BLUE SKY UTILITY PORTFOLIO I 2017, LLC

a Delaware Limited Liability Company

AMENDED & RESTATED OPERATING AGREEMENT

Dated as of November 6, 2017

THE SECURITIES (MEMBERSHIP INTERESTS) REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR REGISTERED OR QUALIFIED UNDER ANY SECURITIES OR BLUE SKY LAWS OF ANY STATE OR JURISDICTION. THEREFORE, THE SECURITIES MAY NOT BE SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED UNTIL A REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR THE APPLICABLE STATE SECURITIES OR BLUE SKY LAWS SHALL HAVE BECOME EFFECTIVE WITH REGARD TO THE PROPOSED TRANSFER OR, IN THE OPINION OF LEGAL COUNSEL ACCEPTABLE TO THE COMPANY, REGISTRATION OR QUALIFICATION UNDER THE SECURITIES ACT OR BLUE SKY LAWS IS NOT REQUIRED IN CONNECTION WITH THE PROPOSED TRANSFER.

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BLUE SKY UTILITY PORTFOLIO I 2017, LLC

AMENDED AND RESTATED OPERATING AGREEMENT

THIS AMENDED AND RESTATED OPERATING AGREEMENT, dated as of November 6, 2017 (the "**Effective Date**"), is made and entered into by and between 344 Columbia Associates, Ltd., an Ohio limited liability company ("**344**"), Palm Drive Associates, LLC ("**PDA**") and Blue Sky Utility, LLC, a Delaware limited liability company (the "**Class B Equity Investor**"), as the Class B Member. Each of 344 and PDA are referred to herein as a "**Class A Equity Investor**" and collectively as the "**Class A Equity Investors**".

RECITALS

A. Blue Sky Utility Portfolio I 2017, LLC, a Delaware limited liability company (the "**Company**"), was formed pursuant to the Act on June 29, 2017.

B. Prior to the Effective Date of this Agreement, the Class B Equity Investor owned 100% of the membership interests in the Company and the Class B Equity Investor executed an Operating Agreement with respect to the Company, dated June 29, 20117 (the "**Existing Agreement**").

C. On or about the Effective Date of this Agreement and pursuant to that certain Equity Capital Contribution Agreement, dated as of the date hereof (as amended, supplemented or otherwise modified from time to time, the "**Equity Capital Contribution Agreement**"), among the Class A Equity Investor, the Class B Equity Investor and the Company, (i) the Class A Equity Investor has made Capital Contributions to the Company and in consideration therefor has acquired a membership interest specified as a Class A Interest in the Company and is admitted as a Class A Member of the Company pursuant hereto, and (ii) the Class B Equity Investor has made equity contributions to the Company and in consideration therefor the membership interest in the Company owned by the Class B Equity Investor has been converted into the membership interest specified as the Class B Interest in, and the Class B Equity Investor is hereby designated as the Class B Member of, the Company.

D. The Class A Equity Investor and the Class B Equity Investor now desire to amend and restate the Existing Agreement in its entirety as set forth herein.

NOW, THEREFORE, in consideration of the premises and the mutual undertakings contained herein, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

1.1 Certain Definitions. Initially capitalized terms not defined in this Agreement shall have the meaning assigned to such terms in the Equity Capital Contribution Agreement. The following initially capitalized terms, as and when used in this Agreement, shall have the following meaning:

"**2015 Act**" has the meaning set forth in Section 8.7(b).

"**Act**" means the Delaware Limited Liability Company Act, 6 Del. C. § 18 101 *et seq*., as amended from time to time, and any successor to such Act.

"**Active Person**" has the meaning set forth in the definition of "Disqualified Transferee" herein.

"**Adjusted Capital Account Deficit**" means, with respect to any Member, the deficit balance, if any, in the Capital Account established and maintained for such Member, as the same is specially computed as of the end of each Taxable Year after giving effect to the following adjustments:

(i) Credit to such Member's Capital Account any amounts which such Member is obligated to contribute to the Company or to restore pursuant to Section 10.3 or is deemed obligated to restore pursuant to the penultimate sentences in Treasury Regulation Sections 1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Member's Capital Account any items described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently with such Regulations.

"**Advisors**" has the meaning set forth in Section 7.7(a).

"**Affected Member**" has the meaning set forth in Section 9.2(b).

"**Affected Tax Return**" has the meaning set forth in Section 8.7(b).

"**Agreement**" means this Amended and Restated Operating Agreement, as amended, supplemented or restated from time to time pursuant to the provisions hereof.

"**Annual Report**" means the report delivered pursuant to Section 8.4(a).

"**Applicable Rules**" has the meaning set forth in Section 8.7(b)(ii).

"**Appraisal Procedure**" means, within fifteen (15) days of a party invoking the buyout procedure described in Section 9.2 or the Purchase Option or Put Options described in Section 9.3, the Class A Members and Class B Members in the case of Section 9.3 or the Affected Member and Purchasing Members (in the case of Section 9.2) shall engage a Qualified Appraiser, mutually acceptable to the applicable parties, to determine the Fair Market Value of the applicable Membership Interests. If the parties cannot agree on an Qualified Appraiser within such (15) day period, then Fair Market Value of the applicable Membership Interests shall be determined by three (3) independent appraisers, one selected by the Class A Members and a second selected by the Class B Members (in the case of Section 9.3) or one selected by the Affected Member and a second selected by the Purchasing Members (in the case of Section 9.2) and a third selected by the two appraisers so named. The Fair Market Value of the applicable Membership Interests shall be the value determined by the Qualified Appraiser, if one is used, or

the average of two Qualified Appraisers closest in amount to each other, if three are used. The Company shall pay all reasonable expenses of the appraisals incurred in connection with the determination of Fair Market Value.

"**Available Cash Flow**" means, with respect to any date of determination, the gross cash receipts from the Company and the Project Company operations (including sales and dispositions of the Company and the Project Company Assets), termination payments received under Project Documents, insurance payments, warranty payments, cash previously reserved, in each case, during the period beginning on the date the last cash distribution was made to Members and ending on such date of determination, less the portion thereof used to pay, or establish reserves for, the Project Company expenses and Company Reimbursable Expenses or reserves otherwise necessary or appropriate for the operation of the Company and the Project Company and their respective assets.

"**Base Case Model**" has the meaning set forth in the Equity Capital Contribution Agreement.

"**Bid**" has the meaning set forth in Section 9.1(d).

"**Book Value**" means, with respect to any Asset of the Company, such Asset's adjusted basis for federal income tax purposes, except as follows:

(i) The initial Book Value of any Asset contributed by a Member to the Company shall be the gross Fair Market Value of such Assets, as agreed to by the Consent of the Members;

(ii) The Book Value of all Assets of the Company shall be adjusted to equal their respective gross Fair Market Values, as determined by the Members, as provided within Treasury Regulation Section 1.704-1(b)(2)(iv)(f); provided, however, that any such adjustments (other than pursuant to the liquidation (as defined for purposes of such Treasury Regulations) of the Company) shall be made only if the Managing Member reasonably determines, with the Consent of the Members, that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(iii) The Book Value of any Asset distributed to any Member shall be the gross Fair Market Value of such Asset on the date of distribution (taking Section 7701(g) of the Code into account), as the Managing Member shall reasonably determine, with the Consent of the Members;

(iv) The Book Value of Company Assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Assets pursuant to Sections 734(b) or 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) (consistent with subparagraph (vi) of the definition of "Profits" and "Losses" and Section 4.3(g)); provided, however, that the Book Value shall not be adjusted pursuant to this clause (iv) to the extent the Members determine that an adjustment pursuant to clause (ii) of this definition is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv); and

(v) If the Book Value of an Asset has been determined or adjusted pursuant to clause (i), (ii) or (iv) of this definition, such Book Value shall thereafter be adjusted by the Depreciation taken into account with respect to such Asset for purposes of computing Profits and Losses.

"**Budget**" means for each calendar year, the capital and operating budget of the Company and each Facility for such year.

"**Buyout Event**" has the meaning set forth in Section 9.2(a).

"**Buyout Exercise Notice**" has the meaning set forth in Section 9.2(c).

"**Buyout Price**" has the meaning set forth in Section 9.2(d).

"**Capital Account**" means the capital account established and maintained for a Member pursuant to Section 4.1.

"**Capital Contribution**" means any cash or the Book Value of any other property (net of liabilities secured by such property that the Company is considered to assume or take subject to under Section 752 of the Code) that a Member directly or indirectly contributes to the Company pursuant to Article III or has previously contributed to the Company.

"**Cash Equivalents**" means any of the following having a maturity of not greater than one year from the date of issuance thereof: (a) readily marketable direct obligations of the government of the United States of America or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of the government of the United States of America, (b) insured certificates of deposit of or time deposits with any commercial bank that is a member of the Federal Reserve System, which issues (or the parent of which issues) commercial paper rated as described in clause (c) below, which is organized under the laws of the United States or any State thereof and which has combined capital and surplus of at least $1,000,000,000 or (c) commercial paper issued by any corporation, other than an Affiliate of the Managing Member, organized under the laws of any State of the United States and rated at least "Prime-1" (or the then equivalent grade) by Moody's or "A-1" (or the then equivalent grade) by S&P.

"**Certified Public Accountant**" means a firm of independent public accountants selected from time to time by the Managing Member and approved, if prior to the Tax Flip Point, with the Consent of the Class A Members. The initial Certified Public Accountant is Novogradac & Company LLP

"**Change of Member Control**" means with respect to any Member, an event (such as a Transfer of voting securities, merger or corporate reorganization) that causes such Member to cease to be Controlled (either directly or indirectly) by the Persons who Controlled such Member prior to such event.

"**Claims**" means all claims, suits, demands, injunctions, actions, causes of action, assessments, cleanup and remedial obligations, judgments, awards, liabilities, losses (including amounts paid in settlement of claims), damages (including any loss of profits, consequential, punitive, incidental or special damages recovered by any Third Party, but excluding any loss of

profits, consequential, punitive, incidental or special damages asserted by any Member or an Affiliate), fines, fees, taxes, penalties, costs and expenses of every kind and character (including litigation costs and reasonable attorneys' and experts' fees and expenses, including such fees and expenses at trial and on any appeal).

"**Class A Equity Investor**" has the meaning set forth in the preamble.

"**Class A Interest**" means a Membership Interest issued pursuant to Section 3.1, that entitles the Holder thereof to receive the distributions of cash and property, allocations of profits and losses and other rights that are accorded Holders of a Class A Interest under this Agreement.

"**Class A Investor Claims**" has the meaning set forth in Section 11.1.

"**Class A Investor Group**" has the meaning set forth in Section 11.1.

"**Class A ITC Loss Event**" means an ITC Loss Event that is the result of any of the following: (i) an act or omission of the Class A Equity Investor or any Affiliate thereof that is not required or permitted under any Investment Document or any Principal Project Document, (ii) a direct or indirect Transfer of Class A Interests or Change of Member Control with respect to the Class A Member or change of Control of the Class A Member's Member Parent, or (iii) the breach of Section 5.11 of the Equity Capital Contribution Agreement.

"**Class A Member**" means each Person holding a Class A Interest. As of the Effective Date, the Class A Members means each of the Class A Equity Investors. If there is more than one Class A Member, all uses of the singular "Class A Member" shall be deemed to refer to each Class A Member or all Class A Members, as the context requires.

"**Class A Unit**" means a unit representing a Class A Interest having the rights, preferences and designations provided for such class in this Agreement.

"**Class B Equity Investor**" has the meaning set forth in the preamble.

"**Class B Interest**" means the Membership Interest issued pursuant to Section 3.2, that entitles the Holder thereof to receive distributions of cash and property, allocations of profits and losses and other rights that are accorded Holders of a Class B Interest under this Agreement.

"**Class B ITC Loss Event**" means an ITC Loss Event that does not arise as the result of a Class A ITC Loss Event.

"**Class B Member**" means the Person(s) holding a Class B Interest. Initially, and as of the Effective Date, the Class B Member means the Class B Equity Investor.

"**Class B Member Execution Date Contribution**" has the meaning set forth in the Equity Capital Contribution Agreement.

"**Class B Unit**" means a unit representing a Class B Interest having the rights, preferences and designations provided for such class in this Agreement.

"**Company**" has the meaning set forth in the recitals.

"**Company Minimum Gain**" has the meaning given the term "partnership minimum gain" set forth in Treasury Regulations Section 1.704-2(b)(2) and will be determined as provided in Treasury Regulations Section 1.704-2(d).

"**Company Reimbursable Expenses**" means all reasonable Third Party costs and expenses (including legal, accounting and auditing fees) incurred either by the Managing Member or an Affiliate of the Managing Member on behalf of the Company or the Project Company, in the performance of duties relating to the Company's or the Project Company's activities or business, in accordance with this Agreement and the Project Documents (including, without limitation, any costs and expenses incurred in connection with providing and maintaining credit support on behalf of the Project Company under any Project Documents), other than any items described in Section 5.1(f) hereof.

"**Compliance Date**" means the fifth (5th) anniversary of the date that the last Facility to be Placed in Service is Placed in Service.

"**Confidential Information**" has the meaning set forth in Section 7.7(a).

"**Consent**" or "**Approval**" (whether or not capitalized) means, whenever the Agreement affords a party or group of parties (each a "**Deciding Party**") the power to give or withhold consent or approval, such consent or approval may be given or withheld in the sole discretion of each Deciding Party; provided however, that if the Agreement expressly specifies that the Consent is "not to be unreasonably withheld (or delayed)" (or words of similar meaning), the following shall apply: (a) the party asserting that any Deciding Party acted unreasonably in withholding consent or approval shall have the burden of proving such unreasonableness; (b) each Deciding Party shall be deemed to have acted reasonably so long as there is some rational connection between the facts available to the Deciding Party's decision at the time consent or approval was given or withheld, provided that this rational is not to hold leverage against the non Deciding Party or solely to affect damage on the non Deciding Party; (c) without limiting the generality of clause (b), it shall not be unreasonable for any Deciding Party withhold consent where the Deciding Party rationally determines that granting consent or approval could result in adverse impacts on its own financial interests, diminishment of its rights, or augmentation of its obligations and (d) no Deciding Party is required to balance its own interests against the interests of any other party hereto.

"**Consent of the Class A Members**" means, at any time, the Consent or Approval of Class A Members who own in the aggregate more than fifty percent (50%) of the Class A Units outstanding at such time.

"**Consent of the Class B Members**" means, at any time, the Consent or Approval of Class B Members who own in the aggregate more than fifty percent (50%) of the Class B Units outstanding at such time.

"**Consent of the Members**" means each of (i) the Consent of the Class A Members and (ii) the Consent of the Class B Members.

"**Consistent Return**" has the meaning set forth in Section 8.7(b).

"**Control**", "**Controlled**", and "**Controlling**" means the possession, directly or indirectly, of any of the following: (i) in the case of a corporation, more than fifty percent (50%) of the outstanding voting securities thereof; (ii) in the case of a limited liability company, partnership, limited partnership or joint venture, the right to more than fifty percent (50%) of the distributions (including liquidating distributions) therefrom; (iii) in the case of a trust or estate, including a business trust, more than fifty percent (50%) of the beneficial interest therein; (iv) in the case of any other entity, more than fifty percent (50%) of the economic or beneficial interest therein; or (v) in the case of any entity, the power or authority, through ownership of voting securities, by contract or otherwise, to exercise a controlling influence over the management of the entity.

"**Damages**" means all claims, actions, causes of action, demands, assessments, losses, damages (including, without limitation, ITC Loss Tax Event Liability), liabilities, judgments, settlements, taxes, penalties, costs and expenses (including reasonable attorneys' fees and expenses, including without limitation, such fees and expenses at trial and on any appeal) of any nature whatsoever.

"**Delaware Certificate**" means the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on June 29, 2017, as amended or restated from time to time.

"**Depreciation**" means, for each Taxable Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable with respect to an Asset for such period, except that if the Book Value of any Asset differs from its adjusted basis for federal income tax purposes at the beginning of such period, Depreciation shall be an amount which bears the same ratio to such beginning Book Value as the federal income tax depreciation, amortization or other cost recovery deduction for such year or other period bears to such beginning adjusted tax basis; provided, however, that if the federal income tax depreciation, amortization or other cost recovery deduction for such year is zero, Depreciation shall be determined with reference to such beginning Book Value using any method selected by the Managing Member and reasonably acceptable to the Members.

"**Disqualified Transferee**" means any Person which is, or whose Affiliate is, then (A) a party adverse in any pending or threatened action, suit or proceeding to the Company or any other Member or an Affiliate thereof, if the Company or such Member shall not have consented (in the Company's or such Member's sole and absolute discretion) to the Transfer to such Person, or (B) with respect to any Transfer of a Class A Interest, directly or indirectly engaged in owning, managing, operating, maintaining or developing facilities utilizing solar energy for the production of electricity for sale to others (an "**Active Person**") except for an Affiliate of an Active Person where such Affiliate of an Active Person is an entity regularly involved in making passive investments in such facilities (a "**Passive Investor**") if such Passive Investor has certified in a manner reasonably acceptable to the Managing Member that such Passive Investor has in place procedures to prevent its Affiliates which are Active Persons from acquiring confidential information relating to such passive investments; provided, however, that, for the avoidance of doubt, a Person will not be deemed to be an Active Person solely by virtue of owning an interest in a facility similar to the ownership interest of the Class A Members.

"**Distribution Date**" shall mean January 1, April 1, July 1 and October 1 of each year, commencing with the first such date following the final Investor Tranche B Funding Date Contribution.

"**Economic Interest**" means the right to receive a share of the Company's distributions, and to be allocated a share of Profits and Losses, in each case in accordance with the terms of this Agreement, but does not include any other rights of a Member, including voting rights or rights to access Company information.

"**Effective Date**" means the date of this Agreement.

"**Encumber**" means any action or inaction creating an Encumbrance.

"**Encumbrance**" means encumbrances, liens, charges, pledges, collateral assignments, mortgages, deeds of trust, security interests, easements and encroachments of every type and description whatsoever, whether voluntary or involuntary, choate or inchoate or imposed by law, agreement (including any agreement to give any of the foregoing), understanding or otherwise, and whether or not of record.

"**Environmental Claim**" means any demand, order, suit, action or proceeding before any Governmental Authority or arbitral body, or any claim, in each such case, relating to a Facility or the Project Company and brought or made by a third party (including any Governmental Authority), relating to any Environmental Law or any Governmental Approval issued pursuant to any Environmental Law.

"**Equity Capital Contribution Agreement**" has the meaning set forth in the recitals.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**Exercise Notice**" has the meaning set forth in Section 9.3(b).

"**Existing Agreement**" has the meaning set forth in the recitals.

"**Facility**" has the meaning set forth in the Equity Capital Contribution Agreement.

"**Fair Market Value**" means, with respect to any Asset, the price at which such Asset would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of the relevant facts, and specifically with respect to a Facility, or any Membership Interest in the Company, as determined consistently with Section 4.05 of Revenue Procedure 2007-65, including for the avoidance of doubt with respect to the Class A Interest, taking into account the priority of the payment of Preferred Distributions pursuant to this Agreement. For the avoidance of doubt, in determining the Fair Market Value of the Class A Interests, to the extent the "discounted cash flow" method is used, such cash flows shall take into account the expected timing and amount of any Preferred Distributions.

"**Financing Documents**" has the meaning set forth in the Equity Capital Contribution Agreement.

"**Fiscal Year**" means the calendar year, except that the initial Fiscal Year of the Company commenced on the Effective Date and the final Fiscal Year of the Company shall end on the date on which the Company is terminated under Article X.

"**GAAP**" means United States generally accepted accounting principles consistently applied.

"**Holder**" means any Member.

"**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"**Indebtedness**" means indebtedness for borrowed money and any lease of any property as lessee the obligations of which are required to be classified or accounted for as a capital lease on the balance sheet of the applicable Person, but expressly does not include short-term (i.e., less than one year in maturity) trade payables incurred in the ordinary course of business.

"**Investment Documents**" has the meaning set forth in the Equity Capital Contribution Agreement.

"**Investor Contribution**" means on any date, the sum of the Investor Execution Date Contribution, each Investor Tranche A Funding Date Contribution and each Investor Tranche B Funding Date Contribution made by the Class A Member on or prior to such date.

"**Investor Execution Date Contribution**" has the meaning set forth in the Equity Capital Contribution Agreement.

"**Investor ITC Amount**" means the amount of ITC projected to be allocated to the Class A Members, as determined in the Base Case Model as updated and revised from time to time.

"**Investor Tranche A Funding Date Contribution**" has the meaning set forth in the Equity Capital Contribution Agreement.

"**Investor Tranche B Funding Date Contribution**" has the meaning set forth in the Equity Capital Contribution Agreement.

"**IRS**" means the Internal Revenue Service and any successor Governmental Authority.

"**ITC**" means investment tax credits available pursuant to Internal Revenue Code Section 48.

"**ITC Conditions**" means any and all conditions, requirements and restrictions including, but not limited to, applicable federal, state and local laws, rules and regulations, which must be complied with in order for the Facilities to qualify for the ITC or to avoid an event of recapture in respect of the ITC, including but not limited to the requirements of Internal Revenue Code Sections 48 and 50.

"**ITC Loss Event**" means either (i) the recapture pursuant to Section 50(a) of the Code of all or any portion of the ITC claimed by the Class A Member or its Affiliates with respect to a Facility, or (ii) any disallowance of, lack of the right to claim, or delay in the ability to claim, all or any portion of the ITC with respect to a Facility shown as allocated to the Class A Member in the Base Case Model, including by reason of the Qualified Investment not being ITC Eligible Property.

"**ITC Loss Tax Event Liability**" means any and all federal income tax costs (net of any net benefits actually realized, if any) suffered by the Class A Member or its Affiliates as the result of a Class B ITC Loss Event, determined assuming the highest applicable marginal federal income tax rate, and including, without limitation, re-computation of federal income tax, other changes in distributive share of tax depreciation or taxable income or loss, plus any penalties, interest or additions to tax relating thereto.

"**LLCA Relevant Experience**" means that a Person has, for the three (3) preceding years, owned or operated (or had access to the expertise required in order to operate through committed management agreements with its Affiliates) electric generation facilities of comparable size to the Facilities.

"**Liquidating Events**" has the meaning set forth in Section 10.1(a).

"**Management Services Agreement**" has the meaning set forth in the Equity Capital Contribution Agreement.

"**Managing Member**" means the Person appointed by the Members pursuant to Article VI to manage the affairs of the Company on their behalf and any other Person hereafter appointed as a successor Managing Member of the Company as provided in Article VI. Pursuant to its appointment by the Members in Section 6.1, the Class B Equity Investor shall be the initial Managing Member of the Company.

"**Member**" means those Persons who execute the signature page of this Agreement or otherwise agree to be bound hereby and are admitted to the Company as Members pursuant to this Agreement, excluding any Person (i) having solely the status of an assignee or (ii) that has ceased to be a Member.

"**Member Parent**" means, with respect to a Member, the company or companies, if any, that directly own and Control such Member on the Effective Date or, if applicable, from and after the date of a Change of Member Control in accordance with Section 9.1(b)(iv).

"**Member Nonrecourse Debt**" has the meaning given the term "partner nonrecourse debt" in Treasury Regulations Section 1.704-2(b)(4).

"**Member Nonrecourse Debt Minimum Gain**" has the meaning given the term "partner nonrecourse debt minimum gain" set forth in Treasury Regulation Section 1.704-2(i)(2), and will be computed as provided in Treasury Regulation Section 1.704-2(i)(3).

"**Member Nonrecourse Deductions**" has the meaning given the term "partner nonrecourse deductions" in Treasury Regulation Section 1.704-2(i)(2).

"**Membership Interest**" as to any Member means the entire limited liability company interest and rights of that Member in the Company, including, without limitation, its right to a share of the profits, losses, deductions and credits of the Company and its right to a distributive share of the Assets of the Company in accordance with the provisions hereof. Membership Interests shall consist of Class A Interests and Class B Interests, each of which shall constitute a separate class of limited liability company interests, but shall not constitute a "series" for purposes of Section 18-215 of the Act.

"**Moody's**" means Moody's Investor Service, Inc., or any successor entity.

"**Nonrecourse Deductions**" has the meaning given such term in Treasury Regulations Sections 1.704-2(b)(1) and 1.704–2(c).

"**Nonrecourse Liability**" has the meaning given such term in Treasury Regulations Section 1.704-2(b)(3).

"**Operating Reserve**" means the operating reserve, if any, to be established with respect to each Facility as set forth in the Base Case Model.

"**Partnership Representative**" has the meaning set forth in Section 8.7(b)(i).

"**Passive Investor**" has the meaning set forth in the definition of "Disqualified Transferee" herein.

"**Permitted Encumbrance**" has the meaning set forth in the Equity Capital Contribution Agreement.

"**Permitted Investment**" has the meaning given to such term in Section 8.5.

"**Permitted Transfer**" means a Transfer or Encumbrance of any Units (and the Membership Interest represented thereby) to or in favor of:

(i) (A) an Affiliate that Controls, is Controlled by or under common Control with the Transferring Member, or (B) any other Member (or its Affiliate that Controls, is Controlled by or under common Control with such other Member), in each case, which Transferee has both a tangible net worth and financial creditworthiness that is equal to or greater than the tangible net worth of the Transferor on the Execution Date; provided, however that , in the case of a Transfer or Encumbrance made by the Class B Member or any of its Affiliates that is a Transferee prior to the date on which the Tax Flip Point occurs, only if (A) such Transfer or Encumbrance does not result in the Class B Member or its Affiliates thereafter owning less of the Class B Units owned by the Class B Member and its Affiliates on the Execution Date and (B) such Transfer or Encumbrance does not result in the Affiliates of the Class B Equity Investor owning less than 100% of the Class B Member and (C) unless the Consent of the Class A Members has been obtained with respect to such change, such Transfer or Encumbrance does not result in any change of the Managing Member;

(ii) any creditor of the Project Company, or any collateral agent for such creditor, to the extent that such Transfer or Encumbrance is of a Class B Interest and is required under the

Financing Documents, and including the Transfer upon foreclosure of such Encumbrance or in lieu of such foreclosure, so long as such Encumbrance complies with the provisions of Section 9.1(c);

(iii) any Member or Member designee pursuant to Sections 9.2 or 9.3;

(iv) any trust created by a Member (who is an individual natural person) for the exclusive benefit of the spouse and/or any children of such Member: (A) no one other than such Member is the trustee of such trust; (B) no one other than such Member has the power to act with respect to the trust's assets; provided, however, that, upon the death or mental incapacity of such Member, all Membership Interests held by such trust shall automatically become mere Economic Interests and the holder shall be a mere assignee (and not a Member) and such Economic Interests shall thereafter be subject to the buyout rights set forth in Section 9.2. For clarity, if and to the extent that any equity owner(s) of a Member that is a legal entity Transfer their interests in such Member to a trust that satisfies all of the requirements of this clause (iv) and such Transfer would otherwise constitute a Change of Member Control hereunder, such Transfer shall also be a Permitted Transfer hereunder so long as the Member has a written agreement granting such Member rights to repurchase such Membership Interests from the equity owner upon his/her death or mental incapacity and, upon any such event such Member promptly exercises such rights and consummates such repurchase; and

(v) any Transfer of a Class A Interest by a Class A Member upon or as a result of the death or mental incapacity prior to the Tax Flip Point of either Scott Kotick or Shawn Horwitz so long as the Person Controlling the Class A Interest as a result of such Transfer is the spouse or any child of the applicable decedent or mentally incapacitated Person.

"**Post-Flip Sharing Percentages**" means, (a) for the Class A Members as a group, five percent (5%), and (b) for the Class B Members as a group, ninety five percent (95%).

"**Preferred Distribution**" means a quarterly distribution to the Class A Member (pro-rated for periods of less than three (3) months) of an amount equal to one-quarter of two percent (2.0%) of the paid-in Investor Contribution beginning at the end of the first Quarterly Period and ending on the Tax Flip Date. For the avoidance of doubt, the amount of the paid-in Investor Contribution shall not include transaction expenses (if any) paid by the Investor pursuant to the Equity Capital Contribution Agreement.

"**Principal Project Documents**" has the meaning set forth in the Equity Capital Contribution Agreement.

"**Profits**" and "**Losses**" means, for each Taxable Year or other period, an amount equal to the Company's taxable income or loss for such Taxable Year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(i) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this definition shall be added to such taxable income or loss;

(ii) Any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) of the Code expenditures pursuant to Treasury Regulations Section 1.704 1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits and Losses pursuant to this definition, shall be subtracted from such taxable income or loss;

(iii) In the event the Book Value of any Company Asset is adjusted pursuant to subsections (ii) or (iii) in the definition of "Book Value", the amount of such adjustment shall be taken into account as gain or loss from the disposition of such Asset for purposes of computing Profits or Losses;

(iv) Gain or loss resulting from any disposition of Company property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(v) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Taxable Year or other period as determined in accordance with the definition of Depreciation; and

(vi) To the extent an adjustment to the adjusted tax basis of any Company Asset pursuant to Section 734(b) of the Code is required, pursuant to Treasury Regulations Section 1.704 (b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the Asset) or loss (if the adjustment decreases such basis) from the disposition of such Asset and shall be taken into account for purposes of computing Profits or Losses.

"**Project Company**" has the meaning set forth in the Equity Capital Contribution Agreement. If there is more than one Project Company, all uses of the singular "Project Company" shall be deemed to refer to each Project Company or all Project Companies, as the context requires.

"**Project Documents**" means, collectively, (i) the Principal Project Documents or any agreement entered into in replacement or substitution of any such agreement and (ii) any other document to which the Project Company is a party that relates to the development, construction, operation or maintenance of a Facility (excluding the Investment Documents and the Financing Documents).

"**Purchase Option**" has the meaning set forth in Section 9.3(a).

"**Purchase Option Date**" has the meaning set forth in Section 9.3(b).

"**Purchase Price**" means the amount of any unpaid Preferred Distributions plus the then-determined Fair Market Value of the Investor's interest, consistent with the Appraisal Procedure but without any discount applied for lack of marketability or control.

"**Purchasing Member**" has the meaning set forth in Section 9.1(d) and 9.2(c).

"**Qualified Appraiser**" means a nationally recognized third-party appraiser which shall (i) be qualified to appraise independent solar powered electric generating businesses, (ii) have been engaged in the appraisal or business valuation and consulting business for a period of not less than five (5) years, and (iii) not be affiliated with any Member or any Affiliate thereof.

"**Qualified Replacement Manager**" means a Person that has LLCA Relevant Experience.

"**Quarterly Period**" means the three-month periods ending each March 31, June 30, September 30 and December 31; provided that the first Quarterly Period shall commence on the date when the final Investor Tranche B Funding Date Contribution is made and end on March 31, 2018.

"**Regulatory Allocations**" has the meaning set forth in Section 4.4.

"**Representatives**" has the meaning set forth in Section 7.7(a).

"**Revised Partnership Audit Procedures**" means the provisions of Subchapter C of Subtitle A, Chapter 63 of the Code, as amended by the Bipartisan Budget Act of 2015, P.L. 114-74 (together with any subsequent amendments thereto, Treasury Regulations promulgated thereunder, and published administrative interpretations thereof).

"**S&P**" means Standard & Poor's Ratings Group, a division of McGraw Hill, Inc., or any successor entity.

"**Securities**" means with respect to any Person, such Person's capital stock or limited liability company interests or any options, warrants or other Securities which are directly or indirectly convertible into, or exercisable or exchangeable for, such Person's capital stock or limited liability company interests (whether or not such derivative Securities are issued by the Company). Whenever a reference herein to Securities refers to any derivative Securities, the rights of an Equity Investor shall apply to such derivative Securities and all underlying Securities directly or indirectly issuable upon conversion, exchange or exercise of such derivative Securities.

"**Securities Act**" means the Securities Act of 1933 or any successor statute, as amended from time to time.

"**Subsidiary**" means, with respect to any Person, any corporation, partnership, limited liability company, joint venture or other entity of which such Person (either alone or through or together with any other Person pursuant to any agreement, arrangement, contract or other commitment) owns, directly or indirectly, ten percent (10%) or more of the stock or other equity interests the holders of which are generally entitled to vote for the election of the board of directors or other governing body of such corporation or other legal entity.

"**Tax Benefits**" means the Investor ITC Amount and 99% of such other tax benefits projected in the Base Case Model.

"**Tax Flip Point**" means the sixth (6th) anniversary of the date that the last Facility to be Placed in Service is Placed in Service.

"**Tax Information**" has the meaning set forth in Section 7.7(b).

"**Tax Matters Member**" has the meaning set forth in Section 8.7(a)(i).

"**Tax Return**" has the meaning set forth in Section 8.7(c).

"**Taxable Year**" means the taxable year of the Company for federal income tax purposes, which is the Fiscal Year as of the Effective Date.

"**Terminated Member**" has the meaning set forth in Section 9.2(f).

"**Third Party**" means a Person other than a Member or an Affiliate of a Member.

"**Transfer**" means, as to any Asset (including, without limitation, the Units and equity interests of any kind in any entity), a sale, assignment, conveyance, gift, exchange, lease or other disposition or transfer of such Asset, whether effected voluntarily, involuntarily or by operation of Applicable Law (including, a merger, conversion or consolidation in which the Person owning such Asset is not the surviving entity). Any direct or indirect Transfer of an interest in a Member which would cause (i) the Company's termination within Section 708 of the Code, (ii) the Company to be classified as an entity other than a partnership (or cause the Company to be treated as a publicly traded partnership) for purposes of the Code; (iii) an ITC Loss Event with respect to the Class A Interest or (iv) result in the Class B Member being a "related person" to the Company or the Company being a "related person" to any purchaser of power under a power purchase agreement for purposes of Sections 267 or 707 of the Code shall be deemed a "Transfer" of the Units owned by such Member for all purposes of this Agreement. A Change of Member Control of any Member who is an entity shall be deemed a "Transfer" of any and all Units held by such entity.

"**Transfer Notice**" has the meaning set forth in Section 9.1(d).

"**Transferee**" means a Person to which a Transfer is made.

"**Transferring Member**" means a Member making a Transfer.

"**Treasury Regulations**" means the regulations promulgated under the Code by the United States Department of Treasury, as such regulations may be amended from time to time. All references herein to specific sections of the regulations shall be deemed also to refer to any corresponding provisions of succeeding regulations, and any reference to temporary regulations shall be deemed also to refer to any corresponding provisions of final regulations.

"**Uniform Commercial Code**" means the Uniform Commercial Code as in effect from time to time in the States of Delaware.

"**Units**" means each of the Class A Units and Class B Units. Upon a Transfer by any Member in accordance with the provisions of this Agreement of any portion of such Member's Membership Interest, the assignee shall receive from the Transferring Member a number of Units of the relevant class equal to the percentage of the Membership Interest so Transferred multiplied by the total number of Units owned by the Transferring Member immediately prior to the Transfer.

1.2 Other Definitional Provisions.

(a) Construction. As used herein, singular shall include the plural, the masculine gender shall include the feminine and neuter, feminine gender shall include the masculine and neuter and the neuter gender shall include the masculine and feminine unless the context otherwise indicates.

(b) References. References to Articles and Sections are intended to refer to Articles and Sections of this Agreement, and all references to Exhibits and Schedules are intended to refer to Exhibits and Schedules attached to this Agreement, each of which is made a part of this Agreement for all purposes. Information contained in any Schedule shall be deemed contained in each and every other schedule without requiring repetition thereof. The term "including" means "including, without limitation." Any date specified for action that is not a Business Day shall mean the first Business Day after such date. Any reference to a Person shall be deemed to include such Person's permitted successors and assigns. Any reference to any document or documents shall be deemed to refer to such document or documents as amended, modified, supplemented or replaced from time to time. Whenever a Person is to determine that something is "satisfactory to," "acceptable to," or "to the satisfaction of" such Person, the determination may not be made in bad faith.

ARTICLE II
THE COMPANY

2.1 Continuation of Limited Liability Company. The parties hereto hereby continue the Company formed on June 29, 2017, as a limited liability company pursuant to the Act. The rights and obligations of the Members shall be as provided in the Act, except as otherwise expressly provided herein. The Managing Member shall, from time to time, execute or cause to be executed all such certificates, instruments and other documents, or cause to be done all such filings, as the Managing Member may deem necessary or appropriate to operate, continue or terminate the Company as a limited liability company under the laws of the State of Delaware and to qualify the Company to do business in such states where such qualification is necessary or desirable.

2.2 Name. The name of the Company is, and the business of the Company shall continue to be conducted under the name of, "Blue Sky Utility Portfolio I 2017, LLC" or such other name or names as the Managing Member may designate from time to time, with the Consent of the Members. The Managing Member shall take any action that it determines is required to comply with the Act, assumed name act, fictitious name act, or similar statute in effect in each jurisdiction or political subdivision in which the Company proposes to do business and the Members agree to execute any documents requested by the Managing Member in connection with any such action.

2.3 **Principal Office**. The Company shall maintain a principal office which shall initially be located at located at 1715 2nd St, Napa, CA 94581. The Managing Member may change the principal office of the Company from time to time upon written notice to the Members.

2.4 **Registered Office; Registered Agent**. The name of the registered agent of the Company in the State of Delaware is Business Filings Incorporated. The address of the Company's registered office in the State of Delaware is 108 West 13th Street, Wilmington, DE 19801.

2.5 **Purposes**. The purposes of the Company are to (a) be the sole member of the Project Company, (b) own or dispose of membership interests in the Project Company, (c) cause the Project Company to develop, construct, own, operate, maintain and repair each Facility, for the purpose of producing electricity and selling electricity , (d) enter into, comply with, perform its obligations and enforce its rights under this Agreement and the other Investment Documents, (e) cause the Project Company to enter into, comply with, perform its obligations and enforce its rights under the applicable Project Documents, and (f) engage in and perform any and all activities necessary, incidental, related or desirable to the foregoing. The Company shall not engage in any activity or own any Assets that are not necessary, incidental, related or desirable to the Company's purpose as set forth in this Section 2.5.

2.6 **Term**. The Company shall be perpetual unless earlier dissolved and terminated in accordance with this Agreement.

2.7 **Title to Property**. Title to Company Assets, whether tangible or intangible, shall be held in the name of the Company, and no Member, individually, shall have title to or any interest in such property by reason of being a Member. Membership Interests of each Member shall be personal property for all purposes.

2.8 **Units; Certificates of Membership Interest; Applicability of Article 8 of UCC**. Membership Interests shall be represented by Units, divided into Class A Units (in the case of Class A Interests) and Class B Units (in the case of Class B Interests). The Membership Interests represented by Class A Units and Class B Units shall have the respective rights, preferences and designations ascribed to such Units in this Agreement. The Members hereby specify, acknowledge and agree that all Units (and the Membership Interests represented thereby) are securities governed by Article 8 and all other provisions of the Uniform Commercial Code, and pursuant to the terms of Section 8-103(c) of the Uniform Commercial Code, such interests shall be "securities" for all purposes under such Article 8 and under all other provisions of the Uniform Commercial Code. All Units (and the Membership Interests represented thereby) shall be represented by certificates substantially in the form attached hereto as Exhibit B, shall be recorded in a register thereof maintained by the Company, and shall be subject to such rules for the issuance thereof in compliance with this Agreement as the Managing Member may from time to time determine.

ARTICLE III
CAPITAL CONTRIBUTIONS

3.1 **Class A Interests; Capital Contributions of the Class A Members**. On the Effective Date, the Class A Equity Investor shall make the Investor Execution Date Contributions to be made by it pursuant to the terms and conditions set forth in the Equity Capital Contribution

Agreement, and in consideration of such Investor Execution Date Contributions, the Class A Equity Investor shall be issued Class A Units in the amount set forth opposite its name in Exhibit A and be admitted to the Company as a Class A Member. The Class A Members shall be entitled to the allocations, distributions and other rights as are prescribed for the Class A Members in this Agreement. Each Class A Member's Capital Account balance as of the Effective Date with respect to its Membership Interest shall be as indicated on Exhibit A.

3.2 Class B Interests; Capital Contributions of the Class B Member. On the Effective Date, the Class B Member shall have made the Class B Member Execution Date Contributions to be made by it pursuant to the terms and conditions set forth in the Equity Capital Contribution Agreement. In addition, the Class B Member shall hold Class B Units in the amount set forth opposite its name in Exhibit A. The Class B Member shall be entitled to the allocations, distributions and other rights as are prescribed for the Class B Member in this Agreement. The Class B Member's additions to its Capital Account as of the Effective Date (and the Class B Member's Capital Account balance as of the Effective Date) are shown on Exhibit A, which amounts include the initial Book Value of property contributed by the Class B Member to the Company prior to and on such date.

3.3 Additional Capital Contributions.

(a) On each Tranche A Funding Date, pursuant to the terms and conditions of the Equity Capital Contribution Agreement, (i) the Class A Member shall make its Capital Contributions to the Company and (ii) the Class B Member shall make its Capital Contributions to the Company.

(b) On each Tranche B Funding Date, pursuant to the terms and conditions of the Equity Capital Contribution Agreement, (i) the Class A Member shall make its Capital Contributions to the Company and (ii) the Class B Member shall make its Capital Contributions to the Company.

(c) The Company shall apply the contributions set forth in clauses (a) and (b) above in accordance with Sections 2.4 and 2.6 of the Equity Capital Contribution Agreement, and each Member's Capital Account shall be adjusted in accordance with Section 4.1.

3.4 No Other Required Capital Contributions. Except as provided in Sections 3.3, no Member shall be obligated to make Capital Contributions in excess of the amount of such Member's required Capital Contribution made on the Effective Date.

3.5 No Right to Return of Capital Contributions. Except as otherwise provided in this Agreement, no Member may require a return of its Capital Contributions or the payment of interest thereon from the Company or from another Member.

ARTICLE IV
CAPITAL ACCOUNTS; ALLOCATIONS

4.1 Capital Accounts. The Company shall maintain for each Member a separate Capital Account in accordance with the rules of Treasury Regulation Section 1.704-l(b)(2)(iv).

Each Member's Capital Account shall be maintained in accordance with those Treasury Regulations, including the following provisions:

(a) To each Member's Capital Account there shall be credited the Member's Capital Contributions, such Member's distributive share of Profits and items of income and gain under Section 4.2 and any items in the nature of income or gain which are specially allocated to the Member pursuant to Section 4.3, Section 4.4 and Section 10.2(a) and the amount of any Company liabilities assumed by the Member or which are secured by any Company Asset distributed to such Member.

(b) To each Member's Capital Account there shall be debited the amount of cash and the Book Value of any Company Asset distributed to such Member pursuant to any provision of this Agreement, such Member's distributive share of Losses and items or loss and deduction under Section 4.2 and any items of loss and deduction which are specially allocated to the Member pursuant to Section 4.3, Section 4.4 and Section 10.2(a) and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(c) In determining the amount of any liability for purposes of the foregoing subsections (a) or (b), there shall be taken into account Section 752(c) of the Code and any other applicable provisions of the Code and the Treasury Regulations.

(d) In the event any Membership Interest in the Company is transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Membership Interest.

This Section 4.1 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Treasury Regulations Sections 1.704-1(b) and 1.704-2, and will be interpreted and applied in a manner consistent with such Treasury Regulations. The Managing Member also shall make any adjustments that are necessary or appropriate to maintain equality between the Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(q).

4.2 Profits and Losses. For purposes of maintaining Capital Accounts, after making the allocations provided under Section 4.3, all items of Company income, loss, gain, deduction and credit for any Fiscal Year will be allocated among the Members as follows:

(a) ***General Allocations***. Except as provided in the following Sections 4.2(b) through 4.2(d), Profits and Losses and constituent items of Company income, gain, loss and deduction thereof shall be allocated for each Fiscal Year or part of a Fiscal Year as follows:

(i) For any Fiscal Year of the Company or portion thereof prior to the Tax Flip Point, Profits and Losses and constituent items of Company income, gain, loss and deduction thereof shall be allocated 99% to the Class A Members, pro rata according to their respective Class A Units, and 1% to the Class B Members, pro rata according to their respective Class B Units.

(ii) For any Fiscal Year of the Company or portion thereof commencing on or after the Tax Flip Point, Profits and Losses and constituent items of Company income, gain, loss and deduction thereof shall be allocated to the Class A Members and the Class B Members, pro rata in accordance with their respective Post-Flip Sharing Percentages.

(b) ***Adjusted Capital Account Deficits***. Except as provided in the following Sections 4.2(c) and 4.2(d), Losses allocated pursuant to Section 4.2(a) shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. If some but not all of the Members would have Adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 4.2(a), the foregoing limitation shall be applied on a Member-by-Member basis so as to allocate the maximum permissible losses to each Member under Treasury Regulation Section 1.704-1(b)(2)(ii)(d).

(c) ***Items in Connection with Liquidation***. Except as provided in the following Section 4.2(d), Profits and Losses and any other items of income, gain, loss or deduction for the Taxable Year in which there is a disposition of all or substantially all of the Assets of the Company pursuant to Section 10.2(a) shall be specially allocated pursuant to Section 10.2(a)(iv).

(d) ***Allocation of ITC***. It is the intention of the Members that (i) the allocations provided in Section 4.2(a) constitute, for purposes of Treasury Regulations Section 1.46-3(f)(2)(i), the ratio in which the Members divide the general profits of the Company (that is, the taxable income of the partnership as described in Code Section 702(a)(8)) regardless of whether the Company has a profit or a loss for its Taxable Year during which the ITC Eligible Property is Placed in Service, (ii) the allocations made pursuant to Section 4.2(b) are allocations described in Code Section 702(a)(7) and Treasury Regulations Section 1.702-1(a)(8)(i) and serve only to restore the original economic profit and loss arrangement, while maintaining the requirement for "economic effect" under Treasury Regulations Section 1.704 1(b)(2)(ii)(d), and therefore, in the aggregate, such allocations do not reduce the allocation of the general profits to the Class A Members for purposes of Treasury Regulation Section 1.47-6(a)(2)(i)(b), and (iii) accordingly, the relative shares of the Class A Members and the Class B Members of the basis of ITC Eligible Property for purposes of Treasury Regulation Section 1.46-3(f)(2)(i) is 99% and 1%, respectively. Further, it is the intention of the Members that, for purposes of Treasury Regulation Section 1.47-6(a)(2)(i)(b), the allocations provided in Sections 4.2(a)(ii) shall not constitute a reduction in the Class A Members' interest in the general profits of the Company (that is, the taxable income of the Company as described in Code Section 702(a)(8)) below two-thirds of the Class A Members' proportionate interest in the general profits of the Company for the Taxable Year in which the ITC Eligible Property was Placed in Service and before the close of the "estimated useful life" of such ITC Eligible Property (treating the "estimated useful life" of the ITC Eligible Property as ending not earlier than the end of the fifth (5th) anniversary of the date it was Placed in Service for purposes of Code Section 168).

4.3 Special Allocations. The following special allocations shall be made in the order and at the times specified in Section 1.704-2(j) of the Treasury Regulations, if applicable, or otherwise in the following order:

(a) ***Company Minimum Gain Chargeback***. Notwithstanding the other provisions of this Article IV, except as provided in Treasury Regulation Section 1.704-2(f), if there is a net decrease in Company Minimum Gain during any Taxable Year, each Member shall be specially allocated items of Company income and gain for such Taxable Year (and, if necessary, subsequent Taxable Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulation Section 1.704 2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulation Sections 1.704 2(f)(6) and 1.704 2(j)(2). This Section 4.3(a) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations Section 1.704 2(f) and shall be interpreted consistently therewith.

(b) ***Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt***. Notwithstanding the other provisions of this Article IV, except as provided in Treasury Regulation Section 1.704-2(i)(4), if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Taxable Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations Section 1.704 2(i)(5), shall be specially allocated items of Company income and gain for such Taxable Year (and, if necessary, subsequent Taxable Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Treasury Regulation Section 1.704 2(i)(4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations Sections 1.704 2(i)(4) and 1.704 2(j)(2). This Section 4.3(b) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement in Treasury Regulations Section 1.704 2(i)(4) and shall be interpreted consistently therewith.

(c) ***Qualified Income Offset***. In the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by Treasury Regulations, the Adjusted Capital Account Deficit of the Member as quickly as possible; provided, that an allocation pursuant to this Section 4.3(c) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other special allocations provided for in this Section 4.3 have been tentatively made as if this Section 4.3(c) were not in this Agreement.

(d) ***Gross Income Allocation***. To the extent that, after the application of all other special allocations provided for in this Section 4.3 have been made (but excluding Section 4.3(c) and this Section 4.3(d)), any member has a deficit Capital Account at the end of any Taxable Year that is in excess of the amount such Member is obligated to restore pursuant this Agreement plus the amount such Member is deemed obligated to restore pursuant to the penultimate sentences of Treasury Regulations Sections 1.704-2(g)(1) and 1.704-2(i)(5), each such Member shall be specially allocated items of Company income and gain in the amount of such excess as quickly as possible.

(e) ***Nonrecourse Deductions***. Notwithstanding the other provisions of this Article IV, Nonrecourse Deductions (as defined and determined under Section 1.704-2(b)(1) and (c) of the Treasury Regulations) shall be specially allocated between the Members in accordance with the Members' interests in the Company (defined in the same manner as the "partners' interests in the partnership" as used in Section 1.704-2(b)(1) and (e) of the Treasury Regulations). To the extent permitted under Section 1.704-2 of the Regulations, nonrecourse deductions shall be allocated in the manner in which loss and deduction is allocated under Section 4.2(a) as applicable in the Fiscal Year in which the nonrecourse deductions are being allocated. This provision is intended to comply with Section 1.704-2(b) and (e) of the Treasury Regulations and shall be applied consistently therewith.

(f) ***Member Nonrecourse Deductions***. Notwithstanding the other provisions of this Article IV, any Member Nonrecourse Deductions for any Taxable Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i)(1).

(g) ***Section 754 Adjustments***. If the Company distributes property to a Member in liquidation of the Membership Interest of the Member and there is an adjustment in the adjusted tax basis of Company property under Section 734(b) of the Code, such that the first sentence of Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies, there will be a corresponding adjustment to the Capital Account of the Member receiving the distribution. If the Company distributes cash to a Member in excess of its outside basis in its Membership Interest, leading to an adjustment in the inside basis of the Company property under Section 734(b) of the Code pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2), then solely for purposes of adjusting Capital Accounts of the Members, the adjustment in the inside basis will be treated as gain or loss and be allocated among the Members in accordance with Section 4.2, as in effect at the time of the adjustment. This provision is intended to comply with Treasury Regulations Sections 1.704-1(b)(2)(iv)(m)(2) and (4).

(h) ***Basis Adjustments***. In the event the adjusted tax basis of any Code Section 38 property that has been Placed in Service by the Company is adjusted pursuant to Section 50(c) of the Code, (i) any increase in adjusted tax basis shall be specially allocated among the Members (as an item in the nature of income or gain) in the same proportions as the ITC that is recaptured with respect to such property is shared among the Members and (ii) any reduction in adjusted tax basis shall be specially allocated among the Members (as an item in the nature of expenses or losses) in the same proportions as the basis (or cost) of such property is allocated pursuant to Treasury Regulations Section 1.46-3(f)(2)(i).

4.4 Curative Allocations. The allocations required under Section 4.2(b) and Sections 4.3(a) through 4.3(e) and 4.3(g) (the "**Regulatory Allocations**") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 4.4. Therefore, notwithstanding any other provisions of this Article IV, the Regulatory Allocations shall be taken into account in allocating items of income, gain, loss, deduction and credit among the Members such that, to the extent possible, the net amount of allocations of such

items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each Member if the Regulatory Allocations had not occurred and all Company items were allocated pursuant to Section 4.2, Section 10.2(a)(iv) and Section 10.2(a)(v).

4.5 Income Tax Allocations.

(a) Except as otherwise provided in this Section 4.5, for federal, state and local income tax purposes each item of income, gain, loss and deduction of the Company shall be allocated to the Members in the same manner as such items are allocated for book purposes pursuant to this Article IV.

(b) In accordance with Section 704(c) of the Code and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Book Value (computed in accordance with the definition of Book Value) using the remedial allocation method permitted by Treasury Regulations Section 1.704-3(d).

(c) In the event the Book Value of any Company Asset is adjusted pursuant to subparagraph (ii) of the definition of Book Value, subsequent allocations of income, gain, loss and deduction with respect to such Asset shall take account of any variation between the adjusted basis of such Asset for federal income tax purposes and its Book Value in the same manner as under Section 704(c) of the Code and the Treasury Regulations thereunder.

(d) Allocations pursuant to this Section 4.5 are solely for federal, state and local income taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

4.6 Other Allocation Rules.

(a) In the event Company ITC Eligible Property is disposed of during any taxable year, Profits for such taxable year (and, to the extent such Profits are insufficient, Profits for subsequent taxable years) in an amount equal to the excess, if any, of (i) the reduction in the adjusted tax basis (or costs) of such property pursuant to Code Section 50(c) over (ii) any increase in the adjusted tax basis of such property pursuant to Code Section 50(c) caused by the disposition of such property, shall be excluded from the Profits allocated pursuant to Section 4.2 hereof and shall instead be allocated among the Members in proportion to their respective shares of such excess, determined pursuant to Section 4.3(h) hereof. In the event more than one item of such property is disposed of by the Company, the foregoing sentence shall apply to such items in the order in which they are disposed of by the Company, so that Profits equal to the entire amount of such excess with respect to the first such property disposed of shall be allocated prior to any allocations with respect to the second such property disposed of, and so forth.

(b) For purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly or

other basis, as determined by the Managing Member using any permissible method under Section 706 of the Code and the Treasury Regulations thereunder.

(c) The Members are aware of the income tax consequences of the allocations made by this Article IV and Section 10.2(a) and hereby agree to be bound by the provisions of this Article IV and Section 10.2(a) in reporting their shares of Company income and loss for income tax purposes, unless otherwise required by law or the IRS.

(d) The Company shall allocate 100% of the "excess" Nonrecourse Liabilities of the Company for purposes of Treasury Regulations Section 1.752-3(a)(3) in accordance with allocations shown in the Base Case Model of deductions attributable to such remaining Nonrecourse Liabilities, taking into account the allocations required under Section 4.5 above (provided that such ratio shall be neither greater than 99.0% nor less than 5% for the Class A Members in any Fiscal Year).

(e) To the extent permitted by Treasury Regulations Section 1.704-2(h)(3), the Managing Member shall endeavor to treat distributions of Available Cash Flow as having been made from the proceeds of a Nonrecourse Liability or a Member Nonrecourse Debt only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Member.

(f) The Members acknowledge and agree that, for federal and state income tax purposes, the Company shall report (in a manner consistent with the Base Case Model) (i) electrical production as tangible property produced by the Company for purposes of Treasury Regulations Section 1.263A-1(a)(3)(ii) and (ii) that each Power Purchase Agreement is a service contract under Section 7701(e). The Members acknowledge and agree that the Company shall prepare the federal income tax returns and its applicable state income tax returns in a manner consistent with such treatment.

ARTICLE V
DISTRIBUTIONS

5.1 Application of Available Cash Flow. Subject to Article 2 of the Equity Capital Contribution Agreement, Sections 5.1(c)-(f) and Section 10.2(a)(v), Available Cash Flow shall be applied or distributed on each Distribution Date for the Quarterly Period most recently ended in the following order and priority:

(a) Until the Tax Flip Point:

(i) First, to the Class A Members pro rata in accordance with their respective Class A Units, in an amount equal to any accrued, but unmade, Preferred Distributions;

(ii) Thereafter, to Class A and Class B Members on a pro -rata basis of 5% to the Class A Member and 95% to the Class B Member.

(b) After the Tax Flip Point:

(i) First, to the Class A Members pro rata in accordance with their respective Class A Units, in an amount equal to any accrued, but unmade, Preferred Distributions; and

(ii) Thereafter, to the Class A Members (pro rata in accordance with their respective Class A Units) and the Class B Members (pro rata in accordance with their respective Class B Units) in accordance with their respective Post-Flip Sharing Percentages.

(c) If the aggregate Capital Contributions made by the Class A Member as of the final Tranche B Funding Date exceed the Investor Contribution (as defined in the Equity Contribution Agreement), then 100% of Available Cash Flow shall be distributed 100% to the Class A Member until the Class A Member has received cumulative Available Cash Flow pursuant to this Section 5.1(c) equal to such excess.

(d) The preferred distributions to the Class A Members are not intended to be guaranteed payments for the use of capital as described in Section 707(c) of the Code. The Company and the Class A Member shall treat such distributions as distributions to a partner out of Available Cash Flow.

(e) Notwithstanding the foregoing provisions of this Section 5.1, in the event the Company receives a payment or otherwise has Available Cash Flow attributable to or in connection with an event that triggers an ITC Loss Event (including insurance proceeds with respect to a casualty), such payment or other Available Cash Flow shall be distributed first 100% to the Class A Members pro rata in accordance with their respective Class A Units to the extent of any ITC Loss Event Liabilities.

(f) When made, any payment of fees or other amounts under the Management Services Agreement shall be treated by the Company as a compensation for services and not as a distribution.

5.2 Limitation. The distributions described in this Article V shall be made only from Available Cash Flow and only to the extent that there shall be sufficient Available Cash Flow to enable the Managing Member to make payments in accordance with the terms hereof. Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to a Member on account of Membership Interest if such distribution (including a return of Capital Contributions) would violate the Act or any other Applicable Law.

5.3 Withholding. Notwithstanding any other provision of this Agreement, the Company shall comply with any withholding requirements under any Applicable Law and shall remit amounts withheld to, and file required forms with, applicable taxing authorities. To the extent that the Company is required to withhold and pay over any amounts to any taxing authority with respect to distributions or allocations to any Member, the amount withheld shall be treated for all purposes under this Agreement as a distribution of cash to such Member in the amount of such withholding. In the event of any claim over withholding, Members shall be limited to an action against the applicable taxing authority. If an amount required to be withheld was not withheld from an actual distribution, the Company may reduce subsequent distributions by the

amount of such required withholding and any penalties or interest thereon. Each Member agrees to furnish to the Company such forms or other documentation as are reasonably necessary to assist the Company in determining the extent of, and in fulfilling, its withholding obligations.

ARTICLE VI
MANAGEMENT

6.1 Managing Member.

The Class B Equity Investor is hereby appointed by the Members as the initial Managing Member of the Company. Except as provided in Section 6.2 or as otherwise expressly provided herein, the Managing Member shall conduct, direct and exercise control over all activities of the Company, and shall have full power and authority on behalf of the Company to manage and administer the business and affairs of the Company and the Project Company and to do or cause to be done any and all acts considered by the Managing Member to be necessary or appropriate to conduct the business of the Company and the Project Company (including, without limitation, taking all necessary actions to cause the Company and the Project Company to perform its obligations and enforce its rights under the Project Documents and to otherwise carry out its purposes) without the need for approval by or any other consent from any Member, including, but not limited to, the authority to bind the Company in making contracts and incurring obligations in the Company's name in the course of the Company's business. Except to the extent that a Member is also the Managing Member or authority is delegated from the Managing Member, no Member shall have any authority to bind the Company.

6.2 Standard of Care; Required Consents.

(a) In carrying out its duties hereunder, the Managing Member shall act in the best interests of the Company and its Members, including that it (i) shall cause the Project Company to operate and manage each Facility in accordance with the applicable Project Documents; provided, that, in performing such obligations, the Managing Member shall (A) exercise such care, skill and diligence as a reasonably prudent business company of established reputation engaged in the solar energy business would exercise in the conduct of its business and for the advancement or protection of such company's own interests and the interests of its equity owners and (B) perform such duties in accordance with applicable solar energy industry standards, taking into account, prior to the occurrence of the Compliance Date, the Applicable Laws with respect to the ITC, and (ii) in instances not involving the operation or management of a Facility, shall act in good faith taking into account in the best interests of the Company and its Members,; provided, that it shall not be a breach of such standard of care and the Managing Member shall not be responsible hereunder for the negligence, gross negligence or willful misconduct of, or breach of contract by, any sufficiently qualified Person engaged by the Managing Member in accordance with the terms of this Agreement, pursuant to a contract that requires such Person to perform its duties in accordance with such standard of care or a standard substantially similar, if the Managing Member is diligent in its selection and oversight of such Person.

(b) Notwithstanding any other provision of this Agreement to the contrary, the Managing Member may not take any of the following actions without having first obtained the Consent of the Class A Members:

(i) Admit any additional Member to the Company except as permitted under Section 9.1, or admit any additional member to the Project Company;

(ii) Redeem any Membership Interest in the Company or redeem any membership interest in the Project Company;

(iii) Do any act in contravention of this Agreement or of the other organizational documents of the Company or of the Project Company, as applicable;

(iv) Cause the Company to engage in any business or activity that is not within the purpose of the Company, as set forth in Section 2.5, or to change such purpose, or cause the Project Company to engage in any business or activity that is not within the purpose of the Project Company, as set forth in the operating agreement of the Project Company, or to change such purpose;

(v) Cause the Company to be treated other than as a partnership for United States federal income tax purposes or cause the Project Company to be treated as other than an entity disregarded as separate from the Company for federal income tax purposes (in each case, including by electing under Treasury Regulations Section 301.7701-3 to be classified as an association);

(vi) Make, or cause the Company or the Project Company to make, any payments of compensation or other consideration to the Managing Member or any of its Affiliates other than as expressly contemplated by this Agreement or any Project Document; or

(vii) Cause the Company or the Project Company to engage in any speculative energy trading.

(c) Notwithstanding any other provision of this Agreement to the contrary, the Managing Member may not take any of the following actions without having first obtained the Consent of the Class A Members (such consent not to be unreasonably withheld or delayed):

(i) Cause the Company or the Project Company to voluntarily and permanently remove a Facility from service (other than a removal from service caused by a force majeure event or casualty);

(ii) Make any tax election, or cause the Company or the Project Company to make any tax election, other than as provided herein;

(iii) Cause the Company to permit (A) possession of property of the Company by any Member (unless such action is taken pursuant to the express terms of the applicable Project Document), (B) the assignment, transfer or pledge of rights of the Company in specific property of the Company for other than the Company's purposes or other than for the benefit of the Company, or (C) any commingling of the funds of the Company with the funds of any other Person;

(iv) Cause the Project Company to permit (A) possession of property of the Project Company by any member thereof (unless such action is taken pursuant to the express

terms of the applicable Project Document), (B) the assignment, transfer or pledge of rights of the Project Company in specific property of the Project Company for other than the Project Company's purposes or other than for the benefit of the Project Company, or (C) any commingling of the funds of the Project Company with the funds of any other Person; or

(v) Seek any private letter ruling from the IRS relating to the transactions contemplated hereunder.

(vi) Except as provided in the Project Documents and the Financing Documents, mortgage, pledge, assign in trust or otherwise Encumber, or cause the Company or the Project Company to mortgage, pledge, assign in trust or otherwise Encumber, any Company or Project Company property, or to assign, or cause the Company or the Project Company to assign any monies owing or to be owing to the Company or the Project Company, as applicable, except to secure the payment of any borrowing permitted hereunder and except for customary liens contained in or arising under any operating agreements, construction contracts and similar agreements executed by or binding on the Company or the Project Company with respect to amounts not yet due or not yet delinquent (or, if delinquent, that are being contested by the Managing Member, the Company or the Project Company, as the case may be, in good faith and for which adequate reserves have been set aside in accordance with GAAP) or except for statutory liens for amounts not yet due or not yet delinquent (or, if delinquent, that are being contested by the Managing Member, the Company or the Project Company, as the case may be, in good faith and for which adequate reserves have been set aside in accordance with GAAP); provided, that in no event shall the Managing Member mortgage, pledge, assign in trust or otherwise Encumber the Company's right to receive Capital Contributions from the Members;

(vii) Except as provided in the Project Documents and the Financing Documents, incur any Indebtedness or guarantee, or cause the Company or the Project Company to incur any Indebtedness or to guarantee, in the name of or on behalf of the Company or the Project Company, the payment of money or the performance of any contract or other obligation of any person;

(viii) Except as provided in the Project Documents and the Financing Documents, sell, lease, transfer, assign or distribute or cause the Company or the Project Company to sell, lease, transfer, assign or distribute, (i) a Facility or (ii) any Asset or related group of Assets (other than a Facility) except for transfers or other dispositions in connection with the replacement of Assets or obsolete Assets (as determined in the sole discretion of the Managing Member);

(ix) Enter into: (A) any amendment, modification, waiver or termination of any applicable Project Document, Financing Document or any agreement with the Managing Member or any Affiliate of the Managing Member or any operating agreement of any Project Company; (B) any substitution or replacement of any applicable Project Document, Financing Document or any agreement with the Managing Member any Affiliate of the Managing Member, or (C) any additional Project Document, Financing Document or agreement with the Managing Member or any Affiliate of the Managing Member;

(x) Compromise or settle, or cause the Company or the Project Company to compromise or settle, any lawsuit, administrative matter or other dispute where the

amount the Company or the Project Company may recover or might be obligated to pay, as applicable, is in excess of $50,000 in the aggregate, or which includes consent to the award of an injunction, specific performance or other equitable relief; provided, however that that, any suit, claim or cause of action relating to an IRS audit litigation or claim, or other tax matter covered by Section 8.7, regardless of the amount in issue, shall be subject to Section 8.7 hereof;

(xi) Loan any funds of the Company or the Project Company to any Person;

(xii) Cause the Company or the Project Company to hire any employees, enter into or adopt any bonus, profit sharing, thrift, compensation, option, pension, retirement, savings, welfare, deferred compensation, employment, termination, severance or other employee benefit plan, agreement, trust, fund, policy or arrangement for the benefit or welfare of any directors, officers or employees of the Company or the Project Company;

(xiii) Cause the Company or the Project Company to change its methods of accounting as in effect on the Effective Date, except as required by GAAP, or take any action, other than reasonable and usual actions in the ordinary course of business or specifically contemplated under the Project Documents to which it is a party, with respect to accounting policies or procedures, unless required by GAAP;

(xiv) Cause the Company or the Project Company to consent to or approve any action that would result in or require an adjustment to the annual operating Budget for the Company or the Project Company, as the case may be, considered in the aggregate in excess of five percent (5%);

(xv) Cause the Company to return capital or make distributions in a form other than in cash; or

(xvi) Cause the Company or Project Company to have any Subsidiary or otherwise own any equity interest in any Person (except, in the case of the Company, the Project Company).

(d) The Managing Member shall not take any of the following actions prior to the Tax Flip Point, without having first obtained the Consent of the Class A Members:

(i) Any removal or replacement of the Certified Public Accountant;

(ii) Develop, construct or operate the Facilities in such a manner or cause or permit the Company to take or omit to take any action which would cause a recapture, reduction (other than as a result of a construction or other cost savings) or disallowance of any ITCs anticipated to be recognized by the Company; or

(iii) Do any act (or fail to act) that causes or is reasonably likely to cause an ITC Loss Event.

(d) Notwithstanding any other provision of this Agreement to the contrary, the Managing Member may not take any of the following actions without having first obtained the written consent of all of the Members:

(i) Cause the Company or the Project Company to change its legal form, recapitalize, merge or consolidate, convert, liquidate, wind up or dissolve (other than in accordance with this Agreement), or declare itself Bankrupt, agree to an exchange of interests with any other Person, or acquire all or substantially all of the Assets or stock of any other Person; or

(ii) Amend, supplement or otherwise modify Section 2.5 or any of the definitions of capitalized terms used therein.

(e) Prior to the dissolution of the Company under the terms of this Agreement, the Managing Member shall devote such time and effort to the Company's business as may be necessary to adequately promote the interests of the Company and the mutual interests of the Members.

6.3 Removal of Managing Member.

(a) The Managing Member will be subject to removal as Managing Member, upon thirty (30) days' notice to the Managing Member, by the Consent of the Class A Members if the Managing Member (x) has engaged in gross negligence, willful misconduct or fraud, as finally determined in a judicial proceeding or, even prior to a final determination, which could reasonably be expected to have a Material Adverse Effect on the any Project Company, the Class A Members, the Company or a Facility, (y) has performed any action or omitted to take any action that is in breach or violation of this Agreement, or (z) is declared Bankrupt; provided, however, that in the case of clause (y), the Managing Member shall have the opportunity to cure such breach or violation within thirty (30) days of receiving notice of such breach; provided, further, that if such breach or violation cannot be cured within such period, and the Managing Member is proceeding with diligence to cure such breach, the 30-day cure period shall be extended by an additional sixty (60) days, for a total cure period of ninety (90) days so long as such extended cure period could not reasonably be expected to have a Material Adverse Effect on the any Project Company, the Class A Members, the Company or a Facility.

(b) If the Managing Member is so removed, the Consent of the Class A Members shall be required to elect a successor Managing Member, and the Class A Members and any other Class B Member that is not the Managing Member that was removed or an Affiliate of the Managing Member that was removed shall be entitled to elect a successor Managing Member to succeed to all the rights, and to perform all of the obligations, set forth for the Managing Member hereunder. The Person selected as the successor Managing Member shall be a Qualified Replacement Manager, shall enter into a replacement Management Services Agreement and shall execute a counterpart to this Agreement.

6.4 Indemnification and Exculpation.

(a) To the fullest extent permitted by Applicable Law, the Managing Member and its officers, directors, employees, members and agents shall be exculpated from, and the

Company shall indemnify such Persons from and against, all Claims any of them incur by reason of any act or omission performed or omitted by such Person in a manner reasonably believed to be consistent with its rights and obligations under Applicable Law and this Agreement (including, without limitation, Section 6.2); provided, however, that this indemnity does not apply to Claims that are attributable to the bad faith, gross negligence, willful misconduct or fraud of such Person or a breach by the Managing Member or any Affiliate thereof of its covenants or representations set forth in any Investment Document or any Project Document; provided, further, that this indemnity does not apply to Claims that are between or among the Class B Members, the Class B Equity Investor, the Managing Member and/or any of their respective Affiliates and any of their respective officers, directors, employees, members and/or agents. For clarity, any indemnity under this Section 6.4 shall be payable solely from the assets of the Company and no Member shall be personally liable therefor.

(b) To the fullest extent permitted by Applicable Law, expenses to be incurred by an indemnified Person under this Section 6.4 shall, from time to time, be advanced by or on behalf of the Company prior to the final disposition of any matter upon receipt by the Company of an undertaking from a Person with sufficient credit capacity to repay such amount if it shall be determined that the indemnified Person is not entitled to be indemnified under this Agreement.

6.5 Annual Operating Budget. Annually, at least sixty (60) days prior to the start of each calendar year, the Managing Member shall deliver to the Members a proposed Budget for the coming calendar year. The proposed Budget shall include an estimate of the Tax Benefits allocable to the Members for such calendar year. In the event that the aggregate of all costs or expenses in the proposed Budget represents an increase of more than five percent (5%) over the aggregate of all costs or expenses in the previous year's budget, then following delivery of such proposed Budget, the Members shall have fifteen (15) days to review and either approve or reject such proposed Budget, which approval or rejection shall be made in writing within fifteen (15) days of receipt of the proposed Budget from the Managing Member and, if applicable, set forth in writing the reasons for rejecting the proposed Budget. In the event that any Member rejects the proposed Budget, either (a) the Managing Member shall promptly following such rejection submit to the Members a revised proposed Budget for the coming calendar year that does not require the approval of the Members pursuant to the preceding sentence or (b) the Members shall thereafter meet (which meeting may be in person or by telephone) to discuss and agree upon a Budget for the coming calendar year. Failure by any Member to accept or reject a proposed Budget within thirty (30) days of receipt thereof from the Managing Member shall be deemed to constitute acceptance of the proposed Budget.

6.6 Company Reimbursement. The Company shall directly pay and reimburse the Managing Member for all Company Reimbursable Expenses incurred from time to time.

6.7 ITC Conditions. The Managing Member acknowledges the importance to the Class A Member's Tax Benefits of achieving the Investor's ITC Amount and satisfying the ITC Conditions and the Managing Member agrees that it shall use its best efforts to avoid any failure to achieve and maintain such levels on its part or on the part of the Project Company. The Managing Member shall use best business efforts to cause to be kept all records, and cause to be made all elections and certifications, pertaining to any matters now or hereafter required to satisfy the ITC Conditions and qualify for the Investor ITC Amount in connection with the construction

of the Facilities. The Managing Member shall confirm compliance with the ITC Conditions when requested to do so by the Class A Member. In the event at any time it becomes apparent that the Tax Benefits projected in the Base Case Model are not likely to be substantially realized, the Managing Member shall promptly notify the Class A Member of the circumstances.

ARTICLE VII
RIGHTS AND RESPONSIBILITIES OF MEMBERS

7.1 General. The rights and responsibilities of the Members shall be as provided in the Delaware Certificate, this Agreement and the Act.

7.2 Member Voting Rights. Except as provided in Sections 6.2(b), 6.2(c) and 6.2(d) and as otherwise expressly provided in this Agreement or as required by the Act, the consent of the Members shall not be required and the Managing Member (and not the other Members) shall have all right, power and authority to do for, on behalf of, and in the name of the Company, all things that the Managing Member deems necessary, proper or desirable to carry out its duties and responsibilities. Without limitation of the foregoing, to the extent that the consent of the Members is expressly required by this Agreement or the Act, except as provided in Sections 6.2(b), 6.2(c) and 6.2(d) or as otherwise expressly provided in this Agreement, the Consent of the Members shall constitute approval by, or the authorization of, any action by or on behalf of the Company that expressly requires a vote, consent, approval or action of or an election by the Members; provided, that, without the prior written approval of each Member adversely affected thereby, no such consent shall (i) modify the limited liability of a Member; (ii) require a Member to provide funds to the Company, by loan, contribution or otherwise (or amend any of the conditions to making any loan or contribution); (iii) alter the interest of any Member in Capital Accounts, Profits, Losses, distributions, Tax Benefits or Available Cash Flow or (iv) amend, supplement or otherwise modify (x) any provision of this Agreement that would increase the liability of a Member; (y) Sections 6.2(b), 6.2(c), 6.2(d) or (z) this Section 7.2, or, in each case, any of the definitions of capitalized terms used in any of the foregoing provisions.

7.3 Member Liability.

(a) To the fullest extent permitted under the Act and any other Applicable Law as currently or hereafter in effect, no Member shall have any personal liability whatsoever, whether to the Company or to its creditors for the debts, obligations, expenses or liabilities of the Company, whether arising in contract, tort or otherwise, which shall be solely the debts, obligations or liabilities of the Company, or for any of the Company's losses, in excess of the value of such Member's Capital Account, except as expressly provided herein.

(b) A Member shall be liable only to make its Capital Contributions as provided herein and, except as is otherwise provided in Section 10.3, no Member shall be required to restore a deficit balance in its Capital Account. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Members or the Managing Member for liabilities of the Company.

(c) Notwithstanding any other provision of this Agreement, no Class A Member will be deemed to have any fiduciary duty to any other Member in connection with its exercise of its right to participate in voting regarding the approval of certain actions of the Company as provided in this Agreement or in giving or withholding consent to matters as to which such consent is required pursuant to this Agreement, notwithstanding any effect upon the Company, the Project Company or any other Member of any outcome of the exercise of such right or power.

7.4 Withdrawal. Except as otherwise provided in this Agreement, no Member shall be entitled to: (i) voluntarily withdraw from the Company; (ii) withdraw any part of such Member's Capital Contributions from the Company; (iii) demand the return of such Member's Capital Contributions; or (iv) receive property other than cash in return for such Member's Capital Contribution.

7.5 Member Compensation. No Member shall receive any interest, compensation or drawing with respect to its Capital Contributions or its Capital Account or for services rendered on behalf of the Company or otherwise, in its capacity as a Member, except as otherwise provided in this Agreement or the Management Services Agreement.

7.6 Other Ventures. Notwithstanding any other provision of this Agreement or any duty existing at law or in equity, the Members (including the Managing Member) and their respective Affiliates at any time and from time to time may engage in and possess interests in other business ventures of any and every type and description, including other business ventures competitive with, or of the same type and description as, the Company or the Project Company, independently or with others, with no obligation to offer to the Company or any other Member the right to participate therein. Neither the Company nor any other Member shall have any rights by virtue of this Agreement in or to such other business ventures or to the income or profits derived therefrom.

7.7 Confidential Information.

(a) With respect to each of the Company and the Members, except to the extent necessary for the exercise of its rights and remedies and the performance of its obligations under this Agreement or otherwise with respect to a Facility, such Member will not itself use or intentionally disclose (and will not permit the use or disclosure by any of its Affiliates, any of the officers, directors or employees of it or its Affiliates (collectively, "**Representatives**"), or any of its advisors, counsel and public accountants (collectively, "**Advisors**")), directly or indirectly, any of the applicable Project Documents, this Agreement or other confidential information in respect of the transactions contemplated hereby ("**Confidential Information**"); provided, that (i) any such Member and its Affiliates, Representatives and Advisors may use and disclose Confidential Information to such Member's Affiliates, Representatives and Advisors and to any other Member and its Affiliates, Representatives and Advisors, (ii) any such Member and its Affiliates, Representatives and Advisors may use and disclose Confidential Information that (A) has been publicly disclosed or is publicly known (other than by such Member or any of its Affiliates, Representatives or Advisors in breach of this Section 7.7), (B) has come into the possession of such Member or any of its Affiliates, Representatives or Advisors other than in connection with the transactions contemplated by this Agreement, or (C) has been independently developed by

such Member or any of its Affiliates, Representatives or Advisors without use of information obtained under this Agreement, (iii) to the extent that such disclosure is required by law, a subpoena or any other applicable legal process or by a Governmental Authority or rules or regulations of a securities exchange having jurisdiction over such Member or its Affiliates, such Member may disclose Confidential Information provided that in such case such Member shall, unless otherwise prohibited by law, (1) give prompt notice to the other Members that such disclosure is or may be required and (2) cooperate in protecting such confidential or proprietary nature of the Confidential Information which must so be disclosed; provided, that no such notification shall be required in respect of any disclosure to bank, insurance or financial industry regulatory authorities having jurisdiction over such Member or its Affiliates or under the laws, rules or regulations of the Securities and Exchange Commission, (iv) disclosures to lenders, potential lenders or other Persons providing financing to the Company or to their respective representatives and advisors, any Member or any Affiliate of any Member and potential purchasers of equity interests in the Company, any Member or any Affiliate of any Member are permitted if such Persons have agreed to abide by the terms of this Section 7.7 or have otherwise entered into an agreement with restrictions on disclosure substantially similar to the terms of this Section 7.7 (or in the case of advisors, are otherwise bound by professional or legal obligations of confidentiality), (v) any such Member and its Affiliates, Representatives and Advisors may disclose Confidential Information, and make such filings, as may be required by this Agreement or the Project Documents, (vi) any Member which is an insurance company or an Affiliate thereof may disclose such information to the National Association of Insurance Commissioners and any rating agency requiring access to its portfolio, (vii) the Class B Equity Investor and its Affiliates, Representatives and Advisors may disclose Confidential Information relating to a Facility, as applicable (but not Confidential Information relating to any Member), to lenders, potential lenders or other Persons providing financing to any Person developing or proposing to develop any additional phase of a Facility and potential purchasers of equity interests in such Person or potential power or renewable energy credits purchasers from such Persons, or to any Person in connection with the operation of a Facility, and (viii) any such Member may disclose Confidential Information to the United States Department of Treasury, the IRS or any state taxing authority in connection with any communication regarding the tax consequences of a Facility, the Company's ownership and operation of a Facility or such Member's ownership of an interest in the Company; provided, that such Member shall, as soon as practicable, notify the other Members of such disclosure, furnish a copy of any written material provided to the IRS or any state taxing authority to such other Members and, if practicable, afford such other Members reasonable opportunity to comment on the proposed disclosure (but for the avoidance of doubt the such other Members will not have the right to consent to such proposed disclosure). A Member's obligations pursuant to this Article VII shall survive the Transfer of its Units.

(b) The foregoing obligations shall not apply to the tax treatment or tax structure of the Transaction and each Member (and any Representative or Affiliate of such party) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Transaction and all other materials of any kind (including opinions or other tax analyses) that are provided to any Member to the extent relating to such tax treatment and tax structure (all such information that may be so disclosed hereunder is hereinafter referred to as the "**Tax Information**"). For purposes of this Section 7.7(b), the Tax Information includes only those facts that may be relevant to understanding the purported or claimed U.S. federal income tax

treatment or tax structure of the Transaction and, to eliminate any doubt, therefore specifically does not include information that either reveals or standing alone or in the aggregate with other information so disclosed tends of itself to reveal or allow the recipient of the information to ascertain the identity of any of the Company, any Member (or potential member) of the Company, or any other third parties involved in any of the Transaction or any other potential transactions with any of the foregoing. However, any Tax Information is required to be kept confidential to the extent necessary to comply with any applicable securities laws. This Section 7.7(b) is intended to prevent such an investment in the Company from being treated as "reportable transaction" as a result of it being a transaction offered to a taxpayer under conditions of confidentiality within the meaning of Code Sections 6011, 6111 and 6112 (or any successor provision) and the Treasury Regulations thereunder (as clarified by Notice 2004-80 and Notice 2005-22) and shall be construed in a manner consistent with such purpose.

(c) Except as otherwise permitted by this Section 7.7, no Member shall include in a press release or otherwise disclose (other than as required to be included in a filing to any bank, insurance or financial industry regulatory authority having jurisdiction over such Member, its affiliates or permitted Transferees) the name, contact information or any other personal information of any Member without the prior written consent of such Member.

(d) If the Company or any Subsidiary thereof is required at any time to make any regulatory filing that identifies by name, or otherwise relates specifically to, any Member or any of its Affiliates or permitted Transferees, then the Company shall submit (or the Company shall cause its Subsidiary to submit) an advance draft of such regulatory filing to such Member or its Affiliate or permitted Transferee, as applicable, and each such Member shall cooperate and shall provide such information as is necessary to complete such filing. Such Member (or its Affiliate or permitted Transferee, as applicable) shall have the right to provide comments to such regulatory filing as it relates to such Member (or its Affiliate or permitted Transferee), and the Company or its Subsidiary shall, to the extent reasonably practicable, incorporate or accommodate, prior to submitting such filing, such comments.

(e) If any Member is required at any time to make any regulatory filing (other than a filing to any bank, insurance or financial industry regulatory authority having jurisdiction over such Member or its affiliates) that identifies by name, or otherwise relates specifically to, any other Member, then such Member shall submit an advance draft of the relevant portions of such regulatory filing to such other Member. Such other Member shall have the right to provide comments to such regulatory filing as it relates to such other Member, and the Member making such filing shall, to the extent reasonably practicable, incorporate or accommodate, prior to submitting such filing, such comments.

ARTICLE VIII
ADMINISTRATIVE AND TAX MATTERS

8.1 Intent for Income Tax Purposes. The Members intend that the Company be treated as a partnership for federal, state and local income tax purposes and that it be operated in a manner consistent with such treatment, but that the Company not be operated or treated as a "partnership" for any other purpose, including, but not limited to, Section 303 of the United States Bankruptcy Code, and the provisions of this Agreement may not be construed to suggest otherwise.

8.2 **Books and Records**. The Company's books of account shall be prepared and maintained in accordance with GAAP for the type of business of the Company. The Managing Member shall cause to be kept, at the principal place of business of the Company, full and proper ledgers and other books of account of all receipts and disbursements and other financial activities of the Company, including the following documents:

(a) A copy of the certificate of formation of the Company and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate has been executed;

(b) Copies of the Company's federal, state and local income tax or information returns and reports (including any information or reports pertaining to any tax elections made by the Company), if any, for the six (6) most recent Taxable Years of the Company;

(c) Copies of this Agreement and all amendments thereto;

(d) Financial statements, including a consolidated balance sheet and consolidated statements of income (or loss), of the Company and its consolidated subsidiaries for, to the extent applicable, each of the seven (7) most recent Fiscal Years, including quarterly internal consolidated financial statements of the Company; and

(e) The Company's and the Project Company's books and records for at least the current and, to the extent applicable, the past seven (7) Fiscal Years.

8.3 **Information and Access Rights**. The Members and their respective agents will have the right, at their sole risk and expense and upon reasonable prior notice to the Managing Member, to inspect each Facility, and all relevant books and records relating thereto and make copies thereof. Any such inspection will be conducted during normal business hours and so as not to unreasonably interfere with the business of the Managing Member.

8.4 **Reports**. The Managing Member shall, at the Company's expense, deliver, or caused to be delivered to each Member, the following reports, information and financial statements at the times indicated below:

(a) Annually, within ninety (90) days after the end of each Fiscal Year (as such dates may be extended or waived only by the Consent of the Class A Members), commencing with the Fiscal Year ended December 31, 2017, consolidated financial statements for the Company and its consolidated subsidiaries, prepared by the Managing Member and audited by the Certified Public Accountant, prepared on a GAAP basis for the immediately-preceding year-end, including a consolidated balance sheet and consolidated statements of income, members' equity and cash flows (the "**Annual Report**") and accompanied by a report of such accounting firm stating that their examination was made in accordance with generally accepted auditing standards and that in their opinion such financial statements and Annual Report of the Company and its consolidated subsidiaries fairly present the Company's and its consolidated subsidiaries' cash flows, results of operations and financial position on a GAAP basis. Each Annual Report and each report required by Section 8.4(b) below shall include, for the period covered by such report:

(i) the amount of operating expenses and fees paid to the Managing Member or its Affiliates, together with details supporting the calculation of each such amount and a statement of whether and the extent to which such amounts are in compliance with the Budget applicable to such period; and

(ii) a summary of the Class A Member's capital account activity for such fiscal year or quarter, including (A) a beginning capital account balance, (B) cash contributions, (C) distributions, (D) gain or loss from operations, (E) unrealized depreciation and appreciation on investment, and (F) a closing capital account balance; and

(iii) a copy of any written report delivered to a third party by the Company, Project Company, the Managing Member or any Affiliate of the Managing Member under any of the Financing Documents, Project Documents, Power Purchase Agreement or any lease relating to a Facility.

(b) Within sixty (60) days after the end of each of the first three (3) calendar quarters of each Fiscal Year (as such dates may be extended or waived by the applicable Members), unaudited quarterly financial statements of the Company and its consolidated subsidiaries for such period and portion of the Fiscal Year then ended, all in reasonable detail and fairly presenting the financial position of the Company and its consolidated subsidiaries, as of the end of such quarter, on a GAAP basis, subject to lack of footnotes and normal year-end adjustments.

(c) (i) no later than April 15th of each year, a draft IRS Schedule K-1 for the prior Fiscal Year, (ii) no later than May 31st of each year, the final IRS Schedule K-1 and other tax information necessary for the preparation of the Member's federal income tax returns; (iii) no later than December 15 of each year, an estimate of the Member's Tax Benefits and Losses for the current fiscal year and the next fiscal year, and (iv) within ninety (90) days of the end of each fiscal quarter of the Company, a report containing a reasonable estimate of the Member's Tax Benefits and Losses resulting from its investment in the Company.

(d) Promptly upon becoming aware of any such event or circumstance, notice of (i) any material litigation pending or, to the knowledge of the Managing Member, threatened against the Company, the Project Company or any Facility; (ii) any material event of default under the Principal Project Documents or the Financing Documents; (iii) any audit, inquiry, investigation or other administrative or judicial proceeding by the IRS, Securities and Exchange Commission or other regulatory or administrative body with authority over the Company, the Managing Member, the Project Company or any Facility; (iv) any material claim or series of related claims that are material in the aggregate for indemnification arising under this Agreement; (v) any legal or administrative action, proceeding or investigation pending, or to the knowledge of the Managing Member, threatened, before any court or governmental authority, including, without limitation, the Securities and Exchange Commission or any state securities regulatory authority, against the Managing Member or any key member, director, officer, employee or agent of the Managing Member (the "**Principals**") that claims or alleges (A) violation of any federal or state securities law, rule or regulation, (B) breach of fiduciary duties, fraud, misrepresentation or willful misconduct or (C) a misdemeanor involving the misapplication or misuse of money of another, or any felony; (vi) the occurrence any event that causes (or is reasonably expected to cause) the Company's expenses to exceed the Budget by more than 10% and (vii) any material breach of any

of the Financing Documents, Project Documents, Power Purchase Agreement or any lease relating to a Facility

(e) Promptly following any request therefor, such other reports and information in the possession of the Managing Member as reasonably requested by the Members and such other reports reasonably requested by and paid for by the requesting Member to the extent external costs are incurred with respect to the preparation of such reports.

8.5 Permitted Investments. All cash of the Company may only be invested and reinvested in one of the following investment alternatives ("**Permitted Investments**") (but not directly or indirectly in any "public utility" or "holding company" as defined in the FPA unless any applicable FERC approval has been obtained):

(a) Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury of the United States of America) or obligations, the timely payment of the principal of and interest on which are, fully guaranteed by the United States of America;

(b) Obligations, debentures, notes or other evidence of Indebtedness issued or guaranteed by any of the following: Export-Import Bank of the United States, Federal Housing Administration or other agency or instrumentality of the United States;

(c) Interest-bearing demand or time deposits (including certificates of deposit) which are either:

(i) insured by the Federal Deposit Insurance Corporation, or

(ii) held in banks and savings and loan associations, having general obligations rated at least "AA" or equivalent by S&P or Moody's, or if not so rated, secured at all times, in the manner and to the extent provided by law, by collateral security described in clauses (a) or (b) of this definition, of a market value of no less than the amount of moneys so invested;

(d) Obligations of any state of the United States or any agency or instrumentality of any of the foregoing which are rated at least "AA" by S&P or at least "Aa" by Moody's;

(e) 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 but excluding any such commercial paper issued by any Member or any Affiliate of the Managing Member; or

(f) Any other investments agreed to with the Consent of the Members and the Managing Member.

8.6 **Tax Elections**. The Managing Member shall make the following federal income tax elections on the appropriate Company tax returns:

(a) To the extent permitted under Section 706 of the Code, to elect the calendar year as the Company's Taxable Year;

(b) To elect the accrual method of accounting;

(c) To elect to amortize any organizational and start-up expenses of the Company ratably over a period of one hundred eighty (180) months as permitted by Section 709(b) of the Code;

(d) To make any election necessary to claim an ITC equal to at least the Investor ITC Amount;

(e) If a distribution of the Company's property as described in Section 734 of the Code occurs or a transfer of Membership Interest as described in Section 743 of the Code occurs to elect pursuant to Section 754 of the Code to adjust the basis of the Company's properties;

(f) The election described in Section 168(k)(2)(D)(iii) of the Code to opt out of "bonus depreciation" for the class of property that includes a Facility for each Taxable Year in which a Facility is placed in service;

(g) Such elections with respect to depreciation as may be needed to be consistent with the Base Case Model; and

(h) To elect under Section 6231(a)(1)(B)(ii) of the Code and the Treasury Regulations thereunder to treat the Company as a partnership to which the provisions of Sections 6221 through 6234 of the Code, inclusive, apply.

The Managing Member shall make no other tax elections for the Company, except as otherwise provided herein, without the written Consent of the Members, such consent not to be unreasonably withheld; provided, however, that the Managing Member may, subject to the limitation that the Tax Return shall be filed no later than August 1st of the year following the end of each Taxable Year, elect to extend the time for filing any Tax Return as provided for under the Code and applicable State statutes; and provided, further, however, based upon current Knowledge of the facts pertaining to the transaction as of the date hereof, the Company will not report the transaction to the IRS as a "reportable transaction" pursuant to Section 6111 of the Code, the relevant Treasury Regulations and any other administrative authorities or pronouncements, in each case as they exist on the date hereof (provided, however, that if such facts or law change in a manner affecting the reportability of the transaction, the specific covenant within this proviso shall not be applicable to the Company). Neither the Company nor any Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of Applicable Law of any state. No Member, Managing Member, officer or agent of the Company is authorized to, or may, file IRS Form 8832 (or such alternative or successor form) to elect to have the Company classified as a corporation for federal income tax purposes under Regulation Section 301.7701-3. The Managing Member shall, in

addition, affirmatively take such action within its control as may be necessary or required to maintain the status of the Company as a partnership.

8.7 Tax Matters Member, Partnership Representative and Company Tax Filings.

(a) For Company taxable years in which Section 8.7(b) does not apply:

(i) The Class B Equity Investor shall be, and so long as it continues to be the Managing Member, shall continue to be, the "tax matters partner" of the Company pursuant to Section 6231(a)(7) of the Code (the "**Tax Matters Member**"); provided, that if the Class B Equity Investor is no longer the Managing Member, the Person selected as the successor Managing Member pursuant to Section 6.3(b) shall appoint a new Tax Matters Member. At the request of any other Member, the Tax Matters Member shall take such action as may be necessary to cause, to the extent possible, such other Member to become a "notice partner" within the meaning of Sections 6231(a)(8) and 6223 of the Code. The Tax Matters Member shall provide the Members all notices and other written communications received by the Tax Matters Member from the IRS or sent by the Tax Matters Member to the IRS, relating to the Company. The Tax Matters Member shall provide the Members with reasonable opportunity to review and comment on any written communications to the IRS. The Tax Matters Member shall provide Members with prompt written notice of all meetings or conferences with the IRS and the Members shall have the right to attend all such meetings and conferences at their expense.

(ii) Without the Consent of the Class A Members, the Tax Matters Member shall not (A) commence a judicial action (including filing a petition as contemplated in Section 6226(a) or 6228 of the Code) with respect to a federal income tax matter or appeal any adverse determination of a judicial tribunal; (B) enter into a settlement agreement with the IRS; (C) intervene in any action as contemplated by Section 6226(b) of the Code; (D) file any request contemplated in Section 6227 of the Code; or (E) enter into an agreement extending the period of limitations as contemplated in Section 6229(b)(1)(B) of Code. Subject to the immediately preceding sentence, the Tax Matters Member shall have the right to defend against any proposed adjustments with respect to any "partnership item" (as defined in Section 6231(a)(3) of the Code) in the manner provided, and to the extent consistent with, Sections 6221 through 6223 of the Code and the Treasury Regulations issued thereunder. With respect to any other partnership item of the Company not covered by the two preceding sentences, if any Member intends to file, pursuant to Section 6227 of the Code, a request for an administrative adjustment of any such partnership item of the Company, or to file a petition under Sections 6226, 6228 or other Sections of the Code with respect to any such partnership item or any other tax matter involving the Company, such Member shall, at least thirty (30) days prior to any such filing, notify the other Members of such intent, which notification must include a reasonable description of the contemplated action and the reasons for such action. Any cost or expense incurred by the Tax Matters Member in connection with its duties, including, if relevant, the preparation for or pursuance of administrative or judicial proceedings, shall be paid by the Company.

(iii) The Class B Equity Investor and any subsequent Tax Matters Member may be removed as Tax Matters Member by the Consent of the Class A Members if the Tax Matters Member (A) has engaged in negligence, misconduct or fraud, (B) has performed any action or omitted to take any action that is a breach or violation of the obligations of the Tax

Matters Member under this Agreement or (C) is declared Bankrupt. If the Tax Matters Member is so removed, (x) if there is only one other Member of the Company, that Member shall become the Tax Matters Member or (y) if there is more than one other Member of the Company, the Consent of the Class A Members shall be required to elect a successor Tax Matters Member.

(iv) As used in Section 8.7(a), the term "Code" refers to the Code as in effect immediately prior to the enactment of the 2015 Act.

(b) If, and to the extent that, provisions of the Bipartisan Budget Act of 2015 (the "**2015 Act**") apply to any audit of any tax return of the Company ("**Affected Tax Return**"), then the following provisions shall apply:

(i) Designation of Partnership Representative. The Managing Member shall be the "partnership representative" (the "**Partnership Representative**") pursuant to the Code in connection with any audit of such Affected Tax Return. With the consent of the Class A Members, the Company may engage accountants and legal counsel reasonably satisfactory to the Class A Members to assist the Partnership Representative in discharging its duties hereunder.

(ii) Replacement Partnership Representative. If (A) the Managing Member designated as Partnership Representative (1) withdraws from the Company, or (2) is removed pursuant to Section 6.3, or (B) the Class A Members determine to designate a new Partnership Representative, then the Members shall designate a successor Partnership Representative in accordance with applicable rules of the Code, Treasury regulations, and the IRS that apply to audits conducted pursuant to the 2015 Act ("Applicable Rules") and the successor Partnership Representative shall take such action, including notifying the IRS of its designation as such, as may be necessary or appropriate under the Applicable Rules.

(iii) Consent of Class A Members Generally Required. Notwithstanding any provision in this Agreement to the contrary, to the extent permitted by Applicable Rules, the Partnership Representative shall not take any of the following actions without the Consent of the Class A Members:

(A) *Extend the Statute of Limitations*. Enter into any agreement with the IRS to extend the period for assessing any tax that is attributable to any item that may be the subject of an audit of an Affected Tax Return.

(B) *Settle*. Settle any audit of an Affected Tax Return with the IRS concerning the adjustment of any Company item.

(C) *Litigate*. Commence or settle any Tax Court case or other judicial or administrative proceeding with respect to any Affected Tax Return.

(D) *Apply the Rules to pre-2018 Returns*. Elect to have the provisions of the 2015 Act apply to any tax return of the Company for any tax year that commences prior to 2018.

If, at any time, the Partnership Representative determines that it cannot comply with any of the foregoing because it is not permitted by the Applicable Rules, it shall promptly, and in any event,

not less than thirty (30) days before taking the action described, notify the Class A Members with sufficient detail to explain why the Applicable Rules prevent it from complying.

(iv) Notices, Consent and Failure to Obtain Consent. The Partnership Representative shall keep the Class A Members promptly advised whenever the Company has any dispute with or inquiry from any federal, state or local taxing authority, and it shall take such action as may be required to enable the Class A Members and their representatives to participate in any meeting or presentation with or to any federal, state or local tax authority, or in connection with any court or administrative proceeding, whether such meeting, presentation or proceeding is in person, or by electronic, telephonic, or other means. The Partnership Representative shall use its best efforts to assure that the Members are aware of any matter for which this provision provides for their participation, or which requires their consent, with the intention that the Company and its Members should have sufficient time and notice to be able to comply with any time requirements that may be imposed by the applicable tax authority, including the Applicable Rules and any other rules of the IRS in its conduct of any particular examination of an Affected Tax Return. If the Managing Member promptly and diligently attempts to contact the Members and obtain Consent for a matter that requires a response to the IRS within a specified time period, and it has not received a response from sufficient Members to constitute Consent, but, after consultation with accountants or legal counsel, as appropriate, it reasonably determines that it is in the best interest of the Company and the Members to provide a certain response to the IRS, then it may provide such response to the IRS, but only after giving written notice to all Members not less than thirty (30) business days prior to providing such response to the IRS.

(v) Amendments to Comply with Applicable Law. The Members agree to work together, reasonably and in good faith, to amend this Agreement as soon as reasonably practicable after final rules are adopted with respect to the 2015 Act to incorporate provisions that will amend this Agreement, as necessary, for Taxable Years for which the 2015 Act is effective. Such provisions will apply the 2015 Act to the extent reasonably possible, to preserve and maintain (including through relevant elections and credit support) the relative and analogous rights, duties, responsibilities, indemnities, obligations and risk of the Members to those provided under this Agreement. In the event subsequent to such amendment, there are further statutory amendments, Treasury Regulations, notices, revenue procedures, revenue rulings or other administrative guidance, interpreting or applying the 2015 Act, the Members shall further amend this Agreement consistent with this Section 8.7(b). Without limiting the foregoing, such revised provisions will provide, for taxable years beginning after December 31, 2017, that upon any final partnership adjustment occurring under the 2015 Act, the Class A Member or the Class B Member may cause the Company to elect to utilize the alternative procedure described in Section 6226 of the Code (as amended by the 2015 Act) to have the Members of the Company for the year which is under examination pay the applicable tax liability, and the "partnership representative" (within the meaning of the Section 6223 of the 2015 Act) shall provide the Internal Revenue Service and each affected Member with such information as required by such Section 6226 and any Treasury Regulations promulgated thereunder. Each Member agrees to cooperate with the Company in utilizing the procedures under Section 6226 of the Code, whether or not such person is a Member at the time of a final partnership adjustment. In the event the Members have not amended this Agreement to the reasonable satisfaction of each Member on or before November 7, 2017, then the Partnership Representative will, within thirty (30) days after the date of the notice of final partnership adjustment, make the election contemplated by Code section 6226, and shall follow

the procedures required in connection with that election, to make inapplicable to the Company the requirement in Code section 6225 that the Company pay any "imputed underpayment" as that term is used in such section.

(c) The Tax Matters Member shall prepare, or cause to be prepared, and timely file (on behalf of the Company) all federal, state and local tax returns required to be filed by the Company. Each Member shall furnish to the Tax Matters Member all pertinent information in its possession relating to the Company's operations that is reasonably necessary to enable the Company's tax returns to be timely prepared and filed. The Tax Matters Member shall prepare, or cause to be prepared, the Company's federal income tax return (including K-1s) (the "**Tax Return**") on a basis consistent with this Agreement and the assumptions contained in the Base Case Model, except to the extent such inconsistency is the result of either (x) a Class A ITC Loss Event, or (y) any final determination under a federal income tax audit or administrative or judicial proceeding of such a federal income tax return for a prior period making an adjustment to an item of such federal income tax return (*provided* that such audit or administrative or judicial proceeding is prosecuted by the Company materially in the manner required by this Section 8.7) (a "**Consistent Return**"). The Tax Matters Member shall use commercially reasonable efforts to furnish to the Members, by no later than ninety (90) days following each Taxable Year, the Tax Return proposed to be filed by the Tax Matters Member. The Tax Matters Member shall furnish to the Members reasonable estimates (broken down by item and character of income, loss, deduction or credit) prior to the date that is seventy-five (75) days after the end of the Taxable Year. In the event that the Tax Matters Member anticipates furnishing to the Members a Tax Return that is not a Consistent Return, the Tax Matters Member shall notify the Members in writing no less than thirty (30) days prior to the date on which it intends to furnish such Tax Return that such Tax Return will not be a Consistent Return, other than inconsistencies solely relating to variances in the anticipated operating results of a Facility. If a Tax Return is timely objected to by the Class A Members, the Tax Matters Member shall submit such Tax Return, together with copies of all relevant workpapers used in preparation thereof, to a nationally recognized firm (other than the Certified Public Accountant) of independent public accountants or, if related to a legal matter, a law firm, in each case, selected by the Class A Member. The determination of such independent expert, and the Tax Return as completed by such expert, shall be final and binding on the Members, and the Tax Matters Member shall cause such final Tax Return to be filed. The Company shall bear the costs of the preparation and filing of its returns, including the fees of the independent expert. In no event shall any Tax Return be filed later than August 1st.

(d) The provisions of this Article VIII will survive the termination of the Company or the termination of any Member's interest in the Company and will remain binding on the Member for the period of time necessary to resolve with the IRS or other federal tax agency any and all federal income tax matters relating to the Company that are subject to Sections 6221 through 6233 of the Code as in effect immediately prior to the enactment of the 2015 Act or the Applicable Rules.

8.8 Financial Accounting. Each Member may report the transactions contemplated hereby for financial accounting purposes in such manner as the Member and its accountants may determine appropriate.

8.9 Legend. Until (a) the securities representing ownership of membership interests in the Company are effectively registered under the Securities Act or (b) the holder of such securities delivers to the Company a written opinion of counsel of such holder to the effect that such legend is no longer necessary under the Securities Act, the Company will cause each certificate representing its securities to be stamped or otherwise imprinted with the following legend:

> THE MEMBERSHIP INTEREST REPRESENTED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAW OF ANY STATE. SUCH MEMBERSHIP INTEREST MAY NOT BE SOLD OR TRANSFERRED UNLESS SUBSEQUENTLY REGISTERED OR UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE. THIS CERTIFICATE EVIDENCES AN INTEREST IN BLUE SKY UTILITY PORTFOLIO I 2017, LLC AND SHALL BE A SECURITY GOVERNED BY ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT FROM TIME TO TIME IN THE STATES OF DELAWARE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OTHER APPLICABLE JURISDICTION.

8.10 Representations, Warranties and Covenants of the Class B Member. Each Class B Member, jointly and severally, represents and warrants on each Funding Date and covenants on and after the Effective Date to the Class A Members (in its capacity as both the Class B Member and the Managing Member) as follows:

(a) The Class B Member is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California.

(b) The Class B Member has the full limited liability company right, power and authority to perform its obligations hereunder.

(c) This Agreement is a legal valid and binding obligation of the Class B Member enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

(d) Such Member (or if it is a disregarded entity, or if it and its owner are disregarded entities, its owner or its owner's owner) is and will remain a United States person within the meaning of Section 7701(a)(30) of the Code and is not, and will not become, subject to withholding under Section 1446 of the Code.

(e) That either (A) no part of the aggregate Capital Contributions made by such Member and used by such Member to acquire any Units, constitutes "plan assets" within the meaning of Department of Labor Reg. §2510.3-101 of any "employee benefit plan" within the meaning of Section 3(3) of ERISA, or other "benefit plan investor" (as defined in U.S. Department of Labor Reg. §§2510.3-101 et seq. or in Section 3(42) of ERISA) or assets allocated to any insurance company separate account or general account in which any such employee benefit plan or benefit plan investor (or related trust) has any interest or (B) the source of the funding used to pay the Capital Contributions made by such Member is an "insurance company general account"

within the meaning of Department of Labor Prohibited Transaction Exemption 95-60, issued July 12, 1995, and there is no employee benefit plan, treating as a single plan all plans maintained by the same employer or employee organization, with respect to which the amount of the general account reserves and liabilities for all contracts held by or on behalf of such plan exceeds ten percent (10%) of the total reserves and liabilities of such general account (exclusive of separate account liabilities) plus surplus, as set forth in the National Association of Insurance Commissioners "Annual Statement" filed with such Member's state of domicile.

(f) The Class B Member is and will remain for federal income tax purposes a partnership or entity disregarded from its owner for federal income tax purposes, but the beneficial owner of such Class B Member will not be a Disqualified Person, unless such person holds its interest in the Class B Member through a taxable C corporation which is not a Disqualified Person.

(g) The Class B Member will neither take any action that would cause, nor fail to take any action (within the reasonable control of it or its Affiliate) that would prevent, the Assets of the Company from becoming (i) except as provided in Section 8.6(g), subject to the alternative depreciation system within the meaning of Section 168(g) of the Code or (ii) "tax-exempt use property" within the meaning of Section 168(h) of the Code.

(h) Based upon its Knowledge of the facts pertaining to the transaction as of the date hereof, the Class B Member will not report the transaction to the IRS as a "reportable transaction" pursuant to Section 6111 of the Code, the relevant Treasury Regulations and any other administrative authorities or pronouncements, in each case as they exist on the date hereof; provided, however, that if such facts or law change in a manner affecting the reportability of the transaction, this covenant shall not be applicable.

(i) The Class B Member will not take any action that would cause the Company to become a "related person" to any purchaser under any Power Purchase Agreement for purposes of Sections 267 or 707 of the Code, assuming the Company is not a "related person" on account of a relationship with any Class A Member or any Affiliate thereof.

(j) All of the materials used to build the Facilities will be new and previously unused.

(k) The Class B Member will not agree to any arrangement that would result in any loss, reduction, disallowance or deferral of the Tax Benefits.

(l) The Class B Member shall establish and maintain, the reserves, if any, contemplated to be funded in the Base Case Model (and for the purposes set forth in the Base Case Model) or as may be required by any lender. The Operating Reserve shall be deposited in an interest-bearing account in a financial institution mutually agreeable to the Managing Member and the Class A Member. The Operating Reserve account instructions shall provide that no withdrawal may be made from the account without the signature of the Class A Member. Interest earned, if any, on the Operating Reserve shall be added to the Operating Reserve.

(m) Each Facility has been and will be developed in a manner which satisfies the ITC Conditions.

(n) To the Knowledge of the Class B Member, all material facts related to the transactions contemplated by the Investment Documents and the Facilities and all material transactions in connection with the construction of the Facilities have been disclosed to the Class A Member and all materials furnished by the Class B Member or its Affiliates to the Class A Member with respect to the Facilities or the Class A Member's investment in the Company are true and complete in all material respects and the Class B Member has not knowingly withheld any information that is in the knowledge or possession of the Class B Member and that, if not disclosed to the Class A Member, would be likely to materially affect a reasonable investor's decision to acquire Membership Interests. Without limiting the generality of the foregoing, the factual assumptions set forth in the Base Case Model are reasonable, true and accurate in all material respects, subject only to such changes as shall have been disclosed in writing to, and approved in writing by, the Class A Member.

8.11 Representations, Warranties and Covenants of the Class A Member. The Class A Member represents and warrants on each Funding Date and, with respect to Section 8.11(f) and (g) below, covenants as to itself, to the other Members and the Company as follows:

(a) It is an entity duly organized, validly existing and in good standing under the laws of its jurisdiction of organization.

(b) It has the full right, power and authority to perform its obligations hereunder.

(c) This Agreement is a legal valid and binding obligation of such Member enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

(d) It (or if it is a disregarded entity, its owner) is a United States person within the meaning of Section 7701(a)(30) of the Code and is not subject to withholding under Section 1446 of the Code.

(e) That either (A) no part of the aggregate Capital Contributions made by such Member and used by such Member to acquire any Units, constitutes "plan assets" within the meaning of Department of Labor Reg. §2510.3-101 of any "employee benefit plan" within the meaning of Section 3(3) of ERISA, or other "benefit plan investor" (as defined in U.S. Department of Labor Reg. §§2510.3-101 et seq. or in Section 3(42) of ERISA) or assets allocated to any insurance company separate account or general account in which any such employee benefit plan or benefit plan investor (or related trust) has any interest or (B) the source of the funding used to pay the Capital Contributions made by such Member is an "insurance company general account" within the meaning of Department of Labor Prohibited Transaction Exemption 95-60, issued July 12, 1995, and there is no employee benefit plan, treating as a single plan all plans maintained by the same employer or employee organization, with respect to which the amount of the general account reserves and liabilities for all contracts held by or on behalf of such plan exceeds ten percent (10%) of the total reserves and liabilities of such general account (exclusive of separate account liabilities) plus surplus, as set forth in the National Association of Insurance Commissioners "Annual Statement" filed with such Member's state of domicile.

(f) Based upon its Knowledge of the facts pertaining to the transaction as of the date hereof, it will not report the transaction to the IRS as a "reportable transaction" pursuant to Section 6111 of the Code, the relevant Treasury Regulations and any other administrative authorities or pronouncements, in each case as they exist on the date hereof; provided, however, that if such facts or law change in a manner affecting the reportability of the transaction, this covenant shall not be applicable.

(g) The Class A Member will not take any action that would cause the Company to become a "related person" to any purchaser under any Power Purchase Agreement for purposes of Sections 267 or 707 of the Code, assuming the Company is not a "related person" on account of a relationship with any Class B Member or any Affiliate thereof.

8.12 Survival. The representations, warranties and covenants herein shall be continuing agreements of the Members that made them and shall continue until the termination of this Agreement.

8.13 No Breach of Obligations. Notwithstanding anything to the contrary contained herein, in no event shall it be a breach of the Managing Member's obligations pursuant to this Article VIII to fail to deliver any report, financial statement or Tax Return within the specified timeframes to the extent any failure to comply with such obligations is attributable to either the failure of any Member to grant or object to any consent required pursuant to the terms hereof necessary to enable the Managing Member to comply with such obligations.

ARTICLE IX
TRANSFERS OF INTERESTS; PURCHASE OPTION

9.1 Transfer and Encumbrances of Membership Interests.

(a) General Restriction. A Member may not Transfer or create or allow an Encumbrance on all or any portion of its Membership Interest, except in strict accordance with this Section 9.1. References in this Agreement to Transfers or Encumbrances of a "Membership Interest" shall also refer to Transfers or Encumbrances of a portion of a Membership Interest. Any attempted Transfer or Encumbrance of any Membership Interest, other than in strict accordance with this Section 9.1, shall be, and is hereby declared, null and void *ab initio*. The Members agree that a breach of the provisions of this Section 9.1 may cause irreparable injury to the Company and to the other Members for which monetary damages (or other remedy at law) are inadequate in view of (i) the complexities and uncertainties in measuring the actual damages that would be sustained by reason of the failure of a Member to comply with such provision and (ii) the uniqueness of the Company's business and the relationship among the Members. Accordingly, the Members agree that the provisions of this Section 9.1 may be enforced by specific performance.

(b) Transfers of Membership Interests.

(i) General Provision. A Member may not Transfer all or any portion of its Membership Interest except by complying with all of the following requirements:

(A) General Requirements Applicable to Transfers of Class B Interests. No Transfer of any Class B Interest (except for a Permitted Transfer) may be effected without the prior written Consent of the Class A Members (which Consent may be withheld in the sole discretion of the Class A Members). Any Transfer made pursuant to the immediately preceding sentence for which Consent is required shall be subject to the provisions of Section 9.1(d).

(B) General Requirements Applicable to Transfers of Class A Interests. No Transfer of any Class A Interest may be made before the final Tranche B Funding Date, except for Permitted Transfers. Thereafter, no Transfer of Class A Interests (except for a Permitted Transfer) may be effected without the prior written Consent of the Class B Members (such consent not to be unreasonably withheld, conditioned or delayed) unless (1) such Transfer (together with any other Transfer of Class A Interests, in the aggregate) is of fifty percent (50%) or less of the Class A Equity Investor's Class A Units owned as of the final Tranche B Funding Date if such Transfer occurs prior to the Tax Flip Point and (2) the Transferee is not a Disqualified Transferee. Any Transfer made pursuant to the preceding sentence for which Consent is required shall be subject to the provisions of Section 9.1(d).

(C) Compliance with Requirements. Any Transfer must comply with the requirements of Section 9.1(b)(iii) and, if the Transferee is to be admitted as a Member, Section 9.1(b)(ii).

(D) Permitted Transfer, Certain Other Transfer. Anything to the contrary in this Section 9.1 notwithstanding,

(1) the provisions of Section 9.1(d) shall not apply to any Permitted Transfer,

(2) the provisions of Sections 9.1(b)(i)(B) and 9.1(b)(iv) shall not apply in connection with any Transfer by Members holding Class A Interests at any time following the Tax Flip Point where the sum of all distributions under Section 5.1 to all Class A Members is less than the sum of all Capital Contributions made to the Company by the Class B Members, and

(ii) Admission of Transferee as a Member. A Transferee pursuant to a Permitted Transfer shall be admitted as a Member promptly upon its compliance with Section 9.1(b)(iii) (*Requirements Applicable to All Transfers and Admissions*). Any other Transferee has the right to be admitted to the Company as a Member, with respect to the Membership Interest so transferred to such Transferee, only if (A) the Transferring Member making the Transfer has granted the Transferee the Transferring Member's entire Membership Interest or, in the case of Transfer of a part of such Member's Membership Interest, the express right to be so admitted; and (B) such Transfer is effected in strict compliance with this Section 9.1. For the avoidance of doubt, the Transfer of any of its Class B Units by the Class B Equity Investor as permitted by Section 9.1(b)(i)(A) (*General Requirements Applicable to Transfers of Class B Interests*) or pursuant to a Permitted Transfer shall not result in the replacement of the Managing Member other than as Consented to by the Class A Members.

(iii) Requirements Applicable to All Transfers and Admissions. In addition to the requirements set forth in Sections 9.1(b)(i) and 9.1(b)(ii), any Transfer of a Membership Interest and any admission of a Transferee as a Member shall also be subject to the following requirements, and such Transfer (and admission, if applicable) shall not be effective unless such requirements are complied with:

(A) Transfer Documents. The following documents must be delivered to the Managing Member and each other Member, and must be satisfactory, in form and substance, to the Managing Member:

(1) Notice. Written notice not less than ten (10) Business Days prior to the effective date of such Transfer.

(2) Transfer Instrument. An instrument implementing the Transfer in such form receiving Managing Member consent (such consent not to be unreasonably withheld).

(3) Ratification of this Agreement. An instrument, executed by the Transferring Member and its Transferee, containing the following information and agreements, to the extent they are not contained in the instrument described in Section 9.1(b)(iii)(A)(2): (1) the notice address of the Transferee; (2) if applicable, the Member Parent of the Transferee; (3) the allocations percentages as to each class of Membership Interest of the Transferring Member after the Transfer by such Transferring Member, and its Transferee (which must total the allocations percentages as to each class of Membership Interest of the Transferring Member before the Transfer); (4) the Transferee's ratification of this Agreement and its confirmation that the representations and warranties in Article VIII applicable to it are true and correct with respect to it; (5) the Transferee's ratification of the Investment Documents to which the Transferring Member is a party and agreement to be bound by them to the same extent that the Transferring Member was bound by them prior to the Transfer; (6) in the case of any Transfer of the Class B Interests, the Transferee assumes, from and after the effective date of the Transfer, the indemnity obligation set forth in Article XI; provided, that, solely in the case of a Transfer of Class B Interests to an Affiliate of the Class B Equity Investor, the Class B Equity Investor shall reaffirm in writing its indemnity obligations as set forth in Article XI with respect to such Affiliate Transferee; and (7) representations and warranties by the Transferring Member and its Transferee (x) that the Transfer and admission is being made in accordance with Applicable Law, and (y) that the conditions set forth in Sections 9.1(b)(iii)(B) and (C) have been satisfied.

(B) Applicable Laws; Securities Laws. Such Transfer does not violate any provision of Applicable Law, including, without limitation, applicable securities laws.

(C) Tax Consequences.

(1) Termination. If, prior to the Tax Flip Point, such Transfer is of a Class B Interest, such Transferring Class B Member or the Transferee (i) shall provide to the Company and the Class A Member not later than eight (8) Business Days prior to the effective date of the Transfer an opinion of nationally recognized tax counsel reasonably acceptable to the Class A Member that such Transfer should not result in the Company's

termination within Section 708 of the Code and (ii) shall indemnify the non-Transferring Members against any such termination to the reasonable satisfaction of the non-Transferring Members.

(2) Entity Classification. Such Transfer will not cause the Company to be classified as an entity other than a partnership (or cause the Company to be treated as a publicly traded partnership) for purposes of the Code.

(3) Tax Disqualified Person. If such Transfer is of a Class B Interest and such Transfer occurs before the Compliance Date, such Transfer is not to a Disqualified Person.

(4) ITC Loss Event. If such Transfer is of a Class B Interest and such Transfer occurs before the Compliance Date, the Transferring Member or the Transferee (i) shall deliver to the Company and the Class A Member not later than eight (8) Business Days prior to the effective date of the Transfer a written opinion of nationally recognized tax counsel reasonably acceptable to the Class A Member that such Transfer will not cause an ITC Loss Event with respect to the Class A Interest and (ii) shall indemnify the non-Transferring Members against any such ITC Loss Event to the reasonable satisfaction of the non-Transferring Members.

(5) Related Person. If, prior to the Compliance Date, such Transfer is of, or in respect of, Class B Units, such Transfer will not result in the Class B Member being a "related person" to the Company or the Company being a "related person" to any purchaser of power under a power purchase agreement for purposes of Sections 267 or 707 of the Code.

[1]

(D) Payment of Expenses. The Transferring Member and its Transferee shall pay, or reimburse the Company and each Member for, all reasonable costs and expenses incurred by the Company and such Members in connection with the Transfer and admission, on or before the tenth (10th) day after the receipt by that Person of the Company's or such Member's invoice for the amount due.

(E) No Release. No Transfer of a Membership Interest shall effect a release of the Transferring Member from any liabilities to the Company or the other Members arising from events occurring prior to or in connection with the Transfer.

(F) Approved Investor. The Transferee of any Class A Interest shall have both a tangible net worth and financial creditworthiness that is equal to or greater than the tangible net worth of the Transferor on the Execution Date.

[1] Note – the last paragraph of (C) was removed because it did not seem to make sense as drafted, but we took the concepts and added them to the definition of "Transfer"

(G) Consents and Permits. All permits, consents, approvals and licenses with respect to such Transfer shall have been obtained (including any approval by FERC that any Project Company or any party to a Transfer requires).

(H) Compliance with Project Documents. The Transfer does not violate, or constitute a default or termination event under, any material Project Documents.

(I) Patriot Act Information. Any Transferee of a Class B Member shall have delivered the information requested by the Class A Members in order to allow such Class A Member to comply with the Patriot Act, if applicable, including, without limitation, the names, addresses and other information that will allow the requesting Class A Member to identify such Transferee in accordance with the requirements of the Patriot Act.

(J) Investment Company Act. Such Transfer does not require the Company to register as an "investment company" under the Investment Company Act of 1940, as amended.

(iv) Change of Member Control. Except as otherwise provided in this Agreement, a Change of Member Control must also comply with the requirements of this Section 9.1, which shall be applied by treating a Change of Member Control of a Member as a Transfer of the Membership Interest held by such Member. Without limiting the generality of the forgoing and for the avoidance of doubt, (a)if a Transfer of the Membership Interests held by a Member to a Person would be a Permitted Transfer, such Person's acquisition of Control of such Member in a Change of Member Control shall be treated as a Permitted Transfer and (b) a transfer by a Member Parent or any of its Subsidiaries of the membership interests it holds in the Class B Member which would constitute a Change of Member Control must comply with this Section 9.1 in the same manner as would a transfer of the Class B Interests held by such Class B Member (other than provisions in respect of a Member being admitted as a member of the Company). Notwithstanding the foregoing or anything to the contrary in this Agreement, Section 9.1(b)(ii) (*Admission of Transferee as Member*), Section 9.1(b)(iii)(A)(2) (*Transfer Instrument*), Section 9.1(b)(iii)(A)(3) (*Ratification of this Agreement*), Section 9.1(b)(iii)(F) (*Approved Investor*). For further clarity, Section 9.1(d) (*Right of First Bid*) shall apply to the Membership Interests held by a Member who is the subject of a Change of Member Control (unless such Change of Member Control is considered a Permitted Transfer).

(c) Encumbrances of Membership Interest. A Member may Encumber its Membership Interest if (i) such Encumbrance is approved by both the Consent of the Class A Members (which consent shall not be unreasonably withheld or delayed) and the Consent of the Class B Member (which consent shall not be unreasonably withheld or delayed) and (ii) the instrument creating such Encumbrance provides that any Transfer upon foreclosure of such Encumbrance (or Transfer in lieu of such foreclosure) must comply with the requirements of Sections 9.1(b)(i) and 9.1(b)(iii). Any such Encumbrance, and any Transfer upon foreclosure of such Encumbrance (or Transfer in lieu of such foreclosure) that complies with the requirements of this Section 9.1(c) shall be a Permitted Transfer pursuant to clause (ii) in the definition thereof.

(d) Right of First Refusal. This Section 9.1(d) shall apply to any proposed voluntary Transfer (other than a Permitted Transfer) of Membership Interests for cash or other

tangible consideration under the conditions specified in Sections 9.1(b)(i)(A) and 9.1(b)(i)(B). The Member proposing to make such a Transfer shall provide written notice of its intention to make a Transfer which shall include the purchase price and all other proposed terms of such Transfer (a "**Transfer Notice**") (i) first to the remaining Members holding Membership Interests of the same class as those Membership Interests intended to be Transferred and (ii) second to all other remaining Members. Upon receipt of a Transfer Notice, the Members shall have the right for a period of thirty (30) days to submit to the Transferring Member and each other Member an unconditional offer to purchase, at the price and on the terms set forth in the Transfer Notice(each such offer, a "**Bid**"), all or any portion (as specified in the Bid)of such Membership Interests (each Member submitting a Bid, a "**Purchasing Member**"). The Membership Interests covered by the Transfer Notice shall first be allocated for purchase among the Purchasing Members described in clause (i) above in accordance with the amount of each Bid, or if such Bids collectively exceed the Units covered by the Transfer Notice, then on a pro rata basis among such Purchasing Members in accordance with the Membership Interests then held by such Members. If the Purchasing Members described in clause (i) above do not elect to purchase all Membership Interests covered by the Transfer Notice, then any remainder shall be allocated for purchase among the Members described in clause (ii) above in accordance with the amount of each Bid, or if such Bids collectively exceed the Units covered by the Transfer Notice, then on a pro rata basis among such Purchasing Members in accordance with the Membership Interests then held by such Members. If the Purchasing Members collectively elect to purchase all of the Membership Interests offered in the Transfer Notice, then the Member intending to Transfer its Membership Interests shall sell and the Purchasing Members must purchase such Membership Interests allocated to them in accordance with this paragraph within five (5) Business Days following delivery of the Bids (or, in any event if later, the fifth (5th) Business Day after the receipt of all applicable regulatory and governmental approvals of the purchase). If the Purchasing Members do not collectively elect to purchase all of the Membership Interests offered in the Transfer Notice, then the Member intending to Transfer its Membership Interests shall have the right for a period of one hundred and eighty (180) days thereafter (or, in any event, if later, the fifth (5th) Business Day after the receipt of all applicable regulatory and governmental approvals of the purchase) to Transfer all such Membership Interests covered by the Transfer Notice at a price which is equal to or higher than the price set forth in the Transfer Notice and upon terms no less favorable in any material respect to such Member than the terms contained in the Transfer Notice; provided, that such Transfer shall be subject to any other applicable provisions of this Section 9.1.

9.2 Buyout Option.

(a) This Section 9.2 shall apply to any of the following events (each a "**Buyout Event**"):

(i) a Member becomes Bankrupt;

(ii) a Member dissolves and commences liquidation or winding up;

(iii) any Transfer with respect to a Member's Membership Interests occurs that is not in full compliance with the terms of Section 9.1;

(iv) a Member who is an individual natural person dies or becomes mentally incapacitated or a Change of Member Control occurs with respect to a Member who is an entity as a result of the death or mental incapacity of an equity owner(s) who Control such Member;

(v) the Managing Member is removed; and

(vi) there occurs an event that makes it unlawful for the Member to continue to be a Member to the extent such event can reasonably be expected to result in a material adverse effect on any of the other Members or the Company (including, without limitation, dissolution of the Company).

(b) In each case, the Member with respect to whom a Buyout Event has occurred is referred to herein as the "**Affected Member**". In the case of the removal of the Managing Member, all Members who are Affiliates of the Managing Member shall be Affected Members. All Membership Interests held by an Affected Member shall automatically become mere Economic Interests upon the occurrence of a Buyout Event and the holder thereof shall be a mere assignee (and not a Member) and such Economic Interests shall thereafter be subject to the buyout rights set forth in Section 9.2. If a Member who is an individual dies or is mentally incapacitated, the Member's executor, administrator, guardian, conservator, or other legal representative may exercise all of the Member's rights solely for the purpose of settling the Member's estate or administering the Member's property including such Member's rights and obligations under this Agreement, including this Section 9.2.

(c) If a Buyout Event occurs, then at any time following such Buyout Event each of the other Members shall have the option to acquire the Membership Interest of the Affected Member (or to cause it to be acquired by a third party designated by the other Members) on an "as is, where is" basis without representations or warranties (other than that no Encumbrance against the Membership Interest (or Economic Interest) of the Affected Member then exists that has been created by, through or under any Affected Member or any Affiliate thereof other than those created pursuant to this Agreement and that the sale of such Class A Units do not create any conflict with the Class A Members' organizational documents), expressed or implied, in accordance with the Bid procedures and priority of allocation for purchase that are substantively equivalent to those set forth in Section 9.1(d) (and with the Members exercising such buyout right also being referred to herein as "**Purchasing Members**") which procedures shall be triggered upon any Purchasing Member giving the Company and all other Members written notice of an election to exercise its buyout rights pursuant to this Section 9.2 (a "**Buyout Exercise Notice**") during such period.

(d) The purchase price (the "**Buyout Price**") for a Membership Interest (or Economic Interest) being purchased pursuant to this Section 9.2 shall be the Fair Market Value of such Membership Interest (or Economic Interest) as to which a Buyout Event has occurred, as determined under the Appraisal Procedure.

(e) If an option to purchase is exercised in accordance with the other provisions of this Section 9.2, the closing of such purchase shall occur on the sixtieth (60th) day after Buyout

Exercise Notice (or in any event, if later, the thirtieth (30th) day after the determination of the Fair Market Value pursuant to Section 9.2(d), or the fifth (5th) Business Day after the receipt of all applicable regulatory and governmental approvals to the purchase) and shall comply in all material respects with the requirements set forth in Section 9.1(b)(iii). Unless otherwise agreed among the Members, the Buyout Price shall be paid in cash at such closing.

(f) Upon the occurrence of a closing under Section 9.2(e), the following provisions shall apply to the Affected Member (now a "**Terminated Member**"):

(i) The Terminated Member shall cease to be a Member immediately upon the occurrence of the closing.

(ii) The Terminated Member shall no longer be entitled to receive any distributions (including liquidating distributions) or allocations from the Company, and it shall not be entitled to exercise any voting or consent rights or to receive any further information (or access to information) from the Company (other than any required Tax Information).

(iii) The Terminated Member must pay to the Company all amounts owed to the Company by such Terminated Member.

(iv) The Terminated Member shall remain obligated for all liabilities it may have under this Agreement or otherwise with respect to the Company that accrue prior to the closing.

(v) The Membership Interest, including the Capital Account balance attributable thereto, of the Terminated Member shall be allocated among the Purchasing Members in the proportion of the total Buyout Price paid by each Purchasing Member. Upon purchase by Purchasing Members hereunder, any Economic Interest shall automatically become a full Membership Interest.

9.3 Purchase Option. The Class A Members grant and convey to the Class B Member the exclusive and irrevocable option to purchase, for a period of six (6) months after the Tax Flip Date, all (but not less than all) of the Class A Units for the Purchase Price upon the terms and conditions set forth herein (the "**Purchase Option**").

(b) To exercise the Purchase Option, the Class B Member must deliver written notice (the "**Exercise Notice**") of the exercise of the Purchase Option to the Managing Member and the Class A Members no later than the expiration of the option period. The closing of such Purchase Option shall occur on the sixtieth (60th) day after the Exercise Notice (or in any event, if later, the thirtieth (30th) day after the determination of the Purchase Price, or the fifth (5th) Business Day after the receipt of all applicable regulatory and governmental approvals to the purchase). Once the Exercise Notice has been issued, the Purchase Option shall be irrevocable..

(c) Subject to the receipt of any necessary approvals from any Governmental Authority, including, without limitation, the approval, if any, required under the HSR Act, the Class A Members shall convey all of the Class A Units to the Class B Member (or its designee)

on an "as is, where is" basis without representations or warranties (other than ownership of the Class A Units by the Class A Members, that no Encumbrance against the Class A Units other than those created pursuant to this Agreement and that the sale of such Class A Units do not create any conflict with the Class A Members' organizational documents), expressed or implied. At the closing of the Purchase Option, (i) the Class B Member shall expressly assume any and all liability of the Class A Members under this Agreement (other than any liability arising out of a breach of this Agreement by the Class A Member prior to such conveyance) and (ii) the Members shall amend this Agreement to reflect the withdrawal of the Class A Members and the transfer of the Class A Units effective as of the Purchase Option Date. The Purchase Price of the Class A Units shall be payable in full by wire transfer of immediately available funds at the closing of the Purchase Option. The Class A Members shall allocate the Purchase Price among themselves, pro rata, based upon their relative Class A Interests. All reasonable costs associated with the purchase by a Class B Member, including but not limited to, legal, accounting, tax preparation and audit costs, shall be borne by the Class B Member.

ARTICLE X
DISSOLUTION, LIQUIDATION AND TERMINATION

10.1 Dissolution.

(a) The Company will dissolve and its business and affairs will be wound up on the first to occur of the following (the "**Liquidating Events**"):

(i) The unanimous written consent of the Members; provided, however that if the Managing Member has been removed, only the Consent of the Class A Members shall be required;

(ii) Any other event upon the occurrence of which dissolution is required by the Act (that the Act does not allow to be waived by agreement of the parties), unless, to the extent permitted by the Act, Members (other than the Member with respect to which such event occurs) unanimously elect in writing, within ninety (90) days of the date such event described in this Section 10.1(a)(ii) occurs, to continue the business of the Company, in which case the Company will not dissolve; or

(b) The Transfer by the Company of all or substantially all of its Assets.Each Member agrees that, to the fullest extent permitted by Applicable Law, it will not dissolve itself or the Company except as set forth in Section 10.1(a) or withdraw from the Company except as set forth in Section 7.4.

10.2 Liquidation and Termination.

(a) On dissolution of the Company, the Managing Member shall act as liquidator or may appoint one or more other Persons as liquidator; provided that the Managing Member shall remain liable for the performance of any such third party liquidator. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided in this Agreement. The costs of liquidation will be borne as a Company expense. Until

final distribution, the liquidator shall continue to operate the Company with all of the power and authority of the Managing Member. The steps to be accomplished by the liquidator are as follows:

(i) As promptly as reasonably practicable after dissolution and again after final liquidation, the liquidator shall cause a proper accounting to be made by the Certified Public Accountants of the Company's Assets, liabilities, and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

(ii) with respect to the remaining Assets of the Company:

(A) the liquidator shall use all commercially reasonable efforts to obtain the best possible price and may sell any or all of the Company's Assets (subject to any and all restrictions to which the is subject, including restrictions under Applicable Laws or any Permitted Encumbrances), including to the Members at such price, but in no event lower than the Fair Market Value thereof; and

(B) with respect to all of the Company's Assets that have not been sold, the Book Values of such Assets shall be determined pursuant to subparagraph (ii) of the definition of Book Value;

(iii) The liquidator shall pay from Company funds and Assets all of the debts and liabilities of the Company, or otherwise make adequate provision for them (including the establishment of a cash escrow fund for contingent, conditional or unmatured liabilities in such amount and for such term as the liquidator may reasonably determine);

(iv) Items of income, gain, loss and deduction (including any such unrealized items attributable to the deemed disposition of Assets pursuant to Section 10.2(a)(ii)) for the Taxable Year during which the distribution of liquidation proceeds occurs) shall first be allocated among the Members as follows:

(A) First, if applicable, items of income and gain shall be allocated to the Class A Members, pro rata in accordance with the Class A Members' relative deficit balances on their Capital Accounts, to eliminate any such deficit Capital Account balances;

(B) Second, if applicable, items of income and gain shall be allocated to the Class B Members, pro rata in accordance with the Class B Members' relative deficit balances on their Capital Accounts, to eliminate any such deficit Capital Account balances;

(C) Third, if applicable, items of income and gain shall be allocated to the Class A Members, pro rata in accordance with their respective Class A Units, so as to cause the positive Capital Account balance of each Class A Member to equal an amount at least equal to such Class A Member's pro rata share of the excess, if any, of (i) the sum of all Preferred Distributions shown as made or paid to the Class A Members in the Base Case Model minus (ii) all Preferred Distributions actually made or paid to the Class A Members;

(D) Fourth, to the extent that any Class B Member has been allocated in excess of the Class B Member's pro rata share of 1% of Company Losses for any Taxable Year ending on or prior to the Tax Flip Date (such excess, the "**Excess Pre-Flip Loss**"),

items of income and gain shall be allocated to the Class B Members that were allocated Excess Pre-Flip Losses, pro rata accordance with the relative amount of Excess Pre-Flip Losses that were allocated to each such Class B Member, in an amount necessary to eliminate such Excess Pre-Flip Loss; and

(E) Thereafter, any remaining items shall be allocated to the Class A Members and the Class B Members, pro rata, in proportion to their Post-Flip Sharing Percentages;

provided, however, if a Liquidating Event occurs during a Taxable Year beginning prior to the Tax Flip Date, and the allocations otherwise made under Section 10.2(a)(iv)(E) would cause less than 66% of any item of income, gain, loss and deduction to be allocated to the Class A Members, then the allocations under Section 10.2(a)(iv)(E) shall be modified to the minimum extent necessary so as to cause such item to instead be allocated in the aggregate for such Taxable Year at least 66% to the Class A Members and no more than 34% to the Class B Members; and provided, further, however, that to the extent the allocations under Section 10.2(a)(iv)(E) (after application of the immediately preceding proviso) would cause the Capital Account balance of a Member to be less than it would be prior to allocations being made under Section 10.2(a)(iv)(E), then the allocations under Section 10.2(a)(iv)(E) shall be further modified so as to preserve to the maximum extent possible the Capital Account balances that otherwise would have resulted from the order and priority of the allocations set forth in Section 10.2(a)(iv)(A)-(D).

(v) After giving effect to all allocations (including those under Section 4.2 and Sections 10.2(a)(iv)), all distributions (including those under Section 5.1) and all Capital Contributions (including those under Section 3.1, Section 3.2 and Section 3.3) for all periods, all remaining cash and property (including any Available Cash Flow and liquidation proceeds) shall be distributed to the Members in accordance with the positive balances in their Capital Accounts; and

(vi) Any distribution to the Members in respect of their Capital Accounts pursuant to this Section 10.2 shall be made by the end of the Company Taxable Year in which a Liquidating Event occurs (or if later, within ninety (90) days after the date of such Liquidating Event).

(b) The distribution of cash or property to a Member in accordance with the provisions of this Section 10.2 constitutes a complete distribution to the Member on account of its Membership Interest and all the Company's property and constitutes a compromise to which all Members have consented pursuant to Section 18-502(b) of the Act.

10.3 Deficit Capital Accounts.

(a) Except as provided in this Section 10.3, no Member shall be obligated to contribute cash to restore a deficit in its Capital Account.

(b) If the Class B Member has a deficit balance in its Capital Account following the liquidation of the Company or its Class B Interest, as determined after taking into account all Capital Account adjustments for the Taxable Year during which such liquidation occurs, the Class B Member shall be unconditionally obligated to contribute cash to the Company in an amount equal to such deficit balance by the end of the such Taxable Year (or, if later, within ninety (90) days after the date of such liquidation); provided, however, that such obligation shall be limited to the amount necessary to support the allocation of Profits and Losses to the Class A Member provided for in Section 4.2(a)(i); provided, further that such obligation shall not exceed $10,000.

10.4 Termination. On completion of the satisfaction of liabilities and distribution of Assets as provided in this Agreement, the Managing Member (or such other Person or Persons as the Act may require or permit) shall cause the cancellation of the Delaware Certificate and any filings made as provided in Section 2.1 and shall take such other actions as may be necessary to terminate the Company.

ARTICLE XI
INDEMNIFICATION

11.1 Indemnification of Class A Investor Group by the Class B Member. Subject to the terms and conditions of this Article XI, the Class B Equity Investor and each other Class B Member hereby, jointly and severally, indemnifies, defends, reimburses and holds harmless each Class A Equity Investor and its respective parent or subsidiary companies, partners and other Affiliates, and their respective officers, directors, employees, attorneys, contractors and agents (collectively, the "**Class A Investor Group**"), from and against any and all Damages asserted against, resulting to, imposed upon or incurred by the Class A Investor Group, directly or indirectly, by reason of or resulting from (a) any Environmental Claim, (b) any breach by the Class B Equity Investor or other Class B Member (whether in its capacity as the Class B Member, the Managing Member, the Tax Matters Member or otherwise) or the Company (to the extent the Managing Member is an Affiliate of the Class B Equity Investor or other Class B Member) of their respective representations and warranties or covenants contained in this Agreement or any other Investment Document or Project Document, or (c) any Class B ITC Loss Event, any ITC Loss Event resulting from a determination by the IRS that the "fair market value" of a Facility is less than its capitalized cost for ITC purposes or a change in federal income tax law after the Effective Date or (d) any agreement, arrangement or understanding alleged to have been made by, or on behalf of, the Company or the Managing Member or their Affiliates with any broker or finder in connection with this Agreement or the transaction contemplated hereby (collectively, "**Class A Investor Claims**").

11.2 Reserved. .

11.3 Limitation on Liability. The indemnification obligations of the Class B Equity Investor and other Class B Members (the "**Class B Indemnitors**") pursuant to this Article XI shall be subject to the following limitations:

(a) The amount of Damages required to be paid by the Class B Indemnitors to indemnify any Person included in the Class A Investor Group pursuant to this Article XI as a result of any Class A Investor Claim shall be reduced to the extent of any amounts actually received by

such Person after the Effective Date with respect to such Damages (i) pursuant to the terms of the insurance policies obtained and maintained by the Company covering such claim (but in no instance shall any insurance proceeds from policies obtained and maintained by any Class A Equity Investor or any Affiliate thereof be considered in connection with a reduction of Damages pursuant to this Section 11.3(a)) and (ii) from third parties arising out of the indemnified matters, and if any such recoveries are received by an indemitee from a third party after the payment of the applicable indemnity amount by the Class B Indemitors (for example, by the indemnitee pursuing a third party for damages and recovering such damages), the indemnitee shall promptly refund the amounts so received, but not in excess of the indemnity amounts originally received by such indemnitee from the Class B Indemnitors with respect to the same Damages.

(b) Damages paid pursuant to this Article XI shall be grossed-up and paid on an after-tax basis (assuming the highest marginal federal income tax rate then applicable to individuals and the highest state and local income tax rate applicable to individuals resident in California); provided, however, that no gross-up shall be required to the extent any such indemnification payment is not includible as income of the recipient or its Affiliate under Applicable Law or pursuant to a "determination" within the meaning of Code Section 1313(a), in each case as determined by agreement of the parties, or if there is no agreement, by an opinion of a nationally recognized firm of independent public accountants (other than the Certified Public Accountant) or, if related to a legal matter, of a nationally recognized law firm, in each case, jointly selected by the Class A Member and the Class B Member, that such amount "should" not be includable as income of the recipient or its Affiliates, it being understood that if taxes are assessed on any such indemnity payment (including any interest, penalties or additions attributable thereto), any Damages to any indemnified person relating thereto shall constitute additional amounts payable to such indemnified person pursuant to this Article XI. In the event an indemnified Person is entitled to claim an item of loss or deduction, credit or other tax benefit with respect to an item that gives rise to the receipt of an indemnity payment, such tax benefit shall be taken into account for purposes of determining the amount of the indemnification payment and, to the extent payment has been made to an indemnified Person prior to the period in which such tax benefit was claimed, the indemnified Person shall promptly repay the indemnifying Person an amount equal to the value of such loss or deduction, credit or other tax benefit (in each case, assuming the highest marginal federal income tax rate then applicable to individuals and the highest state and local income tax rate applicable to individuals resident in California); provided that any such refund shall not exceed the original amount paid.

(c) No member of the Class A Investor Group may receive compensation for Damages suffered by such Person to the extent that such Damages are attributable to (i) the gross negligence or willful misconduct of such Person, (ii) the breach of any representation or warranty by such Person in this Agreement or any other Investment Document to the extent such representation or warranty was false when made, or (iii) the breach of any covenant by such Person in this Agreement or any other Investment Document.

11.4 Procedure for Indemnification. After receipt by an indemnified party under Section 11.1, Section 11.2 or Section 11.3 of notice of the commencement of any action, such indemnified party shall, if a claim in respect thereof is to be made against an indemnifying party under such Section, give written notice to the indemnifying party of the commencement thereof. The failure to promptly notify the indemnifying party shall not relieve it of any liability that it may

have to any indemnified party with respect to such action; provided, that to the extent that any such failure to provide prompt notice is responsible for an increase in the indemnity obligations of the indemnifying party, the indemnifying party shall not be responsible for any such increase. In case any such action shall be brought against an indemnified party and it shall give written notice to the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it may wish, to assume the defense thereof with counsel reasonably satisfactory to such indemnified party. If the indemnifying party elects to assume the defense of such action, the indemnified party shall have the right to employ separate counsel at its own expense and to participate in the defense thereof. If the indemnifying party elects not to assume (or fails to assume) the defense of such action, the indemnified party shall be entitled to assume the defense of such action with counsel of its own choice, at the expense of the indemnifying party. If the action is asserted against both the indemnifying party and the indemnified party and (i) there is a conflict of interest which renders it inappropriate for the same counsel to represent both the indemnifying party and the indemnified party or (ii) such action could reasonably be expected to result in the imposition of criminal liability, the indemnifying party shall be responsible for paying for separate counsel for the indemnified party; provided, however, that if there is more than one indemnified party and it is practical for all such parties to be represented by common counsel, the indemnifying party shall not be responsible for paying for more than one separate firm of attorneys to represent the indemnified parties, regardless of the number of indemnified parties. If the indemnifying party elects to assume the defense of such action, (a) no compromise or settlement thereof may be effected by the indemnifying party without the indemnified party's written consent (which shall not be unreasonably withheld) unless the sole relief provided is monetary damages that are paid in full by the indemnifying party and (b) the indemnifying party shall have no liability with respect to any compromise or settlement thereof effected without its written consent (which shall not be unreasonably withheld) unless the indemnifying party has failed to defend such indemnified party against such action.

11.5 No Right of Contribution. After the Effective Date, the Company shall have no liability to indemnify the Class B Equity Investor, any Class B Member or any of their respective Affiliates on account of the breach of any representation or warranty or the nonfulfillment of any covenant or agreement of the Company or any Project Company; and none of the Class B Equity Investor shall not have any right of contribution against the Company, any Class B Member or any of their respective Affiliates.

ARTICLE XII
GENERAL PROVISIONS

12.1 Offset. Whenever a party of this Agreement (or another Person on behalf of the party) is to pay or distribute any sum to any other party hereto, any amounts then owed by such party or its Affiliate to the other party may be deducted from such sum before payment.

12.2 Notices. All notices, consents, demands, requests or other communications which may be or are required to be given under this Agreement shall be in writing and shall (a) be sent by overnight courier, facsimile or United States mail, addressed to the recipient, postage paid, and registered or certified, return receipt requested, or delivered to the recipient in person and (b) be sent or delivered at the addresses set forth in the Equity Capital Contribution Agreement, or such other address as a Member may specify by notice to the Company and the other Members. Any

notice, request or consent to the Company must be given to the Managing Member. Notices, consents, demands, requests and other communications shall be deemed effective or served on the date of receipt at the address of the Person to receive it.

12.3 Counterparts. This Agreement may be executed in one or more counterparts, each bearing the signatures of one or more Members. Each such counterpart shall be considered an original and all of such counterparts shall constitute a single agreement binding all the parties as if all had signed a single document. Facsimile or electronic signatures shall be accepted as original signatures for purposes of this Agreement.

12.4 Governing Law and Severability. THIS AGREEMENT SHALL BE DEEMED MADE AND PREPARED AND SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS THEREOF WHICH MAY REQUIRE THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. If any provision of this Agreement shall be contrary to any other Applicable Law, at the present time or in the future, such provision shall be deemed null and void, but this shall not affect the legality of the remaining provisions of this Agreement. This Agreement shall be deemed to be modified and amended so as to be in compliance with Applicable Law and this Agreement shall then be construed in such a way as will best serve the intention of the parties at the time of the execution of this Agreement.

12.5 Entire Agreement. This Agreement, including any Schedules and Exhibits, together with the other Investment Documents, constitutes the entire agreement among the Members regarding the terms and operations of the Company, except as amended in writing pursuant to the requirements of this Agreement, and supersedes all prior and contemporaneous agreements, statements, understandings and representations of the parties.

12.6 Effect of Waiver or Consent. A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations under this Agreement, or any Investment Document is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person under this Agreement, or any Investment Document. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to its obligations under this Agreement, or any Investment Document, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute of limitations period has run.

12.7 Amendment or Modification. Except as otherwise provided herein, this Agreement may be amended or modified from time to time only by a written instrument executed by all Members.

12.8 Binding Effect. Subject to the restrictions on Transfers set forth in this Agreement, this Agreement is binding on and inures to the benefit of the Members and their respective legal representatives, permitted successors and permitted assigns.

12.9 Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions contemplated here, including all filing, recording, publishing and other acts appropriate to comply with all requirements for the operation of a limited liability company under the laws of all jurisdictions where the Company shall conduct business.

12.10 Jurisdiction; Service of Process. Each of the parties hereto hereby irrevocably consents to the non-exclusive jurisdiction of the State and Federal courts located in the City and County of Los Angeles, California in connection with any suit, action or other proceeding arising out of or relating to this Agreement or the transactions contemplated hereby; agrees to waive any objection to venue in Los Angeles County, California; and 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 12.2 hereof.

[SIGNATURE PAGE FOLLOWS]

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

Blue Sky Utility, LLC
a California limited liability company (Class B Member)

By:_____
Name:
Title:

Palm Drive Associates, LLC,
a Delaware limited liability company (Class A Member)

By:_____
Name: Shawn Horwitz
Title: Managing Member

344 Columbia Associates, Ltd.,
an Ohio limited liability company (Class A Member)

By:_____
Name: Scott Kotick
Title: Member Managing Member

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

Blue Sky Utility, LLC
a California limited liability company (Class B Member)

By: _____
Name: RAN BUKANOVER
Title: PRESIDENT

Palm Drive Associates, LLC,
a Delaware limited liability company (Class A Member)

By: _____
Name: Shawn Horwitz
Title: Managing Member

344 Columbia Associates, Ltd.,
an Ohio limited liability company (Class A Member)

By: _____
Name: Scott Kotick
Title: Member Managing Member

EXHIBIT A

CAPITAL CONTRIBUTIONS MADE

AS OF THE EFFECTIVE DATE

Class A Equity Investor	**Amount**	**Capital Account Balance**	**Units**	**Percentage of Class A Interest Owned**
Palm Drive Associates, LLC	$265,158.77	$265,158.77	50 Class A Units	50%
344 Columbia Associates, Ltd.	$265,158.77	$265,158.77	50 Class A Units	50%
TOTAL	$530,317.54	$530,317.54	100 Class A Units	100%

Class B Equity Investor	**Amount**	**Capital Account Balance**	**Units**	**Percentage of Class B Interest Owned**
Blue Sky Utility, LLC	$800,000.00	$800,000.00	100 Class B Units	100%

EXHIBIT B

FORM OF MEMBERSHIP CERTIFICATE

THE MEMBERSHIP INTEREST REPRESENTED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR UNDER THE SECURITIES LAW OF ANY STATE. SUCH MEMBERSHIP INTEREST MAY NOT BE SOLD OR TRANSFERRED UNLESS SUBSEQUENTLY REGISTERED OR UNLESS AN EXEMPTION FROM REGISTRATION IS AVAILABLE. THIS CERTIFICATE EVIDENCES AN INTEREST IN [_____], LLC AND SHALL BE A SECURITY GOVERNED BY ARTICLE 8 OF THE UNIFORM COMMERCIAL CODE AS IN EFFECT FROM TIME TO TIME IN THE STATES OF DELAWARE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OTHER APPLICABLE JURISDICTION.

CERTIFICATE FOR MEMBERSHIP INTEREST
IN
[_____], LLC

Certificate No. [A][B] – [__]

The undersigned, as the Managing Member of [_____], LLC, a Delaware limited liability company (the "**Company**"), hereby certifies that [_____, a _____], is the holder of a Class [_] Interest in the Company to the extent and as described in Exhibit A to the Amended and Restated Operating Agreement of the Company, effective as of _____, 201_, as amended and restated from time to time (the "**Agreement**") (a copy of which is on file at the principal office of the Company). All capitalized terms not otherwise defined herein have the meanings ascribed to them in the Agreement.

This Certificate is not negotiable or transferable except by operation of law, or as otherwise provided in the Agreement, and any such transfer will be valid only upon delivery of this Certificate, together with an assignment in a form sufficient to convey an interest in a limited liability company pursuant to the Delaware Limited Liability Company Act, as it may be amended and in effect from time to time, or any successor statute thereto, duly executed, to the Transferee Member of the Company.

Dated: [_____]

[_____],
a [Delaware limited liability company]

By: _____
Name:
Title: