner has provided to the Operator adequate funds and other support necessary to discharge such lien, the Operator will take all prompt steps to discharge such lien filed against any such item. If the Operator fails to discharge promptly any such lien, the Owner will have the right to notify Operator in writing and to take any reasonable action to satisfy, defend, settle or otherwise remove the lien at the Operator's expense, but only to the extent the Owner provided adequate funds to the Operator to discharge such lien.

20. [RESERVED]

21. OPERATOR REPRESENTATIONS AND WARRANTIES. The Operator represents and warrants to the Owner as follows:

(a) The Operator is a limited liability company duly organized in the State of Delaware, qualified to conduct business in the States of Delaware and California and validly existing and in respect of which no action relating to insolvency or liquidation has, to the knowledge of the Operator, been taken.

(b) The execution, delivery and performance of this Agreement by the Operator have been duly authorized by all necessary action on the part of the Operator and do not and will not require the consent of (i) any trustee or holder of any indebtedness or other obligation of the Operator or (ii) any other Person that is not a Governmental Authority (other than any such consents which have already been obtained by the Operator).

(c) This Agreement has been duly executed and delivered by the Operator. This Agreement constitutes the legal, valid, binding and enforceable obligation of the Operator, subject to any applicable principles of equity or other similar law.

(d) No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any Governmental Authority is required on the part of the Operator in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which the Operator anticipates will be obtained in a timely manner and in the ordinary course of performance by the Operator and the Owner of this Agreement.

(e) The execution, delivery and performance of this Agreement by Operator will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of its certificate of formation, limited liability company agreement or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.

(f) There are no actions, suits, proceedings or investigations pending or, to Operator's knowledge, threatened against Operator at law or in equity before any court or other Governmental Authority or any arbitration panel, which individually or in the aggregate may result in any material adverse effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under the Agreement.

22. OWNER REPRESENTATIONS AND WARRANTIES. The Owner represents and warrants to the Operator as follows:

(a) The Owner is a limited liability company duly organized in the State of Delaware, qualified to conduct business in the States of Delaware and California and validly existing and in respect of which no action relating to insolvency or liquidation has, to the knowledge of the Owner, been taken.

(b) The execution, delivery and performance of this Agreement by the Owner have been duly authorized by all necessary action on the part of the Owner and do not and will not require the consent of any trustee or holder of any indebtedness or other obligation of the Owner or any other party to any other agreement with the Owner (other than any such consents which have already been obtained by the Owner).

(c) This Agreement has been duly executed and delivered by the Owner. This Agreement constitutes the legal, valid, binding and enforceable obligation of the Owner, subject to any applicable principles of equity or other similar law.

(d) No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any Governmental Authority is required on the part of the Owner in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which the Owner anticipates will be timely obtained in the ordinary course of performance by the Operator and the Owner of this Agreement.

(e) The execution, delivery and performance of this Agreement by Owner will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of its certificate of formation, limited liability company agreement or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.

(f) There are no actions, suits, proceedings or investigations pending or, to Owner's knowledge, threatened against Owner at law or in equity before any court or other Governmental Authority or any arbitration panel, which individually or in the aggregate may result in any material adverse effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under the Agreement.

23. SURVIVAL. All provisions of this Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement, including Section 2.6, Section 2.7, Section 9, Section 10, Section 11, Section 19.6, Section 19.7 and this Section 23 shall remain in effect and be enforceable following termination or expiration of this Agreement.

[Signatures begin on next page]

IN WITNESS WHEREOF, the Parties hereto have caused this Operation and Maintenance Agreement to be effective as of the date first above written.

OPERATOR:

NRG Energy Services LLC,
a Delaware limited liability company

By: /s/ John M Belk

Name: John M Belk

Title: President

OWNER:

NRG Solar Borrego I LLC,
a Delaware limited liability Company

By: /s/ Randall Hickok

Name: Randall Hickok

Title: Vice President

[Signature Page to O&M Agreement]

Exhibit 10.14

ASSET MANAGEMENT AGREEMENT

By and among

NRG SOLAR ALPINE LLC,
as the Owner,

and

NRG SOLAR ASSET MANAGEMENT LLC,
as Administrator

March 15, 2012

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ASSET MANAGEMENT AGREEMENT

THIS ASSET MANAGEMENT AGREEMENT (the "Agreement") is made as of this 15th day of March, 2012 (the "Effective Date"), by and between **NRG SOLAR ALPINE LLC**, a Delaware limited liability company (as further defined below, the "Owner"), and **NRG SOLAR ASSET MANAGEMENT LLC**, a Delaware limited liability company (as further defined below, the "Administrator").

WITNESSETH:

The Owner shall enter into this Agreement with the Administrator to provide for, among other things, certain asset management and administrative services for the Project, on behalf of the Owner.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS AND USAGE

1.1 Definitions. Unless the express terms of this Agreement shall otherwise provide, capitalized terms used in the recitals hereto shall have the meanings given to them in the recitals and capitalized terms used in this Agreement shall have the following meanings:

"Adjustment Date" is defined in Section 4.1(1).

"Administrative Services" means the responsibilities of the Administrator under Article II of this Agreement.

"Administrator" means NRG Solar Asset Management LLC, a Delaware limited liability company in its capacity of providing Administrative Services under this Agreement.

"Administrator Indemnified Party" is defined in Section 9.4(2).

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly: (a) owns or controls such Person; (b) is owned or controlled by such Person; or (c) is under common ownership or control with such Person. For purposes of this definition, "control" shall mean, when used with respect to any specified Person, possession of the power to direct the management or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"Agreement" is defined in the preamble.

"Approved Budget" is defined in Section 2.2(10).

"Claims" means, collectively, all claims, demands, actions, suits or proceedings (judicial, governmental or otherwise) asserted, threatened or filed against a Person, and any fines, penalties, losses, liabilities, damages and expenses incurred by such Person as a result thereof, including reasonable attorneys' fees and costs of investigation, litigation, settlement and judgment, and any contractual obligations of such Person to provide indemnity for any such claims, demands, actions, suits or proceedings, fines, penalties, losses, liabilities, damages and expenses to any other Person.

"Commencement Date" means the Effective Date.

"Confidential Information" is defined in Section 11.9.

"Core Duties" shall consist of the following services to be provided hereunder with respect to the Project: (i) supervision, monitoring and administration of the Project Documents, (ii) supervising and monitoring compliance with the Financing Documents, (iii) bookkeeping, record keeping and preparation of financial statements as set forth in Section 2.2, (iv) overall coordination of the administrative activities of the Owner, (v) reporting to and communication with the Owner, (vi) administration of environmental reviews and audits in the ordinary course of business and (vii) supervision and administration of operating performance reviews.

"Effective Date" is defined in the preamble.

"EPC Agreement" means the Engineering, Procurement and Construction Contract, dated as of October 28, 2011, by and between the Owner and First Solar Electric (California), Inc., which provides for the design, engineering, procurement, site preparation, construction, testing and start-up of the Project.

"EPC Contractor" means First Solar Electric (California), Inc., as the "Contractor" under the EPC Agreement, and its permitted assigns.

"Events of Default" is defined in Section 8.1.

"FERC" means the Federal Energy Regulatory Commission and any successor thereto.

"Financing Documents" means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, interest rate exchanges, or swap agreements, and any other documents relating to the development, bridge construction or the permanent financing for the Project, even if more than one financing arrangement exists at any time and even if the financing arrangements are of different tiers or tranches, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications or supplements to the foregoing that may be entered into from time to time.

"Fiscal Year" means in the case of the initial Fiscal Year the period beginning on the Effective Date and ending on December 31, 2012, and in the case of each subsequent Fiscal Year, the calendar year ending on each successive December 31st.

"GAAP" means generally accepted accounting principles in the United States in effect from time to time, applied on a consistent basis.

"Indemnified Party" is defined in Section 9.4(3).

"Indemnifying Party" is defined in Section 9.4(3).

"Initial Term" is defined in Section 7.1.

"Laws" means all applicable federal, state, local, municipal, foreign or other laws, constitutions, statutes, rules, regulations, ordinances, Orders, treaties, codes and other legal requirements issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Authority, including the common law and Environmental Laws.

"LLC Agreement" means the Second Amended and Restated Limited Liability Company Agreement of NRG Solar Alpine LLC, entered into on May 6, 2010, as amended from time to time.

"Management Fee" is defined in Section 4.l(1).

"MW" means megawatt AC.

"Order" means any legally binding order, injunction, judgment, decree, ruling, writ or assessment of a Governmental Authority or decision of an authorized arbitrator.

"O&M Agreement" means the Operation and Maintenance Agreement, dated as of August 5, 2011, between the Owner and First Solar Electric (California), Inc., which provides for the operation, maintenance and repair of the Project by First Solar Electric (California), Inc. by and for the benefit of the Owner.

"Operator" means First Solar Electric (California), Inc., a Delaware corporation.

"Owner" means NRG Solar Alpine LLC, a Delaware limited liability company.

"Owner Indemnified Party" is defined in Section 9.4(1).

"Person" means any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust, unincorporated organization or governmental authority.

"PPI" means the Producer Price Index for Finished Goods published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of the Producer Price Index of the U.S. Bureau of Labor Statistics is discontinued, comparable statistics on the purchasing power of the dollar published by a responsible financial periodical reasonably agreed by Administrator and the Owner shall be used for making such computations.

"Project Documents" means those agreements listed on Exhibit B attached hereto as amended, modified or supplemented from time to time.

"Project" means the approximately 66 MW solar electric generating facility, and all accessories and ancillary facilities associated therewith, owned by the Owner, to be located near Lancaster, Arizona.

"Prudent Industry Practices" means these practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly accepted in the utility-scale photovoltaic industry in the United States as good, safe and prudent practices in connection with the design, construction, operation, maintenance, repair and use of the Project. "Prudent Industry Practice" as defined herein does not necessarily mean one particular practice, method, equipment specification or standard in all cases, but is, instead, intended to encompass a broad range of acceptance practices, methods, equipment specifications and standards.

"Reference Rate" means the rate as published, from time to time, in The Wall Street Journal as the prime lending rate or "prime rate" plus two percent (2%), but not in excess of the maximum lawful rate of interest permitted by any applicable laws. Each change in the Reference Rate shall become effective on the date of such change in the prime rate.

"Renewal Term" is defined in Section 7.2.

"Service Providers" means the EPC Contractor, Operator and each independent third party hired by the Owner, or by the Administrator on behalf of the Owner, to perform services for the Owner or with respect to the Project, including other providers of maintenance, repair and warranty services, certified public accountants, tax return preparers, law firms, engineering firms, and other professional advisors and consultants.

"Subsidiaries" of the Owner means, collectively, each entity (i) of which the Owner (either alone or through or together with one or more other Subsidiaries) owns, directly or indirectly, more than 50% of the capital stock or other equity securities of such entity, the holders of which are generally entitled to vote for the election of the board of directors or other governing body of, or otherwise control the business and affairs of, such entity, or (ii) the operations of which are consolidated with the Owner for financial reporting purposes.

"Term" means the Initial Term and any Renewal Term.

ARTICLE II
ADMINISTRATOR'S RESPONSIBILITIES

2.1 Engagement. So long as this Agreement remains in effect, the Administrator shall be responsible for performing the Administrative Services in accordance with the terms and conditions of this Agreement.

2.2 Responsibilities On and After the Effective Date. Commencing on the Effective Date and continuing through the remainder of the Term, the Administrator shall provide the following Administrative Services on behalf of the Owner and its Subsidiaries:

1. Maintain bank accounts of Owner;

2. Maintain complete and accurate financial books and records in accordance with GAAP for Owner;

3. Perform all of the Owner's reporting, notice and other administrative responsibilities required under and/or in connection with the Project Documents, the Financing Documents, and all required governmental approvals and permits;

4. Administer the Financing Documents on behalf of the Project;

5. Maintain complete and accurate financial books and records of the operations of the Project in accordance with the Financing Documents, prudent business practices and GAAP and make such books and records available for inspection and copying during normal business hours on its premises by the Owner or any other Person authorized by the Owner to inspect or copy such books and records, subject to appropriate confidentiality safeguards;

6. Provide to the Owner copies of monthly financial statements for the Owner and its Subsidiaries, but only if and to the extent such financial statements are prepared as required under the Financing Documents or are prepared and provided to Owner;

7. Administer the Project Documents; coordinate and liaise with each counterparty under the Project Documents and arrange for the performance of the Owner's obligations thereunder; and administer and monitor the Owner's and each counterparty's compliance with the Project Documents, which shall include (i) monitoring each counterparty's performance of its services for the Project (ii) enforcing compliance (or correcting failures to comply) with the Project Documents and (iii) informing Owner of non-compliance of which it becomes aware;

8. Prepare and file or cause to be prepared and filed by certified public accountants acting on behalf of the Owner and the Project, on a timely basis, all federal, state and local tax returns and related information and filings required to be filed by the Owner and the Project; pay out of the Owner's funds in accordance with the Financing Documents all taxes and other governmental charges shown to be due thereon before they become delinquent and, subject to the terms of the LLC Agreement, make all tax elections believed by the Administrator to be necessary or desirable for the Owner;

9. Supervise and monitor the Service Providers with respect to their performance of services for the Project, and maintain detailed records and otherwise account for all expenditures made on behalf of the Project;

10. On or prior to December 1 of each Fiscal Year, prepare, or cause to be prepared, and submit to the Owner an operating budget for the Project for the immediately following Fiscal Year and an operating budget forecast for the five (5) years thereafter, based on the form attached as Exhibit A hereto (each, an "Approved Budget" and collectively, the "Approved Budget"); it being understood that the Annual Operating Budget attached as Exhibit A shall comprise the Approved Budget for the initial Fiscal Year;

11. Notify the Owner of any material variance from the applicable Approved Budget promptly after learning of such variance;

12. (A) Assist Owner with procuring and maintaining all commercially available insurance required to be maintained by Owner and the Project in accordance with the Financing Documents and the Project Documents and (B) on an annual basis, assist the Owner with obtaining certificates from the insurance broker verifying the insurance maintained with respect to the Owner and the Project and setting forth the details of all active insurance policies in connection therewith;

13. Administrator, at its sole cost and expense, agrees to provide the Owner with acceptable evidence (in form and substance reasonably satisfactory to the Owner) of the existence of the following insurance types, with the following policy limits: (a) commercial general liability insurance written on an occurrence based form, covering bodily injury and property damage, premises and operations, products and completed operations, contractual liability, independent contractors, cross liabilities/separation of insureds, and personal injury liability, with limits of not less than $1,000,000 per occurrence and a $2,000,000 annual aggregate; (b) if applicable, automobile liability insurance, including coverage for owned, non-owned and hired automobiles for both bodily injury and property damage in accordance with applicable state legal requirements, with combined single limits of no less than $1,000,000 with respect to bodily injury, property damage or death; (c) all forms and types of insurance required by applicable law with respect to employees, including statutory workers compensation and disability benefits insurance (where applicable) and employers liability insurance, with limits of $1,000,000 per accident/per employee; and (d) excess liability insurance or equivalent form with a minimum of $10,000,000 per occurrence limit for any occurrence following the terms of the primary insurance set forth in clauses (a), (b) and (c) (with respect to employer's liability only) above. Administrator's commercial general liability, insurance shall be primary to, and shall not seek contribution from, any similar insurance being maintained by Owner and/or its affiliates;

14. Ensure that each policy of insurance required by Section 2.2(13) shall: (a) be procured and maintained with responsible insurers rated "A- IX" or better by A.M. Best (provided that, if such coverage is not available from an insurer rated "A- IX" or better by A.M. Best on commercially reasonable terms, such insurance shall be procured and maintained with responsible and reputable insurers rated less than "A- IX" and as reasonably acceptable to the Owner) and that are authorized to do business in California; (b) if commercially available, provide that the coverage provided shall not lapse or be canceled or not renewed without at least thirty (30) days' prior written notice (or ten (10) days' prior notice if such cancellation is due to failure to pay premiums); (c) provide that none of the Owner, its Subsidiaries nor any of their assignees, shall have any liability for the payment of any premiums or commissions for the policies noted in Section 2.2(13); (d) upon Project Substantial Completion (as defined in the EPC Contract), include an endorsement to the commercial general liability, automobile liability and excess liability policies noted in Section 2.2(13) naming the Owner and its Subsidiaries, and their respective successors, assigns, partners, directors, officers, members, managers, and employees as additional insureds (blanket additional insured endorsements and policy language designating same are acceptable); and (e) with respect to general liability insurance, include a severability of interest clause and cross-liability clause;

15. Ensure that certificates of insurance for policies required by Section 2.2(13) shall be provided to the Owner on or prior to the Effective Date and thereafter annually, at each renewal, or upon request. All insurance policies specified in Section 2.2(13) shall include a waiver of any right of subrogation of the insurers thereunder (where permitted by law in the case of the insurance specified in Section 2.2(13)(a), (b) and (c)) in favor of Owner and its affiliates;

16. Engage Service Providers as reasonably believed by the Administrator to be necessary or desirable, or as instructed by the Owner, to represent or perform services for the Owner, provided that the Administrator shall be entitled to request and rely upon instructions from the Owner with respect to

the engagement of any Service Provider and provided further that, subject to the next following sentence, it is understood that to the extent the Administrator engages a Service Provider (other than the Operator or any Service Providers procured by the Operator pursuant to the O&M Agreement) to perform a Core Duty, the Administrator shall bear the cost and expense associated with engaging such Service Provider and shall remain responsible for the proper performance of such Core Duty by such Service Provider. Notwithstanding the foregoing provisions of this Section 2.2(16), any costs of Service Providers (whether providing a Core Duty or other services) anticipated as being provided by third parties other than Administrator under the Approved Budget, shall be excluded from the cost and expense to be borne by the Administrator;

17. (A) Procure and maintain all required governmental approvals and permits and prepare and submit all filings of any nature which are required to be made thereunder, (B) prepare and submit all filings of any nature which are required to be made by the Owner under any laws, regulations, or ordinances applicable to the Owner or the Project, (C) upon becoming aware of any adverse change or possible adverse change to the Owner's status as an "exempt wholesale generator" under the Public Utility Holding Company Act of 2005 and FERC's current regulations and their successors, take all reasonable steps, in consultation with the Owner necessary to maintain or re-obtain, as applicable, such status;

18. Not take any affirmative action as would cause the Owner in any material respect to violate any federal, state or local laws and regulations, including environmental laws and regulations, and to the extent that the Administrator has knowledge of any such existing or prospective violation take, or direct Service Providers to take, commercially reasonable actions, at the sole expense (but subject to Section 4.1(3)) of the Owner (unless such existing or prospective violation arises from breach of the Administrator's duties hereunder), to redress or mitigate any such violation;

19. (A) Give prompt written notice, but in no event more than 72 hours, to the Owner of any litigation, material disputes with governmental authorities, material defaults or material *force majeure* events under the Project Documents and material losses suffered by the Project after learning of the same, and (B) furnish to the Owner, or direct a Service Provider to so furnish, copies of all material documents furnished to the Owner or the Administrator by any governmental authority or furnished to any governmental authority by the Owner;

20. Subject to the Financing Documents, make distributions out of available cash as provided under the relevant provisions of the LLC Agreement; and

21. Perform such other administrative tasks as the Owner may reasonably request from time to time in connection with or related to the Project, subject to appropriate exculpatory provisions as the Administrator may reasonably request, consistent with the terms of this Agreement.

ARTICLE III
STANDARD OF PERFORMANCE

Throughout the term of this Agreement, the Administrator shall perform the services and all other obligations hereunder in accordance with the Project Documents, the Financing Documents, Prudent Industry Practices, and all Laws, including all applicable governmental approvals and permits, regulations, and orders.

The Administrator shall have no liability under this Agreement (i) for failure to take actions which require Owner's consent and as to which it has requested the consent of the Owner for the Administrator to perform if such consent is not timely given (including actions requiring a variance from the Approved Budget for which a request for variance by the Administrator has been made and not timely approved), (ii) for actions taken at the direction of the Owner, provided, that the liability is caused by such direction and the Administrator has notified the Owner reasonably in advance of taking such action that in the judgment of the Administrator the action to be taken at the direction of the Owner will breach the Financing Documents or violate applicable Laws, Prudent Industry Practices for the Project or other technical specifications or is otherwise incompatible with the Project and the Owner has directed the Administrator to take such action notwithstanding such notice or (iii) for actions requiring the expenditure of funds of the Owner if such funds are not available and the Owner after notice from the Administrator, fails to timely provide such funds.

ARTICLE IV
COMPENSATION AND PAYMENT

4.1 Management Fees and Expenses. Following the Effective Date, the Owner shall pay to the Administrator the following fees for the Administrative Services and pay or reimburse the following expenses:

1. Services. For each Fiscal Year (prorated to the extent that such year consists of more or less than twelve (12) months) the Administrator shall be paid an amount equal to [One Hundred Twenty Thousand Dollars ($120,000)] per annum (the "Management Fee"). The Management Fee shall be payable in twelve (12) equal monthly increments, in arrears; provided that with respect to any partial month during the Term, such payment of the Management Fee shall be made pro rata based on the number of days in such month. On January 1st of each Fiscal Year beginning with January 1, 2013 (each, an "Adjustment Date"), the Management Fee shall be increased by an amount to equal the product of (x) the amount of the Management Fee prior to such Adjustment Date and (y) 2.5%.

2. Expenses. It is understood by the Owner that the Management Fee is inclusive of the Administrative Services. No additional fees for the performance of the Administrative Services will be charged to the Owner in addition to the Management Fee. If the Administrator, at the request of the Owner, performs services not contemplated by the Administrative Services, the fee for such additional services shall be such amounts payable at such times as the Administrator and the Owner shall agree.

3. Owner Consent for Expenses. The Administrator shall have the authority to incur expenses on behalf of the Project, as the agent of the Owner, in the performance of the Administrative Services from independent third parties solely in accordance with the Approved Budget. The Administrator shall not authorize or make any expenditures that are in excess of, and are not otherwise contemplated in any line item or category contained in, the Approved Budget, except upon the prior written consent of the Owner, subject to the Financing Documents. The Owner shall directly pay the Services Provider or other counterparty to which any such expense shall be payable, and the Administrator shall have no liability or responsibility to pay any such Services Provider or counterparty out of its own funds. Notwithstanding the foregoing, the consent of the Owner pursuant to this Section 4.1(3) shall not be required (i) as to any operating costs required in the event of an emergency (provided such costs are reasonable in light of such emergency), or (ii) for reimbursement of the Administrator for any expense of a

Service Provider which, for the convenience of the Owner, performs services by contract with the Administrator rather than directly with the Owner, provided that the Owner has consented to such arrangement.

4.2 Billing and Payment. At the end of each month during the Term, the Administrator shall invoice the Owner for the portion of the Management Fee due with respect to such month. Within thirty (30) days following its receipt of such invoice, the Owner shall:

1. Approve and make such payment to the Administrator of the portion of the Management Fee specified in such invoice, less any portion of such expenses that the Owner disputes in good faith; and

2. With respect to any disputed portion of such invoice, provide the Administrator with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with Article VI hereof.

4.3 Default Interest. Any amount owed hereunder which remains unpaid more than ten (10) days after the date such amount is due and payable under this Agreement shall accrue interest at the Reference Rate beginning on the first (1st) day after such amount became due and payable.

4.4 Records. The Administrator shall retain copies of invoices submitted by it under Section 4.2, and of any third party invoices or similar documentation relating to expenses incurred by the Administrator in the performance of Administrative Services for a minimum period of three (3) years or such longer period to the extent required by law.

ARTICLE V
DELAYS

If the Administrator becomes aware of any event or circumstance which could prevent its performance of any of its obligations under this Agreement, the Administrator shall give prompt notice thereof to the Owner. The Administrator shall attempt in good faith to minimize any such delay, provided, however, that the Administrator shall not be obligated to undertake or perform any actions which are prohibited by any Project Document, any Financing Document or any applicable law or that would expose the Administrator to any liability or to any expense which is not reasonably expected to be promptly reimbursed or indemnified hereunder.

ARTICLE VI
DISPUTE RESOLUTION

6.1 Procedure. The parties shall attempt, in good faith, to resolve or cure all disputes (including disputes with respect to claimed Events of Default) by mutual agreement in accordance with this Article VI before initiating any legal action or attempting to enforce any rights or remedies hereunder (including termination), at law or in equity (regardless of whether this Article VI is referenced in the provision of this Agreement which is the basis for any such dispute). If there is a dispute as to whether an Event of Default has occurred or if any other dispute under this Agreement has arisen, either party may give notice thereof to the other party which notice shall describe in reasonable detail the basis and specifics of the alleged Event of Default or dispute. Within five (5) days after delivery of such notice, the designated representatives of both parties shall meet to discuss and attempt to resolve or cure such dispute or claimed Event of Default. If such representatives are unable to resolve the dispute or claimed Event of Default within fifteen (15) days after delivery of such notice, the matter shall be referred to a "Senior Officer" of the Administrator and a "Senior Officer" of the Owner. If such Senior Officers are unable to agree on an appropriate cure or resolution within ten (10) days after the matter has been referred to them, the Owner shall be so informed by the Administrator and the parties may have recourse to mediation, arbitration, or other alternative dispute resolution device of their mutual selection. If the parties cannot agree on an alternative dispute resolution device, each party may pursue its legal remedies.

6.2 Continuation of Work. Pending final resolution of any dispute, the parties shall continue to fulfill their respective obligations under this Agreement; provided, however, that the Owner may withhold any amount which is the subject of dispute from any payment otherwise due hereunder during the pendency of any dispute resolution proceeding. If the Administrator prevails in such dispute, the Owner shall immediately pay to the Administrator the unpaid amount in dispute with interest thereon, which interest shall accrue, at the Reference Rate, for each day from and including the date on which such amount was originally due to, but excluding, the date of actual payment thereof.

ARTICLE VII
COMMENCEMENT AND TERMINATION

7.1 Term. Except as may otherwise be provided herein, this Agreement shall commence on the Commencement Date and remain in full force and effect following the

Commencement Date until and including the earlier of (A) the sale to a third party of the Project by the Owner or the sale of all of the membership interests in Owner and, in each case, the completion of all administrative duties necessary or desirable in connection with the winding up of the Owner's and its Subsidiaries' affairs and (B) the date falling ten (10) years after the Commercial Operation Date (as defined in the EPC Agreement) (the "Initial Term"). In connection with the expiration of the Term or any termination pursuant to Section 7.3, the Administrator shall cooperate with all reasonable requests of the Owner in connection with the transition of administrative services performed by the Administrator to the entity selected by the Owner to undertake such services after such expiration or termination of the Term.

7.2 Renewals. Upon the expiration of the Initial Term, the term of this Agreement shall automatically be extended in one (1) year increments (each, a "Renewal Term") unless the Administrator delivers written notice of termination to Owner no later than 180 days prior to the expiration of the Initial Term or the applicable Renewal Term, as the case may be.

7.3 Early Termination. Subject to Section 7.1 above, this Agreement may not be terminated in all or in part except:

1. by mutual agreement of the parties;

2. pursuant to the remedy provisions of Section 8.3;

3. a termination in its entirety at the Owner's option upon not less than sixty (60) days' prior written notice to Administrator if the Owner is no longer an Affiliate of the Administrator;

4. a termination in its entirety at the Administrator's option if the Owner is no longer an Affiliate of the Administrator; or

5. a termination in its entirety at the Owner's option upon thirty (30) days' prior written notice to the Administrator in the event of the destruction, condemnation or other loss of all or substantially all of the Project.

An early termination pursuant to Section 7.3(3) or Section 7.3(6) shall be effective on the date specified in the applicable written notice of termination delivered by the Owner to the Administrator or, if earlier, the date upon which the parties reasonably agree that the Owner and the Administrator have completed all activities necessary to enable the Owner to assume responsibility for the Administrative Services, including transition to a replacement administrator, if any acceptable to Owner in its sole discretion. An early termination pursuant to Section 7.3(4), shall be effective on the earlier of (i) 180 days after the written notice of such termination is received by the Owner, or (ii) the date upon which the parties reasonably agree that the Owner and the Administrator have completed all activities necessary to enable the Owner to assume responsibility for the Administrative Services, including transition to a replacement administrator, if any acceptable to the Owner in its sole discretion.

7.4 Termination Payment. In the event of a termination pursuant to Section 7.3, the Owner shall pay to the Administrator:

1. All Management Fees earned through the date of termination that have not been paid by the Owner through the effective date of termination; and

2. Other than in the case of a termination by the Owner pursuant to Section 7.3(2) for an Event of Default of the Administrator or a termination pursuant to Section 7.3(3), (4) or (6), the reasonable costs incurred by the Administrator arising out of or relating to such early termination of this Agreement.

ARTICLE VIII
DEFAULT

8.1 Events of Default. Except as provided for in Article VI, Dispute Resolution, the following events shall be deemed to be events of default ("Events of Default") by a party under this Agreement regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceeding which has or might have the effect of preventing such party from complying with the terms of this Agreement:

1. Failure by a party hereto to make any payment required to be made hereunder (including, for the avoidance of doubt, payments to be made by such party to a third party), if such failure shall continue for thirty (30) days after written notice thereof has been given to the non-paying party; or

2. Failure to comply in any material respect with any material term, provision or covenant of this Agreement (other than the payment of sums to be paid by a party hereunder (including, for the avoidance of doubt, payments to be made by such party to a third party)), if such failure continues for thirty (30) days after written notice thereof has been given to the non-performing party; provided, however, if such failure cannot reasonably be cured within such thirty (30) days and the non-performing party has commenced, and is diligently pursuing in good faith, to cure such failure, such thirty (30) day period shall be extended for such longer period as shall be necessary for such party to cure the failure, but in no event shall be extended for more than ninety (90) days without the prior written mutual agreement of the parties.

8.2 Bankruptcy. Subject to the rights or remedies it may have, the Administrator, on the one hand, and the Owner, on the other hand, shall have the right to terminate this Agreement, effective immediately, if, at any time, (i) the other party hereto shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency, or other relief for debtors, whether federal or state, or shall seek, consent to, or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of such party or of all or any substantial part of its properties, or (ii) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the other party hereto seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief for debtors, whether federal or state, and such party shall consent to or acquiesce in the entry of such order, judgment or decree, or the same shall remain unvacated and unstayed for an aggregate of sixty (60) days from the date or entry thereof, or any trustee, receiver, conservator or liquidator

of such party or of all or any substantial part of its properties shall be appointed without the consent of or acquiescence of such party and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days. The terms "acquiesce" and "acquiescence", as used herein, include, but are not limited to, the failure to file a petition or motion to vacate or discharge any order, judgment or decree providing for such appointment within the time specified by law.

8.3 Remedies. If (i) an Event of Default occurs hereunder and such Event of Default is not cured in accordance with the requirements of Section 8.1, or (ii) an event described in Section 8.2 occurs and such event is not cured in accordance with Section 8.2, then subject to resolution pursuant to Section 6.1 of any dispute as to the existence of such event (in the case of Section 8.2) or Event of Default (in the case of Section 8.1), this Agreement may be terminated immediately by the non-defaulting party, without obligation to or recourse by the defaulting party. Without limiting the provisions of Article IX, the sole and exclusive remedy of each party upon the occurrence and continuation of an Event of Default by the other party is the termination of this Agreement and the payments of the amounts required to be paid in accordance with Section 7.4 and, if applicable, Article IX.

ARTICLE IX
INDEMNIFICATION AND LIMITATION OF DAMAGES

9.1 Basis of Compensation. The Administrator is willing to perform the Administrative Services for the Owner under this Agreement only if Administrator has no exposure to loss, risk or liability other than as set forth in this Article IX. Notwithstanding any other provision of this Agreement, the

Administrator's total liability to Owner and its Affiliates for any reason whatsoever shall be strictly limited in accordance with Section 9.3.

9.2 Disclaimers. The Administrator agrees to perform the Administrative Services under this Agreement in accordance with the standards and requirements set forth in Article III and otherwise in accordance with the terms of this Agreement. The Administrator's liability for failure to comply with such standards and requirements shall be limited as set forth in this Article IX. The Administrator makes no other guarantees or warranties of any kind in connection with the performance of the Administrative Services. **THE ADMINISTRATOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY NATURE WHATSOEVER, WHETHER STATUTORY, ORAL, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED CONDITIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Except to the extent expressly provided otherwise in this Article IX (but subject to Section 9.3 hereof) and Owner's right to terminate this Agreement under Section 7.3 and Section 8.3, the Administrator shall have no liability under this Agreement for any failure, breach or default of its obligations.

9.3 Total Limitation of Administrator's Liability. The maximum aggregate liability of the Administrator pursuant to Section 9.4(1) shall not exceed an amount, at any time, in excess of the aggregate amount of Management Fees to be paid to the Administrator over a three (3) year period ($360,000); provided, however, the foregoing limitation on liability shall not apply to (i) amounts owed to third parties for which the Administrator is obligated to indemnify

an Owner Indemnified Party under this Agreement, or (ii) any amounts recoverable by the Administrator as an insurance payment.

9.4 Indemnifications.

1. The Administrator shall defend and indemnify and hold harmless the Owner and its shareholders, members, directors, managers, officers and employees (each, an "Owner Indemnified Party") from and against any and all Claims asserted by or against such Owner Indemnified Party (i) in respect of any taxes imposed on or attributable to the income or property of the Administrator, (ii) in respect of the employer/employee-related responsibilities with respect to any personnel of the Administrator, including specifically payroll taxes, workers' compensation claims, any withholdings required by applicable law, and health and welfare benefits, including COBRA benefits, (iii) relating to the injury or death of any person, including employees of the Administrator, (iv) resulting from loss or damage to property or (v) relating to the failure of Administrator to comply with the terms of this Agreement; provided, however, that in the case of clauses (iii), (iv) and (v), only to the extent the Claim results from the Administrator's willful misconduct or gross negligence or a breach by the Administrator of its obligations hereunder.

2. The Owner shall defend and indemnify and hold harmless the Administrator and its shareholders, members, directors, managers, officers and employees (each, an "Administrator Indemnified Party") from and against any and all Claims asserted by or against such Administrator Indemnified Party, (i) in respect of any taxes imposed on or attributable to the income or property of the Owner, (ii) relating to the injury or death of any person, including employees of the Owner, (iii) resulting from loss or damage to property, or (iv) relating to the failure of the Owner to comply with the terms of this Agreement, except, in the case of clauses (ii) and (iii), to the extent the Claim results from the Administrator's willful misconduct or gross negligence or a breach by the Administrator of its obligations hereunder.

3. When required to indemnify an indemnified Party (the "Indemnified Party") in accordance with this Section 9.4, the Administrator or the Owner, as the applicable (in such capacity, the "Indemnifying Party") shall assume on behalf of such Indemnified Party and conduct with due diligence and in good faith the defense of any Claim against such Indemnified Party and shall bear the expense thereof, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Party shall cooperate with the Indemnifying Party in such defense. The Indemnifying Party shall have charge and direction of the defense and settlement of such Claim, provided, however, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party's right to control the defense or settlement thereof, the Indemnified Party may elect to participate through separate counsel in the defense of any such Claim, but the fees and expenses of such counsel by such Indemnified Party shall be at the expense of such Indemnified Party unless (a) the employment of counsel by such Indemnified Party has been authorized in writing by the Indemnifying Party, (b) the Indemnified Party shall have reasonably concluded that there exists a material conflict of interest between the Indemnifying Party and such Indemnified Party in the conduct of the defense of such Claim (in which case the Indemnifying Party shall not have the right to control the defense or settlement of such Claim on behalf of such Indemnified Party) or (c) the Indemnifying Party shall not have employed counsel reasonably acceptable to the Indemnified Party to assume the defense of such

Claim within a reasonable time after notice of the commencement thereof. In each of such cases set forth in the second sentence of this paragraph, the reasonable fees and expenses of counsel shall be at the expense of the Indemnifying Party except where the Indemnifying Party is ultimately deemed not to have been required to provide the indemnity sought by the Indemnified Party.

9.5 Exclusion of Consequential Damages. Neither party (nor its officers, members, directors or employees) shall be liable to the other party for any punitive, incidental, indirect, special or consequential loss or damage, including loss of revenues, income or profits, cost of capital, loss of goodwill or reputation (provided that the foregoing shall not include liabilities to third parties) connected with or resulting from performance or non-performance of any obligations under this Agreement. The parties further agree that this waiver and disclaimer of liability shall apply at all times, whether in contract, equity, tort or otherwise, regardless of the fault, negligence (in whole or in part), strict liability, breach of contract or breach of warranty of the party whose liabilities are so limited, provided, however, that this waiver and disclaimer of liability shall not apply to claims of, or causes of action arising from, intentional fraud of any party hereto.

9.6 Availability of Insurance. Notwithstanding anything to the contrary set in this Article IX, the obligation of either party to indemnify any other party for any Claims will be reduced to the extent of any insurance proceeds received by the Indemnified Party with respect to indemnified Claims.

9.7 Survival. Notwithstanding any other provision of this Agreement, the provisions of this Article IX are intended to and shall survive the termination of this Agreement so as to cover all Claims instituted within the period set forth in the applicable statute of limitations.

ARTICLE X
REGULATORY

10.1 Foreign Asset Control.

1. To the extent applicable, Administrator and its Affiliates are, and shall at all times be, in compliance, in all material respects, with (i) The United States Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the U.S. Department of Treasury (31 C.F.R. Subtitle B, Chapter V, as amended), or any ruling issued thereunder or any enabling legislation or Presidential Executive Order granting authority therefor (the "Foreign Asset Control Regulations"), (ii) all applicable orders, rules and regulations of The Office of Foreign Asset Control of the U.S. Department of Treasury ("OFAC"), and (iii) the USA PATRIOT Act of 2001, as amended from time to time ("Patriot Act").

2. The performance of this Agreement and payment of any amounts due hereunder will not violate any Foreign Asset Control Regulations or any anti-boycott laws and regulations.

ARTICLE XI
MISCELLANEOUS

11.1 Assignment.

1. By the Administrator: The Administrator may not assign this Agreement without the prior written consent of the Owner, which consent may not be unreasonably withheld, except that the Administrator may, without such consent, assign or delegate any of its rights or obligations under this Agreement to any of its Affiliates (subject to any applicable requirements under the Financing Documents or Project Documents).

2. By the Owner: Subject to Section 11.1(3), the Owner may not assign this Agreement without the prior written consent of the Administrator, which consent may not be unreasonably withheld or delayed.

11.2 Authorization. Except as expressly authorized in writing by the Owner, or contemplated under the Administrative Services, the Administrator shall not have the right or the obligation to create any obligation or to make any representation on behalf of the Owner.

11.3 Governing Law; Jurisdiction. This Agreement, and the rights and obligations of the parties thereunder and any dispute arising under or relating thereto (whether in contract, tort or otherwise) shall be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to the conflict of law rules thereof (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law) or any other statute or doctrine that might call for the application of the laws of any other jurisdiction. Each of the Administrator and Owner (a) hereby irrevocably consents to the exclusive jurisdiction of the courts of the State of New York and of any federal court located in the Southern District of New York in connection with any suit, action or other proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, (b) hereby agrees to waive any objection to venue in the State and County of New York and (c) agrees that, to the extent permitted by Law, service of process in connection with any such proceeding may be effected by mailing in the same manner provided in Section 11.5.

11.4 Independent Contractor. Nothing contained in this Agreement and no action taken by a party to this Agreement shall be (A) deemed to constitute a party or any of such party's employees, agents or representatives to be an employee, agent or representative of any other party; (B) deemed to create any company, partnership, joint venture, association or syndicate among or between the parties; or (C) except as contemplated under the Administrative Services, deemed to confer on a party any express or implied right, power or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability on behalf of the other party or on behalf of the Owner, except as expressly authorized in writing.

11.5 Notice. All notices, requests, consents, demands and other communications (collectively "notices") required or permitted to be given under this Agreement shall be in writing signed by the party giving such notice and shall be given to the other party at its address or fax number set forth in this Section 11.5 or at such other address or fax number as such party may hereafter specify for the purpose of notice to the other party and shall be either delivered

personally or sent by fax or telegraph or registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service. A notice shall be deemed to have been given (i) when transmitted if given by fax or telegraph or (ii) when delivered, if given by any other means. Notices shall be sent to the following addresses:

To the Administrator:

NRG Solar Asset Management LLC
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Attention: John Karam
Phone: 760-710-2147
Fax 760-710-2158
Email: john.karam@nrgenergy.com

With copies to:

NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
Attention: General Counsel
Facsimile No.: 609-524-4589

To the Owner:

NRG Solar Alpine LLC
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Attention: Randall Hickok

VP Asset Management — NRG Solar
Phone: 760-710-2210
Fax 760-710-2158
Email: randall.hickok@nrgenergy.com

With copies to:

NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
Attention: General Counsel
Facsimile No.: 609-524-4589

11.6 Usage. This Agreement shall be governed by the following rules of usage: (i) a reference in this Agreement to a Person includes, unless the context otherwise requires, such Person's permitted successors and assignees; (ii) a reference in this Agreement to a law, license,

or permit includes any amendment, modification or replacement to such law, license or permit; (iii) accounting terms used in this Agreement shall have the meanings assigned to them by GAAP; (iv) a reference in this Agreement to an article, section, exhibit, schedule or appendix is to an article, section, exhibit, schedule or appendix of this Agreement unless otherwise stated; (v) a reference in this Agreement to any document, instrument or agreement shall be deemed to include all appendices, exhibits, schedules and other attachments thereto and all documents, instruments or agreements issued or executed in substitution thereof, and shall mean such document, instrument or agreement, or replacement thereof, as amended, modified and supplemented from time to time in accordance with its terms and as the same is in effect at any given time; (vi) unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and (vii) the words "include" and "including" and words of similar import used in this Agreement are not limiting and shall be construed to be followed by the words "without limitation", whether or not they are in fact followed by such words.

11.7 Entire Agreement. This Agreement (including all appendices and exhibits thereto) constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

11.8 Amendment. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by a document in writing signed by the party against which the enforcement of such termination, amendment, supplement, waiver or modification is sought.

11.9 Confidential Information. Each party agrees that it shall not disclose (and shall cause its directors, officers, attorneys, employees and agents not to disclose), without the prior consent of the other party, any information with respect to such other party that is furnished pursuant to this Agreement or learned during the course of performance of the Administrative Services, including any information that would constitute confidential information under the terms of any Project Document ("Confidential Information"), provided that any party may disclose, or allow the disclosure of, any Confidential Information (a) to its directors, officers, attorneys, employees, agents, auditors, professional advisors, consultants and lenders as necessary to perform a party's obligations under this Agreement, (b) as has become generally available to the public other than as a result of breach of this Section 11.9, (c) as may be required or appropriate in any report, statement or testimony submitted to any governmental authority having or claiming to have jurisdiction over such disclosing party; provided, however, that to the extent such Confidential Information may be excluded from any such report, statement or testimony, or may be submitted subject to administrative confidentiality protection, in each case without prejudicing in any manner the position of the potentially disclosing party, such party shall exclude the information or submit it subject to confidentiality protection, (d) which was otherwise known by the receiving party prior to disclosure or is disclosed to the receiving party by a third party not in violation of any duty of confidentiality, other than, in each case, from a source other than an Affiliate of the Owner, (e) as may be required or appropriate in response to any summons or subpoena from a governmental authority or in connection with any litigation, or (f) to comply with any permit or applicable law. The parties' obligations under this Section 11.9

shall expire two years after the expiration or termination of this Agreement. Upon expiration or termination of this Agreement, all written or other tangible Confidential Information held by a party shall, if requested by the party who owns such Confidential Information, be returned to such owning party. Notwithstanding anything to the contrary set forth in this Agreement, the Administrator agrees to abide by the terms and conditions of the confidentiality undertakings of the Owner set forth in any of the Project Documents.

11.10 Discharge of Obligations. With respect to any duties or obligations discharged hereunder by the Administrator, the Administrator may discharge such duties or obligations through the personnel of an Affiliate of the Administrator; provided that, notwithstanding the foregoing, the Administrator shall remain fully liable hereunder for such discharged duties and obligations.

11.11 Third Party Beneficiaries. Except with respect to the indemnities set forth in Article IX, the parties do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation or understanding established under this Agreement.

11.12 Severability. Any provision of this Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

11.13 Binding Effect. The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and permitted assigns.

11.14 Representations and Warranties. Each party hereby represents and warrants to the other party as of the date of this Agreement that:

1. Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and has all requisite power and authority to execute, deliver and perform its obligations under this Agreement;

2. The execution, delivery and performance by such party of this Agreement have been duly authorized by all necessary limited liability company action, and do not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on such party;

3. All government approvals necessary for the execution, delivery and performance by such party of its obligations under this Agreement have been obtained and are in full force and effect, except for those governmental approvals to be obtained by such party in the course of performance of its obligations under this Agreement; and

4. This Agreement is the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms except as enforceability may be limited by bankruptcy, reorganization, insolvency, moratorium and other laws affecting creditors' rights in general and except to the extent that the availability of equitable remedies is subject to the discretion of the court before which any proceeding therefor may be brought.

11.15 Counterparts. This Agreement may be executed by the parties hereto electronically and in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Owner and the Administrator have caused this Agreement to be executed as of the date first above written.

NRG SOLAR ALPINE LLC

By: /s/ [ILLEGIBLE]
Name: [ILLEGIBLE]
Title: [ILLEGIBLE]

NRG SOLAR ASSET MANAGEMENT LLC

By: /s/ [ILLEGIBLE]
Name: [ILLEGIBLE]
Title: [ILLEGIBLE]

Exhibit 10.15

EXECUTION COPY

OPERATION AND MAINTENANCE AGREEMENT

between

NRG Energy Services LLC, a Delaware limited liability company,

and

High Plains Ranch II, LLC

Dated as of September 30, 2011

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EXHIBIT LIST

OPERATION AND MAINTENANCE AGREEMENT

This OPERATION AND MAINTENANCE AGREEMENT (as amended from time to time, the "Agreement") is being entered into by and between NRG Energy Services LLC, a Delaware limited liability company ("Operator"), and High Plains Ranch II, LLC, a Delaware limited liability company ("Owner"), as of September 30, 2011 (the "Effective Date"). Each of the Owner and the Operator are sometimes hereinafter designated as a "Party," and they are collectively designated as the "Parties."

RECITALS:

A. Owner owns that certain 250 MW solar power generation plant located near San Luis Obispo, California, as further described in Exhibit A (the "Plant").

B. Owner desires to hire Operator to operate and maintain the Plant in accordance with the terms of this Agreement.

C. Operator desires to operate and maintain the Plant for Owner in accordance with the terms of the Agreement.

D. Simultaneously with the execution of this Agreement, NRG Energy, Inc. has delivered Owner a guaranty of Operator's obligations hereunder substantially in the form of Exhibit N hereto.

AGREEMENT:

Accordingly, in consideration of the mutual covenants herein, and intending to be legally bound hereby, Owner and Operator hereby agree as follows:

1. DEFINITIONS AND RULES OF INTERPRETATION.

1.1 Definitions. The following capitalized terms, when used herein (and in the Appendices attached hereto), shall have the meanings specified in this Section 1.1.

"Adjustment Payment" has the meaning specified in Exhibit E.

"Affiliate" means, with respect to a Person, any entity which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), when used with respect to a Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through ownership of voting securities, by contract or otherwise.

"Agreement" has the meaning specified in the Preamble.

"Annual Maintenance Plan" means an annual plan for operation and maintenance of the Plant that is approved by Owner pursuant to Section 3.4.11, as the same may be revised from

time to time pursuant to a Change Order. Each Annual Maintenance Plan shall be substantially in the same form as the Annual Maintenance Plan for 2012 attached hereto as Exhibit D-2 and will conform in all respects to the requirements of the LGA.

"Annual O&M Budget" means a budget detailed by month of anticipated revenues and anticipated expenditures of the Owner with respect to the Plant and execution of the Annual Maintenance Plan, such budget to include debt service, proposed distributions, maintenance, repair and operation expenses (including reasonable allowance for contingencies), capital expenditures, costs and expenses related to the purchase of parts or other personal property of any nature necessary or useful to the operation, maintenance, service or repair of the Plant, management expenses and fees, taxes, insurance premiums, reserves and all other anticipated operating costs for each applicable fiscal year of Owner for the Plant and will conform in all respects to the requirements of the LGA.

"Annual Profit Fee" has the meaning specified in Exhibit E.

"Applicable Law" means any law, ordinance, statute, regulation, decision, ruling, or other similar requirement issued by any Governmental Authority having jurisdiction over a Party or the Plant, including actions by regulatory and judicial agencies or tribunals, as the same may be modified, amended or repealed from time to time, including all Environmental Laws and the U.S. Federal Corrupt Practices Act.

"Associated Parties" means the directors, officers, partners, shareholders, members, managers, trustees, employees, Affiliates, controlling Persons, representatives and agents (including financial advisors, attorneys and accountants) of any Party or Person.

"Basic Corporate Overhead Expense" has the meaning specified in Exhibit E.

"Block" has the meaning specified in the EPC Agreement.

"Block Substantial Completion" has the meaning specified in the EPC Agreement.

"Books and Records" has the meaning specified in Section 14.

"Business Day" means any day other than a Saturday, Sunday, public holiday under the Applicable Laws of the State of California or other day on which banking institutions in California are authorized or required by Applicable Law to be closed.

"CAISO" means the California Independent System Operator Corporation or successor entity.

"Capital Improvement Expenses" has the meaning specified in Exhibit E.

"Change Order" has the meaning specified in Section 4.

"Change of Law" means the enactment, re-enactment, adoption, promulgation, amendment, modification, repeal or other change of any Applicable Law after the Effective Date affecting the Work or the Plant; provided, however, a change in the interpretation or application

of any Applicable Law by any Governmental Authority after the Effective Date shall not be considered a "Change of Law" unless the interpretation was a formal published interpretation by the applicable Governmental Authority.

"Claims" means, collectively, all claims, demands, actions, suits or proceedings (judicial, governmental or otherwise) asserted, threatened or filed against a Person, and any fines, penalties, losses, liabilities, damages and expenses incurred by such Person as a result thereof, including reasonable attorneys' fees and costs of investigation, litigation, settlement and judgment, and any contractual obligations of such Person to provide indemnity for any such claims, demands, actions, suits or proceedings, fines, penalties, losses, liabilities, damages and expenses to any other Person.

"Collateral Agent" has the meaning set forth in the LGA.

"Compensation" means the amount to be paid to Operator by Owner, as determined pursuant to Exhibit E.

"Confidential Information" has the meaning specified in Section 19.3.1.

"Contingency" means the budgeted amount identified as "Contingency" in the Annual Maintenance Plan to be determined by Owner and Operator as provided in Section 3.4.11.

"CPI" means the "United States City Average All Items for All Urban Consumers (CPI-U, 1982-84=100)" published by the Bureau of Labor Statistics of the U.S. Department of Labor. If the publication of the Consumer Price Index of the U.S. Bureau of Labor Statistics is discontinued, comparable statistics on the purchasing power of the consumer dollar published by a responsible financial periodical reasonably agreed by Operator and Owner shall be used for making such computations.

"Davis-Bacon Act" means Subchapter IV of Chapter 31 of Part A of Subtitle II of Title 40 of the United States Code, including and as implemented by the regulations set forth in Parts 1, 3 and 5 of title 29 of the Code of Federal Regulations.

"Davis-Bacon Act Covered Contract" has the meaning specified in Exhibit M.

"Day" means a calendar day; provided, however, that, if any period of Days referred to in this Agreement shall end on a Day that is not a Business Day, then the expiration of such period shall be automatically extended until the end of the first succeeding Business Day.

"Debarment Regulations" has the meaning set forth in Section 21(g).

"Direct Labor Expenses" has the meaning specified in Exhibit E.

"Direct Operating Expenses" has the meaning specified in Exhibit E.

"Disclosing Party" has the meaning specified in Section 19.3.1.

"DOE" means the U.S. Department of Energy, an agency of the United States of America.

"Early Termination Costs" means the actual reasonable out of pocket costs incurred by Operator arising out of or relating to an early termination of this Agreement, as agreed by the Parties (such agreement not to be unreasonably withheld, delayed or conditioned) and which may include expenses of demobilization, the reassignment or severance of Plant Personnel, and the discontinuance of support functions which have performed Work and for which Operator has not already received Compensation during the Term of this Agreement, including all costs related to transitioning the Operator's role to a new operator, including costs for terminating Subcontractors that are not assigned to Owner, costs for terminating any employees of Operator that are not retained by Owner or the new Operator and operating costs incurred by Operator arising from or as a result of the termination, assistance with the transfer of Permits and for costs arising from or as a result of the termination, acquisition or assignment of software and other licenses, data file and record system conversions, the purchase of supplier inventories maintained for the benefit of the Plant, training and instruction of the new operator's personnel, to the extent not already paid for by Owner as part of the Direct Operating Expenses or Capital Improvement Expense.

"Effective Date" has the meaning specified in the Recitals.

"Emergency" means any event or circumstance which (a) requires prompt action, and (b) in the reasonable opinion of a prudent operator, could be expected to have an adverse effect on the Plant, endanger the health or safety of any Person, or cause significant damage to property.

"Environmental Allocation" has the meaning specified in the Exhibit E.

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to (i) the environment, (ii) the preservation or reclamation of natural resources, (iii) the management, environmental release or threatened environmental release of any hazardous substance or (iv) health and safety matters, including the California Environmental Quality Act, California Public Resource Code §§ 21000 et seq.; Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq.; the Resource Conservation and Recovery Act, as the same may be amended from time to time, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.; the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.; the Endangered Species Act, 16 U.S.C. §§ 1531 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 3803 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq.; the Emergency Planning and the Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. §§ 1801 et seq. and the Occupational Safety and Health Act, 29 U.S.C. §§ 651 et seq.; and any state and local counterparts or equivalents, in each case as amended from time to time.

"EPC Agreement" means that certain Engineering, Procurement and Construction Agreement between EPC Contractor and Owner, dated as of even date hereof.

"EPC Contractor" means SunPower.

"Event of Default" means, with respect to Owner, an Owner Event of Default and with respect to Operator, an Operator Event of Default.

"Financing" means any development, bridge, construction, direct or indirect tax equity, lease equity, and/or permanent equity and/or debt financing or refinancing of (including any prospective sale-leaseback transaction), or any other extension of credit for, the development, construction, ownership, leasing, operation or maintenance (including working capital) of the Plant, whether that financing or refinancing takes the form of private debt or equity, public debt or equity or any other form.

"Financing Agreements" means any agreement entered into by Owner evidencing a Financing (and any documents relating to or ancillary to the foregoing).

"Financing Party" means any Person providing Financing and any trustee or agent acting on any such Person's behalf, and their successors and assigns.

"Fiscal Year" means a calendar year beginning on January 1st and ending on December 31st.

"Force Majeure Event" means any event or circumstance or combination of events or circumstances that (i) adversely affects, prevents or delays any Party (including such Party's Subcontractors) in the performance of its obligations hereunder, (ii) is beyond the reasonable control of the affected Party, and (iii) is the type of event customarily recognized as a force majeure event including earthquake, fire, flood, hurricane, storm, tornado, or other act of God, civil disturbance, war (declared or not), terrorism, hostilities, blockade, revolution, regional or national strike, insurrection or riot that prevents the affected Party from securing requisite equipment, supplies, materials or labor or otherwise performing its obligations (other than the payment of money). Material, equipment, labor or supply price escalation shall not be considered a Force Majeure Event. Economic hardship including lack of money or credit resulting in the inability to make payments shall not be considered a Force Majeure Event. For clarity, Change of Law and the inability to obtain Financing for the Plant shall not be considered a Force Majeure Event.

"Forecast Budget" has the meaning specified in Section 3.4.11.

"Foreign Asset Control Regulations" has the meaning given such term in Section 21(e).

"Governmental Authority" means any federal, state, local, municipal or other governmental, regulatory, administrative, judicial, public or statutory instrumentality, court or governmental tribunal, agency, commission, authority, body or entity, or any political subdivision thereof, having legal jurisdiction over the matter or Person in question.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas,

infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Indemnified Party" has the meaning specified in Section 10.3.

"Initial Term" has the meaning specified in Section 2.1.

"Intellectual Property" or, interchangeably, "IP", shall mean all intellectual property and similar proprietary rights held by any Person in any jurisdiction, including all such rights in and to (i) computer software or hardware, whether or not copyrightable, including all databases, source codes, object codes, programs, applications, tables, models, repositories, specifications and documentation; (ii) original works of authorship, whether copyrightable or not, copyrights, and all renewals, modifications, translations thereof, and any Moral Rights relating thereto; (iii) patents; (iv) trademarks, service marks, brand names, certification marks, trade dress, assumed names, trade names and other indications of origin; and (v) know-how and other business information, trade secrets, ideas, concepts, methodologies, processes, development tools, techniques, inventions, innovations, diagrams, sketches, drawings, models, manuals, photographs, calculations, maps, notes, reports, data, models, samples and documentation, in each case to the extent proprietary, confidential and not in the public domain.

"LGA" means the Loan Guaranty Agreement dated of even date herewith by and among Owner, the U.S. Department of Energy, acting by and through the Secretary of Energy (or appropriate authorized representative thereof), for itself as guarantor, and the U.S. Department of Energy, acting by and through the Secretary of Energy (or appropriate authorized representative thereof), as the loan servicer.

"Licensed Materials" means the the drawings, specifications, documents, designs, plans or software prepared by or on behalf of Operator and/or the Subcontractors in connection with or used in the performance of Operator's obligations hereunder.

"Major Maintenance" has the meaning specified in Exhibit D-2.

"Materials" means any and all material, equipment, and supplies, including consumable supplies, tools, spare parts and office supplies, necessary for the performance of the Work.

"Moral Rights" shall mean certain rights of authors of original works subject to copyright, including but not limited to all rights of integrity, paternity, attribution, disclosure and withdrawal with respect to any original work, and any other rights that may be known or referred to as "moral rights."

"Mortgagee Consent" shall mean an agreement entered into by Operator and a Financing Party substantially in the form attached hereto as Exhibit L.

"NOVs" has the meaning specified in the Exhibit E.

"OEM Manuals" means the manuals attached hereto as Exhibit F.

"OFAC" has the meaning given such term in Section 21(e).

"Operating Year" has the meaning specified in Exhibit E.

"Operator" has the meaning specified in the Preamble.

"Operator Event of Default" has the meaning specified in Section 16.1.

"Operator Indemnified Party" means Operator, its successors and assigns, and each of their Associated Parties.

"Operator Related Parties" means Operator and its Affiliates, and their respective members, shareholders, partners, directors, officers and employees.

"Operator Representative" has the meaning specified in Section 6.4.

"Overtime" has the meaning specified in Exhibit E.

"Owner" has the meaning specified in the preamble.

"Owner Event of Default" has the meaning specified in Section 16.2.

"Owner Indemnified Party" means Owner, the Financing Parties, each of their successors and assigns, each of their Associated Parties.

"Owner Representative" has the meaning specified in Section 6.2.

"Paid Absences" has the meaning specified in Exhibit E.

"Party" or "Parties" has the meaning specified in the Preamble.

"Patriot Act" has the meaning given such term in Section 21(e).

"Payroll Additives" has the meaning specified in Exhibit E.

"Payroll Taxes" has the meaning specified in Exhibit E.

"Permit" means the permission granted by any Governmental Authority to do an act that would otherwise be impermissible, including all licenses, permits, consents, authorizations, approvals, ratifications, certifications, registrations, exemptions, variances, exceptions and similar consents granted or issued by any Governmental Authority, and, with respect to the Plant, the Permits set forth on Exhibit J.

"Permitted Excess Expenditures" means expenditures that do not exceed ten percent, (10%) when considered individually, of the amount allocated for such expenditures, or five percent (5%) when considered in the aggregate of the entire amount of the applicable Annual O&M Budget.

"Person" means an individual, corporation, partnership, limited liability company, trust, unincorporated association, joint venture, joint-stock company, Governmental Authority, or any other entity.

"Plant" has the meaning specified in the Recitals.

"Plant Budget Allocation" has the meaning specified in the Exhibit E.

"Plant Control Systems" means remote monitoring systems used by Operator in compliance with Prudent Operating Practices, which may include a SCADA System and/or "Solar Field Integrated Control" systems.

"Plant Availability Allocation" has the meaning specified in the Exhibit E.

"Plant Personnel" means the personnel of Operator or its Affiliates or the Subcontractors of any of them who are assigned to the Plant on a full time basis to perform the Work.

"Post-Substantial Completion Work" has the meaning specified in Section 3.4.

"PPA" means, collectively, (i) the Power Purchase and Sale Agreement between Owner and Pacific Gas and Electric Company, a California corporation ("PG&E"), dated as of April 28, 2009, as amended and (ii) the Amended and Restated Power Purchase and Sale Agreement between Owner (as successor by merger to High Plains Ranch III, LLC) and PG&E, dated as of March 5, 2010.

"Pre-Commercial Operating Budget" means a budget detailed by month covering the period from the Effective Date until the commencement of commercial operations of the Plant. A preliminary Pre-Commercial Operating Budget is set forth in Exhibit D-1. A revised Pre- Commercial Operating Budget shall be delivered in compliance with Section 3.3.2.

"Pre-Substantial Completion Work" has the meaning specified in Section 3.3.

"Prohibited Person" has the meaning given such term in Section 21(g).

"Project Agreements" means the agreements listed on Exhibit G.

"Project Records" means all records relating to the Plant accumulated, prepared or maintained by the Operator per request of or for Owner as part of the Work under this Agreement during the Term, whether prepared on paper, stored electronically, or by any other media.

"Prudent Operating Practices" means any of the practices, methods and acts engaged in or approved by a significant portion of the photovoltaic solar power generation industry in the United States during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good electric power generation practices, reliability, safety and expedition. Prudent Operating Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to refer to a range of acceptable practices, methods and acts.

"PV Competitor" means SunEdison, Fotowatio Renewable Ventures, their Affiliates, and any Person (or any such Person's Affiliates) engaged primarily in the business of manufacturing photovoltaic modules, except General Electric Company and Samsung.

"Receiving Party" has the meaning specified in Section 19.3.1.

"Reconciliation Amount" has the meaning specified in Section 8.2

"Recordable Injury or Illness" means any injury or illness that, in accordance with the California Occupational Safety and Health Act of 1973, as amended, and the CalOSHA standards at 8 CCR 14300 - 14300.48, is required to recorded on an employer's Cal/OSHA Form 300.

"Renewal Term" has the meaning specified in Section 2.1.

"Requirements" has the meaning specified in Section 3.1.

"Safety Allocation" has the meaning specified in the Exhibit E.

"Salary and Wages" has the meaning specified in Exhibit E.

"SCADA System" means the Plant's remote control and monitoring system, including central computer and remote PC system.

"Site Rules" means those reasonable rules, regulations and procedures related to the safe performance of the work and security of the site developed by Operator for Owner's review and approval.

"Straight Time" has the meaning specified in Exhibit E.

"Subcontractor" means subcontractor, consultant or supplier.

"Substantial Completion" has the meaning set forth in the EPC Agreement.

"SunPower" means SunPower Corporation, Systems, a Delaware corporation.

"Support Personnel" means the personnel of Operator or its Affiliates or the contractors of any of them who are assigned, as their principal work location, to work sites other than the Plant. The Direct Labor Expenses of Support Personnel while working on a project for the Plant are billed directly to Owner. Support Personnel may perform Work on a part time basis. Table E-1 of Exhibit E provides a matrix of the positions and functions in the Support Personnel classification and the positions and functions included in the Basic Corporate Overhead Expense. Support Personnel shall not include Plant office personnel.

"Term" means the Initial Term and any Renewal Terms.

"Terminating Party" is defined in Section 2.6.

"Work" means the duties and obligations of Operator required under this Agreement, including the Post-Substantial Completion Work and the Pre-Substantial Completion Work.

1.2 Rules of Interpretation.

(a) Whenever the context may require, any pronoun used in this Agreement includes the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns, and verbs include the plural and vice versa.

(b) As used in this Agreement, accounting terms not defined in this Agreement shall have the respective meanings given to them under generally accepted accounting principles in the United States of America.

(c) The words "hereof," "herein," "hereunder," and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Except as expressly set forth herein, a reference to a Section, an Article, an Exhibit or a Schedule means a Section in, an Article of, an Exhibit to or a Schedule to, this Agreement.

(d) The terms "include," "includes" and "including" shall be construed as followed by the words "without limitation."

(e) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms.

(f) Any agreement, instrument or Applicable Law defined or referred to herein (or provision thereof) means such agreement, instrument or Applicable Law (or provision thereof) as from time to time amended, supplemented or otherwise modified and includes references to all attachments thereto and provisions incorporated therein.

(g) Any references to a Person are also to its successors and permitted assigns and, in the case of any Governmental Authority, shall be construed as including a reference to any Governmental Authority succeeding to its functions and capacities.

(h) The descriptive headings of all Articles and Sections of this Agreement are formulated and used for convenience only and are not be deemed to affect the meaning or construction of any such Article or Section.

(i) All Exhibits, Appendices and Schedules attached hereto are incorporated herein and made a part hereof.

2. TERM, EXPIRATION AND TERMINATION.

2.1 Initial Term; Renewal Terms. This Agreement shall be for an initial term of five (5) years commencing on the Effective Date (the "Initial Term"). Upon expiration of the Initial Term, the term of this Agreement shall automatically be extended in five (5) year increments (each, a "Renewal Term"), unless either Party delivers written notice of termination to the other

Party no later than 180 days prior to the expiration of the Initial Term or the applicable Renewal Term, as the case may be.

2.2 Early Termination by Either Party. This Agreement may be terminated by either Party upon thirty (30) Days' prior written notice to the other Party upon the occurrence and continuation of an Event of Default by the other Party which remains uncured beyond all applicable notice and cure periods, subject, however, to any and all the rights of Financing Parties hereunder. In the event of termination pursuant to this Section 2.2, Section 2.3, Section 2.4 or Section 16, Owner shall pay to Operator to the extent not yet paid:

2.2.1 All Direct Operating Expenses and Capital Improvement Expenses incurred by Operator that have not been paid or reimbursed by Owner through the effective date of termination;

2.2.2 Any Basic Corporate Overhead Expenses and Annual Profit Fees earned but not paid through the effective date of termination (provided that, if such termination is due to an Operator Event of Default, Operator shall forfeit any Annual Profit Fees earned after the Event of Default giving rise to such termination); and

2.2.3 Unless such termination is due to an Operator Event of Default, Operator's Early Termination Costs.

2.3 Early Termination by Owner. In addition to its right to terminate this Agreement pursuant to Section 2.2, Owner may terminate this Agreement for its convenience, subject to the prior written consent of each Financing Party, by providing Operator not less than one (1) year's prior written notice of the effective date of termination. Owner will also be entitled to terminate this Agreement by delivery of thirty (30) days written notice of termination to the Operator (i) if the existence of a Force Majeure Event continues for more than one hundred twenty (120) days or if the cumulative aggregate duration of Force Majeure Event exceeds one hundred fifty (150) days or (ii) in the event of the destruction, condemnation or other loss of all or substantially all of the Plant without reconstruction or repair so as to effectively terminate the operation of the entire Plant permanently. In the event this Agreement is terminated for Owner's convenience or pursuant to clause (i) above of this Section 2.3 prior to the end of the Initial Term, Owner shall pay the amounts set forth in Section 2.2 and pay the Early Termination Costs. In the event this Agreement is terminated pursuant to (ii) above of this Section 2.3, Operator will, subject to any rights of offset in favor of Owner, be entitled to payment of all accrued but unpaid Compensation, including, for the avoidance of doubt, Early Termination Costs.

2.4 Early Termination by Operator. In addition to its right to terminate the Agreement pursuant to Section 2.2, Operator may terminate this Agreement if Operator ceases to be an Affiliate of any member of Owner; provided that: (i) termination pursuant to this Section 2.4 shall be effective on the earlier of (a) one (1) year after written notice of such termination is received by Owner and (b) the date upon which the Parties reasonably agree that Owner and Operator have completed all activities necessary to enable Owner to assume responsibility for operation and maintenance of the Plant, including transition to a replacement operator, if any, and (ii) Operator may not terminate this Agreement pursuant to this Section 2.4 without the prior written consent of the DOE to such termination and such replacement operator,

if any. In the event this Agreement is terminated pursuant to this Section 2.4, Owner shall make the payments set forth in Sections 2.2.1 and 2.2.2 but, for the avoidance of doubt, not including Early Termination Costs.

2.5 Early Termination by Collateral Agent. If Collateral Agent should foreclose, directly or indirectly, on the equity interest of the Owner, the Collateral Agent may terminate this Agreement, provided that: (i) Collateral Agent's notice of termination may only be delivered following the effective date of such foreclosure and (ii) termination pursuant to this Section 2.5 shall be effective thirty (30) days after such written notice of such termination is received by Operator.

2.6 Rights and Duties Upon Termination. On the effective date of expiration or termination of this Agreement by Owner under Section 2.2 or Section 2.3 or by Collateral Agent under Section 2.5 (as applicable, the "Terminating Party"), the Terminating Party shall assume and become responsible for the operation and maintenance of the Plant, including entering into new contracts with third parties for the provision of goods and services. If the Plant is to continue in operation, Terminating Party and Operator shall cooperate with each other and with any new operator to achieve an orderly transition, including (a) if permitted by the terms of the applicable contract or by the contractual counterparty, the assignment to the Terminating Party or its designee of all contracts relating to the Plant entered into by Operator, and (b) to the extent assignable, the transfer to the Terminating Party or its designee of all Permits required by a Governmental Authority to be held in Operator's name as a proxy for the Terminating Party. If this Agreement is terminated for reasons other than an Operator Event of Default, Operator shall be compensated for all such transition services through the Early Termination Costs payable pursuant to Section 2.2.3. If, however, this Agreement is terminated due to an Operator Event of Default, Operator shall not receive the Early Termination Costs payable pursuant to Section 2.2.3.

2.7 Final Settlement. Within three (3) months after the effective date of expiration or termination of this Agreement, Operator shall provide to Owner a settlement statement which reconciles all payments received from Owner with fees and expenses compensable to Operator in accordance with this Agreement. Owner shall pay the amount owed to Operator as shown on the settlement statement within thirty (30) Days of receipt of the settlement statement, and such amount shall be subject to audit in accordance with Section 14. The Parties shall use reasonable commercial efforts to complete the audit and reach mutual agreement on all matters related to the settlement statement within three months after it is presented to Owner.

3. SCOPE OF WORK.

3.1 Standard of Performance. During the Term, Operator shall perform the Work in accordance with the OEM Manuals, Annual Maintenance Plan, Prudent Operating Practices, Applicable Law, all applicable Permits, the Site Rules, Project Agreements, Financing Agreements, any conditions or requirements required to maintain warranties covering the Plant, or any portion or component thereof in effect, and the other requirements of this Agreement (the "Requirements"). If there are any conflicts between or among the standards of performance derived from the Requirements, Operator shall promptly notify Owner of the conflict, and Operator shall request Owner's instructions as to how to reconcile the conflict. The Parties shall

cooperate and negotiate in good faith to make such modifications to this Agreement to the extent such a modification is necessary to resolve the conflict.

3.2 Management of Employees. The exclusive management, direction and control of Plant Personnel, Support Personnel and any other employees of Operator shall always reside in Operator. Subject to compliance with the Requirements, Operator shall complete the Work according to Operator's own means and methods, which shall be in the exclusive charge and control of Operator.

3.3 Duties of Operator Prior to Substantial Completion. Prior to Substantial Completion, Operator shall perform the following activities ("Pre-Substantial Completion Work"):

3.3.1 Operator shall familiarize itself with the Plant, review all relevant Plant related agreements, prepare operations and maintenance plans and manuals conforming to the OEM Manuals (to the extent such OEM Manuals are available) and all other specific operation and maintenance manuals received from major equipment vendors, prepare training procedures, provide adequately trained and certified Plant Personnel and Support Personnel, assist with the acceptance and performance tests under the supervision, direction and control of the EPC Contractor and other major equipment suppliers pursuant to the respective Project Agreements, and prepare for operation and maintenance of the Plant and conduct of the Post-Substantial Completion Work following Substantial Completion. The Pre-Substantial Completion Work shall also include the work described in Exhibit H attached hereto.

3.3.2 No later than three months before the expected date of Block Substantial Completion of the first Block, Operator shall submit the final Pre-Commercial Operating Budget for approval by Owner.

3.3.3 No later than three months before the expected date of Block Substantial Completion of the first Block, Operator shall submit the final Annual Maintenance Plan for the first Operating Year for approval by Owner. Operator shall use the form attached in Exhibit D-2 for the Annual Maintenance Plan.

3.4 Specific Duties of Operator During Operations. Following Block Substantial Completion of each Block, Operator shall perform the following activities with respect to the such Block and the other portions of the operating Plant in conformity with the Annual Maintenance Plan (the "Post-Substantial Completion Work"):

3.4.1 Supervise and manage the day-to-day operation of the Plant, Plant Personnel and Support Personnel, and provide contractual administration on behalf of Owner with respect to any Subcontractor of Operator performing any function or services at or in connection with the Plant in accordance with the terms and conditions of applicable purchase orders and contracts. If Operator becomes aware of any breach or failure of any other contractor of Operator in the performance of its duties or obligations under any purchase order or contract, Operator shall provide prompt written notice of the

same to Owner. Owner shall be responsible for taking any legal or other action necessary to cause its other contractors to comply with their obligations or responsibilities.

3.4.2 Provide training required to enable Operator's employees to obtain, develop or maintain the skills and techniques necessary to enable Operator to perform its obligations under this Agreement in accordance with the Requirements.

3.4.3 Repair and maintain the Plant, including all scheduled and unscheduled maintenance and repairs required to keep the Plant in safe and efficient operating condition. Operator shall conduct scheduled outages for periodic maintenance as provided for in the Annual Maintenance Plan. Operator shall diligently conduct repair efforts related to unplanned outages and restore the Plant to operation as soon as is reasonably practicable in accordance with Prudent Operating Practices. At the reasonable request of Owner, Operator shall use all reasonable efforts to reschedule any previously scheduled outage and minimize any attendant costs to Owner.

3.4.4 Provide all engineering and technical services required to support the operation and maintenance of the Plant. In connection therewith, Operator shall use, and shall be entitled to reasonably rely on, the most recent technical data and other information (including any Intellectual Property) which Owner has furnished to Operator.

3.4.5 Provide environmental services in accordance with Section 9.2 as required to support operation and maintenance of the Plant in a manner consistent with all Requirements, including all Permits and the requirements of cognizant Governmental Authorities, and in accordance with all Applicable Laws, including obtaining and maintaining such Permits as are required by a Governmental Authority to be in Owner's name (to the extent possible and lawful, otherwise Permits shall be held in Operator's name) and documenting use, on-site storage, and coordination of disposition of Hazardous Materials and wastes in accordance with applicable Environmental Laws. Operator shall assist Owner in obtaining and maintaining any Permits, registrations or authorizations necessary for operation of the Plant that are required by a Governmental Authority to be held in Owner's name.

3.4.6 Operate and maintain the Plant in a manner consistent with the Requirements, including with respect to personnel safety and equipment protection.

3.4.7 Maintain records of the operations and maintenance of the Plant (including operating logs and other information required by the PPA), maintain financial books and records relative to the costs of operating and maintaining the Plant in accordance with U.S. generally accepted accounting principles, consistently applied, and make such records available for inspection by Owner or any designees of Owner during normal business hours. Provide to Owner within fifteen (15) Business Days after the end of each month a report in respect of Direct Operating Expenses and Capital Improvement Expenses, comparing the actual expenses to the approved Annual Maintenance Plan's Annual O&M Budget for the preceding month and for the applicable year through the end of such preceding month.

3.4.8 Use commercially reasonable efforts to secure and enforce all warranties (including any availability or other performance guarantees) for Materials and services purchased for the Plant and administer any Claims related thereto, including those provided by any Subcontractor of Operator.

3.4.9 Provide security and property management services, such as janitorial, landscaping, weed abatement, road maintenance, drainage control, perimeter fence repairs, gate maintenance and building maintenance services, in accordance with Prudent Operating Practices.

3.4.10 Provide to Owner by the fifteenth (15th) Business Day of each month a report for the prior month based on the components set forth in Exhibit B. Operator shall also provide to Owner any other information regarding the operation and maintenance of the Plant reasonably requested by Owner. Upon the reasonable request of Owner, Operator's Representative shall meet with Owner to discuss the performance of the Work and operation of the Plant.

3.4.11 On or before November 1st of each calendar year, prepare and submit to Owner a proposed Annual Maintenance Plan for approval by Owner. This plan shall include the following items as further described below.

- The proposed Annual O&M Budget for next calendar year;
- The Forecast Budget (as defined below);
- Support for the Annual O&M Budget and the Forecast Budget; and

· Year over year trend analysis.

The proposed Annual O&M Budget for the next calendar year will be based on Operator's assessment of the Work to be performed during such year and the proposed means of performing such Work in accordance with the Requirements. The proposed Annual O&M Budget shall include line item budget appropriations for Direct Operating Expenses, Capital Improvement Expenses, the recommended amount for the Contingency, expenses of Operator's Subcontractors and anticipated cash flow requirements for such year.

In addition, as part of the Annual Maintenance Plan the Operator shall also provide a Forecast Budget for the following five years (the "Forecast Budget"). As support of the Annual O&M Budget and the Forecast Budget, the Operator shall provide descriptions of Operator's underlying assumptions relating to, and Operator's recommendations regarding, scheduled and unplanned outages (including timing and cost for Major Maintenance (as set forth in Exhibit D-2)), major maintenance and capital repairs, and improvements and additions, which are included in such proposed Annual Maintenance Plan.

Owner shall indicate in writing its comments on the proposed Annual Maintenance Plan, and submit any recommended changes thereto, within fifteen (15) Days after its receipt of the proposed Annual Maintenance Plan. Operator

shall confer with Owner about such comments or recommended changes and submit a revised Annual Maintenance Plan (accompanied by a written statement of Operator's reasons for accepting or rejecting any such comments or recommended changes) not later than fifteen (15) Days following receipt of such comments or recommended changes, unless Operator has obtained Administrator's written consent to submit such revised Annual Maintenance Plan at a later date. This process shall continue until the Annual Maintenance Plan is approved. If Owner fails to approve an Annual Maintenance Plan for any calendar year prior to the commencement of such year, the Parties shall use the prior year's Annual Maintenance Plan with respect to Direct Operating Expenses and other expenses less than $100,000 per project item, including Major Maintenance and Capital Improvement Expenses, until a new Annual Maintenance Plan is agreed, except that the Annual O&M Budget for the prior year shall be increased annually for inflation (but not decreased for deflation) based on the CPI.

Operator shall operate and maintain the Plant in accordance with the Annual Maintenance Plan approved by Owner for the period in question or, if applicable, the Pre-Commercial Operating Budget. Operator shall make recommendations to Owner with respect to budget and scope adjustments that may be required to maintain overall compliance with the Annual Maintenance Plan, and Owner may consider such recommendations in its sole discretion.

3.4.12 Operator shall maintain a continuous improvement program (including steps to maintain improvement of budget development and outage management processes) that is designed to target improving Plant performance metrics such as reliability and availability. Operator shall provide Owner with copies of such improvement program and any modification to such program on a timely basis. Operator shall also make system performance enhancement recommendations as part of the performance reporting process for any changes, adjustments or modifications that should be made to Plant.

3.4.13 Operator shall continuously monitor the Plant remotely through the SCADA System. If Operator detects an alarm or error message in the course of such monitoring, it shall take such actions remotely through the SCADA System or at the Plant as are reasonably necessary to respond to such alarm or error message, including effecting remote resets, when possible, or by performing manual resets at the Plant, in each case, as soon as reasonably practicable. Promptly after taking any such actions, Operator shall make its personnel at the Plant and Owner aware of the existence and nature of such actions and the related error or alarm codes. Operator shall also provide analytical services to analyze generation shortfalls, including the cause of such shortfall and propose resolutions for equipment operating below expected standards of operation.

3.4.14 Administer all Project Agreements and other service contracts relating to the operation and/or maintenance of the Plant, including the following with regard to Owner's obligations under the PPA: communications with or related to CAISO including notices of emergencies and outages required to be provided to CAISO, scheduling

deliveries of energy with CAISO (including acting as or engaging a third party to act as the scheduling coordinator for the Plant) to the extent PG&E is not acting as the scheduling coordinator for the Plant, provide accounting and reports of electric production in connection with the power sales, provide all planned outage and forced outage notifications to PG&E required under the PPA and all forecasts of energy required to be delivered to PG&E under the PPA.

3.4.15 Perform any such additional services related to the operation, maintenance, renewals, replacements, additions and retirements pertaining to the Plant as Owner, by written notice to Operator, requests Operator to undertake and as Operator agrees in writing to undertake.

3.5 Emergency. In the event of any Emergency, Operator shall perform the following (and, unless such Emergency is caused by Operator's acts or omission, shall be entitled to reimbursement for all reasonable costs, expenses and obligations incurred in connection therewith):

3.5.1 Operator shall take immediate and diligent action in accordance with Applicable Laws and Prudent Operating Practice to attempt to prevent such threatened damage, injury or loss and, as necessary, mitigate to the greatest extent reasonably practicable such damage, injury or loss;

3.5.2 Operator shall notify all third parties, including fire departments, government agencies, and national response centers, as required by Applicable Law; and

3.5.3 Operator shall notify the Owner's Representative of any emergency, by telephone, facsimile or electronic mail, as soon as practicable following the occurrence of such Emergency given the circumstances, which notice shall include detail with respect to any action being taken or instigated by Operator in response thereto.

3.6 Notification to Owner. Upon obtaining knowledge thereof, Operator shall promptly deliver Notice of each of the following to Owner's Representative:

3.6.1 Any pending or threatened litigation, claim, dispute, action, investigation or proceeding by any Person concerning the Plant or the Work;

3.6.2 Any refusal or threatened refusal to grant, renew, or extend any existing Permit, or any pending or threatened litigation, claim, dispute, action or proceeding that might adversely affect the granting, renewal or extension of any relevant Permit;

3.6.3 Any material outage of more than twenty percent (20%) of the operating capacity of the Plant (other than as required to perform scheduled or routine maintenance) for a period of four (4) or more continuous hours;

3.6.4 Any incidents at the Plant resulting in death, lost time injury or serious injury to any individual, with written notice to follow within twenty-four (24) hours;

3.6.5 Any discovery of Hazardous Materials at the Plant that are not already recorded on the logs Operator is required to maintain in accordance with Applicable Law and previously notified to Owner or any incident the occurrence of which might reasonably require Operator to provide notification to a Governmental Authority under Applicable Law or Permits or which otherwise may reasonably be expected to result in any regulatory liability to Owner; and

3.6.6 Any other event or circumstance that reasonably could be expected to adversely impact the operation of the Plant in any material manner including labor disputes, material violation of any Applicable Laws or Permits, or material damage to any of the major pieces of equipment comprising the Plant.

3.7 Safety. Operator shall take reasonable safety and other precautions consistent with Prudent Operating Practices to protect persons and property from damage, injury or illness arising out of the performance of the Work. Operator shall prepare for Owner's review and approval a safety manual that shall incorporate the following elements: (i) identification of the Person(s) responsible to implement and enforce the safety program; (ii) identification of safety hazards and correction procedures; (iii) requirements for safety meetings and safety training procedures; (iv) procedures for documenting safety infractions; and (v) general safety regulations and procedures. Operator shall maintain in form and content reasonably acceptable to Owner statistics regarding jobsite accidents, injuries and illnesses at the Plant as required by Applicable Law, which shall be available for inspection by and submitted to Owner upon its written request.

4. CHANGE ORDERS. If Owner and Operator agree that Operator's scope of responsibilities under this Agreement shall be or has been increased or, consistent with Prudent Operating Practices, decreased, or if it appears to either Party that a change is required to the Annual Maintenance Plan to conform the Annual Maintenance Plan to actual circumstances or events, Owner and Operator may in their respective discretion agree upon such amendments to this Agreement, or the Annual Maintenance Plan, as the case may be. Such amendments shall be reflected in a document executed by both Owner and Operator (a "Change Order"). Without limiting the generality of the foregoing, if Owner and Operator agree that Operator's costs of performing the Work are materially increased as a result of any change in Applicable Law, any change to any agreement, instrument or document referred to herein relating to the Plant or any expenditures or services required of Operator in connection with any cooperation provided under Section 6.1 that would not otherwise be required to operate or maintain the Plant, in each case occurring after the date hereof, occurring as a result of actions outside Operator's control, and affecting the scope of Operator's responsibilities under this Agreement, then Owner and Operator shall agree upon an equitable adjustment to the Basic Corporate Overhead Expense and/or an adjustment to Operator's Compensation whereby Operator shall be entitled, upon submission of proper invoices and supporting documentation, to be reimbursed for such increased costs and shall reflect such adjustment in a written Change Order. In addition and without limiting the generality of the foregoing, if Operator's costs of performing the Work are materially increased as a result of any expenditures or services required of Operator in connection with any cooperation provided under Section 6.1 in furtherance of the contracts listed in such section that would not otherwise be required to operate or maintain the Plant, then Owner and Operator shall agree upon an equitable adjustment to the Basic Corporate Overhead Expense and/or an adjustment to Operator's compensation whereby Operator shall be entitled, upon

submission of proper invoices and supporting documentation, to be reimbursed for such increased costs and shall reflect such adjustment in a written Change Order. If any such change in scope is initiated by Operator, Operator shall notify Owner of its estimate of the increased costs caused by such change in scope at or prior to the time the relevant Change Order is submitted to Owner for approval.

5. OPERATOR'S AUTHORITY; SUBCONTRACTING; PARTS.

5.1 Operator's Authority. Operator shall have the authority to procure and make expenditures for such items, parts, materials and services as are deemed necessary by Operator in completing the Work, provided that such procurement and expenditures comply with the Annual Maintenance Plan (or, if applicable, the Pre-Commercial Operating Budget), the Requirements, and the other terms and conditions of this Agreement. In doing so, Operator shall keep Owner timely informed and obtain Owner's prior approval for any expenditures that are not set forth in the Annual Maintenance Plan or that do not qualify as Permitted Excess Expenditures. Operator shall not require Owner's prior approval, and Owner shall reimburse Operator for, any Permitted Excess Expenditures, provided however, if the payee of a Direct Operating Expense or Capital Improvement Expense is the Operator or an Operator Related Party, such expense shall not exceed the applicable line item amount set forth in the applicable Annual O&M Budget unless the Operator has received the prior written consent of the Owner in respect to such expense. Notwithstanding the foregoing, during an Emergency or other unexpected contingency, Operator is authorized to make such expenditures and take such other actions, whether budgeted or not, as Operator shall determine to be reasonably necessary in order to comply with this Agreement, applicable Permits, Applicable Laws or to otherwise protect the Plant, individuals or other property and to maintain the Plant in a safe condition consistent with Prudent Operating Practices. If any such unbudgeted costs and expenditures are incurred, Operator shall promptly notify Owner of such action, specifying the particulars of the events giving rise to such costs and expenditures, and shall promptly submit a revision to the Annual Maintenance Plan to encompass the costs and expenditures incurred, as well as those expected to be incurred, as a result of such Emergency or other unexpected event, and such costs and expenditures reasonably incurred shall be reimbursed in accordance with Exhibit E. Notwithstanding anything in this Section 5.1 to the contrary, Operator shall not make any Permitted Excess Expenditures or other expenditures (including expenditures related to an Emergency or unexpected contingency) not included within an Annual Maintenance Plan (or, if applicable, the Pre-Commercial Operating Budget) if such expenditure or Owner's reimbursement of the same would cause Owner to breach or otherwise fail to comply with the LGA.

5.2 Subcontracts. The subcontracts and Subcontractors proposed by the Operator in the Annual Maintenance Plan shall be reviewed and approved by Owner; *provided* that Operator's subcontract with SunPower Corporation Systems, dated as of even date herewith, is hereby approved for the duration of the

Term, including any Renewal Term. In each monthly report delivered pursuant to Section 3.4.10, Operator shall notify Owner of any other Subcontractors it intends to engage in the future for work expected to result in more than $250,000 in fees to such Subcontractor. Owner shall have ten (10) Business Days from its receipt of such report to object to any such Subcontractor, and Operator shall not engage any Person to which Owner has so objected. Any future subcontracts entered into by Operator to procure equipment, supplies or services for the Plant shall be in a form to be agreed upon by

Owner and Operator, which form shall conform to the applicable terms and provisions of this Agreement. No subcontract entered into by Operator shall prohibit or restrict assignment of such agreement by Operator to Owner. Owner's Representative shall have the right to review and approve (such approval not to be unreasonably withheld, conditioned or delayed) any material changes to the form purchase order. Operator shall not be relieved of any of its obligations or liabilities under this Agreement by reason of any subcontract and shall be responsible for the acts and omissions of its Subcontractors in their performance of the Work to the same extent as if such acts and omissions were performed or made by Operator.

5.3 Parts. Operator may not, in performing the Work, procure and employ used, non- OEM, reverse engineered, and/or refurbished Materials, equipment and parts without the express approval and permission of Owner. Materials, equipment and parts procured by Operator shall meet all specifications and requirements of Owner, shall comply with all Requirements including any conditions required to maintain warranties covering the Plant or any portion or component thereof in effect, and shall be inspected and tested by Operator in accordance with Prudent Operating Practices and any obvious defects shall be noted and handled appropriately.

6. COOPERATION.

6.1 General. During the Term of this Agreement, each Party shall act in good faith and provide such reasonable assistance and cooperation as the other Party may request in connection with the performance of their respective duties and obligations under this Agreement.

6.2 Owner Representative. From time to time during the Term, Owner shall designate, by written notice signed by an executive officer of Owner delivered to Operator, an individual and an alternate (to act in the absence of such representative) (each, an "Owner Representative") with authority to act for Owner in all matters pertaining to this Agreement and the Plant, to receive notices and communications from Operator with respect to this Agreement and the Plant, and to deliver to Operator, on behalf of Owner, notices, communications, decisions and approvals with respect to this Agreement and the Plant. The name of the Owner Representative (including the alternate) as of the date hereof is attached hereto as Exhibit I. In the event that Owner replaces an Owner Representative (or such alternate), Owner shall promptly notify Operator and Operator shall prepare and distribute a new Exhibit I reflecting such changes, and Exhibit I shall be deemed revised.

6.3 Actions by Owner. The manner of making any decision or giving any approval by Owner shall be determined by Owner for itself, but any communication received by Operator from a Person designated by Owner as its Owner Representative (unless such designation shall have been previously revoked) may be conclusively relied upon by Operator as having been authorized by Owner.

6.4 Operator Representative. From time to time during the Term, Operator shall designate, by written notice signed by an executive officer of Operator delivered to Owner an individual and an alternate (to act in the absence of such representative) (each, an "Operator Representative") with authority to act for Operator in all matters pertaining to this Agreement and the Plant, to receive notices and communications from Owner with respect to this Agreement and the Plant, and to deliver to Owner, on behalf of Operator, notices, communications,

decisions and approvals with respect to this Agreement and the Plant. The name of the Operator Representative (including the alternate) as of the date hereof is attached hereto as Exhibit I. In the event that Operator replaces an Operator Representative (or such alternate), Operator shall promptly notify Owner and Operator shall prepare and distribute a new Exhibit I reflecting such changes, and Exhibit I shall be deemed revised.

6.5 Actions by Operator. The manner of making any decision or giving any approval by Operator shall be determined by Operator for itself, but any communication received by Owner from a Person designated by Operator as its Operator Representative (unless such designation shall have been previously revoked) may be conclusively relied upon by Owner as having been authorized by Operator.

6.6 Access to Information and Plant; Special Assistance. Operator shall provide Owner access to all documents, data, information and records that relate to operation and maintenance of the Plant; provided, however, that Operator shall not be required to provide any privileged or proprietary information, personnel information, or other information that does not relate to the Plant and otherwise is not required to operate and maintain the Plant in accordance with Prudent Operating Practices, the Requirements and this Agreement. At the request of Owner from time to time, Operator shall provide Owner with such data and assistance as may be reasonably requested by Owner to enable Owner to discharge satisfactorily its responsibilities as Owner of the Plant, including its responsibilities to its lenders, security holders, regulatory authorities and others. At all times during the Term of this Agreement, Owner and any Affiliates approved by Owner or other Owner designees shall have access to the Plant to inspect and observe any and all aspects of its construction, operation, maintenance, repair, and overall condition, including any command and control facilities for the Plant, subject only to reasonable health and safety rules and regulations which shall be provided to by Operator and Owner and approved by Owner in its reasonable discretion (including any changes made from time to time).

7. OWNER'S RESPONSIBILITIES.

7.1 Responsibilities of Owner. Owner shall be responsible for the following:

(a) Providing Operator and its Subcontractors with access to and within the Plant at all times and without prior notice as reasonably necessary for Operator to perform the Work;

(b) If Owner brings third parties onto the Plant site, Owner shall comply, and be responsible for each third party's compliance, with the safety requirements of the Plant site and any operating or other procedures or protocols related to the Plant. Owner shall not give Plant access to any competitor of the vendor supplying the major generation equipment to the Plant, without first obtaining Operator's consent;

(c) All communications regarding power sales (except with CAISO, which shall be Operator's responsibility in accordance with Section 3.4.14), contracting regarding power sales, and bidding regarding power sales;

(d) Providing all facilities and infrastructure required for Operator's and its Subcontractors' performance of the Work;

(e) Obtaining all Permits or licenses required by a Governmental Authority to be in Owner's name which are necessary to enable Operator or its Subcontractors to operate and maintain the Plant;

(f) Water supply, telephone service, public address system, local data network, in—plant radio system, water and waste disposal (other than Hazardous Materials) and all other utilities as deemed desirable by mutual agreement of Owner and Operator for the execution of the Work;

(g) Providing Operator with reasonably prompt written notice of any changes in the expected date of Substantial Completion when compared to that set forth in the schedule for such event set forth in the EPC Agreement; and

(h) Proving Operator with copies, within a reasonable time period following any request from Operator, of any agreements or other documentation the review of which is part of Operator's Work hereunder.

8. COMPENSATION AND PAYMENTS.

8.1 Compensation. During the Term of this Agreement, Owner shall pay to Operator, as compensation for performance of its duties and obligations hereunder, the Compensation determined and payable pursuant to Exhibit E.

8.2 Invoices and Reconciliation. On the Effective Date, Operator shall invoice Owner for the Compensation anticipated to be owed for the Work to be performed during the remainder of the month in which the Effective Date occurs and the following month of the Term, based on the budget for such period set forth in the Annual Maintenance Plan, or, if applicable, the Pre-Commercial Operating Budget. Thereafter, by the eighth (8th) Business Day of each month during the Term, Operator shall (i) invoice Owner for Compensation anticipated to be owed for the Work to be performed during the following month based on the budget included in the Annual Maintenance Plan (or, if applicable, the Pre-Commercial Operating Budget) plus any Reconciliation Amount owed to Operator as a result of the Compensation paid in the month prior to the issuance of the invoice being less than the actual Compensation earned during such month in accordance with Exhibit E or minus any Reconciliation Amount owed to Owner as a result of the Compensation paid in such prior month being in excess of the actual Compensation earned during such month in accordance with Exhibit E, and (ii) provide an executed lien waiver in the form of Exhibit O for the Operator. Operator shall determine at the end of each month, whether the anticipated Compensation invoiced to Owner for such month was less than or in excess of the actual amount of Compensation earned during such month, as determined pursuant to Exhibit E (such amount, the "Reconciliation Amount"). Owner shall pay all undisputed invoiced amounts of such Compensation to Operator no later than thirty (30) Days following the date of receipt by Owner of the applicable invoice; provided, however, that Owner shall pay all undisputed amounts in the invoice delivered on the Effective Date within five (5) Business Days of the Effective Date. Notwithstanding the provisions of Section 19.1, invoices sent pursuant to this

Section 8.2 shall be addressed to "Accounts Payable" and sent by e-mail (with a follow-up paper invoice to be sent pursuant to the notice provisions of Section 19.1 hereto) to the e-mail address indicated by notice by Owner from time to time.

8.3 Cash Requirements.

8.3.1 If at any time during any month Operator requires additional sums from Owner for unanticipated expenses in excess of 10% over the amounts for Direct Operating Expenses and Capital Improvement Expenses pre-funded by Owner in accordance with Section 8.2, Operator promptly shall notify Owner. Subject to Section 5.1, within fifteen (15) Business Days after receipt of such notice, Owner shall pay by electronic funds transfer the amount of such shortfall to Operator.

8.3.2 Operator shall not be under any obligation to use its own funds to pay any Subcontractors or vendors any amounts included in the Compensation that have not been paid by Owner and shall be indemnified by Owner, beginning on the Effective Date, for Claims suffered by Operator as a result of Owner's failure to provide funds in accordance with this Section 8.

8.4 Cash Neutral. Notwithstanding any provision in this Section 8 to the contrary, all payments to be made by Owner under this Section 8 are due and are to be received by Operator in advance of Operator's incurrence of the expense to which such payments from Owner are to be applied. The Parties acknowledge and agree that the Work, including the procurement of any equipment, supplies and other services, are being performed hereunder on a cost pass-through basis to the Owner.

8.5 Interest on Delinquent Funds. Any delinquent payment under this Agreement shall bear interest, from the date due until paid, at a rate per annum equal to the prime rate from time to time charged by JPMorgan Chase Bank, N.A. in New York City, or any successor institution, plus two percent (2%), but not in excess of the maximum lawful rate of interest permitted by any Applicable Laws. Each change in the interest rate payable on delinquent payments hereunder shall become effective on the date of each such change in the prime rate. The payment of any such interest shall not excuse or cure any delinquent payment due to either Party under this Agreement.

8.6 No Waiver. No payment by Owner shall prejudice or constitute a waiver of its right, within the time frame set forth in Section 14, to audit or make a Claim in respect of the correctness of any billing submitted by Operator.

9. COMPLIANCE WITH LAWS AND PERMITS.

9.1 Requirements of Law Generally. Operator shall comply with all Applicable Laws (including, but not limited to, Environmental Laws) applicable to Operator's performance of the Work. Owner shall comply with all Applicable Laws (including, but not limited to, Environmental Laws) applicable to its obligations hereunder and otherwise applicable to the ownership of the Plant.

9.2 Hazardous Materials Management. Following Substantial Completion, Operator shall be responsible for the on-site management of all Hazardous Materials generated by or used in the operation or maintenance of the Plant. Following Substantial Completion, Owner shall be identified to any Governmental Authority as the party responsible for the generation, treatment, storage and disposal of all hazardous or toxic wastes (including waste Hazardous Materials) generated by or used in the operation or maintenance of the Plant (and, therefore, Owner shall be designated as the "generator" on all manifests relating to all such hazardous or toxic wastes). Operator shall use commercially reasonable and diligent efforts to prevent the release of any Hazardous Materials into the air, soil, surface water or groundwater at the Plant (other than as permitted by applicable Environmental Laws). Owner shall indemnify, defend, and hold harmless the Operator Indemnified Parties from and against any Claims arising from unpermitted releases of Hazardous Materials into the air, soil, surface water or groundwater at the Plant caused by Owner or any its representatives, employees or agents (excepting Operator, its representatives, employees, agents, contractors or Subcontractors (including without limitation, any Plant Personnel or Support Personnel). Operator shall defend, indemnify and hold the Owner Indemnified Parties harmless against, and shall reimburse Owner for any Claims resulting from or related to any unpermitted releases of Hazardous Materials into the air, soil, surface water or groundwater at or from the Plant caused by the acts or omissions of Operator, its representatives, employees, agents, contractors or Subcontractors (including any Plant Personnel or Support Personnel). The amount of any indemnity payable under this Section 9.2 shall be reduced by the amount of all net insurance proceeds received by the indemnified parties in respect of the occurrence of the event giving rise to the indemnification obligation hereunder. Except in the case of gross negligence, fraud or willful misconduct, the total aggregate liability of Operator for investigation, remediation or other response costs arising out of, connected with or resulting from unpermitted releases of Hazardous Materials into the air, soil, surface water or groundwater at the Plant, whether based in contract, in tort (including negligence and strict liability) under warranty or otherwise, and notwithstanding any other provisions of this Agreement, shall in no event exceed $5,000,000.

9.3 Compliance with Permits. Operator shall comply with all Permits, and the terms and conditions thereof, applicable to the Plant (whether such Permits are issued in the name of Operator or Owner).

9.4 Inapplicability of Article 10 to Contamination Claims. Liability of either Party to the other Party for any Claims for investigation, remediation or other response costs arising out of, connected with or resulting from unpermitted releases of Hazardous Materials into the air, soil, surface water or groundwater at the Plant shall be governed by Section 9.2, and Article 10 shall not apply to such Claims. Notwithstanding the foregoing, and for the sake of clarity, Operator's liability for the violation of Environmental Laws other than as relates to Claims for the foregoing shall be governed by Article 10.

10. ALLOCATION OF RISKS AND LIABILITY.

10.1 General Indemnity by Operator. Subject to Section 9.4, Operator shall indemnify, defend and hold harmless the Owner Indemnified Parties from and against any and all Claims of whatsoever kind or character, that could be brought by Operator or that are brought by any of Operator's directors, officers, managers or employees or by any party other than Owner or any of

its Affiliates, including reasonable attorneys' fees and expenses, for injury or death of persons or physical loss of or damage to property of Persons arising from (1) Operator's (including it employees' or agents') fraud, gross negligence or willful misconduct, (2) claims from Governmental Authorities related to the failure of Operator or any Operator Related Party to pay taxes for which any such party is responsible, or (3) the violation of any Applicable Law by Operator or any Operator Related Party, except to the extent such injury, death, loss or damage arises from: (i) the fraud, gross negligence or willful misconduct of any Owner Indemnified Party; or (ii) the breach of this Agreement by Owner; or (iii) the violation of any Applicable Law by any Owner Indemnified Party.

The amount of any such indemnity payable by the Operator shall be reduced by the amount of all net insurance proceeds received by the Owner Indemnified Parties in respect of the occurrence of the event giving rise to the indemnification obligation hereunder.

10.2 General Indemnity by Owner. Subject to Section 9.4, Owner shall indemnify, defend and hold harmless the Operator Indemnified Parties from and against any and all Claims of whatsoever kind or character that are related to the Work or the Plant, that could be brought by Owner or that are brought by any of Owner's directors, officers, managers or employees or by any party other than an Operator Related Party or an Operator's Subcontractor of any tier, including reasonable attorneys' fees and expenses, for injury or death of persons or physical loss of or damage to property of Persons, arising from (1) the fraud, gross negligence or willful misconduct of any Owner Indemnified Party, (2) claims from Governmental Authorities related to the failure of any Owner Indemnified Party to pay taxes for which any such party is responsible, or (3) the violation of any Applicable Law by any Owner Indemnified Party, except to the extent such injury, death, loss or damage arises from: (i) the fraud, gross negligence or willful misconduct of any Operator Related Party or any Operator Subcontractor of any tier in connection with performance of the Work; or (ii) the breach of this Agreement by the Operator; or (iii) the violation of any Applicable Law by Operator's Related Parties or Operator's Subcontractors of any tier.

The amount of any such indemnity payable by the Owner shall be reduced by the amount of all insurance proceeds received by the Operator Indemnified Party in respect of the occurrence of the event which gave rise to the indemnification obligation hereunder.

10.3 Cooperation Regarding Claims. If any Party (each an "Indemnified Party") shall receive notice or have knowledge of any claim that may result in a claim for indemnification by such Indemnified Party against a Party pursuant to this Section 10, such Indemnified Party shall, as promptly as possible, give the indemnifying Party notice of such claim, including a reasonably detailed description of the facts and circumstances relating to such claim, and a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail the basis for its potential claim for indemnification with respect thereto; provided that failure promptly to give such notice or to provide such information and documents shall not relieve the indemnifying Party from the obligation hereunder to respond to or to defend the Indemnified Party failing to give such notice against such claim. The Party against whom indemnification is claimed shall, upon its acknowledgment in writing of its obligation to indemnify the Indemnified Party seeking indemnification, be entitled to assume the defense or to represent the interests of the Indemnified Party seeking indemnification in respect of such claim, which shall include the right to select and

direct legal counsel and other consultants reasonably acceptable to the Indemnified Party, appear in proceedings on behalf of such Indemnified Party and to propose, accept or reject offers of settlement, all at its sole cost, in consultation with the Indemnified Party and provided, however, that without the Indemnified

Party's consent, which consent may not be unreasonably withheld, the indemnifying Party may only consent to entry of a judgment or settlement that does not provide for injunctive or other nonmonetary relief affecting the Indemnified Party or the Plant.

10.4 Limitations of Liability. Except in the case of fraud or willful misconduct, the total aggregate liability of Operator arising out of, connected with or resulting from this Agreement or from the performance or breach hereof, or from any Work performed by Operator, whether based in contract, in tort (including negligence and strict liability) under warranty or otherwise, and notwithstanding any other provisions of this Agreement, shall be limited to the Annual Profit Fee (without any adjustment through the Adjustment Payment) and the Basic Corporate Overhead Expenses for the year in which such liability arose (or, for any year prior to the commencement of commercial operations at the Plant, $100,000 in the aggregate). The foregoing limit of liability will not apply to indemnity claims under Section 9.2 or Section 10.1.

11. CONSEQUENTIAL DAMAGES; DISCLAIMER. Neither Party shall be liable to the other Party for any punitive, incidental, indirect, special or consequential loss or damage, including loss of revenues, income or profits, cost of capital, loss of goodwill or reputation connected with or resulting from performance or non-performance of any obligations under this Agreement, except (a) to the extent arising from the gross negligence, fraud or willful misconduct of the liable Party, or (b) any indemnification obligations of either Party hereunder for third party Claims. The Parties further agree that this waiver and disclaimer of liability shall apply at all times, whether in contract, equity, tort or otherwise, regardless of the fault, negligence (in whole or in part), strict liability, breach of contract or breach of warranty of the Party whose liabilities are so limited.

12. INSURANCE.

12.1 Operator's Insurance. At its own expense Operator shall secure and maintain, or cause to be secured and maintained, the insurance policies required to be maintained by it under Exhibit C in accordance with the terms and conditions set forth therein. Operator shall, within five (5) days after each request by Owner, provide certificates of insurance to Owner, evidencing all insurance policies required pursuant to this Section 12.1. Operator shall also provide detailed summaries (reasonably acceptable to Owner) of all insurance policies required by this Section 12.1, upon reasonable advance notice by Owner.

12.2 Owner's Insurance. The Owner shall procure, or cause to be procured, at the expense of the Owner, the insurance policies required to be maintained by it under Exhibit C in accordance with the terms and conditions set forth therein. Owner shall, within five (5) Days after each request by Operator provide certificates of insurance to Operator, evidencing all insurance policies required pursuant to this Section 12.2. Owner shall also provide detailed summaries (reasonably acceptable to Operator) of all insurance policies required pursuant to this Section 12.2 upon reasonable advance notice by Operator.

13. FORCE MAJEURE.

13.1 Excused Performance; Duty to Mitigate. Notwithstanding any other provision of this Agreement (excepting Section 13.2), any obligation of either Party under this Agreement shall be excused to the extent that such Party's inability to perform is caused by a Force Majeure Event. Both Parties shall make all commercially and technically reasonable efforts to cure, mitigate or remedy the effects of a Force Majeure Event.

13.2 Obligations to Pay Monies. Notwithstanding that a Force Majeure Event may otherwise exist, the provisions of this Section 13 shall not excuse the payment of money due by any Party; provided, however, that Owner shall have no obligation to pay for Work that is not performed during a Force Majeure Event.

13.3 Notice of Force Majeure Event. The Party claiming a Force Majeure Event shall, as a condition precedent for relief for the Force Majeure Event, give notice to the other Party of any Force Majeure Event as soon as reasonably practicable, but not later than ten (10) Days after the date on which such Party knew of the commencement of the Force Majeure Event. Notwithstanding the above, if the Force Majeure Event results in a breakdown of communications rendering it not reasonably practicable to give notice within the applicable time limit specified herein, then the Party claiming a Force Majeure Event shall give such notice as soon as reasonably practicable after the reinstatement of communications, but not later than five (5) Days after the reinstatement of such communications.

13.4 Notice of Cessation of Force Majeure Event. The Party claiming a Force Majeure Event shall give notice to the other Party of (a) the cessation of the relevant Force Majeure Event and (b) the cessation of the effects of such Force Majeure Event, and such Party shall resume performance of its obligations as soon as reasonably practicable thereafter.

14. BOOKS AND RECORDS. All Project Records shall be and remain the sole and exclusive property of the Owner, which shall have and retain all rights, including any Intellectual Property rights, therein. Operator shall maintain on a current basis proper, accurate, detailed and complete books, records and accounts relating to the operation and maintenance of the Plant (including logs of all repairs, parts and materials used and any other data to be maintained under the Requirements) and the performance of the Work (collectively referred to as "Books and Records"), including all operating data and operating logs maintained pursuant to Section 3.4, and as necessary to document Compensation earned by Operator. Operator shall ensure that such Books and Records are kept in a manner that enables them to be separated from Operator's own corporate books and records of account. Throughout the Term and for a period of one (1) year (or such longer period as required by Governmental Authority) following the end of the Term, Owner shall have the right, upon three (3) Business Days' prior written notice and during normal business hours, to inspect and audit the Books and Records. If any overpayments of Compensation are identified in such audit, the undisputed amount of the overpayment shall be refunded to Owner within thirty (30) Days after Operator receives Owner's invoice for the same.

15. INTELLECTUAL PROPERTY. Any Licensed Materials, and all Intellectual Property, if any, contained in the Licensed Materials or otherwise owned by Operator or its Subcontractors and incorporated into the Plant by Operator or its Subcontractors in connection with the performance of the Work, are and shall remain the exclusive property of Operator or its Subcontractors, as the case may be. Operator hereby grants a fully paid-up, non-exclusive,

perpetual, irrevocable, world-wide license for Owner to use the Licensed Materials and all Intellectual Property therein and such Intellectually Property so incorporated into the Plant (the "Operator IP), as set forth below:

(a) Owner shall not, without the prior written consent of Operator, use the Licensed Materials or Operator IP, in relation to any project other than the Plant or for any expansion of the Plant; and

(b) Owner may use such Licensed Materials and Operator IP soley and to the extent required for the operation, maintenance, repair and service of the Plant.

The Licensed Materials covered by the license set forth in this Article 15 are inseparable from the Materials and Work being furnished pursuant to this Agreement. As a result, this license, and all rights and obligations contained in this license, (i) shall continue with respect to the Plant for so long as the Plant remains in service and (ii) shall transfer with any transfer of the Plant or any portion thereof to any Person. All copies, but not the Intellectual Property therein, of the Licensed Materials that are provided to Owner by Operator or its Subcontractors in connection with the performance of the Work shall become the property of Owner.

16. EVENTS OF DEFAULT.

16.1 Operator Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Operator hereunder (an "Operator Event of Default"):

16.1.1 Except as otherwise expressly addressed in this Section 16.1, Operator is in material breach of its obligations or its representations and warranties under this Agreement and such material breach continues uncured for ten (10) Days after receipt of written notice from Owner, provided that Operator's cure period may be extended to up to thirty (30) Days for such breaches not reasonably susceptible to cure within ten (10) Days and further provided that Operator continuously and diligently pursues the cure of the breach to completion;

16.1.2 Operator assigns this Agreement and its obligations hereunder, except as permitted under Section 17.1;

16.1.3 Operator terminates its existence (except in the case of merger or other corporate reorganization to the extent permitted under the Financing Agreements) or voluntarily commences or acquiesces to bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings; or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors; or

16.1.4 Insolvency, receivership, reorganization, bankruptcy, or similar proceedings shall have been commenced against Operator and such proceedings remain undismissed or unstayed for a period of ninety (90) Days.

16.2 Owner Defaults. The occurrence of any one or more of the following events shall constitute an event of default by Owner hereunder (an "Owner Event of Default"):

16.2.1 Owner fails to pay to Operator any payment required under this Agreement that is not in dispute, and such failure continues for thirty (30) Days after receipt of written notice of such failure;

16.2.2 Except as otherwise expressly addressed in this Section 16.2, Owner is in material breach of its obligations or its representations and warranties under this Agreement and such material breach continues uncured for ten (10) Days after receipt of written notice from Operator, provided that Owner's cure period may be extended to up to thirty (30) Days for such breaches not reasonably susceptible to cure within ten (10) Days and further provided that Owner continuously and diligently pursues the cure of the breach to completion;

16.2.3 Owner terminates its existence (except in the case of merger or other corporate reorganization to the extent permitted under the Financing Agreements) or voluntarily commences or acquiesces to bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditors; or

16.2.4 Insolvency, receivership, reorganization, bankruptcy, or a similar proceeding shall have been commenced against Owner and such proceeding remains undismissed or unstayed for a period of ninety (90) Days.

16.3 Event of Default Remedies. The sole and exclusive remedy of each Party upon the occurrence and continuation of an Event of Default by the other Party is the termination of this Agreement and payment of the amounts required to be paid under and in accordance with Section 2.2, provided however, that this provision shall not limit the indemnity obligations of the Parties hereunder.

17. ASSIGNMENT.

17.1 Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of Owner and Operator. Neither Owner nor Operator shall, without the written consent of the other Party, assign or transfer this Agreement, which consent shall be at such other Party's sole discretion. Notwithstanding the foregoing, without the written consent of Operator, (a) Owner may assign all of its rights and obligations under this Agreement to a Financing Party as collateral security in connection with obtaining or arranging any Financing for the Plant; provided, however, Owner shall deliver, at least ten (10) Days prior to any such assignment to Operator (i) written notice of such assignment and (ii) a copy of the instrument of assignment and (b) the Financing Party or the Financing Party's agent may assign this Agreement or their right under this Agreement, including in connection with any foreclosure or other enforcement of their security interest. If Operator executes a consent to assignment or other direct agreement with a Financing Party, the notice requirement set forth in Section 17.1(a) shall be deemed satisfied. Any assignment which does not comply with the requirements of this Section 17.1 shall be null and void; provided, however, that no assignment by Owner to a Financing Party otherwise permitted by this Section 17.1 shall be void or nullified solely due to a failure to give the notice required by this Section 17.1.

17.2 Financing Cooperation. Operator shall provide such cooperation as Owner may reasonably request in connection with obtaining Financing for the Plant; provided, however, that such cooperation does not (a) adversely affect the rights or increase the duties and obligations of Operator under this Agreement in any material respect or (b) cause Operator to incur any additional third party expenses in the performance of its obligations hereunder. At any time and from time to time during the Term of this Agreement, after receipt of a written request by Owner, Operator shall (x) execute and deliver to Owner and/or the Financing Parties, estoppel statements reasonably acceptable to Operator certifying to its knowledge whether or not (i) this Agreement is in full force and effect, (ii) any modifications have been made hereto, (iii) whether there exist any defaults hereunder or any disputes hereunder between the Parties, (iv) any events have occurred

that would, with the giving of notice or the passage of time, constitute a default hereunder, and (v) all amounts then due and owing hereunder have been paid, (y) execute customary consents, at expense of Owner, in a form reasonably acceptable to Operator, to Owner's assignment of this Agreement to a Financing Party as collateral security and (z) provide such legal opinions at the expense of Owner as may reasonably be requested in connection with any collateral assignment and consent. Operator acknowledges that the form of Mortgagee Consent attached hereto as Exhibit L is acceptable and agrees that it shall execute such Mortgagee Consent within twenty-five (25) Days' request from Owner.

18. TITLE TO MATERIALS. Title to any Materials shall pass directly from the supplier to Owner when purchased and shall be free and clear of all liens and encumbrances created or imposed by Operator. Operator shall keep and maintain the Plant free and clear of all liens and encumbrances resulting from the action or inaction of Operator or its Subcontractors hereunder or from any Work done hereunder at the request of Operator or its Subcontractors, other than (a) liens and encumbrances arising by, through or under Owner; and (b) liens and encumbrances which are being diligently contested in good faith and by appropriate proceedings for which appropriate reserves have been established. Notwithstanding the foregoing, Operator shall not be responsible for preventing liens and encumbrances that result from Owner' failure to timely pay amounts owing to Operator under this Agreement.

19. MISCELLANEOUS.

19.1 Notices. All notices, requests, demands, waivers, consents and other communications hereunder shall be in writing and shall be considered properly served, given or made if delivered either in person, by facsimile, by overnight courier or by U.S. mail, first class postage prepaid, directed to the Parties or their permitted assignees at the addresses set forth in Exhibit I. Notice by facsimile, or by hand delivery, shall be effective at the close of business on the day actually received, if received during business hours on a Business Day. Notice by overnight U.S. mail or courier shall be effective on the next Business Day after being sent, and notice by regular U.S. mail shall be effective three (3) Business Days after being sent. Any Party may, at any time, by written notice to the other Party, designate different Persons or addresses for the receipt of notices hereunder.

19.2 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid, binding and enforceable under Applicable Law. In the event that any of the terms, covenants or conditions hereof or the application thereof to either Party or any circumstance shall be held by a court of competent jurisdiction to be invalid in any

jurisdiction, the remaining terms, covenants and conditions hereof and the application thereof to either Party or any other circumstance, or in any other jurisdiction, shall not be affected thereby.

19.3 Confidentiality.

19.3.1 Confidential Information. For purposes of this Agreement, the term "Confidential Information" means proprietary information concerning the business, operations and assets of Operator or Owner (as the case may be), their respective parent companies, subsidiaries or affiliates (collectively, the "Disclosing Party") that is clearly marked "Proprietary" or "Confidential" if disclosed in writing, and, if disclosed orally or visually, is communicated to be confidential at the time of disclosure and reduced to a writing marked "Proprietary" or "Confidential" within a period of thirty (30) days after the initial oral or visual disclosure by the Disclosing Party to the Party receiving the information ("Receiving Party"). Subject to the preceding sentence, Confidential Information may include information or materials prepared in connection with the performance of the Services under this Agreement, or any related subsequent agreement, designs, drawings, specifications, techniques, models, data, documentation, manuals, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, business plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form (provided the requirements of the preceding sentence are satisfied), and any other trade secrets. In no event, shall Confidential Information include (a) information known to Receiving Party prior to obtaining the same from Disclosing Party (provided that such knowledge did not involve a breach of confidentiality obligations by any Person from whom such knowledge was directly or indirectly obtained) as reflected by the written records of Receiving Party; (b) information in the public domain at the time of disclosure by Disclosing Party; (c) information obtained by Receiving Party from a third party rightfully in the possession of such information and who did not receive same, directly or indirectly, from Disclosing Party; or (d) information approved for public release by express prior written consent of an authorized officer of Disclosing Party.

19.3.2 Use of Confidential Information.

(a) General. Receiving Party hereby agrees that it shall use the Confidential Information for the purposes of this Agreement and/or the Plant. Receiving Party agrees to use the same degree of care Receiving Party uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Receiving Party shall keep confidential and not disclose the Confidential Information. Operator and Owner shall cause each of their directors, officers, managers, employees, agents, partners, representatives, Subcontractors, successors and permitted assigns to become familiar with, and abide by, the terms of this Section 19.3.2.

(b) Disclosures Required under Applicable Law. Notwithstanding the provisions of this Section 19.3, a Receiving Party may disclose any of the Confidential Information of the Disclosing Party to the extent required by Applicable Law. Prior to making or permitting any such disclosure, Receiving Party shall provide Disclosing Party with prompt Notice of any such requirement so that Disclosing Party (with Receiving Party's assistance, if requested) may seek a protective order or other appropriate remedy. In any such event, the Receiving Party shall use commercially reasonable efforts, at the sole cost and expense of the Disclosing Party, to ensure that all Confidential Information that is so disclosed shall be accorded confidential treatment, to the extent possible, and shall so disclose only that portion of the Confidential Information that is legally required to be disclosed.

(c) Permitted Disclosures. Notwithstanding the foregoing, each Party has the right to disclose Confidential Information without the consent of the Disclosing Party; (i) as required by any court or other Governmental Authority, or by any stock exchange on which the shares of any Party are listed; (ii) as required in connection with any government or regulatory filings, including filings with any regulating authorities covering the relevant financial markets; (iii) to its attorneys, accountants, financial advisors or other agents that require such information in connection with their work; (iv) to actual and prospective lenders, investors and other financing sources and their advisors, in each case to the extent necessary or advisable in connection with any Person obtaining financing for the Plant; (v) in connection with an actual or prospective merger or acquisition or similar transaction involving

such Party or the parent entity of such Party, (vi) in the case of disclosures by Operator, to its Subcontractors (of any tier), and (vii) in the case of disclosures by Owner, Affiliates of Owner and any Person that has an equity interest in the Plant. In each of cases (iii) through (vii) above, the Disclosing Party shall obtain from the third party to whom it seeks to disclose or to whom it has disclosed Confidential Information a binding confidentiality undertaking in writing agreeing to keep and use such information in confidence that is substantially similar to the undertakings of the Parties in this Article XIV (provided that no such agreement in writing shall be required from third parties who are in any event bound by legal or professional ethical obligations to maintain such confidentiality).

(d) No Disclosure to Competitors. Notwithstanding anything to the contrary in this Agreement, except as required in the case of an emergency that is life-threatening or that can result in bodily injury, Owner shall not disclose any Confidential Information to a PV Competitor, without Operator's consent.

19.3.3 Publicity. Notwithstanding anything to the contrary in this Agreement, Operator and its Subcontractors shall have the right to utilize general information about the Plant, including photographs, in its promotional materials and public statements. All such usage of general information about the Plant, including photographs, must indicate that NRG is the owner of the Plant and cannot disparage the Plant or operation of them. During the Term, Operator shall be allowed: (1) to have reasonable room on the single NRG sign at the main entrances to the Project (specifications to be mutually agreed upon) identifying SunPower as the facility supplier and when required under its subcontract with SunPower, identifying SunPower as the operation and maintenance

provider, and (2) to grant access to the Site to SunPower's guests, who shall not be a Competitor of NRG, for promotional purposes, including the taking of photographs. Owner shall have the right to join on any tours by Contractor, including those tours with media, political and community members. Operator shall require all of its Subcontractors' guests admitted to the Site to observe all applicable safety standards. In addition to the foregoing, during the Term for each Project, Operator may make available to SunPower read-only access to summary data relating to the performance of the Plant, which data shall only be used for purposes internal to SunPower and shall not otherwise be disclosed to any third parties.

19.3.4 Return of Confidential Information. At any time upon the request of Disclosing Party, Receiving Party shall promptly deliver to Disclosing Party or destroy if so directed by Disclosing Party (with such destruction to be certified by Receiving Party) all documents (and all copies thereof, however stored) furnished to or prepared by Receiving Party that contain Confidential Information; provided, however, that the Receiving Party may retain one copy of such Confidential Information; and provided, further, that all such retained Confidential Information shall be held subject to the terms and conditions of this Agreement.

19.3.5 Termination of Confidentiality. The confidentiality provisions set forth in this Agreement shall remain in full force and effect, until the date that is two (2) years after the end of the Term. After such date, unless otherwise agreed in writing by the Parties, no information previously designated as Confidential Information under this Section 19.3.5 shall need to be treated as confidential by the Receiving Party.

19.3.6 Remedies for Breach of Confidentiality Obligations. The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of the obligations set forth in this Section 19.3 and the obligations of each Party under this Section 19.3 are specifically enforceable. Accordingly, the Parties agree that a breach or threatened breach of this Section 19.3 by either Party, shall entitle the other Party to seek an injunction preventing such breach, without the necessity of proving damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to such Party, its direct and indirect parent companies, subsidiaries or Affiliates.

19.4 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of California, exclusive of any conflict of laws provisions that would apply the laws of another jurisdiction.

19.6 Entire Agreement; Conflicts. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, representations, communications and understandings, written or oral, express or implied, pertaining thereto. Any modifications, amendments, or changes to this Agreement shall be

binding upon the Parties only if agreed upon in writing and signed by the authorized representatives of the Parties. In the event of any conflict between the provisions of Sections 1 through 25 of this Agreement and the exhibits and schedules attached hereto, the provisions of Sections 1 through 25 shall control.

19.7 No Partnership Created. Operator is an independent contractor and nothing contained herein shall be construed as constituting any relationship with Owner other than that of purchaser and independent contractor, nor shall it be construed as creating any relationship whatsoever including employer/employee, partners or joint venture parties, between Owner and Operator's employees.

19.8 No Third Party Rights. Except with respect to the indemnities set forth in this Agreement, the Parties do not intend to create rights in, or grant remedies to, any third Party as a beneficiary of this Agreement or of any duty, covenant, obligation or understanding established under this Agreement.

19.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement, notwithstanding that both of the Parties are not signatories to the original or to the same counterpart. A copy of this Agreement signed by a Party and delivered by facsimile, email or other electronic transmission to the other Party shall have the same effect as the delivery of an original of this Agreement containing the original signature of such signing Party.

19.10 No Liens. The Operator will not create, permit or suffer to exist any liens created by through or under the Operator (or its employees, agents, representatives, contractors, Subcontractors or vendors) on the Work or other facilities, equipment or materials used to provide or incorporated into the Work, as applicable. However, and for the avoidance of doubt, the Operator may enter into agreements with third parties, within the scope of the Work, that could result in liens and encumbrances against the Plant, including liens and encumbrances in favor of carriers', warehouseman's, mechanics', materialmen's, repairmen's or

other like liens arising in the ordinary course of business and within the scope of the authority of the Operator hereunder. In the event such a lien is made against the Plant and the Owner has provided to the Operator adequate funds and other support necessary to discharge such lien, the Operator will take all prompt steps to discharge such lien filed against any such item. If the Operator fails to discharge promptly any such lien, the Owner will have the right to notify Operator in writing and to take any reasonable action to satisfy, defend, settle or otherwise remove the lien at the Operator's expense, but only to the extent the Owner provided adequate funds to the Operator to discharge such lien.

20. [RESERVED]

21. OPERATOR REPRESENTATIONS AND WARRANTIES. The Operator represents and warrants to the Owner as follows:

(a) The Operator is a limited liability company duly organized in the State of Delaware, qualified to conduct business in the States of Delaware and California and validly

existing and in respect of which no action relating to insolvency or liquidation has, to the knowledge of the Operator, been taken.

(b) The execution, delivery and performance of this Agreement by the Operator have been duly authorized by all necessary action on the part of the Operator and do not and will not require the consent of (i) any trustee or holder of any indebtedness or other obligation of the Operator or (ii) any other Person that is not a Governmental Authority (other than any such consents which have already been obtained by the Operator).

(c) This Agreement has been duly executed and delivered by the Operator. This Agreement constitutes the legal, valid, binding and enforceable obligation of the Operator, subject to any applicable principles of equity or other similar law.

(d) No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any Governmental Authority is required on the part of the Operator in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which the Operator anticipates will be obtained in a timely manner and in the ordinary course of performance by the Operator and the Owner of this Agreement.

(e) To the extent applicable, Operator and its Affiliates are in compliance, in all material respects, with (i) The United States Trading with the Enemy Act, as amended, or any of the foreign assets control regulations of the U.S. Department of Treasury (31 C.F.R. Subtitle B, Chapter V, as amended), or any ruling issued thereunder or any enabling legislation or Presidential Executive Order granting authority therefor (the "Foreign Asset Control Regulations"), (ii) all applicable orders, rules and regulations of The Office of Foreign Asset Control of the U.S. Department of Treasury ("OFAC"), and (iii) the USA PATRIOT Act of 2001, as amended from time to time ("Patriot Act").

(f) The performance of this Agreement and payment of any amounts due hereunder will not violate any Foreign Asset Control Regulations or any anti-boycott laws and regulations.

(g) Neither the Operator, any Operator Affiliate, or any Person who owns or controls Operator, nor any of their members, directors, officers, parents or subsidiaries: (x) is subject to United States or multilateral economic or trade sanctions in which the United States participates, (y) is owned or controlled by, or act on behalf of, any governments, corporations, entities or individuals that are subject to United States or multilateral economic or trade sanctions in which the United States participates, or (z) is a Prohibited Person or otherwise is named, identified or described on any blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other list of individuals or entities with whom United States persons may not conduct business, including lists published or maintained by OFAC, lists published or maintained by the U.S. Department of Commerce, and lists published or maintained by the U.S. Department of State. For purposes of this Agreement, the term "Prohibited Person" shall mean a Person that is: (i) named, identified, or described on the list of "Specially Designated Nationals and Blocked Persons" (Appendix A to 31 CFR chapter V) as published by OFAC at its official website,

http://www.treas.gov/offices/enforcement/OFAC/sdn/, or at any replacement website or other replacement official publication of such list; (ii) named, identified or described on any other blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other list of individuals or entities with whom United States persons may not conduct business, including lists published or maintained by OFAC, lists published or maintained by the U.S. Department of Commerce, and lists published or maintained by the U.S. Department of State; (iii) debarred or suspended from contracting with the U.S. Government or any agency or instrumentality thereof; (iv) debarred, suspended, proposed for debarment with a final determination still pending, declared ineligible or voluntarily excluded (as such terms are defined in (i) The Government-wide Debarment and Suspension (Non-procurement) regulations (Common Rule), 53 Fed. Reg. 19161 (May 26, 1988), (ii) Subpart 9.4 (Debarment, Suspension, and Ineligibility) of the Federal Acquisition Regulations, 48 C.F.R. 9.400 - 9.409, and (iii) the revised Government-wide Debarment and Suspension (Non-procurement) regulations (Common Rule), 60 Fed. Reg. 33037 (June 26, 1995), the "Debarment Regulations") from contracting with the any United States federal government department or any agency or instrumentality thereof or otherwise participating in procurement or non-procurement transactions with any United States federal government department or agency pursuant to any of the Debarment Regulations; (v) or has been indicted, convicted or had any judgment, order, decision, or decree, or any action of a similar nature, of or by a governmental authority having jurisdiction over such Person or any of its properties rendered against it for any of the offenses listed in any of the Debarment Regulations; (vi) subject to U.S. or multilateral economic or trade sanctions in which the U.S. participates; (vii) owned or controlled by, or acting on behalf of, any governments, corporations, entities or individuals that are subject to U.S. or multilateral economic or trade sanctions in which the U.S. participates; or (viii) an Affiliate of a Person listed above.

(h) No event has occurred and no condition exists that is likely to result in the Operator, any Operator Affiliate, or any Affiliate of Operator or any Person who owns or controls the Operator, nor any of their members, directors, officers, parents or subsidiaries, becoming a Prohibited Person.

(i) The execution, delivery and performance of this Agreement by Operator will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of its certificate of formation, limited liability company agreement or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.

(j) There are no actions, suits, proceedings or investigations pending or, to Operator's knowledge, threatened against Operator at law or in equity before any court or other Governmental Authority or any arbitration panel, which individually or in the aggregate may result in any material adverse effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under the Agreement.

22. OWNER REPRESENTATIONS AND WARRANTIES. The Owner represents and warrants to the Operator as follows:

(a) The Owner is a limited liability company duly organized in the State of Delaware, qualified to conduct business in the States of Delaware and California and validly existing and in respect of which no action relating to insolvency or liquidation has, to the knowledge of the Owner, been taken.

(b) The execution, delivery and performance of this Agreement by the Owner have been duly authorized by all necessary action on the part of the Owner and do not and will not require the consent of any trustee or holder of any indebtedness or other obligation of the Owner or any other party to any other agreement with the Owner (other than any such consents which have already been obtained by the Owner).

(c) This Agreement has been duly executed and delivered by the Owner. This Agreement constitutes the legal, valid, binding and enforceable obligation of the Owner, subject to any applicable principles of equity or other similar law.

(d) No governmental authorization, approval, order, license, permit, franchise or consent, and no registration, declaration or filing with any Governmental Authority is required on the part of the Owner in connection with the execution, delivery and performance of this Agreement, except those which have already been obtained or which the Owner anticipates will be timely obtained in the ordinary course of performance by the Operator and the Owner of this Agreement.

(e) The execution, delivery and performance of this Agreement by Owner will not conflict with, result in the breach of, constitute a default under or accelerate performance required by any of the terms of its certificate of formation, limited liability company agreement or any Applicable Laws or any covenant, agreement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected.

(f) There are no actions, suits, proceedings or investigations pending or, to Owner's knowledge, threatened against Owner at law or in equity before any court or other Governmental Authority or any arbitration panel, which individually or in the aggregate may result in any material adverse effect on its business, properties or assets or its condition, financial or otherwise, or in any impairment of its ability to perform its obligations under the Agreement.

23. SURVIVAL. All provisions of this Agreement that are expressly or by implication to come into or continue in force and effect after the expiration or termination of this Agreement, including Section 2.6, Section 2.7, Section 9, Section 10, Section 11, Section 19.6, Section 19.7 and this Section 23 shall remain in effect and be enforceable following termination or expiration of this Agreement.

24. DAVIS-BACON ACT.

(a) This Section 24 and the provisions of Exhibit M and Exhibit M-1 shall apply only to Work conducted under this Agreement prior to the first portions of the Plant to begin operation.

(b) Pursuant to Section 1705(c) of Title XVII, all laborers and mechanics employed in the performance of the Plant, including those employed by contractors and

Subcontractors, shall be paid wages at rates not less than those prevailing on similar work in the relevant locality as determined by the U.S. Secretary of Labor pursuant to the Davis-Bacon Act. Operator shall cause the contract clauses set out in 29 C.F.R. 5.5(a)(1) through (10) to be incorporated into all Davis-Bacon Act Covered Contracts, in each case.

(c) The Operator, on DOE's behalf, shall systematically review the certified payroll records that it maintains for its own laborers and mechanics pursuant to subparagraph (b)(3)(i) of Exhibit M and those that it receives for the laborers and mechanics of any Subcontractor pursuant to subparagraph (b)(3)(ii)(A) of Exhibit M. The Operator shall promptly notify the DOE contracting officer in writing when it receives any complaint related to non-compliance with the Davis-Bacon Act, or discovers in the course of its systematic review of the certified payroll records an incident that the Operator reasonably believes to be a case of such non-compliance and which, in each case, the Operator cannot resolve on its own and shall forward to the DOE contracting officer (1) the complaint or a written summary of the non-compliant incident, (2) a summary of the Operator's investigation into such complaint or such incident, and (3) the relevant certified payroll records. Certified payroll records maintained by the Operator shall be preserved for three (3) years after completion of work. Notwithstanding anything to the contrary in subparagraph (b)(3)(ii)(A) of Exhibit M, the Operator shall maintain such certified payroll records at a site designated by the Operator and shall make such records available to DOE and the U.S. Department of Labor when necessary, and upon request, for purposes of an investigation or audit of compliance with prevailing wage requirements. Certified payroll records maintained by the Operator shall be considered federal government records for the purposes of the Freedom of Information Act, 42 U.S.C. § 552. The Operator shall provide such records to DOE within five (5) Days of receipt of any request for such records from DOE.

(d) If and to the extent performance of the Work began prior to the Effective Date, Operator shall immediately retroactively adjust, and cause each Subcontractor to retroactively adjust, the wages of each affected laborer and mechanic employed in the performance of the Plant prior to the Effective Date, and pay or cause to be paid to each such laborer or mechanic such additional wages, if any, as are necessary for such laborers and mechanics to have been paid at rates not less than those prevailing on similar work in the relevant locality during the period such work was performed, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act; provided, however, that this clause (d) shall not apply if and to the extent the Operator obtains an exemption pursuant to the provisions of 29 C.F.R. 1.6(g).

(e) The Operator shall take no action, nor omit to perform any obligation, which causes Owner to be in violation of the requirements of the Davis-Bacon Act (currently as set forth in Exhibit M) as they relate to the Work, at any time prior to the first portions of the Project beginning operation.

[Signatures begin on next page]

IN WITNESS WHEREOF, the Parties hereto have caused this Operation and Maintenance Agreement to be effective as of the date first above written.

OPERATOR:

NRG Energy Services LLC,
a Delaware limited liability company

By: /s/ David Stickler

Name: David Stickler

Title: President

OWNER:

High Plains Ranch II, LLC,
a Delaware limited liability company

By: /s/ Richard Grosdidier

Name: Richard Grosdidier

Title: Vice President, Finance

[Signature Page to O&M Agreement]

Exhibit 10.16

EXECUTION VERSION

PROJECT ADMINISTRATION AGREEMENT

Dated as of August 16, 2010

By and Between

SOUTH TRENT WIND LLC

and

NRG TEXAS POWER LLC

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PROJECT ADMINISTRATION AGREEMENT

This PROJECT ADMINISTRATION AGREEMENT (this "Agreement") is made as of this 16th day of August, 2010 (the "Effective Date"), by and between SOUTH TRENT WIND LLC, a Delaware limited liability company (the "Project Company") and NRG TEXAS POWER LLC, a Delaware limited liability company (the "Administrator").

W I T N E S S E T H:

WHEREAS, the Project Company owns a 101.2 MW wind project in Nolan and Taylor Counties, Texas (the "Wind Farm") and the Administrator has expertise in providing administrative services to wind projects; and

WHEREAS, the Project Company desires to engage the Administrator and the Administrator wishes to accept such engagement, to provide administrative services to the Project Company on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE I
DEFINITIONS AND USAGE

Section 1.01 Definitions. Unless the context shall otherwise require or the express terms of this Agreement shall otherwise provide, capitalized terms used in this Agreement shall have the following meanings:

"Administrative Agent" has the meaning given to such term in the Financing Agreement.

"Administrative Services" means the responsibilities of the Administrator under Article II of this Agreement.

"Administrator" is defined in the preamble.

"Administrator Protected Party" is defined in Section 9.01(a).

"Affiliate" of a Person ("First Person") shall mean a Person which directly or indirectly controls, or is controlled by, or is under common control with, the First Person, and shall also include any limited partnership or limited liability company of which the First Person or an Affiliate thereof is the general partner, managing member or manager, as the case may be. "Control" of a Person shall mean the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of that Person.

"Agreement" is defined in the preamble.

"Approved Budget" is defined in Section 2.02(k).

"BOP O&M Agreement" is defined on Schedule 1.

"BOP O&M Contractor" is defined on Schedule 1.

"Build Out Agreement" means any agreement entered into between the Project Company and any other Person with respect to an adjacent wind farm to the Wind Farm.

"Certified Public Accountants" means a firm of independent public accountants selected from time to time by the Project Company. The initial Certified Public Accountants are KPMG with respect to financial matters and KPMG with respect to compliance matters.

"Core Duties" means the following services to be provided with respect to the Project Company: (i) supervision, monitoring and enforcement with respect to Service Providers, (ii) bookkeeping and record keeping, (iii) overall coordination of the Project Company's administrative activities (including, the Administrative Services), (iv) reporting to and communication with the Project Company, (v) depositing funds into the accounts maintained on behalf of the Project Company pursuant to Section 2.01(a) hereof, (vi) payment of the Project Company's administrative expenses out of Project Company funds, and (vii) the making of distributions out of available cash as provided under the relevant provisions of the Project Company LLC Agreement and, prior to the Discharge Date, the Financing Agreement and the Depository Agreement.

"Depository" means The Bank of New York Mellon, a New York Banking Corporation, in its capacity as Depository pursuant to the Depository Agreement.

"Depository Agreement" means the Depository Agreement, dated as of June 14, 2010, among the Project Company; Mizuho Corporate Bank, Ltd., acting through its New York Branch, and the Depository (as amended, modified and supplemented from time to time).

"Discharge Date" has the meaning given to such term in the Financing Agreement.

"Effective Date" is defined in the preamble.

"Emergency Expenditure" is defined in Section 4.01(c).

"Events of Default" is defined in Section 8.01.

"FERC" means the Federal Energy Regulatory Commission and any successor thereto.

"Financing Agreement" means the Amended and Restated Financing Agreement, dated as of June 14, 2010, among the Project Company; Bayerische Landesbank, acting through its New York Branch; HSH Nordbank AG, New York Branch; Banco Espirito Santo, S.A., New York Branch; Norddeutsche Landesbank Girozentrale, acting through its New York Branch, Mizuho Corporate Bank, Ltd., acting through its New York Branch, and the lenders party thereto from time to time (as amended, modified and supplemented from time to time).

"Fiscal Year" means the calendar year and in the case of the initial Fiscal Year the period beginning on the Effective Date and ending on December 31, 2010.

"Force Majeure" means any circumstances beyond the reasonable control of the Administrator that causes delay in, or failure of, performance of obligations under this Agreement, and then only to the extent the circumstance is not the result of the willful misconduct or negligent act or omission of the Administrator. To the extent that the following fall within the foregoing limitations, they will fall within the definition of "Force Majeure": acts of God; fire; accident; flood; explosion; war; hurricane; tornado; riot; government action or inaction; national strike, collective bargaining obligations or labor dispute.

"FPA" means the Federal Power Act of 1935, as amended, 16 U.S.C. § 792 et seq.

"GAAP" means generally accepted United States accounting principles, consistently applied.

"GDP Implicit Price Deflator" means the most recent revision of the implicit price deflator for the gross domestic product as computed and published by the United States Department of Commerce.

"Independent Engineer" means (i) prior to the Discharge Date, the Independent Engineer, under, and as defined in, the Financing Agreement and (ii) on any after the Discharge Date, Garrad Hassan Group Limited, or any other Person with experience serving as an independent engineer on utility scale wind projects.

"O&M Agreement" is defined on Schedule 1.

"O&M Contractor" is defined on Schedule 1.

"Person" means any individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust, unincorporated organization or governmental authority.

"Principal Project Documents" means those documents listed on Schedule 1.

"Project Company" is defined in the preamble.

"Project Company LLC Agreement" means the Second Amended and Restated Limited Liability Company Agreement of the Project Company dated as of June 14, 2010.

"Project Company Protected Party" is defined in Section 9.01(b).

"Reference Rate" means the rate as published, from time to time, in The Wall Street Journal as the prime lending rate or "prime rate" plus one percent (1%).

"Relevant Experience" means for a period of at least two (2) years prior to the relevant date, owned or managed more than (1) 150 MW of wind generation assets or (2) 500 MW of electric generation assets that include 50 MW of wind generation assets.

"Sale Termination Option Period" is defined in Section 7.03(c).

"Service Providers" means the BOP O&M Contractor, the O&M Contractor, and each other party hired by the Project Company or the Administrator on behalf of the Project Company, to perform services for the Project Company or with respect to the Wind Farm, including other providers of scheduling, maintenance, repair and warranty services, certified public accountants, tax return preparers, law firms, engineering firms, power and renewable energy credit brokers or marketers, and other professional advisors and consultants.

"Term" is defined in Section 7.01.

"Wind Farm" is defined in the recitals.

"Wind Farm Site" means the real property estates created by the real property documents described on Schedule 1.

"Wind Farm Services Fee" is defined in Section 4.01(a).

ARTICLE II
ADMINISTRATOR'S RESPONSIBILITIES

Section 2.01 Direction from Project Company. The Administrator shall perform the Administrative Services set forth herein and in accordance with the direction, instructions, decisions and policies of the Project Company. The Administrator shall perform the Administrative Services solely in accordance with the authority granted to the Administrator herein, or as directed by the Project Company. The Administrator may rely on any such request, notice, communication, authorization, consent, approval or direction as having been given or made by the Project Company.

Section 2.02 Responsibilities. The Administrator shall provide the following administrative services on behalf of the Project Company:

(a) Maintain, in the name and for the exclusive benefit of the Project Company, bank accounts in a manner consistent with the provisions of the Financing Agreement into or through which the Administrator shall promptly deposit the funds received by it on behalf of the Project Company with respect to the Wind Farm.

(b) (i) Collect on behalf of the Project Company, or cause to be so collected, all payments due to the Project Company with respect to the Wind Farm or otherwise; and

(ii) promptly (but in no event later than the date such payment is due and payable) remit or direct to be remitted (including directions to the Depository) from funds of the Project Company amounts in payment of the expenses of the Project Company as provided for in the

Approved Budget or in any approved variance therefrom, or which constitute Emergency Expenditures, and in accordance with the Financing Agreement;

(c) Subject to the expenditure limitations set forth in the Approved Budget, or otherwise approved by the Project Company, purchase or lease, at the sole expense of the Project Company (but subject to Section 4.01 (c) of this Agreement), any materials, supplies and equipment necessary for the performance of the services to be performed by the Administrator or the Project Company pursuant to this Agreement; provided that nothing herein shall imply any guarantee or undertaking by the Administrator with respect to the collection of amounts due to the Project Company which remain uncollected after commercially reasonable efforts by the Administrator, at the sole expense of the Project Company (but subject to Section 4.01 (c) of this Agreement) to collect such amounts, and nothing herein shall imply any duty of the Administrator under any circumstances to expend its own funds in payment of the sole expenses of the Project Company. In addition, the Administrator shall (i) determine the need for, and, if it reasonably determines that doing so would be in the commercial interests of the Project Company, make or instruct the Project Company to make draws under a working capital or other facility of the Project Company permitted under the Financing Agreement or, after the Discharge Date, any Affiliate of the Project Company, if any, and (ii) establish appropriate reserves, as it determines necessary to meet the Project Company's cash flow requirements, in each case, in accordance with the direction and approval of the Project Company, and shall cause such funds to be deposited into the Project Company's accounts as required pursuant to the terms of the Financing Agreement, prior to the Discharge Date (to the extent such funds are available);

(d) Maintain complete and accurate financial books and records of the Project Company's operations in accordance with prudent business practices and GAAP and make such books and records available for inspection and copying during normal business hours on its premises by any Person authorized by the

Project Company to inspect or copy such books and records, subject to appropriate confidentiality safeguards;

(e) Supervise and monitor the Project Company's and each counterparty's compliance (and where necessary or desirable, at the Project Company's sole expense (but subject to Section 4.01(c) of this Agreement) and enforce each counterparty's compliance) with the administrative terms and conditions of all contracts under which the Project Company has any obligations or rights, including the Principal Project Documents or, in the case of Principal Project Documents with respect to which and to the extent the performance of the Project Company's obligations, or the supervision and monitoring of the counterparty's compliance with the administrative terms of which, the Project Company has delegated such functions to a Service Provider (including the BOP O&M Contractor and the O&M Contractor), supervise and monitor the administrative aspects of such Service Provider's performance of such delegated functions;

(f) Perform on behalf of the Project Company all reporting and other routine administrative responsibilities reasonably believed by the Administrator to be required under the Principal Project Documents (except to the extent required to be performed by the BOP O&M Contractor and the O&M Contractor under the BOP O&M Agreement and O&M Agreement, respectively) and appropriately maintain the corporate documents of the Project Company;

(g) Prepare and file or cause to be prepared and filed by the Certified Public Accountants on behalf of the Project Company, on a timely basis all federal, state and local tax returns and related information and filings required to be filed by the Project Company or delivered to the Project Company, pay out of the Project Company's funds (which shall be in accordance with the Financing Agreement and the Depository Agreement prior to the Discharge Date) all taxes and other governmental charges shown to be due thereon before they become delinquent and make all tax elections believed by the Administrator to be necessary or desirable for the Project Company;

(h) Within thirty (30) days after the end of each quarter (or more often, at the Administrator's option), prepare, or cause to be prepared, and submit to the Project Company, a status report relating to the financial operations of the Wind Farm for such quarter (or for the applicable shorter period, if such report is submitted more frequently than quarterly), in a format to be agreed upon by the Administrator (and the BOP O&M Contractor or O&M Contractor, if appropriate) and the Project Company (but in each case as required by the Financing Agreement). The Wind Farm operations report, which may be combined with other operations reports provided by the BOP O&M Contractor and/or the O&M Contractor, will detail variances between actual and budgeted financial performance;

(i) Within forty-five (45) days after the end of each quarter, prepare, or cause to be prepared, and submit to the Project Company, unaudited internal GAAP financial statements for each quarter, in a format to be agreed upon by the Administrator (and the BOP O&M Contractor or O&M Contractor, if appropriate) and the Project Company (but in each case as required by the Financing Agreement) which would include project GAAP income allocations;

(j) Supervise and monitor the Service Providers with respect to the administrative aspects of their performance of services for the Project Company and, where necessary or desirable, at the Project Company's sole expense (but subject to Section 4.01(c) of this Agreement), enforce each Service Provider's compliance with its administrative obligations to the Project Company; provided that the Administrator's responsibility for matters that are subject to the Project Company's arrangements with Service Providers (other than Service Providers performing Core Duties) shall consist solely of such supervision, monitoring and enforcement and shall not include responsibility for the proper performance of any such matters;

(k) At least fifty (50) days prior to the end of each Fiscal Year, prepare, or cause to be prepared, and submit to the Project Company a proposed budget and operating plan of the Wind Farm for the immediately following Fiscal Year, which shall be in a format to be agreed upon by the Administrator and the Project Company and subject to approval of the Project Company and, prior to the Discharge Date, the Administrative Agent (as so approved, the "Approved Budget"). The Approved Budget shall be prepared in accordance with the directions and requirements of the Project Company and the Financing Agreement;

(l) Notify the Project Company of any material variance from the Approved Budget promptly after learning of such variance;

(m) Within ninety (90) days after the end of each Fiscal Year, cause the Project Company's Certified Public Accountants to prepare, review and submit to the Project Company annual

audited financial statements for the Project Company, and assist and cooperate with the Project Company's Certified Public Accountants in connection with all audits made of the Project Company's books and records;

(n) Provide such readily available information to each of the Project Company and/or the Administrative Agent as it may reasonably request from time to time;

(o) Represent the Project Company in business matters with third parties to the extent contemplated by the Principal Project Documents and as directed by the Project Company, subject to the terms of the Financing Agreement, and cause the Project Company to execute such additional documents reasonably deemed necessary or desirable by the Administrator to effectuate the transactions and agreements contemplated by the Principal Project Documents; provided that with respect to any such material additional document the Administrator shall be entitled to request and rely upon instructions from the Project Company;

(p) (i) Cause the Project Company to obtain and maintain all commercially available insurance required by the Project Company to be maintained on behalf of the Project Company and the Wind Farm in accordance with the Principal Project Documents and the Financing Agreement and (ii) on an annual basis, provide the Project Company with certificates from the insurance broker verifying the insurance maintained with respect to the Project Company and the Wind Farm and setting forth the details of all active insurance policies in connection therewith;

(q) Engage Service Providers as reasonably believed by the Administrator to be necessary or desirable (provided that any contract proposed to be entered into with a Service Provider that is an Affiliate of the Administrator shall be subject to the approval of the Project Company, or as instructed by the Project Company, to represent or perform services for the Project Company; provided that the Administrator shall be entitled to request and rely upon instructions from the Project Company with respect to the engagement of any Service Provider; and provided, further that it is understood that to the extent the Administrator engages a Service Provider to perform a Core Duty, the Administrator shall bear the cost and expense associated with engaging such Service Provider and shall remain responsible for the proper performance of such Core Duty;

(r) (i) Procure and maintain all required governmental approvals and permits and prepare and submit all filings of any nature that are required to be made thereunder, (ii) prepare and submit all filings of any nature that are required to be made by the Project Company under any laws, regulations or ordinances

applicable to the Project Company, (iii) upon becoming aware of any adverse change or possible adverse change to the Project Company's status as an entity not required to seek FERC approval under the FPA, take all reasonable steps, in consultation with the Project Company, necessary to maintain or re-obtain, as applicable, such status, and (iv) maintain the Project Company's status as an "Exempt Wholesale Generator;" provided that, in each case, if responsibility for such activity or duty has been delegated to a Service Provider, the Administrator shall supervise and monitor such Service Provider's performance of such delegated activity or duty;

(s) Not take any affirmative action as would cause the Project Company in any material respect to violate any federal, state or local laws and regulations, including environmental laws and regulations, and to the extent that the Administrator has knowledge of any such existing or

prospective violation take, or direct Service Providers to take, commercially reasonable actions, at the sole expense (but subject to Section 4.01 (c) of this Agreement) of the Project Company (unless such existing or prospective violation arises from a breach of the Administrator's duties hereunder), to redress or mitigate any such violation;

(t) (i) Give prompt written notice to the Project Company of any litigation, material disputes with governmental authorities, material defaults or material force majeure events under the Principal Project Documents and material losses suffered by the Wind Farm promptly after learning of the same, and (ii) furnish to the Project Company, or direct a Service Provider to so furnish, copies of all material documents furnished to the Project Company or the Administrator by any governmental authority or furnished to any governmental authority by the Project Company;

(u) Subject to the Financing Agreement and the Depository Agreement, make distributions out of available cash as provided under the relevant provisions of the Project Company LLC Agreement and as required and directed by the Project Company;

(v) Perform such other administrative tasks as the Project Company may reasonably request from time to time in connection with or related to the Project Company and/or the Wind Farm, subject to appropriate exculpatory provisions as the Administrator may reasonably request, consistent with the terms of this Agreement;

(w) Engage the Independent Engineer to perform all functions required by the Independent Engineer as may be directed by the Project Company from time to time; and

(x) Administer on behalf of the Project Company, the collection and payment (including the submittal of invoices) of expenses required to be paid under any co-tenancy or similar agreement concerning common facilities entered into pursuant to a Build Out Agreement in a timely manner such that the Project Company or the counterparties to such agreements will have sufficient notice to be able to pay their respective expenses when due and payable pursuant to and in accordance with such agreements.

ARTICLE III
STANDARD OF PERFORMANCE

Section 3.01 Diligence, Care and Prudence. The Administrator shall use such diligence, care and prudence in the performance of its duties set forth in Article II hereof (including in supervising, monitoring and enforcing any rights) and shall devote such time, effort and skills of its employees as an ordinary administrator in like position would do in like circumstances; provided that the Administrator shall be deemed to have satisfied its duties:

(a) in respect of supervision or monitoring of the BOP O&M Contractor and the O&M Contractor and monitoring of the Wind Farm Site (in the absence of actual knowledge of specific operational, maintenance or legal compliance issues requiring more extensive supervisory activities), and without any further investigation, verification or consultation by the Administrator, through (i) four (4) site visitations during each twelve (12) month period, (ii) semi-monthly telephone or personal communication with responsible officers of the BOP O&M

Contractor and the O&M Contractor, and (iii) diligent review of periodic reports required to be issued by the BOP O&M Contractor and the O&M Contractor under the BOP O&M Agreement and the O&M Agreement, respectively;

(b) in respect of supervision or monitoring of Service Providers providing legal, accounting, tax preparation, engineering and advisory services, by diligent review of the work product of such Service Providers, and without any duty to conduct further investigation, verification or consultation, in the absence of actual knowledge that such work product is incorrect or incomplete; and

(c) in respect of any specific matter or circumstance requiring interpretation, application, or enforcement of Principal Project Documents, by relying conclusively on the advice of qualified legal counsel and/or qualified industry consultants engaged to advise the Project Company or the Wind Farm with respect to such matter or circumstance.

It is understood and agreed that the Administrator is not guaranteeing or undertaking to procure any financial or other outcome with respect to the Project Company or Wind Farm.

Section 3.02 Limitation on Liability. The Administrator shall have no liability under this Agreement for failure to take actions as to which it has requested the consent of the Project Company for the Administrator to perform if such consent is not timely given (including actions requiring a variance from the Approved Budget for which a request for variance by the Administrator has been made and not timely approved), or for actions taken at the direction of the Project Company, or for actions requiring the expenditure of Project Company funds if such funds are not available.

ARTICLE IV
COMPENSATION AND PAYMENT

Section 4.01 Wind Farm Services Fees. Following the Effective Date, the Project Company shall pay to the Administrator the following fees for the Administrative Services and pay or reimburse the following expenses:

(a) Services. For each Fiscal Year (prorated to the extent that such year consists of more or less than twelve (12) months) the Administrator shall be paid an amount equal to Two Hundred Thousand Dollars ($200,000) per *annum* (the "Wind Farm Services Fee"), payable in monthly increments on the first day of each month of a Fiscal Year and adjusted annually to reflect changes in the GDP Implicit Price Deflator; provided that if the first day of the Term is not the first day of the month, the payment for the balance of that month shall be payable on the first day of the Term, or at the option of the Administrator, at the same time as the payment for the succeeding month.

(b) Expenses. It is understood by the Project Company that the Wind Farm Services Fee is inclusive of the Administrative Services. No additional fees for the performance of the Administrative Services will be charged to the Project Company in addition to the Wind Farm Services Fee. If the Administrator, at the request of the Project Company, performs services not

contemplated by the Administrative Services, the fee for such additional services shall be such amounts payable at such times as the Administrator and the Project Company shall agree.

It is understood that all out-of-pocket expenses incurred in the administration and operation of the Project Company and the Wind Farm are solely for the account of the Project Company and may be disbursed by the Administrator from the Project Company's funds, subject to the consent of the Project Company and the Administrative Agent as outlined in Section 4.01(c). The Administrator shall be reimbursed for all reasonable expenses that the Administrator incurs in connection with performance of its obligations under this Agreement (not including any cost of retaining Service Providers to perform Core Duties, internal general and administrative overhead expenses, or the salaries of or benefits provided to any of the Administrator's employees), subject to the consent of the Project Company to the extent required pursuant to Section 4.01(c).

(c) Consent. The Administrator shall obtain the Project Company's prior written consent before incurring any single expense hereunder in excess of Fifty Thousand Dollars ($50,000) and/or aggregate annual expenses of One Hundred Fifty Thousand Dollars ($150,000) unless such expenses are included in the Approved Budget or any variance thereof that has been approved by the Project Company and, prior to the Discharge Date, the Administrative Agent; provided, however, that consent shall not be required (i) as to any Emergency Expenditure or (ii) for reimbursement of the Administrator for any expense of a Service Provider (incurred in accordance with this Agreement) which, for the convenience of the Project Company, performs services by contract with the Administrator rather than directly with the Project Company, provided that the Project Company has consented to such arrangement. For this purpose, an "Emergency Expenditure" shall mean an expense with respect to the Project Company or the Wind Farm that is not included in an Approved Budget or any approved variance therefrom and that is incurred, in the reasonable judgment of the Administrator, to avoid or to mitigate a material risk of physical injury to any person, a material financial loss or damage to the Project Company or the Wind Farm or a violation of law. The Administrator shall give prompt written notice to the Project Company of any Emergency Expenditure.

Section 4.02 Billing and Payment. Within fifteen (15) days following the Administrator's submission of an invoice to the Project Company reflecting any expenses due and payable by the Project Company (and including material identifying and substantiating, in reasonable detail, the nature of such expenses and the basis for reimbursement thereof), or reflecting the Wind Farm Services Fee, the Project Company shall:

(a) Approve such payment to the Administrator of the expenses plus the portion of the Wind Farm Services Fee specified in such invoice, less any portion of such expenses that the Project Company disputes in good faith;

(b) With respect to any disputed portion of such invoice, provide the Administrator with a written statement explaining, in reasonable detail, the basis for such dispute. The parties shall attempt to resolve any such disputed portion in accordance with Article VI hereof; and

(c) Any amount owed hereunder that remains unpaid more than ten (10) days after the date such amount is due and payable under this Agreement shall accrue interest at the Reference Rate beginning on the first (1st) day after such amount became due and payable.

Section 4.03 Records. The Administrator shall retain copies of invoices submitted by it under Section 4.02 and of any third party invoices or similar documentation contained or reflected therein, for a minimum period of three (3) years or such longer period to the extent required by law.

ARTICLE V
DELAYS; FORCE MAJEURE

Section 5.01 Delays. If the Administrator becomes aware of any event or circumstance that could prevent its performance of any of its obligations under this Agreement, the Administrator shall give prompt notice thereof to the Project Company. The Administrator shall attempt in good faith to minimize any such delay; provided, however, that the Administrator shall not be obligated to undertake or perform any actions that are prohibited by contract or any applicable law or that would expose the Administrator to any material liability or to any material expense that is not reasonably expected to be promptly reimbursed or indemnified hereunder.

Section 5.02 Force Majeure. The Administrator will not be liable for, or be in default under this Agreement, as a result of the Administrator's failure or inability to perform any of the Administrator's obligations under this Agreement to the extent that such failure or inability is caused by an event of Force Majeure. If the Administrator claims there is a Force Majeure event, the Administrator will notify the Project Company in writing and state in detail the nature and cause of the event as soon as possible after the Administrator becomes aware of the event.

ARTICLE VI
DISPUTE RESOLUTION

Section 6.01 Procedure. The parties shall attempt, in good faith, to resolve or cure all disputes (including disputes with respect to claimed Events of Default) by mutual agreement in accordance with this Article VI before initiating any legal action or attempting to enforce any rights or remedies hereunder (including termination), at law or in equity (regardless of whether this Article VI is referenced in the provision of this Agreement which is the basis for any such dispute). If there is a dispute as to whether an Event of Default has occurred or if any other dispute under this Agreement has arisen, either party may give notice thereof to the other party which notice shall describe in reasonable detail the basis and specifics of the alleged Event of Default or dispute. Within five (5) days after delivery of such notice, the designated representatives of both parties shall meet to discuss and attempt to resolve or cure such dispute or claimed Event of Default. If such representatives are unable to resolve the dispute or claimed Event of Default within fifteen (15) days after delivery of such notice, the matter shall be referred to a

"Senior Officer" of the Administrator and a "Senior Officer" of the Project Company for a resolution or cure. If such Senior Officers are unable to agree on an appropriate cure or resolution within ten (10) days after the matter has been referred to them, the Project Company shall be so informed by the Administrator and the parties may have recourse to mediation, arbitration or other alternative dispute resolution device of their mutual selection. If

the parties cannot agree on an alternative dispute resolution device, each party may pursue its legal remedies.

Section 6.02 Continuation of Work. Pending final resolution of any dispute, the parties shall continue to fulfill their respective obligations under this Agreement; provided, however, that the Project Company may withhold any amount that is the subject of dispute from any payment otherwise due hereunder during the pendency of any dispute resolution proceeding. If the Administrator prevails in such dispute, the Project Company shall immediately pay to the Administrator the unpaid amount in dispute with interest thereon, which interest shall accrue, at the Reference Rate, for each day from and including the date on which such amount was originally due to, but excluding, the date of actual payment thereof.

ARTICLE VII
COMMENCEMENT AND TERMINATION

Section 7.01 Term. Except as may otherwise be provided herein, this Agreement shall commence on the Effective Date and remain in full force and effect following the Effective Date until and including the earlier of (A) the sale by the Project Company of the Wind Farm and the completion of all administrative duties necessary or desirable in connection with the winding up of the Project Company's affairs and (B) the twenty-fifth (25th) anniversary of the Effective Date (the "Term"). In connection with the expiration of the Term or any termination pursuant to Section 7.03, the Administrator shall cooperate with all reasonable requests of the Project Company in connection with the transition of administrative services performed by the Administrator to the entity selected by the Project Company to undertake such services after such expiration or termination of the Term. Following any termination, the Administrator shall not be entitled to the Wind Farm Services Fee (or any other fees or reimbursement expenses other than reimbursement of reasonable expenses incurred by the Administrator in connection with the transition of the administrative services pursuant to the immediately preceding sentence) for the period after such termination, except in connection with a termination under Section 7.03(b)-(d) and 8.03 relating to an Event of Default by the Project Company.

Section 7.02 Renewals. The Project Company and the Administrator may agree to renew this Agreement beyond the Term, for additional terms that are to be agreed upon in a written agreement, executed by all parties hereto, and, once adopted, such agreement will become an integral part of this Agreement.

Section 7.03 Early Termination. Subject to Section 7.01, this Agreement may not be terminated except:

(a) by mutual agreement of the parties; or

(b) pursuant to the remedy provisions of Section 8.03; or

(c) upon the occurrence of the sale or transfer (i) by NRG South Trent Holdings LLC of 100% of the membership interests NRG South Trent Holdings LLC owns in the Project Company (including pursuant to a private secured party sale under Section 9-610 of the Uniform Commercial Code as enacted in New York) or (ii) by the Project Company of all or substantially

all of the assets of the Project Company, and in each such case, for a period of sixty (60) days thereafter (the "Sale Termination Option Period"), in which case, Project Company (or its transferee upon an assignment of this Agreement to transferee in connection with a sale or transfer of all or substantially all of the assets of Project Company to transferee) will have the right to terminate this Agreement, at its option, by providing sixty (60) days' prior written notice to the Administrator of the Project Company's (or, if applicable, its transferee's) election to terminate this Agreement in accordance with this Section 7.03(c), which notice will state the effective date of termination and reference this Section 7.03(c); provided that, in order for any such termination to be effective, the Project Company (or the applicable buyer or transferee) shall pay the Administrator all amounts payable hereunder by the Project Company up through the effective date of termination, together with an amount equal to fifty percent (50%) of the Wind Farm Services Fee payable for the entire Fiscal Year (unprorated and assuming the Fiscal Year is a full calendar year) in which such termination occurs; and provided, further, that upon the expiration of the Sale Termination Option Period, if Project Company (or, if applicable, its transferee) shall not have exercised its right to terminate this Agreement in accordance with this Section 7.03(c), or if Project Company (or, if applicable, its transferee) shall have so exercised its right to terminate this Agreement but fails to make the payments required by this Section 7.03(c) by the time required by this Section 7.03(c), this Section 7.03(c) shall be void and have no further force or effect. For the avoidance of doubt, fifty percent (50%) of the Wind Farm Services Fee equals One Hundred Thousand Dollars ($100,000) plus any applicable adjustment to reflect changes in the GDP Implicit Price Deflator in accordance with Section 4.01(a); or

(d) in addition to the terms of Section 7.03(c), the Project Company may also terminate this Agreement for convenience at any time during the stated term hereof upon sixty (60) days' written notice to the Administrator, provided, that, in order for such termination to be effective, the Project Company shall pay the Administrator all amounts payable hereunder by the Project Company through the effective date of termination, and shall in addition pay (i) the Wind Farm Services Fee, provided this Agreement is terminated pursuant to this Section 7.03(d) on or before January 1, 2012, or (ii) 50% of the Wind Farm Services Fee, provided this Agreement is terminated pursuant to this Section 7.03(d) after January 1, 2012. For the avoidance of doubt, the Wind Farm Services Fee equals Two Hundred Thousand Dollars ($200,000) plus any applicable adjustment to reflect changes in the GDP Implicit Price Deflator in accordance with Section 4.01(a), and 50% of the Wind Farm Services Fee equals One Hundred Thousand Dollars ($100,000) plus any applicable adjustment to reflect changes in the GDP Implicit Price Deflator in accordance with Section 4.01(a).

ARTICLE VIII
DEFAULT

Section 8.01 Events of Default. Except as provided for in Article VI, Dispute Resolution, the following events shall be deemed to be events of default ("Events of Default") by either party under this Agreement regardless of the pendency of any bankruptcy, reorganization, receivership, insolvency or other proceeding that has or might have the effect of preventing such party from complying with the terms of this Agreement:

(a) Failure by a party hereto to make any payment required to be made hereunder (including, for the avoidance of doubt, payments to be made by such party to a third party), if such failure shall continue for twenty (20) days after written notice thereof has been given to the non-paying party; or

(b) Failure to comply in any material respect with any material term, provision or covenant of this Agreement (other than the payment of sums to be paid by a party hereunder (including, for the avoidance of doubt, payments to be made by such party to a third party)), if such failure continues for thirty (30) days after written notice thereof has been given to the non-performing party; provided, however, that if such failure cannot reasonably be cured within such thirty (30) days and the non-performing party has commenced, and is diligently pursuing in good faith, to cure such failure, such thirty (30) day period shall be extended for such longer period as shall be necessary for such party to cure the failure, but in no event shall be extended for more than sixty (60) days without the prior written mutual agreement of the parties.

Section 8.02 Bankruptcy. Subject to the rights or remedies it may have, either party shall have the right to terminate this Agreement, effective immediately, if, at any time, (i) the other party shall file a voluntary petition in bankruptcy, or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief for debtors, whether federal or state, or shall seek, consent to or acquiesce in the appointment of any trustee, receiver, conservator or liquidator of such party or of all or any substantial part of its properties or (ii) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against such party seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute or law relating to bankruptcy, insolvency or other relief for debtors, whether federal or state, and such party shall consent to or acquiesce in the entry of such order, judgment or decree, or the same shall remain unvacated and unstayed for an aggregate of sixty (60) days from the date of entry thereof, or any trustee, receiver, conservator or liquidator of such party or of all or any substantial part of its properties shall be appointed without the consent of or acquiescence of such party and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days. The terms "acquiesce" and "acquiescence", as used herein, include, but are not limited to, the failure to file a petition or motion to vacate or discharge any order, judgment or decree providing for such appointment within the time specified by law.

Section 8.03 Remedies. If (i) an Event of Default occurs hereunder and such Event of Default is not cured in accordance with the requirements of Section 8.01 or (ii) an event described in Section 8.02 occurs and such event is not cured in accordance with Section 8.02, then subject to resolution pursuant to Section 6.01 of any dispute as to the existence of such event (in the case of Section 8.02) or Event of Default (in the case of Section 8.01), this Agreement may be terminated immediately by the non-defaulting party, without obligation to or recourse by the defaulting party. If a termination pursuant to this Section 8.03 occurs, the terminating party shall have all rights and remedies allowed at law or in equity, subject however, to the specific limitations of liability set forth in Article IX.

ARTICLE IX
INDEMNIFICATION AND LIMITATION OF DAMAGES

Section 9.01 Indemnification.

(a) The Project Company shall indemnify and hold the Administrator, its Affiliates (except for the Project Company) and each of their respective officers, members and employees (each an "Administrator Protected Party") harmless from any damage, loss, liability or expense (including reasonable attorneys' fees) incurred by the Administrator Protected Party as a result of the Administrator's performance of its obligations under this Agreement, except to the extent such damage, loss, liability or expense results from any Administrator Protected Party's willful misconduct, gross negligence, or breach of its obligations under this Agreement.

(b) The Administrator shall indemnify and hold the Project Company, its Affiliates (except for the Administrator) and each of their respective officers, members, directors and employees (each a "Project Company Protected Party") harmless from any damage, loss, liability or expense (including reasonable attorneys' fees but subject to the limitations of Section 9.02, below) incurred by the Project Company Protected Party as a result of the Administrator's breach of its obligations under this Agreement except to the extent such damage, loss, liability or expense results from any Project Company Protected Party's willful misconduct, gross negligence, or breach of its obligations under this Agreement.

Section 9.02 Limitation on Liability; Exclusion of Consequential Damages. The Administrator's total liability during the term of this Agreement to the Project Company Protected Parties in any Fiscal Year on all claims of any kind, whether based on contract, indemnity, warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of connected with, or resulting from this Agreement or from the performance or breach thereof, or from any services covered by or furnished during the term of this Agreement, shall in no case exceed the Wind Farm Services Fee for such Fiscal Year; provided, however, the foregoing limitation on liability shall not apply to (i) damage to a Project Company Protected Party caused by the gross negligence or willful misconduct of the Administrator with respect to the subject matter of this Agreement, (ii) amounts owed to third parties for which Administrator is obligated to indemnify a Project Company Protected Party under this Agreement, but only to the extent any such amount is covered by insurance obtained by the Administrator, or (iii) any amounts recoverable by Administrator as an insurance payment. Neither party shall be liable hereunder for punitive, consequential or intangible damages of any nature including, but not limited to, damages for lost profits or revenues or the loss or use of such profits or revenues, loss by reason of plant shutdown or inability to operate at rated capacity, increased operating expenses of plant or equipment, increased costs of purchasing or providing equipment, materials, labor, services, costs of replacement power or capital, debt service fees or penalties, inventory or use charges, damages to reputation, damages for lost opportunities or claims of customers, members or affiliates, regardless of whether said claim is based upon contract, warranty, tort (including negligence and strict liability) or other theory of law. For purposes of this section, loss of production tax credits under Section 45 of the Internal Revenue Code of 1986, as amended, associated with production to the extent lost as a result of breach of the Administrator's duties hereunder shall not constitute consequential damages notwithstanding the fact that the underlying loss of production constitutes consequential damage for which no recovery is permitted.

Section 9.03 Supremacy. The provisions expressed in this Article IX shall prevail over any conflicting or inconsistent provisions contained elsewhere in this Agreement and shall survive termination of this Agreement.

ARTICLE X
MISCELLANEOUS

Section 10.01 Assignment.

(a) By the Administrator: The Administrator may not assign this Agreement without the prior written consent of the Project Company, except that the Administrator may, without such consent, assign this Agreement (i) to any Affiliate or (ii) to any Person that has (or whose obligations under this Agreement are guaranteed by an entity that has) Relevant Experience.

(b) By the Project Company: This Agreement may be assigned by the Project Company to a successor owner of the Wind Farm without the prior consent (written or otherwise) of the Administrator; provided, that no such assignment shall impair the rights of the Administrator to operate the Wind Farm pursuant to this Agreement. The Project Company may pledge, collaterally assign, or encumber its rights under this Agreement to any lender of the Project Company. In such event, the Administrator agrees to execute a consent to assignment in form and substance reasonably acceptable to the Administrator and consistent with then-current financing practices. The Administrator also agrees that it shall, at any time and from time to time during the term of this Agreement, after receipt of a written request by the Project Company, execute and deliver to the Project Company and/or its lender, such estoppel statements as may reasonably be requested.

Section 10.02 Authorization. Except as expressly authorized in writing by the Project Company, or as contemplated under the Administrative Services, the Administrator shall not have the right or the obligation to create any obligation or to make any representation on behalf of the Project Company.

Section 10.03 Governing Law, Jurisdiction, Venue. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York without regard to conflicts of law principles (except for Section 5-1401 of the New York General Obligations Law).

Section 10.04 Independent Contractor. Nothing contained in this Agreement and no action taken by any party to this Agreement shall be (A) deemed to constitute any party or any of such party's employees, agents or representatives to be an employee, agent or representative of any other party; (B) deemed to create any company, partnership, joint venture, association or syndicate among or between any of the parties; or (C) except as contemplated under the Administrative Services, deemed to confer on any party any expressed or implied right, power or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability on behalf of any other party, except as expressly authorized in writing. Notwithstanding anything to the contrary in this Section, each party acknowledges that it expects that communications between the parties and between either party and outside legal counsel in connection with legal services supervised, monitored and/or enforced by the Administrator

pursuant to Section 2.02(j) hereof are privileged communications to which the attorney-client privilege will attach.

Section 10.05 Notice. All notices, requests, consents, demands and other communications (collectively "notices") required or permitted to be given under this Agreement shall be in writing signed by the party giving such notice and shall be given to each party at its address or fax number set forth in this Section 10.05 or at such other address or fax number as such party may hereafter specify for such purpose by notice to the other party and shall be either delivered personally or sent by fax or telegraph or registered or certified mail, return receipt requested, postage prepaid, or by a nationally recognized overnight courier service. A notice shall be deemed to have been given (i) when transmitted if given by fax or telegraph or (ii) when delivered, if given by any other means. Notices shall be sent to the following addresses:

To the Administrator:

NRG Texas Power LLC
1301 McKinney, 23rd Floor
Houston, TX 77010
Telephone: 713-795-6405
Facsimile: 713-795-6233
Attention: Senior Vice President

With a copy to:

NRG Texas Power LLC
1301 McKinney, 23rd Floor
Houston, TX 77010
Telephone: 713-795-6235
Facsimile: 713-795-7444
Attention: General Counsel

To the Project Company:

South Trent Wind LLC
1301 McKinney, 23rd Floor
Houston, TX 77010
Telephone: 713-795-6405
Facsimile: 713-795-6233
Attention: Senior Vice President

With a copy to:

South Trent Wind LLC
1301 McKinney, 23rd Floor
Houston, TX 77010
Telephone: 713-795-6235
Facsimile: 713-795-7444

Attention: General Counsel

Section 10.06 Usage. This Agreement shall be governed by the following rules of usage: (i) a reference in this Agreement to a Person includes, unless the context otherwise requires, such Person's successors and permitted assignees; (ii) a reference in this Agreement to a law, license, or permit includes any amendment, modification or replacement to such law, license or permit; (iii) accounting terms used in this Agreement shall have the meanings assigned to them by GAAP; (iv) a reference in this Agreement to an article, section, exhibit, schedule or appendix is to an article, section, exhibit, schedule or appendix of this Agreement unless otherwise stated; (v) a reference in this Agreement to any document, instrument or agreement shall be deemed to include all appendices, exhibits, schedules and other attachments thereto and all documents, instruments or agreements issued or executed in substitution thereof, and shall mean such document, instrument or agreement, or replacement thereof, as amended, modified and supplemented from time to time in accordance with its terms and as the same is in effect at any given time; (vi) unless otherwise specified, the words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement; and (vii) the words "include" and "including" and words of similar import used in this Agreement are not limiting and shall be construed to be followed by the words "without limitation", whether or not they are in fact followed by such words.

Section 10.07 Entire Agreement. This Agreement (including all appendices and exhibits hereto) constitutes the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior written and oral agreements and understandings with respect to such subject matter.

Section 10.08 Amendment. Neither this Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by a document in writing signed by the party against which the enforcement of such termination, amendment, supplement, waiver or modification is sought.

Section 10.09 Confidential Information.

(a) Except as required by applicable law or explicitly required or permitted by this Agreement, no party shall, without the prior written consent of the other party, disclose any confidential information obtained from the other party to any third parties, other than (i) to consultants or to employees who have agreed to keep such information confidential as contemplated by this Agreement and who are reasonably believed to need the information to assist such party with the exercise or performance of any rights and obligations provided to, or imposed upon, such party in such document or (ii) to the Internal Revenue Service or any state taxing authority in connection with an audit by the Internal Revenue Service or such taxing authority involving such parties' interest in the Project Company.

(b) This Section 10.09 does not apply to information that the receiving party can demonstrate is presently a matter of public knowledge or which is or becomes available as a matter of public knowledge from a source which is not known to be prohibited from disclosing such information. In the event that a party is requested or required by legal or regulatory

authority to disclose any confidential information, the party shall promptly notify the disclosing party of such request or requirement prior to disclosure so that the disclosing party may seek an appropriate protective order. Notwithstanding any other provision of this Agreement, the receiving party shall have the right to disclose only so much of the confidential information as, in the advice of its legal counsel, the receiving party is legally required to disclose. In such an event, the receiving party agrees to use good faith efforts to ensure that all confidential information that is so disclosed will be accorded confidential treatment.

Section 10.10 Discharge of Obligations. With respect to any duties or obligations discharged hereunder by the Administrator, the Administrator may discharge such duties or obligations through the personnel of an Affiliate of the Administrator; provided that, notwithstanding the foregoing, the Administrator shall remain fully liable hereunder for such discharged duties and obligations.

Section 10.11 Third Party Beneficiaries. Except as otherwise expressly stated herein, this Agreement is intended to be solely for the benefit of the parties hereto and their permitted assignees and is not intended to and shall not confer any rights or benefits to the general public or any other third party not a signatory hereto.

Section 10.12 Severability. Any provision of this Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law that renders any provision hereof prohibited or unenforceable in any respect.

Section 10.13 Binding Effect. The terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and permitted assigns. Subject to Section 10.11, nothing in this Agreement, whether express or implied, shall be construed to give any Person other than a party hereto any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

Section 10.14 Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

[REST OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Project Company and the Administrator have caused this Agreement to be executed as of the date first above written.

SOUTH TRENT WIND LLC

By: /s/ Arun Banskota
Name: Arun Banskota
Title: Vice President

NRG TEXAS POWER LLC

By: /s/ Arun Banskota
Name: Arun Banskota
Title: Vice President

Signature Page to Project Administration Agreement