

**LOAN AGREEMENT**

**BY AND BETWEEN**

**NEW RESOURCE BANK,  
a California corporation**

**as Lender**

and

**BLUE SKY UTILITY 2017 II, LLC, a California limited liability company**

**as Borrower**

1675 West Lacey Boulevard  
Hanford, California 93230

(Loan No. 400121300)

**LOAN AGREEMENT**  
(BLUE SKY UTILITY 2017 II, LLC)  
(Hanford - Loan No. 400121300)

**THIS LOAN AGREEMENT** ("Agreement") is made as of July 14, 2017, by and between BLUE SKY UTILITY 2017 II, LLC, a California limited liability company, having an office at 1129 Westview Drive, Napa, California 94558 ("Borrower"), and NEW RESOURCE BANK, a California corporation, its successors, assigns and/or affiliates, having an office at 255 California Street, Suite 600, San Francisco, California 94111 ("Lender").

PREAMBLE

Borrower has applied to Lender for a loan (the "Loan") in the maximum principal amount of up to TWO MILLION ONE HUNDRED SIXTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$2,165,000.00). The proceeds of the Loan are to be used by Borrower to finance the construction of a 1637 kW distributed solar system (as more particularly defined in Section 2.1 below (the "Project") situated at 1675 West Lacey Boulevard, Hanford, California (the "Project Site"), and for certain closing costs. Lender has agreed to finance the Project by Borrower, on the terms, and subject to the conditions, hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1.

INCORPORATION OF RECITALS AND EXHIBITS

1.1 Incorporation of Preamble. The foregoing preamble and all other recitals set forth herein are made a part of this Agreement.

1.2 Incorporation of Exhibits. The Exhibits hereto are incorporated herein and expressly made a part hereof.

ARTICLE 2.

DEFINITIONS

2.1 Definitions. The following terms as used herein shall have the following meanings:

Acceleration Event: Means the Transfer by Borrower of (i) all or any portion of the Project (including as a result of the exercise of any purchase option for the purchase of the Project pursuant to any PPA, the Site Lease or otherwise); or (ii) any interest in Borrower in violation of Section 8.2.

Affiliate: When used with respect to any Person, shall mean any other Person directly or indirectly Controlling or Controlled by, or under direct or indirect common Control with, such Person.

Agreement: This Loan Agreement, as originally executed or as may be hereafter supplemented, amended or restated in accordance with its terms from time to time in writing.

Amortized Principal Payment Amount: With respect to any particular period of time, means the amount of the periodic payments of principal that would be necessary to repay the Loan over a term of eight (8) years, such that at all times during the term of the Loan, Borrower is in compliance with the Debt Service Covenant, such periodic payments in the amounts scheduled in Exhibit A.

Applicant: Means, with respect to the PPA, PASSCO HANFORD MALL, LLC, a Delaware limited liability company, or another tenant or off-taker of the Project purchasing solar energy services from Borrower pursuant to the terms of the PPA.

Assignee: The meaning in Section 8.1.

Assignment and Assumption: The meaning in Section 8.1.

Assignment of Project Agreements: Means, the collateral assignment to Lender of all of Borrower's right, title and interest (if any) in, to and under (a) the PPA; (b) the O&M Agreement; (c) the Site Lease; (d) the Interconnection Agreement; and (e) all replacements, substitutions, additions and the proceeds of the foregoing.

Assignment of System Documents and Other Collateral: Means, the collateral assignment to Lender of all of Borrower's right, title and interest (if any) in, to and under (a) the EPC Agreement; (b) any contracts, subcontracts and other agreements executed by Borrower in connection with the construction, operation or maintenance of the Project (other than the PPA, the O&M Agreement, the Site Lease and the Interconnection Agreement), and all guarantees, warranties and other undertakings (including all payment and performance bonds and roof warranties) covering the quality or performance of the work or the quality of the materials required by such contracts, subcontracts and other agreements; (c) all other management, maintenance, service, supply or other agreements relating to the use, operation and maintenance of the Project, and all warranties and guaranties issued in connection therewith; (d) all permits, licenses and authorizations issued from time to time in connection with the design, construction, use, management, maintenance, repair and operation of the Project; (e) all trademarks, trade names, logos and all other materials used to identify or advertise the Project; (f) any and all tests, studies, surveys, audits, results and reports performed or prepared in connection with the Project; (g) the Environmental Attributes; (h) all plans and specifications pertaining to the Project; and (i) all replacements, substitutions, additions and the proceeds of the foregoing.

Borrower: The meaning set forth in the first paragraph of this Agreement.

BPI: Means, Bright Power Inc., a California corporation.

Business Day: Any day other than a Saturday or Sunday or other day on which commercial banks are required or permitted to close in the State of California.

Closing: The first disbursement of proceeds of the Loan in accordance with the terms of this Agreement.

Closing Date: The date of full execution and delivery of this Agreement and the other Loan Documents, on or before which date all conditions precedent to the closing of the Loan shall be satisfied.

Collateral: Means, whether now owned or hereafter acquired or arising, and wherever located: (a) all properties, assets and rights of Borrower, including but not limited to Borrower's Accounts, Inventory, Equipment (other than Equipment (such as the System) designated for transfer pursuant to the terms of any of the PPA or the Site Lease), Fixtures, Goods (including computer programs embedded in Goods and any supporting information provided in connection with a transaction relating to the program and as-extracted collateral), General Intangibles (including but not limited to things in action, payment intangibles, certificates of need, contracts, contract rights, warranties, software, income tax refunds, copyrights, copyright applications, licenses, permits, rights, patents, patent rights, patent applications, franchise rights, distributorship rights, service marks, trademarks, trademark rights, trademark applications, trade dress, formulae, customer lists, goodwill, trade secrets and rights to sue and recover for infringement of patents, trademarks and copyrights), Chattel Paper, Electronic Chattel Paper, Instruments, Investment Property, Documents (including bills of lading, dock warrants, dock receipts and

warehouse receipts), Deposit Accounts, Commercial Tort Claims, Letters of Credit and Letters of Credit Rights, supporting obligations, monies and books and records, wherever located; (b) all accessions, attachments, replacements, substitutions, modifications and additions to any and all of such property described in clause (a) above; and (c) all products and Proceeds of any and all of the foregoing (including insurance proceeds). All capitalized terms used in the foregoing definition of "Collateral" and not otherwise defined in this Agreement or the other Loan Documents but which are defined in the Uniform Commercial Code, shall have the meaning given to them in the Uniform Commercial Code. If a term is defined differently in Article 9 of the Uniform Commercial Code from another Article of the Uniform Commercial Code, the term shall have the meaning specified in Article 9.

Compliance Certificate: The meaning set forth in Section 7.1.12(b).

Construction Period: Means the period of time commencing on the Closing Date and continuing until the earlier of (a) the date the Loan is fully disbursed, and (b) January 11, 2018, during which time disbursements of Loan proceeds shall be made for construction of the Project.

Control: Including the correlative meanings of the terms "controlled by" and "under common control with", means, as used with respect to any Person, possessing, directly or indirectly, the power to direct or cause the direction of the management policies of such Person, whether by city charter, through the ownership of voting securities, by contract or agreement, or otherwise.

Debt: Means (a) indebtedness for borrowed money; (b) obligations evidenced by bonds, debentures, notes or other similar instruments; (c) obligations to pay the deferred purchase price of property or services (other than trade payables and operating expenses incurred in the ordinary course of business and paid in a manner consistent with prudent business practices); (d) obligations as lessee under leases which, in accordance with generally accepted accounting principles, have been or should be recorded as capital leases; and (e) obligations under direct or indirect guaranties in respect of, and obligations (contingent or otherwise) to purchase or otherwise acquire, or otherwise to assure a creditor against loss in respect of, indebtedness or obligations of others of the kinds referred to in clause (a) through (d) above.

Debt Service: Means, with respect to any particular period of time, the sum of (a) the product obtained by multiplying the outstanding principal amount of the Loan by the Note Rate as of such date, and, after the Construction Period, and (b) the Amortized Principal Payment Amount, as determined by Lender in its sole discretion.

Debt Service Covenant: The meaning set forth in Section 7.1.12(a).

Debt Service Coverage Ratio: With respect to a particular period of time, the amount calculated by dividing Net Operating Income by Debt Service for such period.

Default or default: Any event or circumstance which constitutes or, if it were to continue uncured, after notice, lapse of time or both would constitute, an "Event of Default", the meaning of which is set forth in Section 9.1.

Default Rate: As determined by Lender, a rate per annum equal to the lesser of the Note Rate plus five (5) percentage points (500 basis points), or the maximum rate permitted by Law.

Designated Person: The meaning set forth in Section 3.1.21.

Disbursement Period: Means the period of time commencing on the Closing Date and continuing until the earlier of (a) the date the Loan is fully disbursed, and (b) January 14, 2018.

Distributions: With respect to a particular period of time, the sum of distributions of cash, property or dividends made by Borrower, however characterized, that are not re-invested in Borrower.

Dollars and \$: Dollars in lawful money of the United States of America.

Energy: Means all electric energy generated by the System.

Environmental Attributes: Means, with respect to the Project, the characteristics of electric power generation of the System within the Project that have intrinsic value, separate and apart from the Energy, arising from the environmental benefits of the System or the Energy, including but not limited to all environmental and other attributes that differentiate the System or the Energy from energy generated by fossil-fuel based generation units, fuels or resources, characteristics of the System that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the System or compliance with laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator or any state or federal entity given jurisdiction over a program involving transferability of rights arising from Environmental Attributes and Reporting Rights, including all RECs; provided, however, that "Environmental Attributes" shall not include any Tax Benefits.

EPC Agreement: Means, that certain Engineering, Procurement and Construction Services Agreement dated as of May 23, 2017, by and between BLUE SKY UTILITY LLC, a California limited liability company ("BSU"), and BPI, which agreement was subsequently assigned by BSU, and assumed by Borrower, pursuant to a written Assignment and Consent Agreement dated as of June 15, 2017.

Event of Default: The meaning set forth in Section 9.1.

Excess Proceeds: The meaning of such term set forth in the Reserve Agreement.

Executive Orders: The meaning set forth in Section 3.1.20.

Financing Statements: Various Uniform Commercial Code UCC-1 Financing Statements naming Borrower as debtor, and Lender as secured party.

GAAP: Means generally accepted accounting principles in effect from time to time in the United States.

Governmental Authority: Any federal, state, county or municipal government, or political subdivision thereof, any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality, or public body, or any court or administrative tribunal, whether foreign or domestic.

Gross Revenues: For any period, all revenues of Borrower, determined on a cash basis, derived from the operation, use and maintenance of the Project during such period, including the Project Revenues, as verified in a sworn statement of Borrower delivered to Lender together with all necessary supporting documentation reasonably requested by Lender; provided, however, that in no event shall Gross Revenues include (a) any gain arising from any write up of assets; (b) any proceeds from the Loan, (c) proceeds or payments under insurance policies (except that any proceeds of business interruption insurance covering the Project shall be included in Gross Revenues); (d) condemnation proceeds or sales proceeds in lieu of and/or under threat of condemnation; and (e) any other extraordinary items.

Host: Means PASSCO HANFORD MALL, LLC, a Delaware limited liability company.

Includes or including: Including but not limited to.

Indemnified Persons: Lender, its officers, directors, shareholders, employees and agents, and any successor to any interest of Lender in or to the Loan and such successor's officers, directors, shareholders, employees, agents, partners and principals.

Interconnection Agreement: Means, that an interconnection services agreement by and between Borrower and SCE, entered into on or about the date the Project is completed, as may be supplemented or amended from time to time, pursuant to which Borrower may connect the Project to the supply grid with power.

Internal Revenue Code: The Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder from time to time.

Inverter Reserve Account: Means a sub-account of the Reserve Account into which the Minimum Inverter Reserve Deposit shall be funded on a monthly basis during the term of the Loan and disbursed as set forth in the Reserve Agreement.

Knowledge: When used to modify a representation or warranty of Borrower hereunder or under any of the other Loan Documents, means actual knowledge or such knowledge as Borrower should have under the circumstances after reasonable diligent inquiry and investigation.

Laws: Collectively, all federal, state and local laws, statutes, codes, ordinances, orders, rules and regulations, including judicial opinions or precedent setting authority in the applicable jurisdiction, and all directions, requirements, orders and notices of violation of any governmental or quasi-governmental agency, body or office having or asserting jurisdiction over the Project or any party to any of the Loan Documents.

Lender: The meaning set forth in the first paragraph of this Agreement.

Lien: Means any mortgage, deed of trust, lien (statutory or other), pledge, hypothecation, assignment, preference, priority, security interest, or any other encumbrance or charge (including any conditional sale or other title retention agreement, any sale-leaseback, any financing lease having substantially the same economic effect as any of the foregoing, the filing of any financing statement or similar instrument under the applicable Uniform Commercial Code or comparable law of any other jurisdiction, domestic or foreign, or mechanics', materialmen's and other similar liens and encumbrances).

Lists: The meaning set forth in Section 3.1.21.

Loan: The meaning set forth in the Preamble to this Agreement.

Loan Amount: Means, up to TWO MILLION ONE HUNDRED SIXTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$2,165,000.00).

Loan Documents: Means, collectively, this Agreement, the documents and instruments listed in Section 4.2, and all other documents, instruments or certificates delivered to Lender herewith or from time to time to evidence or secure the Loan and the payment and performance of Borrower's obligations hereunder, as the same may be amended, modified or restated from time to time with the prior written consent of Lender.

Loan Expenses: The meaning set forth in Section 5.1.

Loan Fee: The meaning set forth in Section 5.2.

Loan Party or Loan Parties: Borrower and Member, individually or collectively, as the context shall imply.

Material Adverse Change: Any set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect upon the validity or enforceability of this Agreement or any other Loan Document, (b) materially impairs or could reasonably be expected to materially impair the ability of Borrower to pay duly and/or punctually or perform any of its material obligations under the Loan Documents to which they are a party, or (c) materially impairs or could reasonably be expected to materially impair the ability of Lender to enforce Lender's legal remedies pursuant to this Agreement or any other Loan Document.

Maturity Date: July 13, 2024.

Maximum Rate: The highest non-usurious rate of interest, if any, permitted from time to time by applicable Law.

Member: Means BLUE SKY UTILITY LLC, a California limited liability company.

Minimum O&M Reserve Amount: Means, with respect to the O&M Reserve Account, FIFTEEN THOUSAND AND NO/100THS DOLLARS (\$15,000.00) funded with Loan proceeds at Closing, such amount thereafter increased out of Net Operating Income by six (6) deposits of TWO THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$2,500.00) monthly commencing February 3, 2018 through July 3, 2018, at which time the Minimum O&M Reserve Amount will be THIRTY THOUSAND AND NO/100THS DOLLARS (\$30,000.00).

Minimum Payment Reserve Amount: Means, with respect to the Payment Reserve Account, an initial deposit of ONE HUNDRED FORTY-THREE THOUSAND ONE HUNDRED TWENTY-FIVE AND NO/100THS DOLLARS (\$143,125.00) funded with Loan proceeds at Closing, such amount to be reduced to EIGHTY-NINE THOUSAND AND NO/100THS DOLLARS (\$89,000.00) at the end of the Construction Period.

Monthly Payment Date: Means, the third (3<sup>rd</sup>) day of each calendar month upon which a monthly payment of interest and principal is due and payable under and pursuant to the terms of the Note.

Net Operating Income: For any period, the amount by which Gross Revenues for such period exceeds Operating Expenses for such period.

NorCal FDC: Means NORTHERN CALIFORNIA FINANCIAL DEVELOPMENT CORPORATION, a California public benefit corporation, chartered and licensed for, among other things, the operation, delivery and servicing of the State of California Small Business Loan Guaranty Program.

NorCal FDC Guaranty: Means a payment guaranty in form and substance acceptable to Lender in Lender's sole discretion, which guaranty shall be executed and delivered to Lender by Nor-Cal FDC in favor of Lender prior to the Closing, have a term of not less than seven (7) years, and guarantee repayment of up to eighty percent (80%) of the Loan; provided, however, Lender acknowledges that claims under the NorCal FDC Guaranty may be made only after Lender has exhausted its remedies to foreclose on the Collateral pursuant to the terms of the Loan Documents.

Note: Means, the note or notes aggregating the principal amount of the Loan, dated as of the date hereof, as originally executed or as may be hereafter supplemented, amended or restated from time to time in writing.

Note Rate: Means five percent (5.00%) per annum (500 basis points).

Obligations: The meaning set forth in Section 4.3.

O&M Agreement: Means the Operation and Maintenance Agreement dated as of May 23, 2017, by and between BLUE SKY UTILITY, a California limited liability company ("BSU") and BPi, which agreement was subsequently assigned by BSU, and assumed by Borrower, pursuant to a written Assignment and Consent Agreement dated as of June 15, 2017, pursuant to which, among other things, BPi has agreed to operate and maintain the System for Borrower.

O&M Reserve Account: Means an interest bearing account maintained at the Branch, initially funded with FIFTEEN THOUSAND AND NO/100THS DOLLARS (\$15,000.00) of Loan proceeds at Closing, such amount thereafter increased by six (6) monthly deposits of TWO THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$2,500.00) from the Payment Reserve Account commencing February 3, 2018 through July 3, 2018.

Operating Account: The meaning of such term set forth in the Reserve Agreement.

Operating Agreement: Means, the Operating Agreement of BLUE SKY UTILITY 2017 II, LLC, a California limited liability company, dated June 1, 2017.

Operating Expenses: For any period, the actual costs and expenses of owning, operating, managing and maintaining the Project during such period incurred by Borrower, determined on an accrual basis, including, without limitation, personal property taxes, insurance premiums, asset management fees, developer fees, utility costs and reasonable operating reserves as and to the extent included in Borrower's annual operating budget and approved in writing by Lender in Lender's sole discretion; provided, however, that in no event without the written approval of Lender in its sole discretion shall Operating Expenses include (a) interest due on the Loan, (b) any fees paid to Lender in connection with the Loan, (c) depreciation, amortization and other non-cash items, or (d) overhead fees, marketing fees, consulting fees (or any fees similar to the foregoing).

Organizational Documents Means (a) with respect to a corporation, such Person's certificate of incorporation and by-laws, and any shareholder agreement, voting trust or similar arrangement applicable to any of such Person's authorized shares of capital stock; (b) with respect to a limited liability company, such Person's certificate of formation, limited liability company agreement or other document affecting the rights of holders of limited liability company interests; and (c) any and all agreements between any constituent member, partner or shareholder of the Person in question, including any contribution agreement or indemnification agreements. In each case, Organizational Documents shall include any indemnity, contribution, shareholders or other agreement among any of the owners of the entity in question.

Participant: The meaning set forth in Section 8.1.1.

Patriot Act: The meaning set forth in Section 3.1.21.

Payment Reserve Account: Means an interest bearing account maintained at the Branch into which all Project Revenues must be deposited, on a monthly basis. Thereafter, on a monthly basis, Lender shall (a) disburse such funds as are required to meet Borrower's monthly Debt Service obligation, (b) reimburse Lender for any unpaid Loan Expenses pursuant to Article 5 of this Agreement, (c) maintain or replenish the Minimum Payment Reserve Amount; and (d) maintain or replenish the Minimum O&M Reserve Amount, in that order, and thereafter disburse the remaining balance into the Operating Account, all as set forth with more particularity in the Reserve Agreement. The Reserve Account shall be pledged to Lender as additional collateral for the Loan. All costs of administering the Reserve Account shall be paid by Borrower.

Person: Means, any individual, partnership, corporation, trust, unincorporated association, joint venture, government or any department or agency thereof, or any other entity.



PPA Revenues: Means, any and all fees, rebates, payments and other revenues received by Borrower pursuant to the PPA.

PPA: Means, that certain Solar Services Participation Agreement dated as of January 23, 2017, by and between PASSCO HANFORD MALL, LLC, a Delaware limited liability company, as “Applicant”, and Blue Sky Utility LLC (“BSU”), as “Service Provider”, pursuant to which, among other things, the “Applicant” described therein have agreed to purchase the energy output produced by the Project, as may be supplemented or amended from time to time, and as assigned by BSU to and assumed by Borrower by written Assignment and Consent Agreement dated as of June 15, 2017.

Proceeding: As such term is defined in Section 11.4.

Project: The meaning given in the Preamble to this Agreement.

Project Site: The meaning given in the Preamble to this Agreement.

RECs: Commonly known as a “Renewable Energy Credit” and means a tradable, non-tangible energy commodity in the United States that represents proof that 1 megawatt-hour (MWh) of electricity was generated from an eligible renewable energy resource towards compliance with the Colorado renewable energy standard as set forth in C.R.S. § 40-2-124, as may be amended from time to time.

Reference: As such term is defined in Section 11.14.2.

Reporting Right: Means the right to report ownership of Environmental Attributes (including RECs) in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program.

Reserve Agreement: The reserve agreement, dated as of the date hereof, between Borrower and Lender, pursuant to which Borrower shall maintain or exceed the Minimum Payment Reserve Amount and the Minimum O&M Reserve, to be disbursed or released as set forth therein.

SCE: Means Southern California Edison Company, a California corporation.

Security Agreement: The security agreement executed by Borrower in favor of Lender and granting Lender a first priority security interest in all Collateral and any other personal property (tangible and intangible) now or hereafter owned by Borrower and located in, or used in connection with the operation of, the System and the Project.

Site Lease: Means the Renewable Energy Generating System Lease Agreement dated as of February 1, 2016, by and between Host, as “Landlord”, and BLUE SKY UTILITY, LLC, a California limited liability company (“BSU”), as “Lessee”, as amended and supplemented by Letter Agreement dated November 7, 2016, and subsequently assigned by BSU to Borrower pursuant to a written Assignment and Consent Agreement dated as of June 15, 2017, whereby Host has leased portions of the Project Site to Borrower where the Project is or will be situated.

System: Means, individually or collectively, as the context implies, the full scope of solar photovoltaic generating equipment designed and installed pursuant to the EPC, the Site Lease and the PPA on the Project site.

Tenant Estoppel Certificate: An estoppel/notice of default letter from Borrower, as Lessee of the site upon which the Project is located, addressed to Lender, concerning the Site Lease.

Terrorism Executive Order: The meaning set forth in Section 3.1.20.

Transfer: Including the correlative meanings of the term "Transferred", means or refers to a sale, transfer, conveyance, alienation, pledge, assignment, encumbrance, financing, refinancing, hypothecation or other disposition..

2.2 Use of Defined Terms. Defined terms may be used in the singular or the plural. When used in the singular preceded by "a", "an", or "any", such term shall be taken to indicate one or more members of the relevant class. When used in the plural, such term shall be taken to indicate all members of the relevant class.

2.3 Use of Recital, Article, Section and Exhibit References. The use herein of references to Recitals, Articles, Sections and Exhibits shall refer to the referenced Recital, Article or Section in, or Exhibit annexed to, this Agreement.

### ARTICLE 3.

#### REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Borrower. To induce Lender to execute and deliver this Agreement and to perform the obligations of Lender hereunder, Borrower hereby represents and warrants to Lender as follows:

3.1.1 Borrower is a limited liability company duly formed, validly existing and in good standing under the laws of the State of California. Borrower has and will continue to have full power and authority to execute, deliver and perform the obligations and carry out the duties imposed upon Borrower by this Agreement and the other Loan Documents, and Borrower has taken and will continue to take all action necessary to carry out Borrower's obligations and duties in connection with the Loan.

3.1.2 Member is the sole member and one hundred percent owner of Borrower. Member has and will continue to have full power and authority to execute and deliver the Loan Documents on behalf of Borrower, and has taken and will continue to take all action necessary to carry out its obligations and duties in connection with the Loan.

3.1.3 Each of the Loan Documents executed by the Loan Parties, as the case may be, has been or will be duly and properly executed and delivered by such parties.

3.1.4 Each of the Loan Documents to which the Loan Parties are or will become parties constitute or will constitute legal, valid and binding obligations of the Loan Parties, and is and will be enforceable in accordance with its respective terms, except as such enforceability may be affected by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditor's rights generally, and limitations imposed by general principles of equity.

3.1.5 Borrower has good title to the Collateral free and clear of any liens and encumbrances other than those granted to Lender hereunder, and the security interests granted to Lender pursuant to the Loan Documents will at all times constitute a valid, perfected and enforceable first priority security interests in favor of Lender, subject to no other security interest, mortgage, lien or encumbrance, except as may be permitted under the Loan Documents. Upon the filing of the Financing Statements, Lender will have a perfected security interest in the Collateral described in the Loan Documents, to the extent that such Collateral consists of property with respect to which a security interest may be perfected by the filing of a Financing Statement. Other than the Financing Statements in favor of Lender, no Loan Party has executed any UCC-1 financing statements in favor of any other Person with respect to the Collateral.

3.1.6 No provision of any Operating Agreement, or any applicable constitutional provision, law or administrative regulation of the State of California, the State of California, or the United States, or any applicable judgment or decree or any loan agreement, indenture, bond, note, resolution, agreement or other instrument to which Borrower is a party or to which Borrower is or any of its property or assets are otherwise subject, requires the consent or authorization of any other Person as a condition precedent to the consummation of the transactions contemplated herein or in any of the other Loan Documents, or if required, such consents or authorizations have been obtained.

3.1.7 No approvals, consents or permits are required in connection with the execution, delivery and performance by the Loan Parties of this Agreement or any of the other Loan Documents to which any is a party, or in connection with the performance or consummation by the Loan Parties, of any of the transactions contemplated hereby or thereby, or if required, such approvals, consents or permits have been obtained.

3.1.8 The execution, delivery and performance of each Loan Document by each applicable Loan Party does not and will not (a) conflict with or result in or cause any violation under any applicable Law, (b) conflict with or result or cause a breach of any of the terms or provisions of, or constitute a default under, any indenture, pledge, mortgage, deed of trust, loan agreement, partnership agreement, operating agreement or any other agreement or instrument to which such Loan Party is party or by which such Loan Party's property or assets are subject or bound, (c) result in the creation or imposition of any Lien, charge or encumbrance (other than pursuant to the Loan Documents) upon any of the property or assets of any Loan Party, or (d) result in any violation of the provisions of any applicable Law or order of any court or governmental agency or body having jurisdiction over such Loan Party or any of its or his properties or assets.

3.1.9 Except for the Loan Documents, and as set forth in the Operating Agreement as in effect on the date hereof, no Loan Party is a party or subject to any contract or agreement which restricts its or his right or ability to incur any Debt, and no Loan Party is a party or subject to any contract or agreement which restricts its or his right or ability to enter into the Loan Documents to which it or he is a party or which prohibits any Loan Party's execution or performance of its or his obligations under this Agreement or any of the other Loan Documents, Borrower's obtaining the Loan, or the Loan Parties' providing security for the Obligations as provided herein. No Loan Party has agreed or consented to cause or permit in the future (upon the occurrence of a certain event, contingency or otherwise) the Project, whether now owned or hereafter acquired.

3.1.10 Except to the extent obtained and delivered to Lender in writing prior to the Closing Date, no registration, qualification, designation, declaration or filing with, any Person or any Governmental Authority (other than the filing of the Financing Statements and any continuation statements) is or will be necessary in connection with the execution and delivery of this Agreement or any other Loan Documents by each Loan Party, consummation by each Loan Party a party thereto of the transactions herein or therein contemplated, the Loan Parties' granting security for the Obligations, and the performance of or compliance by each Loan Party a party thereto with the terms and conditions hereof or thereof or the legality, validity and enforceability hereof or thereof.

3.1.11 No actions, suits or proceedings are pending, or to the Loan Parties' knowledge are threatened, against any of the Loan Parties which (a) might affect the validity or priority of the liens or the security interests created by the Loan Documents, or (b) might affect the ability of the Loan Parties to perform its obligations pursuant to and as contemplated by the terms and provisions of this Agreement and the other Loan Documents to which each of them are parties.

3.1.12 None of the Loan Parties have entered into the Loan Documents with the actual intent to hinder, delay, or defraud any creditor or any other Person, and each Loan Party has received reasonably equivalent value in exchange for its obligations under the Loan Documents. As of the Closing Date, after giving effect to the transactions contemplated by the Loan Documents, Borrower is solvent and the fair saleable value of each Loan Party's assets exceeds and will, immediately following the execution and delivery of the Loan Documents, exceed such Loan Party's total liabilities, including

subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of each Loan Party's assets will, immediately following the execution and delivery of the Loan Documents, be greater than such Loan Party's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. Each Loan Party's assets, immediately following the execution and delivery of the Loan Documents, will not constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted

3.1.13 Neither of the Loan Parties or any of their Affiliates has dealt with any brokers in connection with the Loan other than Scott Reising, and no brokerage fees or commissions are payable by or to any person other than him in connection with any of the Loan Documents or the transactions contemplated thereby.

3.1.14 No aspect of the Loan violates or will violate any usury laws or laws regarding the validity of agreements to pay interest in effect on the date hereof.

3.1.15 All statements set forth in the Preamble to this Agreement are true and correct.

3.1.16 None of the Loan Parties is a "foreign person" within the meaning of Section 1445 or 7701 of the Internal Revenue Code.

3.1.17 Borrower does not do business under any name other than its actual name set forth herein. The principal place of Borrower's business is 1129 Westview Drive, Napa, California 94558.

3.1.18 No Default or Event of Default has occurred and is continuing.

3.1.19 The information provided by the Loan Parties to Lender in connection with the Loan Parties or the Project, does not include an untrue statement of a material fact or omit to state any material fact or any other fact which is necessary to make the statements contained therein (in the light of the circumstances under which they were made) not misleading.

3.1.20 Neither of the Loan Parties or, to the best of their Knowledge, any of their Affiliates are subject to sanctions of the United States government or in violation of any Laws relating to terrorism or money laundering, including Executive Order No. 13224, 66 Fed. Reg. 49079 (published September 25, 2001) (the "Terrorism Executive Order") or a person similarly designated under any related enabling legislation or any other similar executive order (collectively with the Terrorism Executive Order, the "Executive Orders"), the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56, the "Patriot Act"), any sanctions and regulations promulgated under authority granted by the Trading with the Enemy Act, 50 U.S.C. App. 1-44, as amended from time to time, the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06, as amended from time to time, the Iraqi Sanctions Act, Publ. L. No. 101-513; United Nations Participation Act, 22 U.S.C. § 287c, as amended from time to time, the International Security and Development Cooperation Act, 22 U.S.C. § 2349 aa-9, as amended from time to time, The Cuban Democracy Act, 22 U.S.C. §§ 6001-10, as amended from time to time, The Cuban Liberty and Democratic Solidarity Act, 18 U.S.C. §§ 2332d and 2339b, as amended from time to time, and The Foreign Narcotics Kingpin Designation Act, Publ. L. No. 106-120, as amended from time to time.

3.1.21 Neither of the Loan Parties or, to the best of their Knowledge, any of their Affiliates are (i) listed on the Specially Designated Nationals and Blocked Persons List maintained by the Office of Foreign Assets Control, Department of the Treasury, and/or on any other similar list (the "Lists") maintained by such office pursuant to any authorizing statute, Executive Order or regulation or (ii) a Person (a "Designated Person") either (A) included within the term "designated national" as defined in the Cuban Assets Control Regulations, 31 C.F.R. Part 515, or (B) designated under Sections 1(a), 1(b), 1(c) or 1(d) of the Terrorism Executive Order or a Person similarly designated under any related enabling legislation or any other similar Executive Orders.

3.1.22 Neither of the Loan Parties or any of their Affiliates are knowingly or will knowingly (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Designated Person, (ii) deal in, or otherwise engage in, any transaction relating to any property or interest in property blocked pursuant to any Executive Order or the Patriot Act, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Executive Order or the Patriot Act.

3.2 Acknowledgment of Lender's Reliance. Borrower acknowledges that Lender will extend the Loan in reliance upon the representations and warranties contained in the Loan Documents or any certificate delivered to Lender pursuant to the Loan Documents. Lender shall be entitled to such reliance notwithstanding any investigation which has been or will be conducted by Lender or on its behalf.

3.3 Survival of Representations and Warranties. Borrower agrees that all of its representations and warranties set forth in Section 3.1 and elsewhere in this Agreement and the other Loan Documents will be true at the Closing Date, and except with respect to matters which have been disclosed in writing to and approved by Lender, at all times thereafter.

#### ARTICLE 4.

##### TERMS OF LOAN AND LOAN DOCUMENTS

4.1 Agreement to Borrow and Lend. Subject to all of the terms, provisions and conditions set forth in this Agreement and the other Loan Documents, Lender agrees to make and Borrower agrees to accept the Loan. The maximum principal amount of the Loan disbursed to Borrower shall in no event exceed TWO MILLION ONE HUNDRED SIXTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$2,165,000.00) (the "Loan Amount").

4.2 Loan Documents. Borrower agrees that they will, in sufficient time for review by Lender and its counsel prior to the Closing Date, execute and deliver or cause to be executed and delivered to Lender the following documents (collectively with this Agreement, the "Loan Documents") in form and substance acceptable to Lender and its counsel:

4.2.1 the Note;

4.2.2 the Security Agreement;

4.2.3 the Assignment of Project Agreements;

4.2.4 the Assignment of System Documents and Other Collateral;

4.2.5 the Reserve Agreement;

4.2.6 the Tenant Estoppel Certificate; and

4.2.7 such other papers, documents and instruments as may be required by this Agreement or as Lender may reasonably require.

4.3 Obligations. The grants, assignments, pledges, encumbrances and transfers made under the Loan Documents are made for the purpose of securing (a) the payment of the Loan; and (b) the performance of all other agreements, covenants, conditions and obligations of Borrower and the other Loan Parties contained herein or in the other Loan Documents.

4.4 Interest Rate. So long as no Event of Default remains uncured, the Loan will bear interest at the Note Rate. While any Event of Default remains uncured, the Loan will bear interest at the

Default Rate. Interest on the Loan shall be computed on the principal sum of the entire amount of the Loan from time to time outstanding on the basis of a 360-day year, as set forth in the Note, but shall be charged for the actual number of days within the period for which interest is being charged.

4.5 Term of the Loan. Without limiting the provisions of the Note, the unpaid principal balance, together with any accrued and unpaid interest and all other sums then due and payable under the Note and under the other Loan Documents, if not sooner paid, whether by reason of acceleration or otherwise, shall be paid in full on the Maturity Date.

4.6 Disbursements. Upon the Closing, Lender shall disburse Loan proceeds in the amount of FORTY THREE THOUSAND FIVE HUNDRED FIFTY AND NO/100THS DOLLARS (\$43,550.00) to NorCal FDC in payment of the fee for the NorCal FDC Guaranty. Thereafter, upon written request delivered to Lender on or before 10:00 a.m., Pacific time, on a Business Day, Borrower from time to time may request a disbursement of Loan proceeds; provided, however, (i) no Default or Event of Default remains uncured either at the time of Borrower's request or on the date such funds are to be disbursed; (ii) except as agreed by Lender in writing, Lender shall not be obligated to make more than one (1) disbursement every two (2) weeks or in an amount less than FIFTY THOUSAND AND NO/100THS DOLLARS (\$50,000.00); (iii) Borrower shall have provided to Lender reasonable proof that the costs covered by Borrower's disbursement request are due, including, without limitation, by invoices, progress reports, inspections, lien releases and other documentation reasonably requested by Lender; (iv) Borrower shall have provided to Lender reasonable proof of payment of all amounts covered by previous disbursements of Loan proceeds; (v) the proceeds disbursed shall be utilized solely for Lender approved Project costs as they become due; (vi) no actions, suits or proceedings involving the Project shall be pending, or to Borrower's knowledge, threatened, which in Lender's reasonable opinion could materially adversely affect Borrower's ability to perform its obligations under the Loan Documents, and (vii) Lender shall not be obligated to make any disbursements of Loan proceeds after the expiration of the Construction Period. Each disbursement permitted pursuant to this Section 4.6 shall be made within two (2) Business Days after Borrower's written request is received by Lender; provided, however, such request shall be accompanied by all of the items referenced in clauses (iii) and (iv) of this Section 4.6; provided, further, however, Lender shall not be obligated to make any disbursements of Loan proceeds exceeding, in the aggregate, the sum of TWO MILLION ONE HUNDRED SIXTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$2,165,000.00).

4.7 Voluntary Prepayments. Borrower shall have the right to make voluntary prepayments of all or any portion of the Loan, in multiples of \$25,000, in each case upon not less than five (5) calendar days prior written notice to Lender. The prepayment shall be made together with the payment of all accrued and unpaid interest on the Loan through the date of prepayment. For prepayments during the first three (3) years of the term of the Loan, Borrower shall pay a prepayment fee ("Prepayment Fee") calculated by multiplying the principal prepaid by the applicable percentage set forth in the following table:

Month of prepayment	1 - 36	Thereafter
Percentage	1.0%	Par

Lender will waive the Prepayment Fee in the event Borrower refinances the Loan with Lender. Principal amounts of the Loan which are repaid for any reason may not be reborrowed.

4.8 Mandatory Prepayment. If at any time the Host shall exercise the right to purchase the System pursuant to the terms of the PPA or the Site Lease, Borrower shall, within two (2) Business Days from receipt of the purchase money or termination proceeds, prepay the Loan evidenced by this Note in an amount equal to not less than one hundred percent (100%) of the purchase money or termination proceeds received from the Host for the purchase of the System. No Prepayment Fee shall be due or payable for prepayments made pursuant to this Section 4.8.

4.9 Due on Transfer. The unpaid principal balance, all accrued and unpaid interest and all other sums due and payable under the Note and the other Loan Documents, if not sooner paid, shall be paid in full upon the occurrence of an Acceleration Event.

## ARTICLE 5.

### CREDIT FACILITY EXPENSES AND ADVANCES

5.1 Loan Expenses. Borrower agrees to pay all expenses of the Loan that are reasonably incurred by Lender, including, but not limited to, all costs of administering the Loan, all fees, expenses and charges (including word processing and photocopying expenses) of Lender's attorneys, including all costs and expenses reasonably incurred by Lender in connection with the determination of whether Borrower has performed its obligations hereunder and under the Note or has satisfied the conditions precedent to the obligations of Lender hereunder, and, if any Default or Event of Default occurs hereunder or under the Note, or if the Loan or the Note or any portion thereof is not paid in full when and as due, all costs and expenses of Lender (including, without limitation, court costs and counsel's fees and disbursements) reasonably incurred in reviewing any request from Borrower, documenting any reconveyance, release or prepayment by Borrower, and attempting to enforce payment of the Loan (collectively, the "Loan Expenses"). All such Loan Expenses, charges, costs and fees shall be Borrower's obligation regardless of whether the Loan proceeds are disbursed in whole or in part.

5.2 Loan Fee. On the Closing Date, Borrower shall pay to Lender a credit facility fee (the "Loan Fee") in the amount of FIVE THOUSAND FOUR HUNDRED THIRTEEN AND NO/100THS DOLLARS (\$5,413.00). The Loan Fee shall be deemed fully earned when due and shall be non-refundable.

5.3 Time of Payment of Fees. Borrower shall pay all fees and expenses incurred by Lender at the Initial Closing and on demand at such subsequent times as Lender may determine.

5.4 Expenses and Advances. Lender is hereby authorized, without any specific request or direction by Borrower, to make disbursements of the proceeds of the Loan to pay for, or to reimburse Lender for the payment of, all unpaid Loan Expenses and fees. Without limiting the generality of the foregoing, Lender will provide notice to Borrower and an accounting of any and all disbursements or payments made pursuant to the preceding sentence. All advances or payments made by Lender under this Agreement or any of the other Loan Documents from time to time, and all amounts expended by Lender pursuant to Section 10.1.2 or for Lender's fees and expenses, if any, and all other Loan Expenses shall, as and when advanced or incurred by Lender, constitute additional indebtedness evidenced by the Note to the same extent and effect as if the terms and provisions of this Agreement were set forth therein, whether or not the aggregate of such indebtedness shall exceed the aggregate face amount of the Note.

## ARTICLE 6.

### CONDITIONS PRECEDENT TO THE CLOSING

6.1 Conditions Precedent to the Closing. Borrower shall perform and satisfy all of the following conditions precedent on or before the Closing Date, and Borrower agrees that Lender's obligation to disburse the Loan is conditioned upon Borrower's performance or satisfaction of all such conditions precedent:

6.1.1 No Default or Event of Default by Borrower shall exist under this Agreement or any of the other Loan Documents.

6.1.2 Borrower shall have executed and delivered or caused to be executed and delivered to Lender:

6.1.3 The NorCal FDC Guaranty and all of the Loan Documents as required by, and in accordance with, Section 4.2, duly and properly executed by the respective parties thereto, and Borrower shall have paid all amounts then required to be paid by Borrower on or before the Closing Date pursuant to Article 5.

6.1.4 Borrower shall have furnished the following to Lender, in sufficient time for review and approval by Lender and/or Lender's counsel prior to the Closing Date, all of which shall be in form and substance satisfactory to Lender and/or Lender's counsel, as applicable:

(a) Borrower's Organizational Documents, certified as true, correct and complete by the Managing Member.

(b) Evidence satisfactory to Lender that the Loan and the execution and performance of this Agreement and the other Loan Documents are authorized, and that the individuals executing this Agreement and the other Loan Documents on behalf of Borrower have been duly authorized by all appropriate action to execute and deliver this Agreement and the Loan Documents on behalf of Borrower.

(c) Property and casualty insurance coverages as required by this Section 6.1.3(c), such coverage to be evidenced by a certificate of insurance, together with evidence that the premiums for such policies have been fully prepaid for a period not less than twelve (12) months from the Closing. Borrower shall provide Lender with certificates of insurance on or prior to the Closing. Property insurance covering the System for 100% of its full replacement cost (or such amount as shall be agreed to by Lender in writing) in so called "all risk" form and such other hazards as Lender may require. All insurance required under this Section 6.1.3(c) and Section 6.1.3(d) shall be with companies and in amounts and with coverage and deductibles satisfactory to Lender. All insurance required under this Section 6.1.3(c) shall include endorsements naming Lender as loss payee. All companies issuing policies required under this Section 6.1.3(c) and under Section 6.1.3(d) shall have a Best Insurance Reports (current) rating of "A XII" or better and shall be licensed to do business in the State of Colorado. All policies required under this Section 6.1.3(c) and Section 6.1.3(d) shall provide that the insurance evidenced thereby shall not be cancelled or modified without at least thirty (30) days' prior written notice from the insurance carrier to Lender, and at least ten (10) days' prior written notice to Lender from the insurance carrier or Borrower's insurance broker for non-payment. No act or thing done by Borrower or any Affiliate of Borrower shall invalidate the policy as against Lender. Borrower shall deliver renewal certificates of all policies of insurance required under this Section 6.1.3(c) and Section 6.1.3(d), together with written evidence of full payment of the annual premiums therefor promptly upon payment of such amount. Upon the occurrence of any Event of Default under this Agreement or any of the other Loan Documents, Lender shall have the right (but not the obligation) to place and maintain the insurance required to be placed and maintained by Borrower hereunder and treat the amounts expended therefor as additional indebtedness evidenced by the Note (even if the total amount of such indebtedness would then exceed the face amount of the Note), payable on demand and secured by the Loan Documents.

(d) Liability insurance as required by this Section 6.1.3(d), such coverage to be evidenced by original or certified copies of insurance policies, or binders for such insurance, together with evidence that the premiums for such policies have been fully prepaid for a period not less than six (6) months from the Closing. Such insurance shall provide for commercial general liability insurance coverage for personal injury, bodily injury, death, accident and property damage with limits no less than \$1,000,000.00 per occurrence, and \$2,000,000.00 in the aggregate per location. The policy shall cover, without limitation, (A) Borrower's operations, independent contractors, contractual liability, products and completed operations liability; (B) commercial automobile liability with a limit not less than \$1,000,000.00 combined single limit bodily injury and property damage and be endorsed to cover owned, hired and non-owned automobiles; and (C) umbrella liability coverage in excess of the foregoing liability coverage with a limit of not less than \$5,000,000.00, or such higher limits as Lender may require. The commercial general liability and automobile policies and umbrella liability policy shall name Lender as additional insured.



(e) Current financial statements from Borrower and Managing Member, except as waived by Lender.

(f) Current tax lien, bankruptcy and judgment searches against Borrower and Managing Member. Current searches of all Uniform Commercial Code financing statements filed with such offices as Lender's counsel designates, with respect to each of Borrower and Managing Member, as debtor, which searches shall show that, except as otherwise approved by Lender, no Uniform Commercial Code financing statements are filed or recorded against any of Borrower or Managing Member, or in which the Collateral is described.

(g) Such other evidence, documents, consents, landlord or property owner waivers and other agreements or instruments as may be required under this Agreement or as Lender may reasonably require.

6.1.5 Borrower's written certification that there has occurred no material adverse change in the financial condition of Borrower, as reflected on its most recent annual financial statements submitted to Lender, between the respective dates thereof and the Closing Date.

## ARTICLE 7. COVENANTS

7.1 Affirmative Covenants. So long as any portion of the Loan or any other obligation hereunder (other than contingent indemnity obligations) shall remain unpaid or unsatisfied, Borrower covenants and agrees to and with Lender as follows:

7.1.1 Compliance with Conditions Precedent. All conditions precedent to the closing of the Loan will be complied with in a timely manner or waived by Lender.

7.1.2 Compliance with Requirements of Governmental Authorities. Borrower in all material respects will comply with, and will cause the Project to be in compliance with, all applicable Law and requirements of Governmental Authorities, and all requirements and conditions set forth in all permits, licenses and other approvals which have been obtained or are required to be obtained from Governmental Authorities for the Project.

7.1.3 Inspection by Lender. Borrower will cooperate with Lender in arranging for inspections of the Project by Lender and its respective agents and representatives, from time to time during normal business hours following reasonable notice, except in the case of an emergency when no notice shall be required, subject to the rights of the owners and tenants of the properties where the Project is located.

7.1.4 Proceedings to Enjoin or Prevent the Operation of the Project. If any action, suit or proceeding is filed or otherwise commenced seeking to enjoin or otherwise prevent or declare unlawful the operation of the Project, or if any other action, suit or proceeding alleging the violation of any Law by Borrower is filed or otherwise commenced, Borrower shall give immediate notice thereof to Lender, and, at its sole expense (a) cause such proceedings to be vigorously contested in good faith and (b) in the event of an adverse ruling or decision, prosecute all allowable and reasonable appeals therefrom.

7.1.5 Lender's Attorneys' Fees and Expenses. In case of any Default under this Agreement or any of the other Loan Documents, Borrower (in addition to Lender's attorneys' fees and expenses to be paid by Borrower under Section 5.1) shall pay all of Lender's attorneys' fees and expenses reasonably incurred by Lender in connection with the enforcement of this Agreement and the other Loan Documents and with the collection of all amounts payable hereunder and thereunder. In addition to and without limiting the generality of the foregoing, if at any time hereafter prior to repayment of the applicable Loan in full, Lender reasonably employs counsel for advice or other representation (whether or not any suit has been, or shall thereafter be, filed and whether or not other legal proceedings

have been, or shall thereafter be, instituted, whether or not Lender shall be a party thereto) with respect to the Loan, this Agreement or any of the other Loan Documents, or to enforce any rights of Lender or any of Borrower's obligations hereunder or under any of the other Loan Documents, or any obligations of any other person, firm or corporation which may be obligated to Lender by virtue of this Agreement or any other agreement, instrument or document heretofore or hereafter delivered to Lender by or for the benefit of Borrower ("Lender's Legal Review"), then, in any such event, all of the attorneys' fees and expenses arising from such services, and all expenses, costs and charges relating thereto, shall be paid by Borrower on demand and, if Borrower fail to pay such fees, costs and expenses, payment thereof by Lender shall be deemed to constitute additional indebtedness evidenced by the Note (even if the total amount of such indebtedness would then exceed the corresponding Loan Amount), payable on demand. Without limiting the generality of the foregoing, Lender shall endeavor to provide Borrower with notice of Lender's Legal Review; provided, however, Lender's failure to give such notice shall not be deemed to be Lender's breach of this Agreement, nor excuse Borrower from its payment or reimbursement obligations under this Section 7.1.5.

7.1.6 Lender's Action for its Own Protection Only. The authority herein conferred upon Lender, and any action taken by Lender, to inspect the Project, and to approve all documents and instruments submitted to Lender, will be exercised and taken by Lender and by Lender's employees, agents and representatives for their own protection only and may not be relied upon by Borrower or any other party for any purposes whatever; and neither Lender nor Lender's employees, agents and representatives shall be deemed to have assumed any responsibility to Borrower or any other party with respect to any such action herein authorized or taken by Lender or Lender's employees, agents and representatives. Any review, investigation or inspection conducted by Lender, or consultants retained by Lender, or any agent or representative of Lender in order to verify independently Borrower's satisfaction of any conditions precedent to the disbursement of proceeds of the Loan under this Agreement, Borrower's performance of any of its other covenants, agreements and obligations under the Loan Documents to which any of them is a party, or the validity of any representations and warranties made by Borrower hereunder (regardless of whether or not the party conducting such review, investigation or inspection should have discovered that any of such conditions precedent were not satisfied or that any such covenants, agreements or obligations were not performed or that any such representations or warranties were not true), shall not affect (or constitute a waiver by Lender of) (i) any of Borrower's representations and warranties under this Agreement or Lender's reliance thereon or (ii) Lender's reliance upon any certifications of Borrower, or any other party required under this Agreement, or any other facts, information or reports furnished to Lender by Borrower or any other party.

7.1.7 Furnishing Information. Borrower shall deliver or cause to be delivered to Lender a Federal tax return for Borrower or pertinent schedules of Member's Federal tax return, if Borrower does not file an individual tax return as a disregarded entity, annually as soon as available, but in no event later than thirty (30) days after the applicable filing date, or, if any of Borrower's Federal tax returns have not been filed by the applicable filing date, a copy of the Form 7004 Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns filed on Borrower's behalf. All Federal tax returns or Form 7004 Applications delivered to Lender shall be certified as true, correct and complete by Member. Additionally, Borrower shall deliver or cause to be delivered to Lender (i) unaudited annual and quarterly financial statements for Borrower as soon as available, but in no event later than ninety (90) days after the end of Borrower's fiscal year for the annual financial statements, and forty-five (45) days after the end of Borrower's fiscal quarters for the quarterly financial statements; and (ii) monthly construction progress reports during the Construction Period; and (iii) monthly Energy production reports for a twelve (12) month period commencing with the month in which Energy production commences. All financial statements shall be prepared in such detail as reasonably required by Lender and shall fully disclose all contingent liabilities. Each unaudited annual and quarterly financial statement delivered pursuant to this Section 7.1.7 shall be certified as true, complete and correct by Member. Additionally, Borrower will:

(a) promptly supply Lender with such information concerning Borrower and its financial conditions as Lender may reasonably request from time to time;

(b) promptly notify Lender of any condition or event which constitutes (or which upon the giving of notice or lapse of time, or both, would constitute) a breach, Default, or Event of Default of any term, covenant, condition, warranty, representation or provision of this Agreement or any other Loan Documents, including any event or circumstance which causes any information which has previously been provided by it to Lender to include an untrue statement of material fact or to omit to state any material fact or any fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, and, in such event, Borrower shall promptly furnish to Lender updated or revised information which will correct such untrue statement or include such omitted fact;

(c) promptly notify Lender of the institution of any action, suit or proceeding involving Borrower to the extent the institution of any action, suit or proceeding could cause a Material Adverse Change; and

(d) promptly supply Lender with such information concerning the Project as Lender may reasonably request from time to time.

7.1.8 Documents of Further Assurance. From time to time, Borrower and Lender shall execute, deliver and furnish (or cause to be executed, delivered and furnished) such documents as may be reasonably necessary or desirable to correct any errors of a typographical nature or inconsistencies which may be contained in any of the Loan Documents; and consummate fully the transaction contemplated under this Agreement, including, without limitation, any modification or amendment of this Agreement, the Security Agreement, the Assignment of Project Agreements, the Assignment of System Documents and Other Collateral, or any financing statement relating to the Collateral to enable Borrower to transfer any Collateral permitted to be transferred pursuant to the terms of this Agreement, the Security Agreement, the Assignment of Project Agreements, the Assignment of System Documents and Other Collateral and/or any other Loan Document.

7.1.9 Furnishing Notices. Borrower shall deliver to Lender a copy of any notice or correspondence received or given by Borrower (or its agents or representatives) concerning the Project from or to any Governmental Authority or from or to any insurance company within three (3) Business Days after such notice is received.

7.1.10 Indemnification. Borrower and the Member shall jointly and severally indemnify, defend, protect and hold the Indemnified Persons harmless from and against all claims, injury, damage, loss, costs (including attorneys' fees and disbursements) and liability of any and every kind to any persons or property by reason of (a) the Project; or (b) any other action or inaction by, or matter which is the responsibility of, Borrower; except to the extent such claims under (a) or (b) relate to the gross negligence or willful misconduct of such Indemnified Person. The foregoing indemnification shall survive repayment of the Note for a period of three (3) years.

7.1.11 Lost Note. If the Note is mutilated, destroyed, lost, or stolen, Borrower shall upon written request and delivery by Lender of a commercially reasonable lost note affidavit promptly deliver to Lender, in substitution therefore, a new promissory note containing the same terms and conditions as the Note with a notation thereon (a) of the unpaid principal and accrued and unpaid interest; and (b) stating that such promissory note is a duplicate original of the Note, intended to replace the Note.

7.1.12 Financial Covenants and Compliance Certificate.

(a) Debt Service Coverage. Borrower shall maintain a Debt Service Coverage Ratio of 1.25:1 (the "Debt Service Covenant"), measured as of the end of each calendar year, with a measuring period equal to the four (4) calendar quarters immediately preceding the calculation date, or, during the first year of the term of the Loan, a period equal to the number of calendar quarters immediately preceding the calculation date.

(b) Compliance Certificate. Within thirty (30) days following the end of each calendar quarter, Borrower shall deliver a quarterly compliance certificate to Lender in the form of Exhibit B (each, a "Compliance Certificate"), certifying that as of the date of the Compliance Certificate: (i) no Event of Default has occurred and is continuing under this Agreement or any Loan Documents executed and delivered in connection therewith, and (ii) Borrower is in compliance with the Debt Service Covenant as of that date.

7.1.13 Bank Accounts. Borrower shall maintain all of its operating and working capital accounts with Lender.

7.2 Negative Covenants. So long as the Loan or and any other Obligation hereunder (other than contingent indemnity obligations) shall remain unpaid or unsatisfied, Borrower further covenants and agrees to and with Lender as follows:

7.2.1 Single Purpose Entity. Borrower shall not (a) engage in any business other than the ownership and operation of the Project, (b) enter into any partnership, become a shareholder in any corporation or participate in any other business entity, (c) cease to be a single purpose entity whose sole purpose is to own and operate the Project, (d) engage in or seek or consent to any dissolution, winding up, liquidation, consolidation, merger or asset sale, (e) permit or suffer any material amendment or modification of its operating agreement, or suffer the admission of any new member, (f) cease to conduct its business in its own name and maintain its accounts, books and records separate from any other person or entity, (g) commingle its funds or assets with those of any other entity, (h) fail to pay its own liabilities out of its own funds and assets, (i) make loans or advances to any person or entity without Lender's consent, which consent shall not be unreasonably withheld, (j) enter into or be a party to any transaction with its members, including Member, or any of its Affiliates, except in the ordinary course of its business and on terms that are no less favorable to any party thereto than would be obtained in a comparable arm's length transaction with an unrelated third party, (k) enter into contracts or agreements for employment with any person providing for liquidated damages or guaranteed severance payments; (l) make any Distributions not approved in advance by Lender or that would otherwise result in the violation of any of the covenants contained in this Article 7 or elsewhere in this Agreement; or (m) make investments or acquisitions other than with respect to the Project and as permitted by the terms of this Agreement.

7.2.2 Restriction on Transfers of Interests. Without the prior written consent of Lender, which consent Lender may withhold in its sole and absolute discretion, neither Member, nor any Affiliate of Members shall Transfer, whether voluntarily or involuntarily, directly or indirectly, any interest which they may have in Borrower.

7.2.3 Due on Transfer or Further Encumbrance. Upon the sale or transfer of the Project or portion of the Collateral or any other conveyance, transfer or vesting of any direct or indirect interest in the Project or the Collateral, including any encumbrance of the Project or the Collateral, the Loan shall, at Lender's option in its sole discretion, become immediately due and payable upon notice to Borrower. Notwithstanding the foregoing, Borrower shall be permitted to Transfer the System pursuant to the terms of the PPA or the Site Lease; provided, however, all termination payments or other remuneration received by Borrower from Host pursuant to such Transfer shall be used to repay the outstanding indebtedness under this Agreement as set forth in Section 4.8.

7.2.4 No Additional Debt. Other than the Loan or as set forth in this Agreement, Borrower shall not create, incur, assume, guaranty or suffer to exist any Debt, whether personal or non-recourse, secured or unsecured, subordinate or otherwise, without the prior written consent of Lender, which consent may be withheld in Lender's sole discretion.

7.2.5 Mechanics' and Other Liens and the Contest Thereof. Borrower will not suffer or permit any mechanics' lien, privilege or claim to be filed or otherwise asserted against the Project, and will promptly discharge the same, or cause the same to be discharged, by payment, bonding or otherwise. Without limiting the generality of the foregoing, Borrower may contest such lien, privilege or claim in good

faith and by bona fide proceedings; provided, however, in the event Borrower contests any such mechanics' lien, privilege or claim, Borrower shall maintain reserves or secure a bond in an amount adequate to pay all contested liabilities in accordance with prudent business practices, which reserves shall not be less than 150% of the amount of the contested liabilities. If Borrower shall fail promptly to discharge any mechanics' lien(s), privilege(s) or claim(s) filed or otherwise asserted against the Project and totaling at least \$25,000 in the aggregate, and provided that Borrower is not contesting the same in good faith, Lender may, at its election (but shall not be obligated to), (a) procure the release and discharge of any such lien, privilege or claim and any judgment or decree thereon, without inquiring into or investigating the amount, validity or enforceability of such lien, privilege or claim and (b) effect any settlement or compromise of the same, and any amounts expended by Lender in connection therewith, including premiums paid or security furnished in connection with the issuance of any surety company bonds, shall be deemed to constitute additional indebtedness evidenced by the Note (even if the total amount of such indebtedness would then exceed the face amount of the Note), payable on demand and secured by the Loan Documents.

7.2.6 Settlement of Claims. Borrower shall not settle or compromise any claim in excess of TWENTY-FIVE THOUSAND AND NO/100THS DOLLARS (\$25,000.00) exclusive of the proceeds of insurance, or consent to entry of any judgment in any action or litigation arising from such a claim, without, in each instance, the prior written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned. Lender shall determine the application of proceeds from insurance policies, surety bonds, performance guarantees, contractor and vendor penalties, and other similar risk mitigation instruments related to the Project.

7.2.7 Bankruptcy and Insolvency Filings. Borrower shall not file or consent to the filing of any petition under the Federal Bankruptcy Code or any similar state or federal law, whether now or hereafter existing, or make an assignment for the benefit of creditors or admit in writing its inability to pay its debts as they become due.

7.2.8 Payments to Affiliates; Cash Distributions; Application of Cash Flow. Neither Borrower nor any Affiliate of Borrower (nor any Affiliates of any such persons or entities) shall receive any overhead fees, management fees, marketing fees, consulting fees (or any fees similar to the foregoing) during the term of the Loan, except to the extent such fees do not exceed the amount that would have been paid to non-affiliated parties for the same services in an arms-length transaction. Borrower must apply all Project Revenues to pay the following items in the following order of priority, to the extent necessary to pay such items: (a) Debt Service; (b) any unpaid Loan Expenses pursuant to Article 5 and all other amounts due to Lender pursuant to the Loan Documents other than Debt Service; (c) any amounts necessary to maintain or replenish the Minimum Payment Reserve Amount; and (d) Operating Expenses, in accordance with this Agreement. Subject to all of the foregoing, so long as no Event of Default remains uncured (or would be caused thereby), Borrower may make payments to its members and Affiliates, in amounts not exceeding the Excess Proceeds. Except as set forth in this Section 7.2.8, no cash distributions or loans shall be made to Borrower or any Affiliate of Borrower (or to any Affiliates of any such persons or entities) without the prior written consent of Lender, which consent shall not be unreasonably withheld, delayed or conditioned.

7.2.9 Amendments and Modifications to Project Agreements. Without the prior written consent of Lender, in Lender's reasonable discretion, Borrower shall not materially modify, amend or supplement the EPC Agreement, the O&M Agreement, the Site Lease, the Interconnection Agreement or the PPA or permit any other Party to do the same.

## ARTICLE 8.

### ASSIGNMENTS

8.1 Assignments and Participations. Lender shall have the right, following reasonable notice to but without the consent of Borrower or Member, to Transfer this Agreement and any of its rights hereunder and under the Loan Documents and any of the other Loan Documents, to one or more

Persons (collectively, "Assignee") pursuant to one or more assignment and assumption agreements (each, an "Assignment and Assumption") in a form acceptable to Lender. Upon the effective date of the applicable Assignment and Assumption, Assignee shall be a party to this Agreement, and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Assumption, Assignee shall have the rights and obligations of Lender hereunder and under the other Loan Documents. Borrower and Member agree that all of the rights and remedies of Lender in connection with the interest assigned shall be enforceable against Borrower by Assignee with the same force and effect and to the same extent as the same would have been enforceable but for such assignment, and Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Assumption, relinquish its rights and be released from its obligations hereunder and thereunder. Borrower shall cooperate with Lender and Assignee in connection with the assignment of interests under this Agreement or the sale of participations herein.

8.1.1 Lender shall have the right, without the consent of Borrower or Member, to sell participations to one or more other Persons (each, a "Participant") in or to all or a portion of its rights and obligations under the Loan and the Loan Documents; provided, however, that Borrower and Lender shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under this Agreement and with regard to any and all payments to be made under this Agreement.

8.1.2 Borrower acknowledges and agrees that Lender may provide to any Assignee or Participant, originals or copies of this Agreement, any other Loan Document and any other documents, instruments, certificates, opinions, insurance policies, letters of credit, reports, requisitions and other materials and information of every nature or description, and may communicate all oral information, at any time submitted by or on behalf of Borrower, or received by Lender in connection with the Loan or with respect to Borrower, subject to such Assignee or Participant executing a confidentiality agreement in the form used by Lender to protect its own confidential information. In order to facilitate assignments to Assignees and sales to Participants, Borrower shall execute such further documents, instruments or agreements as Lender may reasonably require; provided, that Borrower shall not be required (a) to execute any document or agreement which would materially decrease its rights, or materially increase its respective obligations, relative to those set forth in this Agreement or any of the other Loan Documents (including financial obligations, personal recourse, representations and warranties and reporting requirements), or (b) to expend more than incidental sums of money or incidental administrative time for which it does not receive reasonable reimbursement in order to comply with any requests or requirements of Lender in connection with such assignment or sale arrangement. In addition, Borrower agrees to cooperate fully with Lender in the exercise of Lender's rights pursuant to this Section 8.1.2, including providing such information and documentation regarding Borrower as Lender or any potential Assignee or Participant may reasonably request and to meet with potential Assignees and Participants, so long as Borrower do not incur any material cost or expense.

8.2 Prohibition of Assignments by Borrower. Except as otherwise permitted by Lender in writing or in connection with the exercise by Applicant, other off-taker of Energy or the Host of the right to purchase the System pursuant to the terms of the PPA or the Site Lease (in which case Section 4.8 of this Agreement shall apply), Borrower shall not Transfer or attempt to Transfer the System, the Project or its rights under this Agreement.

8.3 Successors and Assigns. Subject to the foregoing restrictions on transfer and assignment contained in this Article 8, this Agreement shall inure to the benefit of and shall be binding on the parties hereto and their respective heirs, executors, legal representatives, successors and permitted assigns.

## ARTICLE 9.

### EVENTS OF DEFAULT

9.1 Event of Default. The occurrence of any one or more of the following shall constitute an "Event of Default," as such term is used herein:

9.1.1 If Borrower fails to pay the unpaid principal amount of the Note when due, whether at its Maturity Date or upon acceleration or otherwise as provided herein and in the Note;

9.1.2 If Borrower fails to pay any installment of interest under the Note within five (5) days from the date when due;

9.1.3 If Borrower fails to observe or perform any covenant, agreement or obligation hereunder or under any other Loan Documents involving the payment of money, other than the payment of principal or interest under the Note, and such failure shall continue for five (5) days following notice;

9.1.4 If Borrower fails to perform any of its non-monetary covenants, agreements and obligations under this Agreement or has otherwise breached any of the covenants, agreements and conditions of this Agreement, and such failure or breach shall continue for thirty (30) days after written notice thereof from Lender; provided, however, that if such failure or breach by its nature can be cured but cannot be cured within such thirty (30) day period, then the same shall not constitute an Event of Default so long as Borrower commenced to cure within such thirty (30) day period and diligently and in good faith prosecutes such cure to completion within ninety (90) days of said written notice from Lender to Borrower;

9.1.5 If at any time or times hereafter any representation or warranty (including the representations and warranties of Borrower set forth in Article 3 of this Agreement), or if any statement, report or certificate now or hereafter made or delivered by Borrower, or any Affiliate thereof in connection with the Loan (a) proves to have been untrue, incorrect or misleading in any material respect when made or delivered or (b) thereafter becomes untrue, incorrect or misleading in any material respect, unless, if the representation or warranty is of a nature that can be made to be true or correct, the party having made such representation, warranty or other such statement duly notifies Lender of such fact and diligently proceeds to and does make such representation or warranty true and correct and not misleading, within any applicable grace period contained herein, or, if no grace period is provided herein, within thirty (30) days; provided, however, that nothing herein shall be deemed to extend any applicable grace period beyond the applicable maturity date under either of the Loan.

9.1.6 If any petition is filed by or against Borrower under the Federal Bankruptcy Code or any similar state or federal law, whether now or hereafter existing (and, in the case of involuntary proceedings, either failure to cause the same to be vacated, stayed or set aside within sixty (60) days after filing or the entry of an order for relief); or if Borrower makes an assignment for the benefit of creditors or admits in writing its inability to pay its or his debts as they become due;

9.1.7 If any Transfer is made in violation of Section 8.2;

9.1.8 If there exists any fraud or misappropriation by Borrower which materially adversely affects Lender or the Project;

9.1.9 If Borrower fails to observe or perform any covenant, agreement or obligation under the EPC Agreement, the PPA, the O&M Agreement, the Interconnection Agreement or the Site Lease and such failure shall continue beyond any applicable cure period; or

9.1.10 If a default occurs under any other Loan Documents and continues beyond the applicable grace or cure period, if any, contained therein.

## ARTICLE 10.

### LENDER'S REMEDIES IN EVENT OF DEFAULT

#### 10.1 Remedies Conferred Upon Lender.

10.1.1 Upon the occurrence of an Event of Default, the Note shall immediately and automatically become due and payable in full without notice, presentment, demand, protest or other action of any kind, all of which Borrower hereby expressly waive, and Lender shall, in addition to the foregoing and all other remedies conferred upon Lender by law and by the terms of such Note and the other Loan Documents, have the right, but not the obligation, to pursue one or more of the remedies set forth in Section 10.1.2), concurrently or successively, it being the intent hereof that all of such remedies shall be cumulative and that no such remedy shall be to the exclusion of any other.

10.1.2 Upon the occurrence and during the continuance of any Event of Default, Lender shall, in addition to all other remedies conferred upon Lender by law and by the terms of the applicable Note and the other Loan Documents, have the right but not the obligation to pursue any one or more of the following remedies, concurrently or successively, it being the intent hereof that all such remedies shall be cumulative and that no such remedy shall be to the exclusion of any other:

(a) declare the entire amount of the Loan or any portion thereof which is currently payable (including, without limitation, any and all costs and expenses, including professional fees) to be immediately due and payable; provided, however, if any Event of Default as described in Section 9.1.6 above shall occur, the entire amount of the Loan shall be automatically due and payable, without any further notice, demand or other action by Lender;

(b) institute proceedings, judicial or otherwise, or take any other action, for the enforcement of Lender's rights under the Loan Documents or at law or in equity;

(c) terminate, in whole or in part, any obligation Lender may have to make any disbursement of Loan proceeds hereunder;

(d) institute an action, suit or proceeding in equity for the specific performance of any covenant, condition or agreement contained in the Loan Documents;

(e) recover judgment on the Note either before, during or after any proceedings for the enforcement of any Loan Document;

(f) exercise all or any one or more of the rights, powers and other remedies available to Lender against Borrower under the Loan Documents, at law or in equity, at any time and from time to time, whether or not all or any portion of the Loan shall be declared due and payable;

(g) pay, perform, or cause the performance of (provided Lender shall have no obligation to do so) such covenant or obligation; and

(h) exercise or pursue any other right or remedy permitted under this Agreement or any of the other Loan Documents or conferred upon Lender by operation of Law.

10.1.3 Upon the occurrence and during the continuance of an Event of Default (including after the acceleration of the Loan until all sums due and payable under the Loan Documents are paid in full), interest on the outstanding principal balance of the Loan and, to the extent permitted by law, accrued and unpaid interest and all other amounts due under the terms of the Loan Documents, shall accrue at the Default Rate. Interest at the Default Rate shall be computed from the occurrence of the Event of Default until the actual receipt and collection of the Loan (or that portion thereof that is then due). To the extent permitted or not prohibited under applicable Law, interest at the Default Rate shall be added



to the Loan, shall itself accrue interest at the same rate as the Loan. This Section 10.1.3 shall not be construed as an agreement or privilege to extend the date of the payment of either of the Loan, nor as a waiver of any other right or remedy accruing to Lender by reason of the occurrence of any Event of Default; the acceptance of any payment of by Lender shall not be deemed to cure or constitute a waiver of any Event of Default; and Lender retains its rights under this Agreement and the other Loan Documents to accelerate and to continue to demand payment of the Loan upon the happening of any Event of Default, despite any payments made to Lender after the occurrence of such Event of Default.

10.1.4 Upon the occurrence of any Event of Default, Lender may, but without any obligation to do so and without notice to or demand on Borrower and without releasing Borrower from any obligation, take any action in such manner and to such extent as Lender may deem necessary to cure any Event of Default. Borrower agrees that Lender is authorized to appear in, defend, or bring an action or proceeding to collect the Loan, and the cost and expense thereof (including Lender's legal fees), shall constitute a protective advance and shall be payable on demand.

10.1.5 Lender's exercise of any right or remedy which has the effect of remedying an Event of Default under the Loan Documents shall not constitute a cure or waiver of such Event of Default.

10.2 Non-Waiver of Remedies. The failure of Lender to insist upon strict performance of any term, covenant or condition contained in the Loan Documents shall not be deemed to be a waiver, modification, amendment or estoppel with respect to the enforcement of such term, covenant or condition. Borrower shall not be relieved or released from its obligations by reason of (a) the failure of Lender to comply with any request of Borrower to take any action to enforce any of the provisions of the Loan Documents, (b) the release, regardless of consideration, of any Person liable for the Loan or any portion thereof, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of the Loan Documents. The rights of Lender under each of the Loan Documents shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision of any Loan Document to the exclusion of any other provision. Lender shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every right and remedy now or hereafter afforded at law or in equity.

10.3 Costs of Enforcement. In the event of the (a) exercise of any remedy by Lender under this Agreement or the other Loan Documents or following the occurrence of an Event of Default, (b) bankruptcy, insolvency, reorganization, rehabilitation, liquidation or other similar proceeding in respect of Borrower or an assignment by Borrower for the benefit of its creditors, (c) enforcement of any obligations of or collection of any payments due from Borrower under this Agreement or the other Loan Documents, or (d) incurring of any costs or expenses by Lender in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement and the other Loan Documents in the nature of a "work-out" or "settlement" or "compromise", then Borrower and its successors or assigns shall pay to Lender on demand any and all costs and expenses, including professional fees, reasonably incurred or paid by Lender in connection therewith or in collecting any amount payable hereunder or in enforcing Lender's rights hereunder, whether or not any legal proceeding is commenced hereunder or thereunder and whether or not any Default or Event of Default shall have occurred and is continuing, together with interest thereon at the Default Rate from the date paid or incurred by Lender until such expenses are paid by Borrower.

## ARTICLE 11.

### GENERAL PROVISIONS

11.1 Captions. The captions and headings of various Articles and Sections of this Agreement and Exhibits pertaining hereto are for convenience only and are not to be considered as defining or limiting in any way, the scope or intent of the provisions hereof.

11.2 Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given and received: (a) if hand delivered, on the day so delivered to the address set forth below; (b) if mailed, on the third Business Day after the day on which it is deposited in the United States mails in the continental United States, registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below; (c) if by Federal Express or other reputable express courier service, on the next Business Day after delivery to such express courier service, addressed as set forth below; or (d) if by telecopy or electronic mail transmission, on the day and at the time on which delivered to such party at the address and the telecopier number or email address set forth below, as applicable:

If to Borrower:

Blue Sky Utility 2017 II, LLC  
1129 Westview Drive  
Napa, California 94558  
Attention: Ran Bujanover  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with copy to:

Kelly Wallace, Esq.  
1207 Randolph Street  
Napa, California 94559  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

If to Lender:

New Resource Bank  
255 California Street, Suite 600  
San Francisco, California 94111  
Attention: Michael Jones  
Telephone: (415) 995-8104  
Facsimile: (415) 995-8105

with copy to:

Law Offices of Charles R. Campbell, Jr.  
700 Larkspur Landing Circle, Suite 199  
Larkspur, California 94939  
Attention: Charles R. Campbell, Jr.  
Telephone: (415) 891-8268  
Facsimile: (415) 891-8267

or at such other address or to such other addressee as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

11.3 Entire Agreement; Modification; Waiver. This Agreement and the other Loan Documents and instruments delivered in connection herewith constitute the entire agreement among the parties with respect to the Loan and supersede all prior agreements, written and oral, relating to the subject matter hereof. Neither Lender nor any employee of Lender has made or is authorized to make any representation or agreement upon which Borrower may rely unless such matter is made for the benefit of Borrower and is in writing signed by an authorized officer of Lender. Borrower agrees that it has not and will not rely on any custom or practice of Lender, or on any course of dealing with Lender, in connection

with the Loan unless such matter is set forth in this Agreement or the other Loan Documents or in a written instrument made for the benefit of Borrower and signed by an authorized officer of Lender. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the party against whom the enforcement of such modification, waiver, amendment, discharge or change is sought.

11.4 Governing Law; Jurisdiction. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED UNDER THE INTERNAL LAWS (AS OPPOSED TO THE LAWS OF CONFLICTS) OF THE STATE OF CALIFORNIA. WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT (EACH, A "PROCEEDING"), BORROWER IRREVOCABLY (A) SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS HAVING JURISDICTION IN THE CITY AND COUNTY OF SAN FRANCISCO AND THE STATE OF CALIFORNIA, AND (B) WAIVES ANY OBJECTION WHICH IT MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDING BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT ANY PROCEEDING HAS BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDING, THAT SUCH COURT DOES NOT HAVE JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT SHALL PRECLUDE LENDER FROM BRINGING A PROCEEDING IN ANY OTHER JURISDICTION NOR WILL THE BRINGING OF A PROCEEDING IN ANY ONE OR MORE JURISDICTIONS PRECLUDE THE BRINGING OF A PROCEEDING IN ANY OTHER JURISDICTION. BORROWER FURTHER AGREES AND CONSENT THAT, IN ADDITION TO ANY METHODS OF SERVICE OF PROCESS PROVIDED FOR UNDER APPLICABLE LAW, ALL SERVICE OF PROCESS IN ANY PROCEEDING IN ANY CALIFORNIA STATE OR UNITED STATES COURT SITTING IN THE CITY AND COUNTY OF SAN FRANCISCO MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, DIRECTED TO BORROWER AT THE ADDRESS INDICATED ABOVE, AND SERVICE SO MADE SHALL BE COMPLETE UPON RECEIPT; EXCEPT THAT IF BORROWER SHALL REFUSE TO ACCEPT DELIVERY, SERVICE SHALL BE DEEMED COMPLETE FIVE (5) DAYS AFTER THE SAME SHALL HAVE BEEN SO MAILED.

11.5 Acquiescence Not to Constitute Waiver of Lender's Requirements. Each and every covenant and condition for the benefit of Lender contained in this Agreement may be waived by Lender; provided, however, that to the extent Lender may have acquiesced in any noncompliance with any conditions, covenants or obligations of Borrower contained herein, such acquiescence shall not be deemed to constitute a waiver by Lender of the performance by Borrower of any subsequent conditions, covenants or obligations to be performed by Borrower hereunder.

11.6 Disclaimer by Lender.

11.6.1 This Agreement is made for the sole benefit of Borrower and Lender (and Lender's successors and assigns and participants, if any), and no other person or persons shall have any benefits, rights or remedies under or by reason of this Agreement, or by reason of any actions taken by Lender pursuant to this Agreement. Lender shall not be liable to any party for any debts or claims accruing in favor of any such party against Borrower or others. Borrower is not and shall not be an agent of Lender for any purposes. Except as expressly set forth in the Loan Documents, Lender is not and shall not be an agent of Borrower for any purposes. Lender, by making the Loan or any action taken pursuant to any of the Loan Documents, shall not be deemed a partner or a joint venturer with Borrower or a fiduciary of Borrower.

11.6.2 By accepting or approving anything required to be observed, performed, fulfilled or given to Lender pursuant to the Loan Documents, including, without limitation, any certificate, financial statement, appraisal, insurance policy or other report or document, Lender shall not be deemed to have warranted or represented the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance or approval thereof shall not constitute (i) a warranty or representation to anyone with respect thereto by Lender or (ii) a waiver of any of Borrower's obligations or liabilities under this Agreement or any of the other Loan Documents with respect to any facts, matters or circumstances disclosed in any of the reports or other documents described in this Section 11.6.2.

11.6.3 Lender neither undertakes nor assumes any responsibility or duty to Borrower to select, review, inspect, supervise, pass judgment upon or inform Borrower of any matter in connection with the Project, and Borrower shall rely entirely upon its own judgment with respect to such matters, and any review, inspection, supervision, exercise of judgment or supply of information to Borrower by Lender in connection with such matters is for the protection of Lender only and neither Borrower nor or any third party is entitled to rely thereon.

11.6.4 Lender owes no duty of care to protect Borrower with respect to any matter reviewed or investigated by Lender in connection with the Loan.

11.6.5 Lender shall not be directly or indirectly liable or responsible for any loss, claim, cause of action, liability, indebtedness, damage or injury of any kind or character to any person or property arising from any activity on, or occupancy or use of, all or any portion of any property within or upon which the Project is installed, constructed or operated, including any loss, claim, cause of action, liability, indebtedness, damage or injury caused by, or arising from: (a) any defect in the Project; (b) any act or omission of Borrower or any of its Affiliates, agents, employees, independent contractors, licensees or invitees; or (c) any accident at any property within or upon which the Project is installed or constructed or any fire, flood or other casualty or hazard thereon.

11.7 Right of Lender to Make Advances to Cure Borrower's Defaults. If (a) Borrower shall fail to perform in a timely fashion any of Borrower's covenants, agreements or obligations contained in this Agreement or the other Loan Documents, or (b) Lender determines in good faith that an emergency or other exigent circumstances exist, Lender may (but shall not be obligated to) perform any of such covenants, agreements and obligations. Any amounts expended by Lender pursuant to Section 10.1.2(a), shall constitute additional indebtedness evidenced by the Note (even if the total amount of such indebtedness would then exceed the Loan Amount), payable on demand.

11.8 Definitions Included in Agreement. Definitions contained in this Agreement which identify documents, including the other Loan Documents, shall be deemed to include all amendments and supplements to such documents from the date hereof, and all future amendments and supplements thereto entered into from time to time to satisfy the requirements of this Agreement or otherwise with the consent of Lender. Reference to this Agreement contained in any of the foregoing documents shall be deemed to include all amendments and supplements to this Agreement.

11.9 Time is of the Essence. Time is hereby declared to be of the essence of this Agreement and of every part hereof.

11.10 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

11.11 Waiver of Consequential Damages. In no event shall Lender be liable to Borrower for consequential damages, whatever the nature of a breach by Lender of its obligations under this Agreement or any of the other Loan Documents, and Borrower, for itself and all of its Affiliates, hereby waives all claims for consequential damages.

11.12 Claims Against Lender. Lender shall not be in default under this Agreement, or under any other Loan Documents, unless a written notice specifically setting forth the claim of Borrower shall have been given to Lender within ninety (90) days after either Borrower first had knowledge of, or reasonably should have had knowledge of, the occurrence of the event which Borrower alleges gave rise to such default and Lender does not remedy or cure the default (if any) with reasonable promptness. If it is determined in any proceedings that Lender has improperly failed to grant its consent or approval, where such consent or approval is required by this Agreement or any other Loan Document to be obtained, Borrower's sole remedy shall be to obtain declaratory relief determining such withholding to

have been improper, and Borrower, for itself and all of its Affiliates, hereby waive all claims for damages or set-off against Lender resulting from any withholding of consent or approval by Lender, unless Lender shall have acted in bad faith or with gross negligence.

11.13 Severability. The parties hereto intend and believe that each provision in this Agreement comports with all applicable local, state and federal laws and judicial decisions. However, if any provision or provisions, or if any portion of any provision or provisions, in this Agreement is found by a court of law to be in violation of any applicable local, state, or federal law, statute, ordinance, administrative or judicial decision, or public policy, and if such courts declare such portion, provision, or provisions of this Agreement to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision, or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, and that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void, or unenforceable portion, provision, or provisions were not contained therein, and that the rights, obligations, and interests of Borrower and Lender under the remainder of this Agreement shall continue in full force and effect.

11.14 Jury Trial Waiver and Alternative Dispute Resolution.

11.14.1 JURY TRIAL WAIVER. BORROWER ACKNOWLEDGES THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. TO THE EXTENT PERMITTED BY LAW, LENDER AND THE UNDERSIGNED, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF ITS CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THE MUTUAL BENEFIT OF ALL PARTIES, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OTHER DOCUMENT (INCLUDING THE LOAN DOCUMENTS), INSTRUMENT OR AGREEMENT BETWEEN THE UNDERSIGNED AND LENDER.

11.14.2 Claims Subject to Judicial Reference; Selection of Referee. In the event that the Jury Trial Waiver set forth above is not enforceable, the Parties elect to proceed as follows: All Claims, including any and all questions of law or fact relating thereto, shall, at the written request of any party to this Agreement, be determined by reference pursuant to Section 638 et. seq. of the California Code of Civil Procedure ("Reference"), as the same may be amended from time to time, except as set forth in Section 11.14.6 below.

11.14.3 Referee. The Parties, by mutual written agreement, shall select a single neutral referee, who shall be a retired state or federal court judge or justice with at least five (5) years of judicial trial experience in civil matters. In the event that the Parties cannot agree upon a referee within ten (10) days of a written request to do so by any party, the referee shall be appointed by the Presiding Judge, or a judge designated by the Presiding Judge, of a court of competent jurisdiction located in the City and County of San Francisco, California. A request for appointment of a referee may be heard on an ex parte or expedited basis, and the Parties agree that irreparable harm would result if ex parte relief is not granted. The Parties shall equally bear the fees and expenses of the referee unless the referee otherwise provides in the statement of decision.

11.14.4 Time is of the Essence. The Parties agree that time is of the essence in conducting the Reference proceedings. Accordingly, the referee shall be requested, subject to change in the time periods specified herein for good cause shown, to (a) set the matter for a status and trial-setting conference within fifteen (15) days after the date of selection of the referee, (b) if practicable, try all issues of law of fact within one hundred twenty (120) days after the date of said conference, and (c) report a statement of decision within twenty (20) days after the matter has been submitted for decision.

11.14.5 Conduct of Reference. Except as provided in this Agreement, the Reference shall be conducted pursuant to applicable California Laws. The referee shall determine all issues relating to the applicability, interpretation, legality and enforceability of this Agreement. Except as expressly set forth in this Agreement, the referee shall determine the manner in which the reference proceeding is conducted including the time and place of hearings, the order of presentation of evidence, and all other

questions that arise with respect to the course of the reference proceeding. All proceedings and hearings conducted before the referee, except for trial, shall be conducted without a court reporter, except that when any party so requests, a court reporter will be used at any hearing conducted before the referee, and the referee will be provided a courtesy copy of the transcript. The party making such a request shall have the obligation to arrange for and pay the court reporter. Subject to the referee's power to award costs to the prevailing party, the Parties will equally share the cost of the referee and the court reporter at trial. The referee shall be empowered to enter equitable as well as legal relief, enter equitable orders that will be binding on the parties and rule on any motion which would be authorized in a court proceeding, including without limitation motions for summary judgment or summary adjudication. The referee shall issue a decision pursuant to Section 644 of the California Code of Civil Procedure, as the same may be amended from time to time. The referee's decision shall be entered by the Court as a judgment or an order in the same manner as if the action had been tried by the Court. The final judgment or order from any appealable decision or order entered by the referee shall be fully appealable as provided by law. The parties reserve the right to findings of fact, conclusions of laws, a written statement of decision, and the right to move for a new trial or a different judgment, which new trial, if granted, is also to be a Reference proceeding under this provision.

11.14.6 Provisional Remedies and Self-Help. No provision of this Agreement shall limit the right of any party hereto to (a) exercise any available self-help remedies, or (b) obtain or oppose temporary, provisional or ancillary remedies from a court of competent jurisdiction before, after or during the pendency of the Reference. The exercise of, or opposition to, any such remedy does not waive the right of any party hereto to Reference pursuant to this Agreement.

11.14.7 Limitation on Damages. In the event that punitive damages are permitted under applicable California Laws, the amount thereof shall not exceed a sum equal to the amount of actual damages as determined by the referee.

11.14.8 Severability. In the event that any provision of this Agreement is found to be illegal or unenforceable, the remainder of this Agreement shall remain in full force and effect. In the event that the enabling legislation which provides for the appointment of a referee is repealed and no successor statute is enacted, any dispute between the Parties that otherwise would be determined by Reference shall be resolved and determined by binding arbitration in accordance with the California Arbitration Act, Sections 1280 through 1294.2 of the California Code of Civil Procedure, as the same may be amended from time to time. The provisions of this Agreement with respect to a Reference proceeding shall apply to any such arbitrator, who shall have the same qualifications as the referee and who shall be selected in the same manner as the referee stated herein.

11.14.9 Multiple Claims. In the event that multiple Claims are asserted, some of which are found not subject to this Agreement, the Parties agree to stay the proceedings of the Claims not subject to this Agreement until all other Claims are resolved in accordance with this Agreement. In the event that Claims are asserted against multiple parties, some of whom are not subject to this Agreement, the Parties agree to sever the Claims subject to this Agreement and resolve them in accordance with this Agreement.

11.15 Survival of Indemnities. All indemnities of Borrower contained in this Agreement shall survive for a period of three (3) years after the payment in full and the performance of all obligations under the Loan Documents.

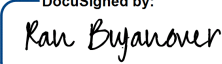
***Signatures on Following Page***

Borrower and Lender have executed this Agreement as of the day and year first set forth above.

BORROWER:

BLUE SKY UTILITY 2017 II, LLC,  
a California limited liability company

By BLUE SKY UTILITY LLC,  
a California limited liability company  
Its Member

DocuSigned by:  
  
By \_\_\_\_\_  
Ran Bujanover  
Its President

LENDER:

NEW RESOURCE BANK,  
a California corporation

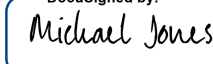
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By \_\_\_\_\_  
Its \_\_\_\_\_  
RM

EXHIBIT A

Schedule of Amortized Principal Payment Amounts

Year	Monthly Principal Payment
1	\$16,925.00
2	\$18,500.00
3	\$20,000.00
4	\$21,575.00
5	\$23,250.00
6	\$25,025.00
7	\$26,950.00
8	\$28,195.00



EXHIBIT B

Form of  
Form of Compliance Certificate

BLUE SKY UTILITY 2017 II, LLC, a California limited liability company ("Borrower") hereby certifies as follows:

This Certificate is furnished pursuant to Section 7.1.12(b) of that certain Loan Agreement ("Agreement") dated July 14, 2017, by and between Borrower and NEW RESOURCE BANK, a California corporation ("Lender"). Unless otherwise defined herein, the terms used in this Certificate shall have the meanings given to them in the Agreement.

The figures set forth in Schedule A attached hereto, to be submitted quarterly for determining compliance by Borrower with the Debt Service Coverage Ratio are true, accurate and complete as of the date hereof.

To the best knowledge and belief of the undersigned, and as of the date of this Certificate: (a) no Event of Default has occurred and is continuing under the provisions of the Agreement or the Loan Documents executed and delivered in connection therewith, including, without limitation, the Debt Service Coverage Ratio, as to which this Certificate shows the calculation thereof in such reasonable detail as Lender shall require; and (b) the representations and warranties set forth in Section 3 of the Agreement are true and correct in all material respects on and as of the date hereof (except to the extent such representations and warranties expressly refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date).

WITNESS my hand on \_\_\_\_\_, 201\_\_

BORROWER:

BLUE SKY UTILITY 2017 II, LLC,  
a California limited liability company

By BLUE SKY UTILITY LLC,  
a California limited liability company  
Its Member

By \_\_\_\_\_  
Ran Bujanover  
Its President

## SCHEDULE A

### Debt Service Covenant for Borrower

(Period Ending \_\_\_\_\_)

#### Debt Service Covenant (Section 7.1.12(a))

Required: Commencing January 14, 2018, Borrower shall maintain a Debt Service Coverage Ratio of 1.25:1, measured as of the end of each calendar quarter, with a measuring period equal to the four (4) calendar quarters immediately preceding the calculation date, or, during the first year of the term of the Loan, a period equal to the number of calendar quarters immediately preceding the calculation date.

#### Actual

Gross Revenues	\$ _____
Operating Expenses	\$ _____
Net Operating Income	\$ _____
Debt Service	\$ _____
Debt Service Coverage	_____

In Compliance Yes ☐ No ☐