

CONSENT OF SALE, ASSIGNMENT AND ASSUMPTION OF COMPANY INTEREST

This **CONSENT TO ASSIGNMENT AND ASSUMPTION OF COMPANY INTEREST** (the "Agreement") is made as of the ____ day of December, 2017 by **New Resource Bank**, a California corporation ("Lender") to **Blue Sky Utility Portfolio II 2017, LLC**, a Delaware limited liability company ("HoldCo"), and **Blue Sky Utility LLC** a California limited liability company ("Interest Holders").

WHEREAS, on or about May 15, 2017, Lender made a loan (the "Loan") to **Blue Sky Utility – Sub 1, LLC**, a California limited liability company ("Borrower") pursuant to that certain Loan Agreement dated concurrently therewith (the "Loan Agreement", and collectively with all other documents evidencing or securing the Loan, the "Loan Documents");

WHEREAS, Interest Holders will sell and assign their interest in Borrower to HoldCo and HoldCo will assume their interest and obligations thereunder (collectively the "Sale, Assignment and Assumption") pursuant to and subject to the terms of that certain Membership Interest Purchase Agreement, dated December ___, 2017, attached hereto as Exhibit A (the "MIPA"); and

WHEREAS, Section 7.2.2.A of the Loan Agreement requires Lender to consent to any transfer of interest in the Borrower.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises, covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Consent to Sale. Lender hereby consents to the Sale, Assignment and Assumption pursuant to and subject to the terms of the MIPA.
2. Incorporation. The preamble to and the recitals of this Agreement are hereby incorporated into this Agreement by reference and made a part of this Agreement as if set forth at length herein.
3. Lender Estoppel. Lender hereby certifies to HoldCo:
 - a. To the best of Lender's knowledge, no default or event which exists on the part of Borrower.
 - b. Sale, Assignment and Assumption is acceptable to Lender and Lender will not cause the Loan to be immediately payable and hereby waives the right to do so per section 7.2.3 of the Loan Agreement but only in respect to the Assignment and Assumptions contemplated in this Agreement
4. Governing Law. The validity and effect of this Agreement and the rights and obligations of the parties hereunder shall be governed by and construed and enforced in accordance with the laws of the State of California.
5. Amendments. No amendment to the terms and conditions of this Agreement shall be valid and binding on the parties hereto unless made in writing and signed by an authorized representative of each of the parties.
6. Authorization. Each party hereto represents and warrants that the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it, and that the person who signs below on behalf of that party has authority to execute this Agreement on behalf of such party and to bind such party to this Agreement.

7. Counterparts. This Agreement may be executed in several counterparts; and all so executed will constitute one agreement, binding on the parties hereto, notwithstanding that all the parties are not signatory to the original or the same counterpart.


8. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9. Disclaimer by Lender. Lender, by virtue of entering into this Agreement and consenting to the Sale, Assignment and Assumption pursuant to and subject to the terms of the MIPA as set forth herein, shall not be deemed to be a partner of or a joint venturer with Borrower or HoldCo, or a fiduciary of either party.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

NEW RESOURCE BANK

By: 

Print Name: Michael Jones

Title: VP / Relationship Manager


BLUE SKY UTILITY PORTFOLIO II 2017, LLC

By: 

Print Name: Ran Bujanover

Title: Authorized Signatory

BLUE SKY UTILITY LLC

By: 

Print Name: Ran Bujanover

Title: President

EXHIBIT A
MEMBERSHIP INTEREST PURCHASE AGREEMENT

This MEMBERSHIP INTEREST PURCHASE AGREEMENT (the “Agreement”), dated November____, 2017 (the “Execution Date”), is entered into by and between Blue Sky Utility LLC , a California limited liability company (the “Seller”), as owner of 100% of the membership interests of Blue Sky Utility 2017 – Sub 1, LLC, a California limited liability company (the “Project Company”), and Blue Sky Utility Portfolio II 2017, LLC, a Delaware limited liability company (the “Buyer”).

RECITALS

WHEREAS, Buyer has a deep understanding of the solar industry and has the expertise to own third party solar energy systems;

WHEREAS, Project Company has secured a long term site lease with for the property described on Exhibit A and commonly known as Colusa North State (the “Property”) upon which certain solar photovoltaic generating facilities (collectively, the “System”) have been constructed;

WHEREAS, Project Company has secured an Solar Service Purchase Agreement dated August 15, 2015 with North State Grocery Inc. for the purchase of energy from the System;

WHEREAS, Project Company intends to obtain or has obtained all required approvals to construct the System and to interconnect the System to the electrical grid; and

WHEREAS, Seller desires to sell and Buyer desires to purchase one hundred percent (100%) of the membership interest in the Project Company;

NOW THEREFORE, Seller and Buyer agree as follows:

ARTICLE 1: DEFINITIONS, INTERPRETATION, EXHIBITS

1.1. Defined Terms

Terms used in this Agreement without other definitions shall have the meaning specified in this Section 1.1

“Agreement” has the meaning set forth in the preamble to this agreement and shall include all of the incorporated Exhibits.

“Execution Date” has the meaning set forth in the preamble to this agreement.

“Energy Offtake Agreement” means that certain Solar Service Purchase Agreement, which arranges for the sale of the power generated by the System, as set forth in Exhibit C.

“EPC Agreement” means the Engineering, Procurement and Construction Agreement between Bright Power Inc. and the Project Company.

“Equipment” means all of the equipment, materials, structures, supplies purchased, ordered, received or owned by the Seller or any of its affiliates or the Project Company and used or to be used in connection with the development, permitting, acquisition, installation, ownership or planned operation of the System and all existing warranties (express or implied) issued to, or assigned to Seller or any of its affiliates or the Project Company in connection with the System.

“Final Completion Date” means the date when the Project Company has received confirmation that the requirements of Section 2.2 have been met.

“Governmental Approvals” means all authorizations, consents, licenses, rulings, certifications, registrations, exemptions, permits, certificates, and approvals from any Governmental Agency

“Governmental Agency” means any federal, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the System or its operations, or the health, safety or environmental conditions of the Property or otherwise over the Parties.

“Host” means the owner of the Property per the Lease as shown in Exhibit D.

“Interests” means membership interests representing one hundred percent ownership of the Project Company.

“Lease” means the long term site lease dated September 12, 2016 with Orland XYZ LLC for the Property described in Exhibit A.

“Output” means electricity produced by the System.

“System” means the solar power generating facilities as described in Exhibit B.

1.2. Exhibits

The following Exhibits are made a part of this document:

- Exhibit A – Description of the Property
- Exhibit B – System Specifications and Scope of Work
- Exhibit C – Energy Offtake Agreement
- Exhibit D – Lease
- Exhibit E – EPC Agreement
- Exhibit F – Payment Schedule
- Exhibit G – Operations & Maintenance (O&M) Agreement
- Exhibit H – Assignment Agreement
- Exhibit I – Permits
- Exhibit J – Close Out Document Checklist

ARTICLE 2: SELLER WARRANTIES, REPRESENTATIONS AND RESPONSIBILITIES

2.1 Project Design and Approvals

Seller warrants and represents on behalf of the Project Company that:

- (i) Project Design. Project Company has procured and provided all design and engineering work pursuant to the EPC Agreement including but not limited to preparation of detailed criteria and design of the System, civil, structural, mechanical, electrical, and instrumentation designs, specifications, working drawings, and final drawings (including As-Builts currently marked), plans and schedules sufficient to detail the requirements for construction of the System in accordance with this Agreement.
- (ii) Standards, Utility & Host Requirements. The design conforms to applicable National Electrical Code (NEC) standards, jurisdictional requirements, the requirements of the Local Electric Utility, and addresses any Host sensitivity issues, for example, with regard to security and equipment locations (if any). Seller shall keep the Local Electric Utility and Host reasonably informed and shall consult with them, including conducting a site review with them, before installation of equipment.

- (iii) Acceptable Equipment. The design features PV modules, inverters and other equipment that the Buyer deems acceptable as described in Exhibit B: System Specifications and Scope of Work.
- (iv) Metering and Monitoring. The design includes revenue grade metering and a Data Acquisition System including remote real-time monitoring of system performance.
- (v) Buyer and Independent Engineer Review. All drawings, specifications and other design documents shall be submitted to Buyer and Independent Engineer.
- (vi) Governmental Approvals. Project Company will obtain all required Governmental Approvals for the construction and operation of the System from any Governmental Authority having jurisdiction.
- (vii) Final Design and As-Built Documents. Seller shall deliver to Buyer the final design specifications for the System, final as-built plans and drawings certified as correct by a licensed professional engineer of the jurisdiction in which the System is located, and all shop drawings and test reports, including performance test reports and commissioning documents, in sufficient detail to allow the operation and maintenance of the System and reflecting any changes in design.
- (viii) Operation and Maintenance Manual. Seller shall provide in writing and in electronic form an Operation and Maintenance Manual. The Manual shall be available for operator training prior to operation of the System. It shall describe procedures for the operation and maintenance of the System, including appropriate safety precautions and limitations, optimum operating conditions, suppliers/manufacturers' standards and warranty conditions, maintenance procedures, spare parts lists, instructions, schedules and aids, and all other information necessary, appropriate, or helpful to instruct operator personnel in all phases of operation of the System and to maintain the System in optimum operating condition.

2.2 Construction

- (i) System Specifications. Project Company has constructed the System per Exhibit B (also referred to herein as the "Work").
- (ii) Unless expressly excluded in this Agreement, Seller has caused or will cause Project Company to provide, install, complete and pay for all labor, Equipment, tools, supplies, construction equipment and machinery, utilities and consumables, transportation and other facilities and services (including any temporary materials, equipment, supplies and facilities) necessary for the proper construction of the System.
- (iii) The System shall be fully tested and all testing results accepted by Buyer prior to issuing a final completion certificate. Close Out Document Checklist details the required commissioning and acceptance testing and provides template commissioning forms and shall be attached hereto as Exhibit J.

2.3 Interconnection Approvals

- (i) Project Company has submitted an Interconnection Application, and has paid all application fees, and has submitted any other documentation required by the Utility to interconnect the system.
- (ii) Project Company has submitted an Interconnection Reliability Study (the “IRS”), and for submitting any required documentation to the Utility, and paying any related fees.
- (iv) All Interconnection Approvals required for operation of the Project have been received by the Project Company.

2.4 Insurance

Project Company has in force at its expense (i) comprehensive general liability and automobile liability insurance with combined bodily injury and property damage limit of at least \$1,000,000 and (ii) any other insurance that the State of Massachusetts or any other Governmental Agency may require for Buyer’s performance under the License and/or PPA. Such insurances shall name Buyer and its Investor Member as an additional named insured.

2.5 The Interests

- (i) Seller is the owner of the Interests free of any lien, claim or encumbrance.
- (ii) The Interests represent 100% of the membership interests in the Project Company.
- (iii) Upon completion of the sale and purchase contemplated by this Agreement, no party other than Buyer shall have any interest or right in or to the Project Company.

2.6 The Project Company

- (i) The Project Company has filed any and all required tax returns.
- (ii) The Project Company is not a party to any contracts or agreements other than as contemplated herein and has no debts or other liabilities other than as disclosed to Buyer.
- (iii) The Project Company is not subject to any outstanding injunction, judgment, order, decree, ruling or charge and, to the knowledge of the Seller, is not threatened with being made a party to any action, suit, proceeding, hearing or investigation of, in, or before any governmental authority or before any arbitrator that could affect its ability to complete the transactions contemplated herein.
- (iv) The agreements to which the Project Company is party and which are necessary to the operation of the Project are duly executed, valid and binding, and enforceable by the Project Company in accordance with their terms, subject only to the effects of bankruptcy, insolvency, reorganization, moratorium and similar laws affecting enforcement of creditors’ rights and remedies generally and to general principles of equity.

2.7 Indemnification

- (i) To the fullest extent allowed by law, Seller will indemnify, hold harmless, reimburse, and defend Buyer and its officers, directors, employees, and agents from, for, and against any and all claims, demands, damages, losses, expenses, liabilities, and penalties, including but not limited to reasonable attorneys’ and expert witnesses’ fees, arising out of or relating to (i) Seller’s breach of this Agreement and (ii) the

engineering, design, location, construction, maintenance, interconnection or parallel operation of the System with a utility system, including land restoration costs for which the Seller is responsible, if any, and/or directly or indirectly arising out of or attributable to or in any manner connected with the breach of any of the representations or warranties of Project Company under the Offtake Agreement.

- (ii) No Limitation on Insurance Coverage. Nothing in either Party's indemnification in this Agreement will be read to limit in any way any entitlement either Party will have to insurance coverage under any insurance policy, including any insurance policy required under this Agreement.
- (iii) Payment Indemnification. To the extent Seller has received payment for the Interests and such payment is not subject to dispute pursuant to the terms hereof, Seller will indemnify, defend and hold harmless Buyer from any third party claims or liens brought against Buyer or against the Project Company as a result of the failure of Seller, or those for whose acts it is responsible, to cause the Project Company to pay for any services, materials, labor, equipment or other items or obligations furnished or incurred for or in connection with the construction of the Project. Within 21 days of receiving written notice from Buyer that such a claim or mechanic's lien has been filed, Seller will commence to take the steps necessary to discharge such claim or lien.

ARTICLE 3:BUYER RESPONSIBILITIES

3.1 Indemnification

To the fullest extent allowed by law, Buyer will indemnify, hold harmless, reimburse, and defend Seller and its officers, directors, employees, and agents from, for, and against any and all claims, demands, damages, losses, expenses, liabilities, and penalties, including but not limited to reasonable attorneys' and expert witnesses' fees, arising out of or relating to Buyer's breach of this Agreement.

ARTICLE 4:SALE, COMPENSATION AND PAYMENT

4.1 Sale and Price

- (i) On the terms and subject to the conditions set forth in this Agreement, on the Execution Date, Seller hereby agrees to sell the Membership Interest to Purchaser and Purchaser hereby agrees to buy the Membership Interest from Seller.
- (ii) Purchaser agrees to pay to Seller, as the purchase price for the Membership Interest, an aggregate amount equal to \$_____. (the "Purchase Price"), pursuant to the schedule set forth in detail on Exhibit F to this Agreement

4.2 Transfer of Membership Interest

On the Execution Date, Seller shall deliver to Purchaser, and Purchaser shall deliver to Seller, one counterpart of an Assignment and Acceptance Agreement in a form agreed by the Parties, duly executed by Seller and by Purchaser respectively.

4.3 Changes to System Specifications

If changes to the System specifications are required after the Execution Date as a result of Governmental Authorities, limitations of the Energy Offtake Agreement, Host requirements, or any other cause and those changes result in a decrease in system size, the total value of the contract will be reduced by an amount equal to a price per Watt based on original System specifications and the purchase price set out in Section 5.1 above, multiplied by the reduction in system size.

ARTICLE 5: REPRESENTATIONS, TERM AND TERMINATION

5.1 Representations

Each Party hereby represents and warrants to the other Party that (i) it has full right, power and authority to enter into this Agreement and to perform its respective obligations under this Agreement; (ii) its performance of this Agreement will not conflict with or result in a breach or violation of any of the terms or provisions, or constitute a default under, any agreement by which it is bound; (iii) when executed and delivered, this Agreement will constitute a legal, valid, and binding obligation enforceable against it in accordance with its terms; and (iv) it will comply with all applicable laws, regulations and orders any governmental authority of competent jurisdiction in its performance of this Agreement.

5.2 Term of the Agreement

The term of this Agreement shall be the earlier of the dates upon which the System has been completely developed, constructed, interconnected to the utility grid and paid for, or 12 months from the Execution Date. If for any reason, after the Execution Date, Final Completion Date has not been achieved by December 31, 2017, the agreement may at the election of Buyer be either terminated by the Buyer and all monies paid to Seller refunded to Buyer or extended for 12 months.

5.3 Termination

This Agreement may be terminated at any time by mutual written agreement of both Parties.

5.4 Breach of Agreement

If a material breach of either Party's obligations under this Agreement occurs, including, but not limited to, any failure to deliver documentations or to make payments when due, the Party causing the breach must cure such default within fifteen (15) days after receiving written notice thereof from the other Party.

ARTICLE 6: DISPUTE RESOLUTION

6.1 Meet and Confer

In the event of a claim, dispute, or other matter in question under this Agreement that arises between the Parties (a "Dispute"), the Party claiming the Dispute shall notify the other Party and request an in-person meeting to discuss and attempt to resolve the Dispute. The Parties shall meet and confer

with respect to the Dispute no later than ten (10) Business Days after the receiving Party's receipt of the notice. In such meet and confer and for a period of not less than thirty (30) and not more than sixty (60) days thereafter, the Parties shall attempt in good faith to resolve the Dispute. If by the end of the meet and confer period either Party determines that the Dispute is not close to resolution, such Party has the right to pursue mediation as provided in Section 6.2.

6.2 Mediation

Any Dispute not resolved under Section 6.1 is subject to mediation as a condition precedent to the institution of any other dispute resolution proceeding by either Party. The mediation will be conducted in accordance with the Commercial Mediation Procedures of the American Arbitration Association then in effect. The request for mediation will be filed in writing with the other Party and with the American Arbitration Association. The request may be made concurrently with the filing of an action and request for reference but, in such event, mediation will proceed in advance of the reference or other proceeding and the proceeding will be stayed pending mediation for a period of 60 days from the date of filing unless stayed for a longer period by agreement of the Parties or court order. The Parties will share the mediator's fee and any filing fees equally. This agreement to mediate will be specifically enforceable by any court with jurisdiction thereof. The mediation will be conducted in Kansas City, Missouri and shall be non-binding.

6.3 Litigation

If the Parties are unable to resolve a Dispute after mediation, either Party may seek resolution through the judicial process.

6.4 Right to Cure

The Buyer's Investor Member or its affiliate or manager shall have the right but not the obligation to cure a Buyer event of default here under. Seller shall accept or reject such cure as if it was rendered by Buyer directly.

ARTICLE 7:MISCELLANEOUS

7.1 Notices

All notices or other communications made in connection with this Agreement shall be in writing, except as otherwise expressly permitted herein. Any notice or other communication in connection herewith shall be deemed given: (i) on the day of delivery, if personally delivered to the person identified below; (ii) three (3) days after mailing if mailed by certified or registered mail, postage prepaid, return receipt requested; (iii) one business day after delivery to any overnight express courier service; and (iv) on the business day of receipt if sent by email, or other customary means of telecommunication, provided receipt thereof is orally confirmed and a copy thereof is sent in the manner provided by clause (i) or (ii) hereof, addressed as follows:

If to Seller: Blue Sky Utility LLC
Attn: Ran Bujanover
POBox 5571
Napa, CA 94581
Email: ran@blueskyutility.com
Phone: 415-513-2707
Fax: 707-754-2553

If to Buyer: Blue Sky Utility Portfolio II 2017, LLC
Attn: Ran Bujanover
POBox 5571
Napa, CA 94581
Email: ran@blueskyutility.com
Phone: 415-513-2707
Fax: 707-754-2553

Such addresses may be changed, from time to time, by means of a written notice given in the manner provided in this Section. Copies delivered to outside or in-house counsel shall not constitute notice.

7.2 Succession and Assignment

This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective successors and permitted assigns. Except as specifically agreed herein, no Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party. Any prohibited assignment shall be null and void and a breach of this Agreement.

7.3 No Third-Party Beneficiaries

Nothing in this Agreement shall confer any rights upon any person or entity other than the Parties, and each such Party's respective successors and permitted assigns.

7.4 Amendment, Waivers

No amendment, modification, or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by an executive officer of the Party against whom enforcement of the amendment, modification, discharge, or waiver is sought. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time.

7.5 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the state of Missouri, without giving effect to the state of Missouri's conflict of law rules.

7.6 Consequential Damages

Notwithstanding anything to the contrary in this Agreement, neither Party will be liable to the other for, nor will a court or referee assess, any consequential losses or damages, whether arising in

contract, warranty, tort (including negligence), strict liability, or otherwise, including but not limited to, losses of use, profits, business, reputation or financing.

7.7 Duty to Continue Performance

Unless the Parties agree otherwise in writing, the Parties will continue to perform under the terms of this Agreement pending the final resolution of any dispute or disagreement between the Parties.

7.8 Relationship of the Parties

The relationship of Buyer and Seller established by this Agreement is that of independent contractors, and nothing contained in this Agreement will be construed to constitute the parties as partners, joint ventures, co-owners, employer/employee, or otherwise as participants in a joint or common undertaking and (ii) each Party hereby acknowledges and agrees that it has no right, power or authority, express or implied, to accept any obligation as binding upon the other Party.

7.9 Entire Agreement

This Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof.

7.10 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument, and counterpart signature pages may be assembled to form a single fully executed original of this Agreement. Furthermore, this Agreement may be executed and delivered by the exchange of electronic facsimile or portable document format ("PDF") copies or counterparts of the signature page, which facsimile or PDF copies or counterparts shall be binding upon the Parties.

7.11 No Party Drafter

The Parties acknowledge that this is a negotiated agreement, that both Parties had reasonable opportunity to seek the advice of legal counsel, and that in no event shall the terms of this Agreement be construed against any of the Parties on the basis that such Party, or its counsel, drafted this Agreement.

7.12 Force Majeure

Neither Party will be liable for delay or default in the performance of its obligations under this Agreement if such delay or default is caused by conditions beyond its reasonable control, including but not limited to, fire, flood, accident, earthquakes, telecommunications line failures, electrical outages, network failures, acts of God, or labor disputes.

7.13 Headings

The headings contained in this Agreement are for purposes of convenience only and shall not affect the meaning or interpretation of this Agreement.

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EXECUTION

IN WITNESS WHEREOF, the Parties have caused this Membership Interest Purchase Agreement to be executed by their duly authorized representatives.

SELLER

BLUE SKY UTILITY, LLC

By: _____

Name: Ran Bujanover

Title: President

BUYER

BLUE SKY UTILITY PORTFOLIO II 2017, LLC

By: _____

By: Blue Sky Utility LLC - Member

Name: Ran Bujanover

Title: President

EXHIBIT A: DESCRIPTION OF PROPERTY

[To Be Inserted]

EXHIBIT B: SYSTEM SPECIFICATIONS AND SCOPE OF WORK

[To be inserted]

EXHIBIT C: ENERGY OFFTAKE AGREEMENT

[To be inserted]

EXHIBIT D: LEASE

[To be inserted]

EXHIBIT E: EPC AGREEMENT

[To be inserted]

EXHIBIT F: PAYMENT SCHEDULE

[To be inserted]

EXHIBIT G: OPERATIONS & MAINTENANCE (O&M) AGREEMENT

[To be inserted]

EXHIBIT H: ASSIGNMENT AGREEMENT

[To be inserted]

EXHIBIT I: PERMITS

[To be inserted]

EXHIBIT J: CLOSE OUT DOCUMENT CHECKLIST

[To be inserted]

