
UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

Quarterly report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the Quarterly Period Ended: June 30, 2014

Transition report pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Commission File Number: 001-36002

NRG Yield, Inc.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation or organization)

46-1777204
(I.R.S. Employer
Identification No.)

211 Carnegie Center, Princeton, New Jersey
(Address of principal executive offices)

08540
(Zip Code)

(609) 524-4500
(Registrant's telephone number, including area code)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes No

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

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

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

As of July 31, 2014, there were 34,586,250 shares of Class A common stock outstanding, par value \$0.01 per share, and 42,738,750 shares of Class B common stock outstanding, par value \$0.01 per share.

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CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING INFORMATION

This Quarterly Report on Form 10-Q of NRG Yield, Inc., or the Company, includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. The words "believes," "projects," "anticipates," "plans," "expects," "intends," "estimates" and similar expressions are intended to identify forward-looking statements. These forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the Company's actual results, performance and achievements, or industry results, to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. These factors, risks and uncertainties include the factors described under Item 1A — *Risk Factors* in Part I, Item 1A of the Company's Annual Report on Form 10-K for the year ended December 31, 2013, including, but not limited to, the following:

- The Company's ability to maintain and grow its quarterly dividend;
- The Company's ability to successfully identify, evaluate and consummate acquisitions;
- The Company's ability to raise additional capital due to its indebtedness;
- Hazards customary to the power production industry and power generation operations such as fuel and electricity price volatility, unusual weather conditions, catastrophic weather-related or other damage to facilities, unscheduled generation outages, maintenance or repairs, unanticipated changes to fuel supply costs or availability due to higher demand, shortages, transportation problems or other developments, environmental incidents, or electric transmission or gas pipeline system constraints and the possibility that the Company may not have adequate insurance to cover losses as a result of such hazards;
- The Company's ability to operate its businesses efficiently, manage maintenance capital expenditures and costs effectively, and generate earnings and cash flows from its asset-based businesses in relation to its debt and other obligations;
- The willingness and ability of the counterparties to the Company's offtake agreements to fulfill their obligations under such agreements;
- The Company's ability to enter into contracts to sell power and procure fuel on acceptable terms and prices as current offtake agreements expire;
- Government regulation, including compliance with regulatory requirements and changes in market rules, rates, tariffs and environmental laws;
- Operating and financial restrictions placed on the Company and its subsidiaries that are contained in the project-level debt facilities and other agreements of certain subsidiaries and project-level subsidiaries generally and in the NRG Yield Operating LLC revolving credit facility or the Company's convertible notes; and
- The Company's ability to borrow additional funds and access capital markets, as well as the Company's substantial indebtedness and the possibility that the Company may incur additional indebtedness going forward.

Forward-looking statements speak only as of the date they were made, and the Company undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of new information, future events or otherwise. The foregoing review of factors that could cause the Company's actual results to differ materially from those contemplated in any forward-looking statements included in this Quarterly Report on Form 10-Q should not be construed as exhaustive.

GLOSSARY OF TERMS

When the following terms and abbreviations appear in the text of this report, they have the meanings indicated below:

2013 Form 10-K	NRG Yield, Inc.'s Annual Report on Form 10-K for the year ended December 31, 2013
Alta Sellers	Terra-Gen Finance Company, LLC and certain of its affiliates
Acquired ROFO Assets	The TA-High Desert, RE Kansas South and El Segundo projects, which were acquired from NRG on June 30, 2014
ASC	The FASB Accounting Standards Codification, which the FASB established as the source of authoritative U.S. GAAP
ASU	Accounting Standards Updates - updates to the ASC
CFTC	U.S. Commodity Future Trading Commission
Distributed Solar	Solar power projects that primarily sell power produced to customers for usage on site, or are interconnected to sell power into the local distribution grid
El Segundo	NRG West Holdings LLC, the subsidiary of Natural Gas Repowering LLC, which owns the El Segundo Energy Center project
ERCOT	Electric Reliability Council of Texas, the Independent System Operator and the regional reliability coordinator of the various electricity systems within Texas
EWG	Exempt Wholesale Generator
Exchange Act	The Securities Exchange Act of 1934, as amended
FERC	Federal Energy Regulatory Commission
FPA	Federal Power Act
ISO	Independent System Operator
ISO-NE	ISO New England Inc.
LIBOR	London Inter-Bank Offered Rate
Marsh Landing	NRG Marsh Landing LLC, formerly GenOn Marsh Landing LLC
MMBtu	Million British Thermal Units
MW	Megawatt
MWh	Saleable megawatt hours, net of internal/parasitic load megawatt-hours
MWt	Megawatts Thermal Equivalent
Net Exposure	Counterparty credit exposure to NRG Yield, Inc. net of collateral
NOLs	Net operating losses
NRG	NRG Energy, Inc.
NRG Yield	Accounting predecessor, representing the combination of the projects that were acquired by NRG Yield LLC in July 2013
NRG Yield, Inc.	NRG Yield, Inc., or the Company
NRG Yield LLC	The holding company, owned by NRG, the holder of Class B common units, and NRG Yield, Inc., the holder of the Class A common units
NRG Yield Operating LLC	The holding company that owns the project companies and is a wholly owned subsidiary of NRG Yield LLC
OCI / OCL	Other comprehensive income / loss
PPA	Power Purchase Agreement
PUCT	Public Utility Commission of Texas
PUHCA	Public Utility Holding Company Act of 2005
PURPA	Public Utility Regulatory Policies Act of 1978
RE Kansas South	NRG Solar Kansas South LLC, the operating subsidiary of NRG Solar Kansas South Holdings LLC, which owns the RE Kansas South project
Remaining ROFO Assets	Three remaining power generating assets that NRG has given NRG Yield, Inc. a right of first offer to acquire, and to the extent NRG elects to sell those assets, prior to July 16, 2018
TA High Desert	TA-High Desert LLC, the operating subsidiary of NRG Solar Mayfair LLC, which owns the TA High Desert project
Terra-Gen	Terra-Gen Operating Company, LLC
U.S.	United States of America
U.S. DOE	U.S. Department of Energy

U.S. GAAP	Accounting principles generally accepted in the United States
Utility-Scale Solar	Solar power projects, typically 20 MW or greater in size (on an alternating current, or AC, basis), that are interconnected into the transmission or distribution grid to sell power at a wholesale level
VaR	Value at Risk
VIE	Variable Interest Entity

PART I — FINANCIAL INFORMATION
ITEM 1 — FINANCIAL STATEMENTS
NRG YIELD, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
(Unaudited)

<u>(In millions, except per share amounts)</u>	Three months ended June 30,		Six months ended June 30,	
	2014	2013 ^(a)	2014	2013 ^(a)
Operating Revenues				
Total operating revenues	\$ 134	\$ 82	\$ 274	\$ 135
Operating Costs and Expenses				
Cost of operations	45	32	105	61
Depreciation and amortization	36	10	60	20
General and administrative — affiliate	2	2	4	4
Total operating costs and expenses	83	44	169	85
Operating Income	51	38	105	50
Other Income/(Expense)				
Equity in earnings of unconsolidated affiliates	14	2	15	6
Other income, net	—	1	1	1
Interest expense	(29)	(6)	(56)	(11)
Total other expense	(15)	(3)	(40)	(4)
Income Before Income Taxes	36	35	65	46
Income tax expense	2	—	5	—
Net Income	34	35	60	46
Pre-acquisition net income of Acquired ROFO Assets	9	1	17	1
Net Income Excluding Pre-acquisition Net Income of Acquired ROFO Assets	25	34	43	45
Income attributable to NRG ^(b)	19		33	
Net Income Attributable to NRG Yield, Inc.	\$ 6		\$ 10	
Basic and Diluted Earnings per Share Attributable to Class A Common Stockholders				
Weighted average number of Class A common shares outstanding	23		23	
Basic and Diluted Earnings per Class A Common Share	\$ 0.26		\$ 0.42	
Dividends per Class A Common Share	\$ 0.35		\$ 0.68	

^(a) Retrospectively adjusted as discussed in Note 1, *Nature of Business*.

^(b) The calculation of income attributable to NRG excludes pre-acquisition net income of the Acquired ROFO Assets.

See accompanying notes to consolidated financial statements.

NRG YIELD, INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME
(Unaudited)

	Three months ended June 30,		Six months ended June 30,	
	2014	2013 ^(a)	2014	2013 ^(a)
	(In millions)			
Net Income	\$ 34	\$ 35	\$ 60	\$ 46
Other Comprehensive (Loss) Income, net of tax				
Unrealized (loss) gain on derivatives	(12)	25	(24)	29
Other comprehensive (loss) income	(12)	25	(24)	29
Comprehensive Income	22	60	36	75
Less: Pre-acquisition net income of Acquired ROFO Assets	9	1	17	1
Less: Comprehensive income attributable to NRG	11	59	18	74
Comprehensive Income Attributable to NRG Yield, Inc.	<u>\$ 2</u>	<u>\$ —</u>	<u>\$ 1</u>	<u>\$ —</u>

^(a) Retrospectively adjusted as discussed in Note 1, *Nature of Business*.

See accompanying notes to consolidated financial statements.

NRG YIELD, INC.
CONSOLIDATED BALANCE SHEETS

(In millions)	June 30, 2014 (unaudited)	December 31, 2013 ^(a)
ASSETS		
Current Assets		
Cash and cash equivalents	\$ 87	\$ 59
Restricted cash	23	67
Accounts receivable — trade	56	51
Accounts receivable — affiliate	1	5
Inventory	14	15
Derivative instruments	1	1
Notes receivable	6	6
Renewable energy grant receivable	—	147
Deferred income taxes	1	—
Prepayments and other current assets	7	27
Total current assets	196	378
Property, plant and equipment		
In service	2,477	2,459
Under construction	11	6
Total property, plant and equipment	2,488	2,465
Less accumulated depreciation	(233)	(174)
Net property, plant and equipment	2,255	2,291
Other Assets		
Equity investments in affiliates	253	227
Notes receivable	17	21
Notes receivable — affiliate	—	2
Intangible assets, net of accumulated amortization of \$8 and \$6	105	103
Derivative instruments	5	20
Deferred income taxes	312	146
Other non-current assets	93	50
Total other assets	785	569
Total Assets	\$ 3,236	\$ 3,238

^(a) Retrospectively adjusted as discussed in Note 1, *Nature of Business*.

See accompanying notes to consolidated financial statements.

NRG YIELD, INC.
CONSOLIDATED BALANCE SHEETS (Continued)

(In millions, except share information)	June 30, 2014	December 31, 2013 ^(a)
	(unaudited)	
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities		
Current portion of long-term debt	\$ 119	\$ 214
Accounts payable	15	42
Accounts payable — affiliate	50	52
Derivative instruments	30	31
Accrued expenses and other current liabilities	19	30
Total current liabilities	233	369
Other Liabilities		
Long-term debt	1,880	1,569
Out-of-market contracts	5	5
Derivative instruments	24	16
Other non-current liabilities	21	27
Total non-current liabilities	1,930	1,617
Total Liabilities	2,163	1,986
Commitments and Contingencies		
Stockholders' Equity		
Preferred stock, \$0.01 par value; 10,000,000 shares authorized; none issued	—	—
Class A common stock, \$0.01 par value; 500,000,000 shares authorized; 22,511,250 shares issued	—	—
Class B common stock, \$0.01 par value; 500,000,000 shares authorized; 42,738,750 shares issued	—	—
Additional paid-in capital	815	621
Retained earnings	3	8
Accumulated other comprehensive loss	(9)	—
Noncontrolling interest	264	623
Total Stockholders' Equity	1,073	1,252
Total Liabilities and Stockholders' Equity	\$ 3,236	\$ 3,238

^(a) Retrospectively adjusted as discussed in Note 1, *Nature of Business*.

See accompanying notes to consolidated financial statements.

NRG YIELD, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Six months ended June 30,	
	2014	2013 ^(a)
	(In millions)	
Cash Flows from Operating Activities		
Net income	\$ 60	\$ 46
Adjustments to reconcile net income to net cash provided by (used in) operating activities:		
Distributions and equity in earnings of unconsolidated affiliates	(8)	3
Depreciation and amortization	60	20
Amortization of financing costs and debt discount/premium	5	1
Amortization of intangibles and out-of-market contracts	1	1
Changes in deferred income taxes	5	—
Changes in derivative instruments	—	(10)
Changes in other working capital	(50)	(80)
Net Cash Provided by (Used in) Operating Activities	73	(19)
Cash Flows from Investing Activities		
Payment to NRG for Acquired ROFO Assets	(357)	—
Capital expenditures	(29)	(267)
Decrease (increase) in restricted cash	44	(52)
Decrease in notes receivable, including affiliates	5	3
Proceeds from renewable energy grants	137	24
Investments in unconsolidated affiliates	(15)	(19)
Other	11	—
Net Cash Used in Investing Activities	(204)	(311)
Cash Flows from Financing Activities		
Capital contributions from NRG	2	150
Dividends and returns of capital to NRG	(24)	(312)
Payment of dividends and distributions	(44)	—
Proceeds from issuance of long-term debt — external	386	519
Payment of debt issuance costs	(13)	(4)
Payment of borrowings from affiliate	—	(2)
Payments for long-term debt — external	(148)	(25)
Net Cash Provided by Financing Activities	159	326
Net Increase in Cash and Cash Equivalents	28	(4)
Cash and Cash Equivalents at Beginning of Period	59	22
Cash and Cash Equivalents at End of Period	\$ 87	\$ 18

^(a) Retrospectively adjusted as discussed in Note 1, *Nature of Business*.

See accompanying notes to consolidated financial statements.

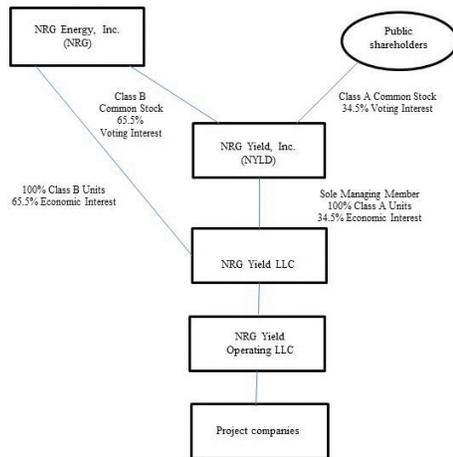
NRG YIELD, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(Unaudited)

Note 1 — Nature of Business

NRG Yield, Inc., or the Company, was formed by NRG as a Delaware corporation on December 20, 2012. On July 22, 2013, the Company issued 22,511,250 shares of Class A common stock in an initial public offering. The Company utilized the net proceeds of the initial public offering to acquire 19,011,250 Class A units of NRG Yield LLC from NRG, in return for \$395 million and 3,500,000 Class A units of NRG Yield LLC directly from NRG Yield LLC in return for \$73 million. In connection with the acquisition of the Class A units, the Company also became the sole managing member of NRG Yield LLC thereby acquiring a controlling interest in NRG Yield LLC.

Immediately prior to the acquisition, NRG Yield LLC acquired a portfolio of contracted renewable and conventional generation and thermal infrastructure assets, primarily located in the Northeast, Southwest and California regions of the United States, from NRG in return for Class B units in NRG Yield LLC. These assets were simultaneously contributed by NRG Yield LLC to its direct wholly owned subsidiary NRG Yield Operating LLC at their historical cost. As of June 30, 2014, the Company owned 34.5% of NRG Yield LLC and consolidates the results of NRG Yield LLC through its controlling interest, with NRG's 65.5% interest shown as noncontrolling interest in the financial statements. As described in Note 3, *Business Acquisitions*, on June 30, 2014, NRG Yield Operating LLC acquired the TA High Desert, RE Kansas South, and El Segundo projects from NRG for total cash consideration of \$357 million plus assumed project level debt.

The following table represents the structure of the Company as of June 30, 2014:



On July 29, 2014, the Company issued 12,075,000 shares of Class A common stock for net proceeds, after underwriting discount and expenses, of \$630 million. The Company utilized the proceeds of the offering to acquire 12,075,000 additional Class A units of NRG Yield LLC and, as a result, it currently owns 44.7% of NRG Yield LLC, with NRG retaining 55.3% of NRG Yield LLC.

For the period prior to the initial public offering, the accompanying unaudited combined financial statements represent the combination of the assets that NRG Yield LLC acquired and were prepared using NRG's historical basis in the assets and liabilities. For the purposes of the unaudited combined financial statements, the term "NRG Yield" represents the accounting predecessor, or the combination of the acquired businesses. For all periods subsequent to the initial public offering, the accompanying unaudited consolidated financial statements represent the consolidated results of the Company, which consolidates NRG Yield LLC through its controlling interest.

As of June 30, 2014, the Company's operating assets are comprised of the following projects:

Projects	Percentage Ownership	Net Capacity (MW) ^(a)	Offtake Counterparty	Expiration
<i>Conventional</i>				
GenConn Middletown	49.95%	95	Connecticut Light & Power	2041
GenConn Devon	49.95%	95	Connecticut Light & Power	2040
Marsh Landing	100%	720	Pacific Gas and Electric	2023
El Segundo	100%	550	Southern California Edison	2023
		<u>1,460</u>		
<i>Utility-Scale Solar</i>				
Alpine	100%	66	Pacific Gas and Electric	2033
Avenal	49.95%	23	Pacific Gas and Electric	2031
Avra Valley	100%	25	Tucson Electric Power	2032
Blythe	100%	21	Southern California Edison	2029
Borrego	100%	26	San Diego Gas and Electric	2038
CVSR	48.95%	122	Pacific Gas and Electric	2038
Roadrunner	100%	20	El Paso Electric	2031
RE Kansas South	100%	20	Pacific Gas and Electric	2033
TA High Desert	100%	20	Southern California Edison	2033
		<u>343</u>		
<i>Distributed Solar</i>				
AZ DG Solar Projects	100%	5	Various	2025 - 2033
PFMG DG Solar Projects	51%	5	Various	2032
		<u>10</u>		
<i>Wind</i>				
South Trent	100%	101	AEP Energy Partners	2029
<i>Thermal</i>				
Thermal equivalent MWt ^(b)	100%	1,346	Various	Various
Thermal generation	100%	123	Various	Various
		<u>2,037</u>		
Total net capacity (excluding equivalent MWt)		<u>2,037</u>		

(a) Net capacity represents the maximum, or rated, generating capacity of the facility multiplied by the Company's percentage ownership in the facility as of June 30, 2014.

(b) For thermal energy, net capacity represents MWt for steam or chilled water and excludes 118 MWt which is available under the right-to-use provisions contained in agreements between two of NRG Yield Inc.'s thermal facilities and certain of their customers.

Substantially all of the Company's generation assets are under long-term contractual arrangements for the output or capacity from these assets. The thermal assets are comprised of district energy systems and combined heat and power plants that produce steam, hot water and/or chilled water and, in some instances, electricity at a central plant. Three of the district energy systems are subject to rate regulation by state public utility commissions while the other district energy systems have rates determined by negotiated bilateral contracts.

The historical combined financial statements include allocations of certain NRG corporate expenses. Management believes the assumptions and methodology underlying the allocation of general corporate overhead expenses are reasonable. The allocated costs include legal, accounting, tax, treasury, information technology, insurance, employee benefit costs, and other corporate costs. However, such expenses may not be indicative of the actual level of expense that would have been incurred if the Company had operated as an independent, publicly-traded company during the periods prior to the initial public offering or of the costs expected to be incurred in the future. Allocation of NRG corporate expenses was \$4 million for the period ending June 30, 2013. In connection with the initial public offering, the Company entered into a management services agreement with NRG for various services, including human resources, accounting, tax, legal, information systems, treasury, and risk management. Costs incurred by the Company under this agreement were \$4 million for the six months ending June 30, 2014.

For all periods prior to the initial public offering, member's equity represents the combined equity of the Company's subsidiaries, including adjustments necessary to present the Company's financial statements as if the Company were in existence as of the beginning of the periods represented. Member's equity represents NRG's equity in the subsidiaries, and accordingly, in connection with the initial public offering, the historical equity balance as of that date was reclassified into noncontrolling interest. Subsequent to the initial public offering, stockholders' equity represents the equity associated with the Class A common stockholders, with the equity associated with the Class B common stockholders, or NRG, classified as noncontrolling interest.

The acquisition of the TA High Desert, RE Kansas South, and El Segundo projects from NRG on June 30, 2014 was accounted for as a transfer of entities under common control. The guidance requires retrospective combination of the entities for all periods presented as if the combination has been in effect since the inception of common control. Accordingly, the Company prepared its consolidated financial statements to reflect the transfer as if it had taken place on January 1, 2013, or from the date the entities were under common control, which was May 13, 2013 for RE Kansas South and March 28, 2013 for TA High Desert, which represent the dates these entities were acquired by NRG. Member's equity represents NRG's equity in the subsidiaries, and accordingly, in connection with the acquisition by the Company, the balance was reclassified into noncontrolling interest.

The accompanying unaudited interim consolidated financial statements have been prepared in accordance with the Securities and Exchange Commission's, or SEC's, regulations for interim financial information. Accordingly, they do not include all of the information and notes required by U.S. GAAP for complete financial statements. The following notes should be read in conjunction with the accounting policies and other disclosures as set forth in the notes to the Company's consolidated financial statements set forth in the 2013 Form 10-K. Interim results are not necessarily indicative of results for a full year.

In the opinion of management, the accompanying unaudited interim consolidated financial statements contain all material adjustments consisting of normal and recurring accruals necessary to present fairly the Company's consolidated financial position as of June 30, 2014, and the results of operations, comprehensive income and cash flows for the six months ended June 30, 2014, and 2013.

Note 2 — Summary of Significant Accounting Policies

Use of Estimates

The preparation of consolidated financial statements in accordance with U.S. GAAP requires management to make estimates and assumptions. These estimates and assumptions impact the reported amount of assets and liabilities and disclosures of contingent assets and liabilities as of the date of the consolidated financial statements. They also impact the reported amount of net earnings during the reporting period. Actual results could be different from these estimates.

Noncontrolling Interest

The following table reflects the changes in the Company's noncontrolling interest balance:

	(In millions)
Balance as of December 31, 2013 (As previously reported)	\$ 382
Net Assets of Acquired ROFO Assets as of December 31, 2013	241
Balance as of December 31, 2013 (As currently reported)	623
Payment to NRG for Acquired ROFO assets	(357)
Comprehensive income, including pre-acquisition net income from Acquired ROFO Assets	35
Non-cash contributions	14
Cash distributions, net of cash contributions	(51)
Balance as of June 30, 2014	\$ 264

Distributions

On January 30, 2014, NRG Yield LLC declared a distribution on its units of \$0.33 per unit, which was paid on March 17, 2014. The portion of the distribution paid by NRG Yield LLC to NRG was recorded as a reduction to the Company's noncontrolling interest balance.

On May 5, 2014, NRG Yield LLC declared a distribution on its Class B unit of \$0.35 per share, which was paid to NRG, its Class B unitholder, on June 16, 2014. The distribution by NRG Yield LLC to NRG was recorded as a reduction to the Company's noncontrolling interest balance.

On June 30, 2014, the Company acquired the TA High Desert, RE Kansas South, and El Segundo projects, as discussed in Note 3, *Business Acquisitions*. The difference between the cash paid and historical value of the entities' equity of \$113 million was recorded as a distribution to NRG and reduced the balance of its noncontrolling interest. In addition, as the TA High Desert, RE Kansas South and El Segundo projects were owned by NRG until June 30, 2014, the pre-acquisition earnings of such projects are recorded as attributable to NRG's noncontrolling interest. Prior to the date of acquisition, El Segundo made a distribution to NRG of \$24 million.

Recent Accounting Developments

ASU 2014-09 - In May 2014, the FASB issued ASU No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*, or ASU No. 2014-09. The amendments of ASU No. 2014-09 complete the joint effort between the FASB and the International Accounting Standards Board, or IASB, to develop a common revenue standard for U.S. GAAP and International Financial Reporting Standards, or IFRS, and to improve financial reporting. The guidance in ASU No. 2014-09 provides that an entity should recognize revenue to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for the goods or services provided and establishes the following steps to be applied by an entity: (1) identify the contract with a customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations in the contract; and (5) recognize revenue when (or as) the entity satisfies the performance obligation. The guidance of ASU No. 2014-09 is effective for annual reporting periods beginning after December 15, 2016, including interim periods therein. Early adoption is not permitted. The Company is currently evaluating the impact of the standard on the Company's results of operations, cash flows and financial position.

ASU 2013-11 - In July 2013, the FASB issued ASU No. 2013-11, *Income Taxes (Topic 740) Presentation of an Unrecognized Tax Benefit When a Net Operating Loss Carryforward, a Similar Tax Loss, or a Tax Credit Carryforward Exists*, or ASU No. 2013-11. The amendments of ASU 2013-11 requires an entity to present an unrecognized tax benefit, or a portion of an unrecognized tax benefit, as a reduction of a deferred tax asset for an NOL, a similar tax loss or tax credit carryforwards rather than a liability when the uncertain tax position would reduce the NOL or other carryforward under the tax law of the applicable jurisdiction and the entity intends to use the deferred tax asset for that purpose. The guidance is effective for fiscal years, and interim periods within those years, beginning after December 15, 2013 with early adoption permitted. The Company adopted this standard effective January 1, 2014. The adoption of this standard did not impact the Company's results of operations or cash flows as the unrecognized tax benefits relate to state issues and the Company either has no NOLs or the NOLs are limited for that particular jurisdiction.

Note 3 — Business Acquisitions

2014 Acquisitions

Alta Wind Portfolio Acquisition — On June 3, 2014, the Company and NRG Yield Operating LLC entered into a purchase and sale agreement with the Alta Sellers, whereby the Company agreed to acquire 100% of the membership interests of Alta Wind Asset Management Holdings, LLC, Alta Wind Company, LLC, Alta Wind X Holding Company, LLC and Alta Wind XI Holding Company, LLC, which collectively own 7 wind facilities that total 947 MW located in Tehachapi, California and a portfolio of associated land leases, or the Alta Wind Assets. The purchase price for the Alta Wind Assets is \$870 million, as well as working capital adjustments, plus the assumption of \$1.6 billion of non-recourse project-level debt. The purchase price is expected to be funded by the following components:

	(in millions)	
Issuance of corporate bonds	\$	500
Issuance of Class A common stock		370
Total	\$	870

In order to fund the purchase price, the Company completed an equity offering of 12,075,000 shares of its Class A common stock at an offering price of \$54.00 per share on July 29, 2014, which resulted in net proceeds of \$630 million, after underwriting discount and expenses. In addition, on August 5, 2014, NRG Yield Operating LLC issued \$500 million of senior unsecured notes, which bear interest at a rate of 5.375% and mature in August 2024. The acquisition of the Alta Wind Assets is subject to customary closing conditions, including the receipt of regulatory approvals. The Company expects the acquisition to close during the third quarter of 2014. The excess of the proceeds over the amount utilized for the acquisition will be available for general corporate purposes, including future acquisitions.

Acquired ROFO Assets — On June 30, 2014, NRG Yield Operating LLC acquired the El Segundo, TA High Desert, and RE Kansas South projects for a total cash consideration of \$357 million, which represents a base purchase price of \$349 million and \$8 million of working capital adjustments. In addition, the acquisition included the assumption of \$612 million in project level debt. The assets and liabilities transferred to the Company relate to interests under common control by NRG and accordingly, were recorded at historical cost in accordance with ASC 805-50, Business Combinations - Related Issues. The difference between the cash proceeds and historical value of the net assets was recorded as a distribution to NRG and reduced the balance of its noncontrolling interest. Since the transaction constituted a transfer of net assets under common control, the guidance requires retrospective combination of the entities for all periods presented as if the combination has been in effect since the inception of common control.

The following is a summary of assets and liabilities transferred in connection with the acquisition:

	RE Kansas South	TA High Desert	El Segundo
	(In millions)		
Current assets	\$ 1	\$ 3	\$ 43
Property, plant and equipment	50	67	625
Non-current assets	2	13	76
Total assets	53	83	744
Debt	35	57	520
Other current and non-current liabilities	2	—	30
Total liabilities	37	57	550
Net assets acquired	\$ 16	\$ 26	\$ 194

The following table presents historical information summary combining the financial information for the Acquired ROFO assets transferred in connection with the acquisition:

	December 31, 2013				
	As Previously Reported	RE Kansas South	TA High Desert	El Segundo	As Currently Reported
	(In millions)				
Current assets	\$ 267	\$ 25	\$ 28	\$ 58	\$ 378
Property, plant and equipment	1,541	51	63	636	2,291
Non-current assets	505	3	10	51	569
Total assets	2,313	79	101	745	3,238
Debt	1,133	58	80	512	1,783
Other current and non-current liabilities	169	5	3	26	203
Total liabilities	\$ 1,302	\$ 63	\$ 83	\$ 538	\$ 1,986

	Three months ended June 30, 2013				Six months ended June 30, 2013					
	As Previously Reported	RE Kansas South	TA High Desert	El Segundo	As Currently Reported	As Previously Reported	RE Kansas South	TA High Desert	El Segundo	As Currently Reported
	(In millions)									
Operating revenues	\$ 79	\$ —	\$ 3	\$ —	\$ 82	\$ 132	\$ —	\$ 3	\$ —	\$ 135
Operating income	38	—	1	(1)	38	50	—	1	(1)	50
Net income	\$ 34	\$ 1	\$ —	\$ —	\$ 35	\$ 45	\$ 1	\$ —	\$ —	\$ 46

2013 Acquisitions

Energy Systems — On December 31, 2013, NRG Energy Center Omaha Holdings, LLC, an indirect wholly owned subsidiary of NRG Yield LLC, acquired Energy Systems Company, or Energy Systems, for approximately \$120 million. The acquisition was financed from cash on hand. Energy Systems is an operator of steam and chilled water thermal facilities that provides heating and cooling services to nonresidential customers in Omaha, Nebraska. The acquisition was recorded as a business combination under ASC 805, with identifiable assets acquired and liabilities assumed provisionally recorded at their estimated fair values on the acquisition date. The purchase price was primarily allocated to property, plant and equipment of \$60 million, customer relationships of \$59 million, and \$1 million of working capital. The initial accounting for the business combination is not complete because the evaluations necessary to assess the fair values of certain net assets acquired are still in process. The provisional amounts are subject to revision until the evaluations are completed to the extent that additional information is obtained about the facts and circumstances that existed as of the acquisition date.

Note 4 — Property, Plant and Equipment

The Company's major classes of property, plant, and equipment were as follows:

	June 30, 2014	December 31, 2013	Depreciable Lives
	(In millions)		
Facilities and equipment	\$ 2,429	\$ 2,411	5 - 40 Years
Land and improvements	48	48	
Construction in progress	11	6	
Total property, plant and equipment	2,488	2,465	
Accumulated depreciation	(233)	(174)	
Net property, plant and equipment	\$ 2,255	\$ 2,291	

Renewable Energy Grants

Borrego achieved commercial operations on February 12, 2013 and transferred the construction in progress to property, plant and equipment. On May 16, 2013, the Borrego solar project, as a qualified renewable energy project, applied for a cash grant in lieu of investment tax credit from the U.S. Treasury Department in the amount of \$39 million. A receivable for the cash grant was recorded when the application was filed, which resulted in a reduction to the book basis of the property, plant and equipment. In addition, the receivable was reduced to \$36 million as a result of the federal government's sequestration, which was put into effect on March 1, 2013. The related deferred tax asset of \$10 million recognizable was recorded with a corresponding reduction of the book value of Borrego's property plant and equipment. In March 2014, the Company received payment of \$30 million for the cash grant related to Borrego. The Company recorded a reserve for the shortage and is in the process of evaluating all of its options for recovering the full amount of the reserve.

TA High Desert achieved commercial operations on March 25, 2013 and transferred the construction in progress to property, plant and equipment. On May 22, 2013, the TA High Desert solar project, as a qualified renewable energy project, applied for a cash grant in lieu of investment tax credit from the U.S. Treasury Department in the amount of \$25 million. A receivable for the cash grant was recorded when the application was filed, which resulted in a reduction to the book basis of the property, plant and equipment. In addition, the receivable was reduced as a result of the federal government's sequestration, which was put into effect on March 1, 2013. The related deferred tax asset of \$6 million was recorded with a corresponding reduction of the book value of TA High Desert's property plant and equipment. In April 2014, TA High Desert received a payment of \$20 million for the cash grant and reduced the book value of its property plant and equipment by the amount by which the grant was reduced.

RE Kansas South achieved commercial operations on June 7, 2013 and transferred the construction in progress to property, plant and equipment. On June 27, 2013, the RE Kansas South solar project, as a qualified renewable energy project, applied for a cash grant in lieu of investment tax credit from the U.S. Treasury Department in the amount of \$23 million. A receivable for the cash grant was recorded when the application was filed, which resulted in a reduction to the book basis of the property, plant and equipment. In addition, the receivable was reduced to \$21 million as a result of the federal government's sequestration, which was put into effect on March 1, 2013. The related deferred tax asset of \$6 million recognizable was recorded with a corresponding reduction of the book value of RE Kansas South's property plant and equipment. In April 2014, RE Kansas South received a payment of \$21 million for the cash grant.

Note 5 — Variable Interest Entities, or VIEs

GenConn Energy LLC — The Company has a 49.95% interest in GCE Holdings LLC, the owner of GenConn Energy LLC, or GenConn, a limited liability company formed to construct, own and operate two 190 MW peaking generation facilities in Connecticut at the Devon and Middletown sites. Each of these facilities was constructed pursuant to a 30-year cost of service type contract with the Connecticut Light & Power Company. All four units at the GenConn Devon facility reached commercial operation in June 2010 and were released to the ISO-NE by July 2010. In June 2011, all four units at the GenConn Middletown facility reached commercial operation and were released to the ISO-NE. GenConn is considered a VIE under ASC 810, however the Company is not the primary beneficiary, and accounts for its investment under the equity method.

The project was funded through equity contributions from the owners and non-recourse, project level debt. As of June 30, 2014, the Company's investment in GenConn was \$116 million and its maximum exposure to loss is limited to its equity investment. On September 17, 2013, GenConn refinanced its existing project financing facility. As of June 30, 2014, the refinanced facility has a \$237 million note with an interest rate of 4.73% per annum and a maturity date of July 2041 and a \$35 million working capital facility that matures in 2018 which can be used to issue letters of credit at an interest rate of 1.875% per annum. The refinancing is secured by all of the GenConn assets.

The following table presents summarized unaudited financial information for GCE Holdings LLC:

	Three months ended June 30,		Six months ended June 30,	
	2014	2013	2014	2013
Income Statement Data:	(In millions)			
Operating revenues	\$ 18	\$ 19	\$ 44	\$ 39
Operating income	10	12	20	23
Net income	7	7	14	15
			June 30, 2014	December 31, 2013
Balance Sheet Data:	(In millions)			
Current assets			\$ 31	\$ 32
Non-current assets			446	453
Current liabilities			16	18
Non-current liabilities			228	231

Note 6 — Fair Value of Financial Instruments

For cash and cash equivalents, restricted cash, accounts receivable — trade, accounts payable, affiliate accounts payable and receivable, accrued expenses and other liabilities, the carrying amount approximates fair value because of the short-term maturity of those instruments and are classified as Level 1 within the fair value hierarchy.

The estimated carrying amounts and fair values of the Company's recorded financial instruments not carried at fair market value are as follows:

	As of June 30, 2014		As of December 31, 2013	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
(In millions)				
Assets:				
Notes receivable — affiliate	\$ —	\$ —	\$ 2	\$ 2
Notes receivable, including current portion	23	23	27	27
Liabilities:				
Long-term debt, including current portion	1,999	2,087	1,783	1,785

The fair value of notes receivable and long-term debt are based on expected future cash flows discounted at market interest rates, or current interest rates for similar instruments and are classified as Level 3 within the fair value hierarchy.

Fair Value Accounting under ASC 820

ASC 820 establishes a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value into three levels as follows:

- Level 1—quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access as of the measurement date.
- Level 2—inputs other than quoted prices included within Level 1 that are directly observable for the asset or liability or indirectly observable through corroboration with observable market data.
- Level 3—unobservable inputs for the asset or liability only used when there is little, if any, market activity for the asset or liability at the measurement date.

In accordance with ASC 820, the Company determines the level in the fair value hierarchy within which each fair value measurement in its entirety falls, based on the lowest level input that is significant to the fair value measurement.

Recurring Fair Value Measurements

The Company records its derivative assets and liabilities at fair market value on its consolidated balance sheet. The following table presents assets and liabilities measured and recorded at fair value on the Company's consolidated balance sheets on a recurring basis and their level within the fair value hierarchy:

(In millions)	As of June 30, 2014		
	Fair Value ^(a)		
	Level 2	Level 3	Total
Derivative assets:			
Commodity contracts	\$ 1	\$ —	\$ 1
Interest rate contracts	5	—	5
Total assets	6	—	6
Derivative liabilities:			
Commodity contracts	1	1	2
Interest rate contracts	52	—	52
Total liabilities	\$ 53	\$ 1	\$ 54

(a) There were no assets or liabilities classified as Level 1 as of June 30, 2014.

(In millions)	As of December 31, 2013		
	Fair Value ^(a)		
	Level 2	Level 3	Total
Derivative assets:			
Commodity contracts	\$ 1	\$ —	\$ 1
Interest rate contracts	20	—	20
Total assets	21	—	21
Derivative liabilities:			
Commodity contracts	1	1	2
Interest rate contracts	45	—	45
Total liabilities	\$ 46	\$ 1	\$ 47

(a) There were no assets or liabilities classified as Level 1 as of December 31, 2013.

The following table reconciles, for the three and six months ended June 30, 2014, the beginning and ending balances for derivative instruments that are recognized at fair value in the consolidated financial statements, at least annually, using significant unobservable inputs:

(In millions)	Fair Value Measurement Using Significant Unobservable Inputs - Derivatives (Level 3)			
	Three months ended June 30,		Six months ended June 30,	
	2014		2014	
Beginning balance	\$	(1)	\$	(1)
Purchases		—		—
Ending balance as of June 30, 2014	\$	(1)	\$	(1)

Derivative Fair Value Measurements

A majority of the Company's contracts are non-exchange-traded and valued using prices provided by external sources. For the Company's energy markets, management receives quotes from multiple sources. To the extent that multiple quotes are received, the prices reflect the average of the bid-ask mid-point prices obtained from all sources believed to provide the most liquid market for the commodity. The remainder of the assets and liabilities represent contracts for which external sources or observable market quotes are not available. These contracts are valued using various valuation techniques including but not limited to internal models that apply fundamental analysis of the market and corroboration with similar markets. As of June 30, 2014, contracts valued with prices provided by models and other valuation techniques make up 0% of the total derivative assets and 2% of the total derivative liabilities.

The fair value of each contract is discounted using a risk free interest rate. In addition, a credit reserve is applied to reflect credit risk, which is calculated based on credit default swaps. To the extent that the net exposure is an asset, the Company uses the counterparty's default swap rate. If the exposure is a liability, the Company uses its default swap rate. The credit reserve is added to the discounted fair value to reflect the exit price that a market participant would be willing to receive to assume the liabilities or that a market participant would be willing to pay for the assets. It is possible that future market prices could vary from those used in recording assets and liabilities and such variations could be material.

Concentration of Credit Risk

Credit risk relates to the risk of loss resulting from non-performance or non-payment by counterparties pursuant to the terms of their contractual obligations. The Company monitors and manages credit risk through credit policies that include: (i) an established credit approval process; (ii) a daily monitoring of counterparties' credit limits; (iii) the use of credit mitigation measures such as margin, collateral, prepayment arrangements, or volumetric limits; (iv) the use of payment netting agreements; and (v) the use of master netting agreements that allow for the netting of positive and negative exposures of various contracts associated with a single counterparty. Risks surrounding counterparty performance and credit could ultimately impact the amount and timing of expected cash flows. The Company seeks to mitigate counterparty risk by having a diversified portfolio of counterparties. The Company also has credit protection within various agreements to call on additional collateral support if and when necessary. Cash margin is collected and held at the Company to cover the credit risk of the counterparty until positions settle.

Counterparty credit exposure includes credit risk exposure under certain long-term agreements, including solar and other PPAs. As external sources or observable market quotes are not available to estimate such exposure, the Company estimates the exposure related to these contracts based on various techniques including but not limited to internal models based on a fundamental analysis of the market and extrapolation of observable market data with similar characteristics. Based on these valuation techniques, as of June 30, 2014, credit risk exposure to these counterparties attributable to the Company's ownership interests was approximately \$1.1 billion for the next five years. The majority of these power contracts are with utilities with strong credit quality and public utility commission or other regulatory support. However, such regulated utility counterparties can be impacted by changes in government regulations, which the Company is unable to predict.

Note 7 — Accounting for Derivative Instruments and Hedging Activities

Energy-Related Commodities

As of June 30, 2014, the Company had forward contracts for the purchase of fuel commodities relating to the forecasted usage of the Company's district energy centers extending through 2017. At June 30, 2014, these contracts were not designated as cash flow or fair value hedges.

Interest Rate Swaps

As of June 30, 2014, the Company had interest rate derivative instruments on project-level debt extending through 2030, the majority of which are designated as cash flow hedges.

Volumetric Underlying Derivative Transactions

The following table summarizes the net notional volume buy/(sell) of the Company's open derivative transactions broken out by commodity as of June 30, 2014 and December 31, 2013.

Commodity	Units	Total Volume	
		June 30, 2014	December 31, 2013
(In millions)			
Natural Gas	MMBtu	2	2
Interest	Dollars	\$ 1,215	\$ 1,234

Fair Value of Derivative Instruments

The following table summarizes the fair value within the derivative instrument valuation on the balance sheet:

	Fair Value			
	Derivative Assets		Derivative Liabilities	
	June 30, 2014	December 31, 2013	June 30, 2014	December 31, 2013
(In millions)				
Derivatives Designated as Cash Flow Hedges:				
Interest rate contracts current	\$ —	\$ —	\$ 26	\$ 26
Interest rate contracts long-term	4	14	22	16
Total Derivatives Designated as Cash Flow Hedges	4	14	48	42
Derivatives Not Designated as Cash Flow Hedges:				
Interest rate contracts current	—	—	3	3
Interest rate contracts long-term	1	6	1	—
Commodity contracts current	1	1	1	2
Commodity contracts long-term	—	—	1	—
Total Derivatives Not Designated as Cash Flow Hedges	2	7	6	5
Total Derivatives	\$ 6	\$ 21	\$ 54	\$ 47

The Company has elected to present derivative assets and liabilities on the balance sheet on a trade-by-trade basis and does not offset amounts at the counterparty master agreement level. As of June 30, 2014 and December 31, 2013, there was no outstanding collateral paid or received. The following table summarizes the offsetting of derivatives by counterparty master agreement level:

	Gross Amounts Not Offset in the Statement of Financial Position		
	Gross Amounts of		
	Gross Amounts of Recognized Assets/Liabilities	Derivative Instruments	Net Amount
As of June 30, 2014	(In millions)		
Commodity contracts:			
Derivative assets	\$ 1	\$ —	\$ 1
Derivative liabilities	(2)	—	(2)
Total commodity contracts	(1)	—	(1)
Interest rate contracts:			
Derivative assets	5	(3)	2
Derivative liabilities	(52)	3	(49)
Total interest rate contracts	(47)	—	(47)
Total derivative instruments	\$ (48)	\$ —	\$ (48)

	Gross Amounts Not Offset in the Statement of Financial Position		
	Gross Amounts of		
	Gross Amounts of Recognized Assets/Liabilities	Derivative Instruments	Net Amount
As of December 31, 2013	(In millions)		
Commodity contracts:			
Derivative assets	\$ 1	\$ —	\$ 1
Derivative liabilities	(2)	—	(2)
Total commodity contracts	(1)	—	(1)
Interest rate contracts:			
Derivative assets	20	(12)	8
Derivative liabilities	(45)	12	(33)
Total interest rate contracts	(25)	—	(25)
Total derivative instruments	\$ (26)	\$ —	\$ (26)

Accumulated Other Comprehensive Loss

The following table summarizes the effects on the Company's accumulated other comprehensive loss, or OCL, balance attributable to interest rate swaps designated as cash flow hedge derivatives, net of tax:

	Three months ended June 30,		Six months ended June 30,	
	2014	2013	2014	2013
	(In millions)		(In millions)	
Accumulated OCL beginning balance, net of tax	\$ (12)	\$ (34)	\$ —	\$ (38)
Reclassified from accumulated OCL to income due to realization of previously deferred amounts	4	3	7	5
Mark-to-market of cash flow hedge accounting contracts	(16)	22	(31)	24
Accumulated OCL ending balance, net of income tax benefit of \$1 and \$3, respectively	(24)	(9)	(24)	(9)
Accumulated OCL attributable to noncontrolling interest	(15)		(15)	
Accumulated OCL attributable to NRG Yield, Inc.	\$ (9)		\$ (9)	

A loss of \$15 million is expected to be realized from OCL during the next 12 months, net of \$0 million tax.

Amounts reclassified from accumulated OCL into income and amounts recognized in income from the ineffective portion of cash flow hedges are recorded to interest expense.

Impact of Derivative Instruments on the Statements of Operations

The Company has interest rate derivative instruments that are not designated as cash flow hedges as well as ineffectiveness on cash flow hedge derivatives. For the three months ended June 30, 2014 and 2013, the impact to the consolidated statements of operations was a loss of \$3 million and a gain of \$6 million, respectively. For the six months ended June 30, 2014 and 2013, the impact to the consolidated statements of operations was a loss of \$6 million and a gain of \$9 million, respectively.

The Company's derivative commodity contracts relate to its Thermal business for the purchase of fuel commodities based on the forecasted usage of the Thermal district energy centers. Realized gains and losses on these contracts are reflected in the fuel costs that are permitted to be billed to customers through the related customer contracts or tariffs and accordingly, no gains or losses are reflected in the statement of operations for these contracts.

See Note 6, *Fair Value of Financial Instruments*, for discussion regarding concentration of credit risk.

Note 8 — Long - Term Debt

This footnote should be read in conjunction with the complete description under Note 9, *Long - Term Debt*, to the Company's 2013 Form 10-K. Long-term debt consisted of the following:

	June 30, 2014	December 31, 2013	Current interest rate % ^(a)
	(In millions, except rates)		
Convertible Senior Notes, due 2019 ^(b)	\$ 324	\$ —	3.50
Project-level debt:			
NRG West Holdings LLC, due 2023	520	512	L+2.50/L+2.875
NRG Marsh Landing LLC, due 2017 and 2023	464	473	L+ 2.75/L+3.00
NRG Solar Alpine LLC, due 2022	170	221	L+2.5/L+1.75
NRG Energy Center Minneapolis LLC, senior secured notes, due 2017 and 2025	124	127	5.95/7.25
NRG Solar Borrego LLC, due 2024 and 2038	77	78	L+ 2.50/5.65
South Trent Wind LLC, due 2020	66	69	L+ 2.625/L+2.75
NRG Solar Avra Valley LLC, due 2031	62	63	L+ 2.25
TA High Desert LLC, due 2023 and 2033	57	80	L+2.50/5.15
NRG Roadrunner LLC, due 2031	43	44	L+ 2.01
NRG Solar Kansas South LLC, due 2031	35	58	L+2.625
NRG Solar Blythe LLC, due 2028	24	24	L+ 2.75
PFMG and related subsidiaries financing agreement, due 2030	31	32	6.00
NRG Energy Center Princeton LLC, due 2017	2	2	5.95
Subtotal project-level debt:	<u>1,675</u>	<u>1,783</u>	
Total debt	<u>1,999</u>	<u>1,783</u>	
Less current maturities	<u>119</u>	<u>214</u>	
Total long-term debt	<u>\$ 1,880</u>	<u>\$ 1,569</u>	

(a) As of June 30, 2014, L+ equals 3 month LIBOR plus x%, except for Kansas South where L+ equals 6 month LIBOR plus x%.

(b) Net of discount of \$21 million as of June 30, 2014.

The financing arrangements listed above contain certain covenants, including financial covenants, that the Company is required to be in compliance with during the term of the arrangement. As of June 30, 2014, the Company was in compliance with all of the required covenants.

NRG Yield, Inc. Convertible Notes

During the first quarter of 2014, the Company closed on its offering of \$345 million aggregate principal amount of 3.50% Convertible Notes due 2019, or the Convertible Notes. The Convertible Notes are convertible, under certain circumstances, into the Company's Class A common stock, cash or a combination thereof at an initial conversion price of \$46.55 per Class A common share, which is equivalent to an initial conversion rate of approximately 21.4822 shares of Class A common stock per \$1,000 principal amount of Convertible Notes. Interest on the Convertible Notes is payable semi-annually in arrears on February 1 and August 1 of each year, commencing on August 1, 2014. The Convertible Notes mature on February 1, 2019, unless earlier repurchased or converted in accordance with their terms. Prior to the close of business on the business day immediately preceding August 1, 2018, the Convertible Notes will be convertible only upon the occurrence of certain events and during certain periods, and thereafter, at any time until the close of business on the second scheduled trading day immediately preceding the maturity date.

The convertible notes are accounted for in accordance with ASC 470-20. Under ASC 470-20, issuers of convertible debt instruments that may be settled in cash upon conversion, including partial cash settlement, are required to separately account for the liability (debt) and equity (conversion option) components. The application of ASC 470-20 resulted in the recognition of \$23 million as the value for the equity component with the offset to debt discount. The debt discount will be amortized to interest expense using the effective interest method over the term of the Convertible Notes.

NRG Yield Operating LLC Senior Notes

On August 5, 2014, NRG Yield Operating LLC issued \$500 million of senior unsecured notes, or the Senior Notes. The Senior Notes bear interest at 5.375% and mature in 2024.

NRG Yield LLC and NRG Yield Operating LLC Revolving Credit Facility

In connection with the Company's initial public offering of Class A common stock in July 2013, as further described in Note 1, *Nature of Business*, NRG Yield LLC and NRG Yield Operating LLC entered into a senior secured revolving credit facility, which provided a revolving line of credit of \$60 million. On April 25, 2014, NRG Yield LLC and NRG Yield Operating LLC amended the revolving credit facility to increase the available line of credit to \$450 million and extend its maturity to April 2019. The revolving credit facility can be used for cash or for the issuance of letters of credit. There was no cash drawn or letters of credit issued under the revolving credit facility as of June 30, 2014.

Project - level Debt

NRG West Holdings Credit Agreement

On August 23, 2011, NRG West Holdings LLC, or West Holdings, entered into a credit agreement with a group of lenders in respect to the El Segundo project, or the West Holdings Credit Agreement. The West Holdings Credit Agreement, is comprised of a \$540 million two tranche construction loan facility with additional facilities for the issuance of letters of credit or working capital loans, and is secured by the assets of West Holdings.

The two tranche construction loan facility consists of the \$480 million Tranche A Construction Facility, or the Tranche A Facility, and the \$60 million Tranche B Construction Facility, or the Tranche B Facility. The Tranche A and Tranche B Facilities, which mature in August 2023, convert to a term loan and have an interest rate of 3-month LIBOR, plus an applicable margin which (i) increases by 0.125% periodically from conversion through year eight for the Tranche A Facility, and (ii) increases by (A) 0.125% upon term conversion and on the third and sixth anniversary of the term conversion and (B) by 0.025% on the eighth anniversary of the term conversion for the Tranche B Facility. The Tranche A and Tranche B Facilities amortize based upon a predetermined schedule over the term of the loan with the balance payable at maturity. The construction loan converted to a term loan on January 28, 2014.

The West Holdings Credit Agreement also provides for the issuance of letters of credit and working capital loans to support the El Segundo's collateral needs. This includes letter of credit facilities on behalf of West Holdings of up to \$90 million in support of the PPA, up to \$48 million in support of the collateral agent, and a working capital facility which permits loans or the issuance of letters of credit of up to \$10 million.

As of June 30, 2014, under the West Holdings Credit Agreement, West Holdings has outstanding \$460 million under the Tranche A Facility, \$60 million under the Tranche B Facility, issued a \$33 million letter of credit in support of the PPA, a \$48 million letter in support of debt service and a \$1 million letter of credit under the working capital facility.

Alpine Financing

On March 16, 2012, NRG Solar Alpine LLC, or Alpine, entered into a credit agreement with a group of lenders for a \$166 million construction loan that was convertible to a term loan upon completion of the project and a \$68 million cash grant loan. On January 15, 2013, the credit agreement was amended, reducing the cash grant loan to \$63 million. On March 26, 2013, Alpine met the conditions under the credit agreement to convert the construction loan to a term loan. Immediately prior to the conversion, the Company drew an additional \$164 million under the construction loan and \$62 million under the cash grant loan. The term loan amortizes on a predetermined schedule with final maturity in November 2022.

In January 2014, Alpine repaid the \$62 million of outstanding cash grant loan, including accrued interest and breakage fees, with the proceeds that it had received from the U.S. Treasury Department, as further described in Note 4, *Property, Plant and Equipment*. On June 24, 2014, Alpine amended the credit agreement to increase its term loan borrowings by an additional \$13 million and to reduce the related interest rate to 3 month LIBOR plus 1.75% through June 30, 2019 and 3 month LIBOR plus 2.00% through November 2022. The proceeds were utilized to make a distribution of \$11 million to NRG Yield Operating LLC with the remaining \$2 million utilized to fund the costs of the amendment.

TA High Desert Facility

The TA High Desert Facility is comprised of \$53 million of fixed rate notes due 2033 at an interest rate of 5.15%, \$7 million of floating rate notes due 2023, \$22 million of bridge notes due the earlier of ten days after receipt of the cash grant or May 2014, and a revolving facility of \$12 million. The floating rate notes have an interest rate of 3 month LIBOR plus 2.5% with LIBOR floor of 1.5%, while the bridge notes have an interest rate of 1 month LIBOR plus 2.50%. As described in Note 4, *Property, Plant and Equipment*, in April 2014, TA High Desert received payment of \$20 million for its cash grant and utilized the proceeds, along with an additional \$2 million of cash contributed by NRG to repay the cash grant bridge loan. The revolving facility can be used for cash or for the issuance of up to \$9 million in letters of credit. As of June 30, 2014, \$57 million of notes were outstanding and \$8 million of letters of credit were outstanding under the revolving facility. The notes amortize on predetermined schedules and are secured by all of the assets of TA High Desert.

RE Kansas South Facility

The RE Kansas South Facility includes a \$38 million term loan due 2031 and a \$21 million cash grant bridge loan due ten days after receipt of the cash grant. The term loan has an interest rate of 6 month LIBOR plus an applicable margin of 2.625% and increases by 0.25% every 4 years. The cash grant bridge loan had an interest rate of 1 month LIBOR plus an applicable margin of 2.00%. The term loan amortizes on a predetermined schedule and is secured by all of the assets of RE Kansas South. As described in Note 4, *Property, Plant and Equipment*, in April 2014, the Company received payment of \$21 million for the cash grant related to RE Kansas South and utilized the proceeds to repay the cash grant bridge loan. As of June 30, 2014, \$35 million was outstanding under the term loan and \$4 million of letters of credit were issued under the RE Kansas South Facility.

Additional Project-level Debt Amendments

On July 9, 2014, Avra Valley amended its credit agreement to increase its borrowings by \$3 million and to reduce the related interest rate from 3 month LIBOR plus an applicable margin of 2.25% to 3 month LIBOR plus 1.75%. The proceeds were primarily utilized to make a distribution to NRG Yield Operating LLC.

On July 17, 2014, Marsh Landing amended its credit agreement to increase its borrowings by \$34 million and to reduce the related interest rate for the Tranche A borrowings from 3 month LIBOR plus an applicable margin of 2.75% to 3 month LIBOR plus 1.75% through December 2017 and to 3 month LIBOR plus 2.00% thereafter; and for the Tranche B to reduce the related interest rate from 3 month LIBOR plus 3.00% to 3 month LIBOR plus 1.875% through December 2017 and to 3 month LIBOR plus 2.125% thereafter. The proceeds from the borrowings were utilized to make a distribution of \$29 million to NRG Yield Operating LLC and to fund the costs of the amendment.

Note 9 — Earnings Per Share

Basic and diluted earnings per Class A common share are computed by dividing net income by the weighted average number of Class A common shares outstanding. Shares issued during the year are weighted for the portion of the year that they were outstanding.

The reconciliation of the Company's basic and diluted earnings per share is shown in the following table:

	Three months ended June 30,	Six months ended June 30,
	2014	2014
<i>(In millions, except per share data)</i>		
<i>Basic and diluted earnings per share attributable to Class A common stockholders</i>		
Net Income Attributable to NRG Yield, Inc.	\$ 6	\$ 10
Weighted average number of Class A common shares outstanding	23	23
Basic and Diluted Earnings per Class A common share:	\$ 0.26	\$ 0.42

There was a total of 7 million shares of Class A common stock that were anti-dilutive as of June 30, 2014.

Note 10 — Changes in Capital Structure

As of June 30, 2014 and December 31, 2013, the Company had 22,511,250 shares of Class A common stock outstanding.

The following table lists the dividends paid on the Company's Class A common stock during the six months ended June 30, 2014:

	Second Quarter 2014	First Quarter 2014
Dividends per share	\$ 0.35	\$ 0.33

The Company's Class A common stock dividends are subject to available capital, market conditions, and compliance with associated laws and regulations.

On July 29, 2014, the Company declared a quarterly dividend on Class A common stock of \$0.365 per share payable on September 15, 2014 to shareholders of record as of September 2, 2014.

On July 29, 2014, the Company issued 12,075,000 Class A common shares for net proceeds, after underwriting discount and expenses, of \$630 million. The proceeds are expected to be used to fund the acquisition of the Alta Wind Assets with the excess of the proceeds over the amount utilized for the acquisition available for general corporate purposes, including future acquisitions.

Note 11 — Segment Reporting

The Company's segment structure reflects how management currently makes financial decisions and allocates resources. Its businesses are primarily segregated based on conventional power generation, renewable businesses which consist of solar and wind, and the thermal and chilled water business. The Corporate segment reflects the Company's corporate costs.

Three months ended June 30, 2014

(In millions)	Conventional Generation	Renewables	Thermal	Corporate	Total
Operating revenues	\$ 61	\$ 30	\$ 43	\$ —	\$ 134
Cost of operations	12	3	30	—	45
Depreciation and amortization	24	7	5	—	36
General and administrative — affiliate	—	—	—	2	2
Operating income/(loss)	25	20	8	(2)	51
Equity in earnings of unconsolidated affiliates	4	10	—	—	14
Interest expense	(11)	(11)	(2)	(5)	(29)
Income/(loss) before income taxes	18	19	6	(7)	36
Net income/(loss)	18	19	6	(9)	34
Total assets	\$ 1,535	\$ 905	\$ 362	\$ 434	\$ 3,236

Three months ended June 30, 2013

(In millions)	Conventional Generation	Renewables	Thermal	Corporate	Total
Operating revenues	\$ 20	\$ 26	\$ 36	\$ —	\$ 82
Cost of operations	3	2	27	—	32
Depreciation and amortization	2	5	3	—	10
General and administrative — affiliate	—	—	—	2	2
Operating income/(loss)	15	19	6	(2)	38
Equity in earnings of unconsolidated affiliates	3	(1)	—	—	2
Interest expense	(3)	(1)	(2)	—	(6)
Other income, net	1	—	—	—	1
Income/(loss) before income taxes	16	17	4	(2)	35
Net income/(loss)	\$ 16	\$ 17	\$ 4	\$ (2)	\$ 35

Six months ended June 30, 2014

(In millions)	Conventional Generation	Renewables	Thermal	Corporate	Total
Operating revenues	\$ 117	\$ 49	\$ 108	\$ —	\$ 274
Cost of operations	22	7	76	—	105
Depreciation and amortization	36	15	9	—	60
General and administrative — affiliate	—	—	—	4	4
Operating income/(loss)	59	27	23	(4)	105
Equity in earnings of unconsolidated affiliates	7	8	—	—	15
Interest expense	(22)	(22)	(4)	(8)	(56)
Other income	—	1	—	—	1
Income/(loss) before income taxes	44	14	19	(12)	65
Net income/(loss)	\$ 44	\$ 14	\$ 19	\$ (17)	\$ 60

Six months ended June 30, 2013

(In millions)	Conventional Generation	Renewables	Thermal	Corporate	Total
Operating revenues	\$ 20	\$ 42	\$ 73	\$ —	\$ 135
Cost of operations	3	5	53	—	61
Depreciation and amortization	2	11	7	—	20
General and administrative — affiliate	—	—	—	4	4
Operating income/(loss)	15	26	13	(4)	50
Equity in earnings of unconsolidated affiliates	7	(1)	—	—	6
Interest expense	(3)	(4)	(4)	—	(11)
Other income, net	1	—	—	—	1
Income/(loss) before income taxes	20	21	9	(4)	46
Net income/(loss)	\$ 20	\$ 21	\$ 9	\$ (4)	\$ 46

Note 12 — Income Taxes

Effective Tax Rate

The income tax provision consisted of the following:

(In millions, except otherwise noted)	Three months ended June 30,		Six months ended June 30,	
	2014	2013	2014	2013
Income before income taxes	\$ 36	\$ 35	\$ 65	\$ 46
Income tax expense	2	—	5	—
Effective tax rate	5.6%	—%	7.7%	—%

For the three and six months ended June 30, 2014 and 2013, the overall effective tax rate was different than the statutory rate of 35% primarily due to taxable earnings allocated to NRG resulting from its 65.5% interest in NRG Yield LLC.

On July 22, 2013, the Company acquired a controlling interest in NRG Yield LLC and its subsidiary NRG Yield Operating LLC. As a result, the Company owns 34.5% of NRG Yield LLC and consolidates the results due to its controlling interest. The Company records NRG's 65.5% ownership as noncontrolling interest in the financial statements. NRG Yield LLC is treated as a partnership for income tax purposes. As such, the Company records income tax on its 34.5% of NRG Yield LLC's taxable income. NRG records income tax on its 65.5% share of taxable income generated by NRG Yield LLC.

The Company's deferred tax balances reflect the change in tax basis of the Company's assets as a result of the initial public offering and ROFO acquisitions, primarily due to an increase in the tax basis of the Company's property, plant and equipment. The change in tax basis resulted in a non-cash addition of \$171 million as of June 30, 2014 and \$153 million as of December 31, 2013 to the Company's additional paid-in capital.

Note 13 — Related Party Transactions

Management Services Agreement with NRG

Subsequent to the initial public offering, NRG provides the Company with various operation, management, and administrative services, which include human resources, accounting, tax, legal, information systems, treasury, and risk management, as set forth in the Management Services Agreement. As of June 30, 2014, the base management fee was approximately \$1 million per quarter subject to an inflation based adjustment annually at an inflation factor based on the year-over-year U.S. consumer price index. The fee is also subject to adjustments following the consummation of future acquisitions and as a result of a change in the scope of services provided under the Management Services Agreement. The fee was increased by approximately \$0.5 million per year in connection with the acquisition of the Acquired ROFO Assets. Costs incurred under this agreement were approximately \$4 million for the six months ending June 30, 2014, which included certain direct expenses incurred by NRG on behalf of the Company in addition to the base management fee.

Accounts Payable to NRG Solar LLC

During the third quarter of 2013, NRG Solar LLC, a wholly-owned subsidiary of NRG, made 100% of the required capital contributions to CVSR, including the Company's 48.95% portion, of which \$14 million was outstanding as of December 31, 2013. This balance was repaid to NRG Solar LLC during the quarter ended March 31, 2014.

Accounts Payable to NRG Repowering Holdings LLC

During 2013, NRG Repowering Holdings, LLC, a wholly-owned subsidiary of NRG, made payments to BA Leasing BSC, LLC, or BA Leasing, of \$18 million, which were expected to be repaid with the proceeds of the cash grant received by BA Leasing with respect to the PFMG DG Solar Projects, a wholly-owned subsidiary of the Company, in connection with a sale-leaseback arrangement between the PFMG DG Solar Projects and BA Leasing. As of December 31, 2013, PFMG DG Solar Projects had a corresponding receivable for the reimbursement of the cash grant from BA Leasing and related payable to NRG Repowering Holdings, LLC. In the first quarter of 2014, the PFMG DG Solar Projects received \$11 million from BA Leasing and reduced the remaining receivable with an offset to the deferred liability recorded in connection with the sale - leaseback arrangement. The PFMG DG Solar Projects utilized the \$11 million to repay NRG Repowering Holdings LLC.

Note 14 — Environmental Matters

In 2013, NRG Energy Center San Francisco LLC, a wholly owned indirect subsidiary of the Company, received a notice of violation from the San Francisco Department of Public Health alleging improper monitoring of three underground storage tanks. The tanks have not leaked. The Company settled the matter in July 2014 for \$123,000.

ITEM 2 — MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion analyzes the Company's historical financial condition and results of operations. For all periods prior to the initial public offering, the discussion reflects the Company's accounting predecessor, or NRG Yield, the financial statements of which were prepared on a "carve-out" basis from NRG and are intended to represent the financial results of the contracted renewable energy and conventional generation and thermal infrastructure assets in the United States that were acquired by NRG Yield LLC on July 22, 2013. For all periods subsequent to the initial public offering, the discussion reflects the Company's consolidated financial results. In addition, as discussed in Note 1, *Nature of Business* to this Form 10-Q, the purchase of the Acquired ROFO Assets on June 30, 2014 was accounted for in accordance with ASC 850-50, Business Combinations - Related Issues, whereas the assets and liabilities transferred to the Company relate to interests under common control by NRG and accordingly, were recorded at historical cost. The difference between the cash proceeds and historical value of the net assets was recorded as a distribution to NRG and reduced the balance of its noncontrolling interest. The guidance requires retrospective combination of the entities for all periods presented as if the combination has been in effect since the inception of common control.

As you read this discussion and analysis, refer to the Company's Consolidated Statements of Operations to this Form 10-Q, which present the results of operations for the six months ended June 30, 2014 and 2013. Also refer to the Company's 2013 Form 10-K, which includes detailed discussions of various items impacting the Company's business, results of operations and financial condition.

The discussion and analysis below has been organized as follows:

- Executive Summary, including a description of the business and significant events that are important to understanding the results of operations and financial condition;
- Results of operations, including an explanation of significant differences between the periods in the specific line items of the consolidated statements of operations;
- Financial condition addressing liquidity position, sources and uses of cash, capital resources and requirements, commitments, and off-balance sheet arrangements; and
- Known trends that may affect the Company's results of operations and financial condition in the future.

Executive Summary

Introduction and Overview

The Company is a dividend growth-oriented company formed to serve as the primary vehicle through which NRG owns, operates and acquires contracted renewable and conventional generation and thermal infrastructure assets. The Company believes it is well positioned to be a premier company for investors seeking stable and growing dividend income from a diversified portfolio of lower-risk high-quality assets.

The Company owns a diversified portfolio of contracted renewable and conventional generation and thermal infrastructure assets in the United States. The Company's contracted generation portfolio consists of four natural gas or dual-fired facilities, ten utility-scale solar and wind generation facilities and two portfolios of distributed solar facilities that collectively represent 1,914 net MW, and includes the Acquired ROFO Assets (which consists of El Segundo, RE Kansas South and TA High Desert projects) that were acquired from NRG on June 30, 2014 as described in Note 1, *Nature of Business*, and Note 3, *Business Acquisitions*. Each of these assets sells substantially all of its output pursuant to long-term, fixed price offtake agreements with creditworthy counterparties. The average remaining contract duration of these offtake agreements was approximately 17 years as of June 30, 2014 based on cash available for distribution. The Company also owns thermal infrastructure assets with an aggregate steam and chilled water capacity of 1,346 net MWt and electric generation capacity of 123 net MW. These thermal infrastructure assets provide steam, hot water and/or chilled water, and in some instances electricity, to commercial businesses, universities, hospitals and governmental units in multiple locations, principally through long-term contracts or pursuant to rates regulated by state utility commissions.

Regulatory Matters

As operators of power plants and participants in wholesale energy markets, certain of the Company's entities are subject to regulation by various federal and state government agencies. These include the CFTC, FERC, and the PUCT, as well as other public utility commissions in certain states where the Company's generating, thermal, or distributed solar assets are located. In addition, the Company is subject to the market rules, procedures and protocols of the various ISO markets in which it participates. The Company must also comply with the mandatory reliability requirements imposed by the North American Electric Reliability Corporation and the regional reliability entities in the regions where the Company operates.

The Company's operations within the ERCOT footprint are not subject to rate regulation by FERC, as they are deemed to operate solely within the ERCOT market and not in interstate commerce. These operations are subject to regulation by PUCT.

The Company's regulatory matters are described in the Company's 2013 Form 10-K in Item 1, Business — *Regulatory Matters*. These matters have been updated below.

CFTC

The CFTC, among other things, has regulatory oversight authority over the trading of swaps, futures and many commodities under the Commodity Exchange Act, or CEA. The Dodd-Frank Wall Street Reform and Consumer Protection Act, or Dodd-Frank Act, among other things, aims to improve transparency and accountability in derivatives markets. The Dodd-Frank Act increases the CFTC's regulatory authority on matters related to over-the-counter derivatives, market clearing, position reporting, and capital requirements.

The Company expects that in 2014, the CFTC will clarify the scope of the Dodd-Frank Act and issue final rules concerning position limits, margin requirements, and other issues that will affect the Company's over-the-counter derivatives and futures trading. Because there are many details that remain to be addressed in CFTC rulemaking proceedings, at this time the expected impact to the Company on its current operations cannot be measured.

FERC

FERC, among other things, regulates the transmission and the wholesale sale of electricity in interstate commerce under the authority of the FPA. The transmission of electric energy occurring wholly within ERCOT is not subject to the FERC's jurisdiction under Sections 203 or 205 of the FPA. Under existing regulations, FERC determines whether an entity owning a generation facility is an EWG, as defined in the PUHCA. FERC also determines whether a generation facility meets the ownership and technical criteria of a Qualifying Facility, or QF, under the PURPA. Each of the Company's non-ERCOT U.S. generating facilities qualifies as an EWG.

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

Public utilities are required to obtain FERC's acceptance, pursuant to Section 205 of the FPA, of their rate schedules for the wholesale sale of electricity. All of the Company's non-QF generating entities located outside of ERCOT make sales of electricity pursuant to market-based rates, as opposed to traditional cost-of-service regulated rates. Every three years, FERC conducts a review of the Company's market based rates and potential market power on a regional basis.

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

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

PUHCA provides FERC with certain authority over and access to books and records of public utility holding companies not otherwise exempt by virtue of their ownership of EWGs, QFs, and Foreign Utility Companies. The Company is exempt from many of the accounting, record retention, and reporting requirements of the PUHCA.

National

New Jersey and Maryland's Generator Contracting Programs — The New Jersey Board of Public Utilities and the Maryland Public Service Commission awarded long-term power purchase contracts to generation developers to encourage the construction of new generation capacity in the respective States. The constitutionality of the long-term contracts was challenged and the U.S. District Court for the District of New Jersey (in an October 25, 2013 decision) and the U.S. District Court for the District of Maryland (in an October 24, 2013 decision) found that the respective contracts violated the Supremacy Clause of the U.S. Constitution and were preempted. On June 30, 2014, the U.S. Court of Appeals for the Fourth Circuit affirmed the Maryland District Court's decision. The appeal of the New Jersey decision is still pending before the U.S. Court of Appeals for the Third Circuit. These decisions may affect future contracting opportunities.

Thermal

On January 17, 2014, ISO-NE filed with FERC to fundamentally revamp its forward capacity market, or FCM, by making a resource's forward capacity market compensation dependent on resource output during short intervals of operating reserve scarcity. The ISO-NE proposal would replace the existing shortage event penalty structure with a new performance incentive, or PI, mechanism, resulting in capacity payments to resources that would be the combination of two components: (1) a base capacity payment and (2) a performance payment or charge. The performance payment or charge would be entirely dependent upon the resource's delivery of energy or operating reserves during scarcity conditions, and could be larger than the base payment.

NEPOOL, the ISO-NE stakeholder group, filed an alternative proposal to ISO-NE's PI proposal with FERC, under which the market rules would be revised to maintain the FCM capacity product as a tool to ensure resource adequacy, and would place real-time performance incentive-related improvements directly into the energy and reserve markets. The Company supported the NEPOOL alternative.

On May 30, 2014, FERC rejected both proposals, instituted a proceeding for further hearings and required ISO-NE to make a compliance filing to modify its proposal and adopt the increases to the reserve constraint penalty factors in NEPOOL's proposal. The matter is still subject to rehearing with FERC.

Significant Events During the Six Months Ended June 30, 2014

Acquisition of Drop-Down Assets from NRG

On May 5, 2014, NRG Yield Operating LLC entered into purchase and sale agreements with certain NRG entities, each of which is a wholly-owned subsidiary of NRG. Pursuant to the terms of the purchase and sale agreements, NRG Yield Operating LLC agreed to acquire: (i) El Segundo, a 550 MW fast-start, gas-fired facility located in Los Angeles County, California; (ii) TA High Desert, a 20 MW solar facility located in Los Angeles County, California; and (iii) RE Kansas South, a 20 MW solar facility located in Kings County, California.

These transactions represent the first drop-down of assets from NRG to the Company at an aggregate purchase price of \$357 million, which represents a base purchase price of \$349 million and \$8 million of working capital adjustments. In addition, the acquisition included the assumption of \$612 million in project level debt.

Alta Acquisition

On June 3, 2014, the Company and NRG Yield Operating LLC entered into a purchase and sale agreement with the Alta Sellers, whereby the Company agreed to acquire 100% of the membership interests of Alta Wind Asset Management Holdings, LLC, Alta Wind Company, LLC, Alta Wind X Holding Company, LLC and Alta Wind XI Holding Company, LLC, which collectively own 7 wind facilities that total 947 MW located in Tehachapi, California, or the Alta Wind Assets, and a portfolio of land leases associated with the Alta Wind Assets. The purchase price for the Alta Wind Assets is \$870 million, as well as working capital adjustments, plus the assumption of \$1.6 billion of non-recourse project-level debt. Terra-Gen, an affiliate of the Alta Sellers, will continue to provide day-to-day operations and maintenance services under a 10-year O&M agreement, which will automatically extend for additional five-year periods unless either party provides notice of termination at least 90 days prior to the expiration of the then-current term. Pursuant to the terms of such agreement, Terra-Gen will be paid a fixed monthly payment (adjusted annually for inflation) and reimbursed for certain costs incurred.

The Alta Acquisition is subject to customary closing conditions, including the receipt of regulatory approvals. The Company expects the Alta Acquisition to close during the third quarter of 2014.

Issuance of 3.50% Convertible Notes

During the first quarter of 2014, the Company issued \$345 million in aggregate principal amount of its convertible notes as described in Note 8, *Long - Term Debt*. The convertible notes are convertible, under certain circumstances, into shares of the Company's Class A common stock, cash or a combination thereof at the option of the Company at an initial conversion price of \$46.55 per share of Class A common stock.

Significant Events During the Six Months Ended June 30, 2013

During the first six months of 2013, Alpine, Borrego and Marsh Landing achieved commercial operations. In addition, Borrego completed financing arrangements with a group of lenders.

Basis of Presentation

For all periods prior to the initial public offering, the accompanying unaudited combined financial statements represent the combination of the assets that NRG Yield LLC acquired and were prepared using NRG's historical basis in the assets and liabilities. For the purposes of the unaudited combined financial statements, the term "NRG Yield" represents the accounting predecessor, or the combination of the acquired businesses. For all periods subsequent to the initial public offering, the accompanying unaudited consolidated financial statements represent the consolidated results of NRG Yield, Inc., which consolidates NRG Yield LLC through its controlling interest.

The acquisition of the TA High Desert, RE Kansas South, and El Segundo projects from NRG on June 30, 2014 was accounted for as a transfer of entities under common control. The guidance requires retrospective combination of the entities for all periods presented as if the combination has been in effect since the inception of common control. Accordingly, the Company prepared its consolidated financial statements to reflect the transfer as if it had taken place on January 1, 2013, or from the date the entities were under common control, which was May 13, 2013 for RE Kansas South and March 28, 2013 for TA High Desert. Member's equity represents NRG's equity in the subsidiaries, and accordingly, in connection with their acquisition by the Company, the balance was reclassified into noncontrolling interest. The Company reduces net income attributable to its Class A common shareholders by the pre-acquisition net income for the Acquired ROFO Assets as it is not available to the shareholders.

Consolidated Results of Operations

The following table provides selected financial information:

(In millions except otherwise noted)	Three months ended June 30,			Six months ended June 30,		
	2014	2013	Change %	2014	2013	Change %
Operating Revenues						
Total operating revenues	\$ 134	\$ 82	64	\$ 274	\$ 135	103
Operating Costs and Expenses						
Cost of operations	45	32	41	105	61	72
Depreciation and amortization	36	10	260	60	20	200
General and administrative — affiliate	2	2	—	4	4	—
Total operating costs and expenses	83	44	89	169	85	99
Operating Income	51	38	34	105	50	110
Other Income/(Expense)						
Equity in earnings of unconsolidated affiliates	14	2	N/M	15	6	150
Other income, net	—	1	100	1	1	—
Interest expense	(29)	(6)	(383)	(56)	(11)	(409)
Total other income/(expense)	(15)	(3)	400	(40)	(4)	N/M
Income Before Income Taxes	36	35	3	65	46	41
Income tax expense	2	—	100	5	—	100
Net Income	34	35	(3)	60	46	31
Pre-acquisition net income of Acquired ROFO Assets	9	1	N/M	17	1	N/M
Net Income Excluding Pre-acquisition Net Income of Acquired ROFO Assets	25	34	(26)	43	45	(5)
Income attributable to NRG	19			33		
Net Income Attributable to NRG Yield, Inc.	\$ 6			\$ 10		

N/M - Not meaningful.

Business metrics:	Three months ended June 30,		Six months ended June 30,	
	2014 ^(a)	2013 ^(a)	2014 ^(a)	2013 ^(a)
Conventional MWh sold (in thousands)	346	—	674	—
Renewable MWh sold (in thousands)	279	256	490	439
Thermal MWh sold (in thousands)	441	364	1,109	862

(a) Volumes sold do not include MWh 52 thousand, 37 thousand, 124 thousand and 45 thousand for thermal generation for the three months and six months ended June 30, 2014 and 2013, respectively.

Management's Discussion of the Results of Operations for the Three months ended June 30, 2014 and 2013

Operating Revenues

Operating revenues increased by \$52 million during the three months ended June 30, 2014, compared to the same period in 2013 due to:

	Conventional	Renewables	Thermal	Total
	(In millions)			
Three Months Ended June 30, 2014	\$ 61	\$ 30	\$ 43	\$ 134
Three Months Ended June 30, 2013	20	26	36	82

The increase in operating revenues is due primarily to:

Increase in Conventional revenues as Marsh Landing and El Segundo reached commercial operations in 2013	\$ 41
Increase in Thermal revenue is primarily due to revenue generated from Energy Systems acquired in the fourth quarter of 2013	7
Increase in Renewables revenue primarily due to RE Kansas South and TA High Desert facilities reaching commercial operations in the first half of 2013	4
	<u>\$ 52</u>

Operating Costs

Operating costs increased by \$13 million during the three months ended June 30, 2014, compared to the same period in 2013 due to:

	Conventional	Renewables	Thermal	Total
	(In millions)			
Three Months Ended June 30, 2014	\$ 12	\$ 3	\$ 30	\$ 45
Three Months Ended June 30, 2013	3	2	27	32

The increase in operating costs is due primarily to:

Increase in costs associated with maintenance and operations at Marsh Landing and El Segundo which reached commercial operations in 2013	\$ 9
Higher cost of production due to repowering of Dover facilities in the second quarter of 2013; as well as increased costs in connection with the Energy Systems acquisition	3
Increase in costs associated with maintenance and operations at RE Kansas South and TA High Desert which reached commercial operations in 2013	1
	<u>\$ 13</u>

Depreciation and Amortization

Depreciation and amortization increased by \$26 million during the three months ended June 30, 2014, compared to the same period in 2013, due primarily to additional depreciation expense associated with El Segundo and Marsh Landing facilities which reached commercial operations in 2013, as well as RE Kansas South and TA High Desert reaching commercial operations in the first half of 2013.

Equity in Earnings of Unconsolidated Affiliates

Equity in earnings of unconsolidated affiliates increased by \$12 million during the three months ended June 30, 2014, compared to the same period in 2013 due primarily to an increase in earnings for CVSR and GenConn.

Interest Expense

Interest expense increased by \$23 million during the three months ended June 30, 2014, compared to the same period in 2013, due primarily to an increase in derivative interest expense of \$9 million related to the Alpine interest rate swap, interest expense of \$8 million on the Company's revolving credit facility and Convertible Notes issued in February 2014, as well as \$6 million of interest expense for the Marsh Landing and El Segundo projects which reached commercial operations in 2013.

Income Tax Expense

For the three months ended June 30, 2014, the Company recorded income tax expense of \$2 million on pretax income of \$36 million. The overall effective tax rate was different than the statutory rate of 35% primarily due to taxable earnings allocated to NRG resulting from its 65.5% interest in NRG Yield LLC.

Pre-acquisition net income of Acquired ROFO Assets

For the three months ended June 30, 2014 the Company had an increase of \$8 million in pre-acquisition net income of Acquired ROFO Assets primarily due to the El Segundo project, which reached commercial operations in the third quarter of 2013.

Income Attributable to NRG

Income attributable to NRG of \$19 million represents NRG's 65.5% interest in NRG Yield LLC's net income during the three months ended June 30, 2014.

Management's Discussion of the Results of Operations for the Six Months ended June 30, 2014 and June 30, 2013

Operating Revenues

Operating revenues increased by \$139 million during the six months ended June 30, 2014, compared to the same period in 2013 due to:

	Conventional	Renewables	Thermal	Total
	(In millions)			
Six Months Ended June 30, 2014	\$ 117	\$ 49	\$ 108	\$ 274
Six Months Ended June 30, 2013	20	42	73	135

The increase in operating revenues is due primarily to:

Increase in Conventional revenues as Marsh Landing and El Segundo reached commercial operations in 2013	\$ 97
Increase in Thermal segment due to revenue generated from Energy Systems acquired in the fourth quarter of 2013, repowering of Dover facilities in the second quarter of 2013, as well as increased generation at other Thermal facilities due to weather conditions in the first quarter of 2014	35
Increase in Renewables revenue due to Alpine, Borrego, TA High Desert and RE Kansas South facilities reaching commercial operations in the first half of 2013	7
	<u>\$ 139</u>

Operating Costs

Operating costs increased by \$44 million during the six months ended June 30, 2014, compared to the same period in 2013 due to:

	Conventional	Renewables	Thermal	Total
	(In millions)			
Six Months Ended March 31, 2014	\$ 22	\$ 7	\$ 76	\$ 105
Six Months Ended March 31, 2013	3	5	53	61

The increase in operating costs is due primarily to:

Higher cost of production due to repowering of Dover facilities in the second quarter of 2013; increased generation at other Thermal facilities due to weather conditions in the first quarter of 2014, as well as increased costs in connection with Energy Systems acquisition	23
Increase in costs associated with maintenance and operations at Marsh Landing and El Segundo which reached commercial operations in 2013	19
Increase in cost associated with maintenance and operations of the Alpine, Borrego, TA High Desert and RE Kansas South facilities which reached commercial operations in the first half of 2013	2
	<u>\$ 44</u>

Depreciation and Amortization

Depreciation and amortization increased by \$40 million during the six months ended June 30, 2014, compared to the same period in 2013, due primarily to \$35 million of additional depreciation associated with Marsh Landing and El Segundo in the Conventional segment, which reached commercial operations in the second and third quarters of 2013; and \$4 million of additional depreciation expense in the Renewable segment for the facilities that reached commercial operations in the first and second quarters of 2013.

Equity in Earnings of Unconsolidated Affiliates

Equity in earnings of unconsolidated affiliates increased by \$9 million during the six months ended June 30, 2014, compared to the same period in 2013, due primarily to an increase of income for CVSR and GenConn.

Interest Expense

Interest expense increased by \$45 million during the six months ended June 30, 2014, compared to the same period in 2013, due primarily to an increase of \$22 million in interest expense for the Marsh Landing and El Segundo projects in the Conventional segment which reached commercial operations in the second and third quarter of 2013, an increase in derivative interest expense of \$15 million related to the Alpine interest rate swap, and an increase of \$8 million in interest expense on the Company's revolving credit facility and Convertible Notes issued in February 2014.

Income Tax Expense

For the six months ended June 30, 2014, the Company recorded income tax expense of \$5 million on pretax income of \$65 million. The overall effective tax rate was different than the statutory rate of 35% primarily due to taxable earnings allocated to NRG resulting from its 65.5% interest in NRG Yield LLC.

Pre-acquisition net income of Acquired ROFO Assets

For the six months ended June 30, 2014, the Company had an increase of \$16 million in pre-acquisition net income of Acquired ROFO Assets primarily due to the El Segundo project, which reached commercial operations in the third quarter of 2013.

Income Attributable to NRG

Income attributable to NRG of \$33 million represents NRG's 65.5% interest in NRG Yield LLC's net income during the six months ended June 30, 2014.

Liquidity and Capital Resources

The Company's principal liquidity requirements are to meet its financial commitments, finance current operations, fund capital expenditures, including acquisitions from time to time, and to service debt. Historically, the Company's predecessor operations were financed as part of NRG's integrated operations and largely relied on internally generated cash flows as well as corporate and/or project-level borrowings to satisfy its capital expenditure requirements. As a normal part of the Company's business, depending on market conditions, the Company will from time to time consider opportunities to repay, redeem, repurchase or refinance its indebtedness. Changes in the Company's operating plans, lower than anticipated sales, increased expenses, acquisitions or other events may cause the Company to seek additional debt or equity financing in future periods. There can be no guarantee that financing will be available on acceptable terms or at all. Debt financing, if available, could impose additional cash payment obligations and additional covenants and operating restrictions.

Liquidity Position

As of June 30, 2014 and December 31, 2013, the Company's liquidity was approximately \$560 million and \$186 million, respectively, comprised of cash, restricted cash, and availability under the Company's revolving credit facility. The increase primarily relates to the available line of credit under the revolving credit facility. The Company's various financing arrangements are described in Note 8, *Long-term Debt*.

Management believes that the Company's liquidity position, cash flows from operations and availability under our revolving credit facility will be adequate to meet our financial commitments, operating and maintenance capital expenditures and debt service obligations. Management continues to regularly monitor the Company's ability to finance the needs of its operating, financing and investing activity within the dictates of prudent balance sheet management.

Sources of Liquidity

The Company's principal sources of liquidity include cash on hand, cash generated from operations, borrowings under new and existing financing arrangements, including its revolving credit facility, and the issuance of additional equity securities as appropriate given market conditions. As described in Note 8, *Long - Term Debt*, the Company's financing arrangements consist of the convertible notes and project-level financings for its various assets.

In connection with the initial public offering of Class A common stock of NRG Yield, Inc., as further described in Note 1, *Nature of Business*, NRG Yield LLC and its direct wholly owned subsidiary, NRG Yield Operating LLC entered into a senior secured revolving credit facility, which provided a revolving line of credit of \$60 million. On April 25, 2014, the Company amended its revolving credit facility to increase the available line of credit to \$450 million and extend its maturity to April 2019. The revolving credit facility can be used for cash or for the issuance of letters of credit.

During the first quarter of 2014, the Company issued \$345 million of Senior Notes, as described in Note 8, *Long - Term Debt*. The Convertible Notes are convertible, under certain circumstances, into the Company's Class A common stock, cash or a combination thereof at an initial conversion price of \$46.55 per Class A common share, which is equivalent to an initial conversion rate of approximately 21.4822 shares of Class A common stock per \$1,000 principal amount of Senior Notes. The proceeds from the issuance were used to fund the purchase of the Acquired ROFO Assets, as well as general corporate purposes, including future acquisitions.

On July 29, 2014, the Company issued 12,075,000 Class A common shares for net proceeds, after underwriting discount and expenses, of \$630 million. The proceeds are expected to be used to fund the acquisition of the Alta Wind Assets with the excess of the proceeds over the amount utilized for the acquisition available for general corporate purposes.

On August 5, 2014, NRG Yield Operating LLC issued \$500 million of senior unsecured notes, or the Senior Notes, with the intention of utilizing the proceeds to fund the acquisition of the Alta Wind Assets. The Senior Notes bear interest at 5.375% and mature in 2024.

Uses of Liquidity

The Company's requirements for liquidity and capital resources, other than for operating its facilities, are categorized as: (i) debt service obligations, as described more fully in Note 8, *Long - Term Debt*; (ii) capital expenditures; and (iii) cash dividends to investors.

Capital Expenditures

The Company's capital spending program is focused on growth capital expenditures, or construction of new assets and completing the construction of new assets where construction is in process, and maintenance capital expenditures, or costs to maintain the assets currently operating such as costs to replace or refurbish assets during routine maintenance. The Company develops annual capital spending plans based on projected requirements for maintenance capital and completion of facilities under construction.

For the six months ended June 30, 2014, the Company used approximately \$29 million to fund capital expenditures, including maintenance capital expenditures of \$5 million. Growth capital expenditures primarily relate to the construction of Marsh Landing and El Segundo.

Acquisitions

The Company intends to acquire generation assets developed and constructed by NRG in the future, as well as generation and thermal infrastructure assets from third parties where the Company believes its knowledge of the market, operating expertise and access to capital provides a competitive advantage, and to utilize such acquisitions as a means to grow its cash available for distribution.

On June 30, 2014, the Company acquired the following NRG facilities: TA High Desert, RE Kansas South, and El Segundo for total cash consideration of \$357 million plus assumed project level debt.

Cash Dividends to Investors

The Company intends to use the amount of cash that it receives from its distributions from NRG Yield LLC to pay quarterly dividends to the holders of its Class A common stock. NRG Yield LLC intends to distribute to its unit holders in the form of a quarterly distribution all of the cash available for distribution that is generated each quarter less reserves for the prudent conduct of the business, including among others, maintenance capital expenditures to maintain the operating capacity of the assets. Cash available for distribution is defined as earnings before income taxes, depreciation and amortization, excluding contract amortization, cash interest paid, income taxes paid, maintenance capital expenditures, investments in unconsolidated affiliates, growth capital expenditures, net of capital and debt funding, and principal amortization of indebtedness, and including cash distributions from unconsolidated affiliates. Common stock dividends are subject to available capital, market conditions, and compliance with associated laws and regulations. The Company expects that, based on current circumstances, comparable cash dividends will continue to be paid in the foreseeable future.

The following table lists the dividends paid on the Company's Class A common stock during the six months ended June 30, 2014:

	Second Quarter 2014	First Quarter 2014
Dividends per share	\$ 0.35	\$ 0.33

The Company's Class A common stock dividends are subject to available capital, market conditions, and compliance with associated laws and regulations.

On July 29, 2014, the Company declared a quarterly dividend on Class A common stock of \$0.365 per share payable on September 15, 2014 to shareholders of record as of September 2, 2014.

Cash Flow Discussion

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

	2014	2013	Change
	(In millions)		
Net cash provided by (used in) operating activities	\$ 73	\$ (19)	\$ 92
Net cash used in investing activities	(204)	(311)	107
Net cash provided by financing activities	159	326	(167)

Net Cash Provided By Operating Activities

Changes to net cash provided by (used in) operating activities were driven by:

	(In millions)
Increase in operating income adjusted for non-cash items	\$ 62
Changes in working capital	30
	<u>\$ 92</u>

Net Cash Provided By Investing Activities

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

	(In millions)
Payment to NRG for Acquired ROFO Assets	\$ (357)
Decrease in capital expenditures as most of the projects were placed in service in late 2012 or 2013	238
Increase in proceeds from renewable grants in the first half of 2014	113
Decrease in restricted cash, primarily for Marsh Landing	96
Other	17
	<u>\$ 107</u>

Net Cash Provided By Financing Activities

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

	(In millions)
Prior year dividends and returns of capital to NRG, net of cash contributions from NRG	\$ 140
Decrease in cash proceeds from issuance of long term debt, as well as higher principal payments in the first half of 2014 compared to the first half of 2013	(254)
Dividends and distributions paid in 2014	(44)
Increase in cash paid for deferred financing costs	(9)
	<u>\$ (167)</u>

NOLs, Deferred Tax Assets and Uncertain Tax Position Implications, under ASC 740

The Company has no uncertain tax benefits. As of June 30, 2014, the Company has a cumulative NOL carry-forward balance of \$173 million for financial statement purposes and does not anticipate any federal income tax payments for 2014. As a result of the Company's tax position, and based on current forecasts, the Company does not anticipate significant income tax payments for state and local jurisdictions in 2014.

Off-Balance Sheet Arrangements

Obligations under Certain Guarantee Contracts

The Company may enter into guarantee arrangements in the normal course of business to facilitate commercial transactions with third parties.

Retained or Contingent Interests

The Company does not have any material retained or contingent interests in assets transferred to an unconsolidated entity.

Obligations Arising Out of a Variable Interest in an Unconsolidated Entity

Variable interest in equity investments — As of June 30, 2014, the Company has several investments with an ownership interest percentage of 50% or less in energy and energy-related entities that are accounted for under the equity method. One of these investments is a variable interest entity for which the Company is not the primary beneficiary.

The Company's pro-rata share of non-recourse debt held by unconsolidated affiliates was approximately \$560 million as of June 30, 2014. This indebtedness may restrict the ability of these subsidiaries to issue dividends or distributions to the Company. See also Note 5, *Variable Interest Entities, or VIEs*.

Contractual Obligations and Commercial Commitments

The Company has a variety of contractual obligations and other commercial commitments that represent prospective cash requirements in addition to our capital expenditure programs, as disclosed in the Company's 2013 Form 10-K. See also Note 8, *Long - Term Debt*, for additional discussion of contractual obligations incurred during the six months ended June 30, 2014.

Fair Value of Derivative Instruments

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

The tables below disclose the activities that include non-exchange traded contracts accounted for at fair value in accordance with ASC 820. Specifically, these tables disaggregate realized and unrealized changes in fair value; disaggregate estimated fair values at June 30, 2014, based on their level within the fair value hierarchy defined in ASC 820; and indicate the maturities of contracts at June 30, 2014. For a full discussion of the Company's valuation methodology of its contracts, see Note 6, *Fair Value of Financial Instruments*.

<u>Derivative Activity Gains/(Losses)</u>	<u>(In millions)</u>
Fair value of contracts as of December 31, 2013	\$ (26)
Contracts realized or otherwise settled during the period	16
Changes in fair value	(38)
Fair value of contracts as of June 30, 2014	<u>\$ (48)</u>

<u>Fair value hierarchy Gains/(Losses)</u>	<u>Fair Value of Contracts as of June 30, 2014</u>					<u>Total Fair Value</u>
	<u>Maturity Less Than 1 Year</u>	<u>Maturity 1-3 Years</u>	<u>Maturity 3-5 Years</u>	<u>Maturity in Excess 5 Years</u>		
	<u>(In millions)</u>					
Level 2	\$ (28)	\$ (32)	\$ (2)	\$ 15	\$ (47)	
Level 3	(1)	—	—	—	(1)	
Total	<u>\$ (29)</u>	<u>\$ (32)</u>	<u>\$ (2)</u>	<u>\$ 15</u>	<u>\$ (48)</u>	

The Company has elected to disclose derivative assets and liabilities on a trade-by-trade basis and does not offset amounts at the counterparty master agreement level. As discussed below in *Quantitative and Qualitative Disclosures about Market Risk -Commodity Price Risk*, the Company measures the sensitivity of the portfolio to potential changes in market prices using VaR, a statistical model which attempts to predict risk of loss based on market price and volatility. The Company's risk management policy places a limit on one-day holding period VaR, which limits the net open position.

Based on a sensitivity analysis using simplified assumptions, the impact of a \$0.50 per MMBtu increase or decrease in natural gas prices across the term of the derivative contracts would cause a change of approximately \$1 million in the net value of derivatives as of June 30, 2014.

Critical Accounting Policies and Estimates

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

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

The Company's significant accounting policies are summarized in Note 2, *Summary of Significant Accounting Policies*. The Company identifies its most critical accounting policies as those that are the most pervasive and important to the portrayal of the Company's financial position and results of operations, and that require the most difficult, subjective and/or complex judgments by management regarding estimates about matters that are inherently uncertain. The Company's critical accounting policies include derivative instruments, income taxes and valuation allowance for deferred tax assets, impairment of long lived assets and other intangible assets, and contingencies.

ITEM 3 — QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

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

Commodity Price Risk

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

Based on a sensitivity analysis using simplified assumptions, the impact of a \$0.50 per MMBtu increase or decrease in natural gas prices across the term of the derivative contracts would cause a change of approximately \$1 million in the net value of derivatives as of June 30, 2014.

Interest Rate Risk

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

Most of the Company's project subsidiaries enter into interest rate swaps, intended to hedge the risks associated with interest rates on non-recourse project level debt. See Note 9, *Long-Term Debt*, to the Company's audited consolidated financial statements included in the Company's 2013 Form 10-K, and Note 8, *Long - Term Debt*, to this Form 10-Q for more information about interest rate swaps of the Company's project subsidiaries.

If all of the above swaps had been discontinued on June 30, 2014, the Company would have owed the counterparties \$48 million. Based on the investment grade rating of the counterparties, the Company believes its exposure to credit risk due to nonperformance by counterparties to its hedge contracts to be insignificant.

The Company has long-term debt instruments that subject it to the risk of loss associated with movements in market interest rates. As of June 30, 2014, a 1% change in interest rates would result in an approximately \$2 million change in interest expense on a rolling twelve month basis.

As of June 30, 2014, the fair value of the Company's debt was \$2,087 million and the carrying value was \$1,999 million. The Company estimates that a 1% decrease in market interest rates would have increased the fair value of its long-term debt by \$119 million.

Liquidity Risk

Liquidity risk arises from the general funding needs of the Company's activities and in the management of the Company's assets and liabilities.

Counterparty Credit Risk

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

ITEM 4 — CONTROLS AND PROCEDURES

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

Under the supervision and with the participation of the Company's management, including its principal executive officer, principal financial officer and principal accounting officer, the Company conducted an evaluation of the effectiveness of the design and operation of its disclosure controls and procedures, as such term is defined in Rules 13a-15(e) or 15d-15(e) of the Exchange Act. Based on this evaluation, the Company's principal executive officer, principal financial officer and principal accounting officer concluded that the disclosure controls and procedures were effective as of the end of the period covered by this report on Form 10-Q.

Changes in Internal Control over Financial Reporting

The Company is integrating certain business operations, information systems, processes and related internal control over financial reporting which will continue to the end of the fiscal year. The Company will assess the effectiveness of internal control over financial reporting as integration activities continue.

PART II — OTHER INFORMATION

ITEM 1 — LEGAL PROCEEDINGS

None.

ITEM 1A — RISK FACTORS

Information regarding risk factors appears in Part I, Item 1A, Risk Factors in the Company's 2013 Form 10-K. There have been no material changes in the Company's risk factors since those reported in its 2013 Form 10-K.

ITEM 2 — UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

None.

ITEM 3 — DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4 — MINE SAFETY DISCLOSURES

Not applicable.

ITEM 5 — OTHER INFORMATION

None.

ITEM 6 — EXHIBITS

Number	Description	Method of Filing
2.1	Purchase and Sale Agreement, dated as of May 5, 2014, by and between NRG Gas Development Company, LLC and NRG Yield Operating LLC.	Incorporated by reference from Exhibit 2.1 to the Company's Current Report on Form 8-K filed on May 9, 2014.
2.2	Purchase and Sale Agreement, dated as of May 5, 2014, by and between NRG Solar PV LLC and NRG Yield Operating LLC.	Incorporated by reference from Exhibit 2.2 to the Company's Current Report on Form 8-K filed on May 9, 2014.
2.3	Purchase and Sale Agreement, dated as of May 5, 2014, by and between NRG Solar PV LLC and NRG Yield Operating LLC.	Incorporated by reference from Exhibit 2.3 to the Company's Current Report on Form 8-K filed on May 9, 2014.
2.4	Purchase and Sale Agreement, dated June 3, 2014, by and among NRG Yield, Inc., NRG Yield Operating LLC, Terra-Gen Finance Company, LLC, NTD AWAM Holdings, LLC, CHIPS Alta Wind X Holding Company, LLC and CHIPS Alta Wind XI Holding Company, LLC.	Incorporated by reference from Exhibit 10.1 to the Company's Current Report on Form 8-K filed on June 9, 2014.
10.1	Amended and Restated Credit Agreement, dated April 25, 2014, by and among NRG Yield Operating LLC, NRG Yield LLC, Royal Bank of Canada, as Administrative Agent, the lenders party thereto, Royal Bank of Canada, Goldman Sachs Bank USA and Bank of America, N.A., as L/C Issuers and RBC Capital Markets as Sole Left Lead Arranger and Sole Left Lead Book Runner.	Incorporated by reference from Exhibit 10.1 to the Company's Current Report on Form 8-K filed on April 28, 2014.
10.2	Credit Agreement, dated as of August 23, 2011, among NRG West Holdings LLC, ING Capital LLC, Union Bank, N.A., Mizuho Corporate Bank, Ltd., RBS Securities Inc., Credit Agricole Corporate and Investment Bank, and each of lenders and issuing banks thereto.*	Filed herewith
10.3	Amendment No. 1 dated October 7, 2011, by and between NRG West Holdings LLC and Credit Agricole Corporate and Investment Bank.	Filed herewith
10.4	Amendment No. 2 dated February 29, 2012, by and between NRG West Holdings LLC and Credit Agricole Corporate and Investment Bank.	Filed herewith
10.5	Amended and Restated Credit Agreement, dated July 17, 2014, by and among NRG Marsh Landing LLC, The Royal Bank of Scotland Plc, Deutsche Bank Trust Company Americas and the lenders party thereto.	Filed herewith
10.6	First Amendment to the Credit Agreement and Collateral Agency and Intercreditor Agreement, dated July 17, 2014, by and among NRG Marsh Landing LLC, The Royal Bank of Scotland Plc, Deutsche Bank Trust Company Americas and the lenders party thereto.	Filed herewith
31.1	Rule 13a-14(a)/15d-14(a) certification of David Crane	Filed herewith
31.2	Rule 13a-14(a)/15d-14(a) certification of Kirkland Andrews	Filed herewith
31.3	Rule 13a-14(a)/15d-14(a) certification of Ronald Stark	Filed herewith
32	Section 1350 Certification	Filed herewith
101 INS	XBRL Instance Document	Filed herewith
101 SCH	XBRL Taxonomy Extension Schema	Filed herewith
101 CAL	XBRL Taxonomy Extension Calculation Linkbase	Filed herewith
101 DEF	XBRL Taxonomy Extension Definition Linkbase	Filed herewith

101 LAB	XBRL Taxonomy Extension Label Linkbase	Filed herewith
101 PRE	XBRL Taxonomy Extension Presentation Linkbase	Filed herewith

* This filing excludes schedules pursuant to Item 601(b)(2) of Regulation S-K, which the registrant agrees to furnish supplementary to the Securities and Exchange Commission upon request by the Commission.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

NRG YIELD, INC.
(Registrant)

/s/ DAVID CRANE

David Crane
Chief Executive Officer
(Principal Executive Officer)

/s/ KIRKLAND B. ANDREWS

Kirkland B. Andrews
Chief Financial Officer
(Principal Financial Officer)

/s/ RONALD B. STARK

Ronald B. Stark
Chief Accounting Officer
(Principal Accounting Officer)

Date: August 7, 2014

CREDIT AGREEMENT

among

NRG WEST HOLDINGS LLC,
as Borrower,

ING CAPITAL LLC,
as Mandated Lead Arranger

UNION BANK, N.A.,
as Mandated Lead Arranger

MIZUHO CORPORATE BANK, LTD.,
as Mandated Lead Arranger and Joint Bookrunner,

RBS SECURITIES INC.,
as Mandated Lead Arranger and Joint Bookrunner,

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,
as Mandated Lead Arranger, Joint Bookrunner and
Administrative Agent

and

THE LENDERS PARTY HERETO

in respect of
THE EL SEGUNDO ENERGY CENTER

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This CREDIT AGREEMENT is dated as of August 23, 2011 among NRG West Holdings LLC, as Borrower, ING Capital LLC, as Mandated Lead Arranger, Union Bank, N.A., as Mandated Lead Arranger, Mizuho Corporate Bank, Ltd., as Mandated Lead Arranger and Joint Bookrunner, RBS Securities Inc., as Mandated Lead Arranger and Joint Bookrunner, Credit Agricole Corporate and Investment Bank, as Mandated Lead Arranger, Joint Bookrunner and Administrative Agent, and each of the financial institutions from time-to-time party hereto as Lenders and Issuing Banks.

WITNESSETH:

WHEREAS, the Borrower has requested that the Lenders and Issuing Banks provide the credit facilities described herein upon the terms and subject to the conditions set forth herein in order to finance a portion of the Project Costs and other costs and expenses incurred in developing, constructing, owning, operating and managing a combined cycle power plant consisting of two fast start, highly efficient units totaling approximately 550 megawatts, to be located on a site in El Segundo, Los Angeles County, California, in the United States (as further defined below, the "Project"); and

WHEREAS, the Lenders and Issuing Banks are willing to provide such credit facilities upon such terms and subject to such conditions;

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

ARTICLE I DEFINITIONS AND RULES OF INTERPRETATION

1.1 Defined Terms. Except as otherwise expressly provided herein, capitalized terms used in this Credit Agreement and its appendices, schedules and exhibits shall have the respective meanings assigned to such terms in Appendix A hereto.

1.2 Rules of Interpretation. Except as otherwise expressly provided herein, the rules of interpretation set forth in Appendix A hereto shall apply to this Credit Agreement.

1.3 Accounting Principles. Except as otherwise expressly provided in this Credit Agreement, all computations and determinations as to financial matters, and all financial statements to be delivered under this Credit Agreement shall be made or prepared in accordance with U.S. GAAP (including principles of consolidation where appropriate) applied on a consistent basis.

ARTICLE II

THE CREDIT FACILITIES

2.1 Construction Facilities.

(a) The Tranche A Lenders hereby establish for the benefit of the Borrower a construction loan facility (the “Tranche A Construction Facility”) having an initial committed principal amount equal to the Tranche A Loan Amount.

(b) The Tranche B Lenders hereby establish for the benefit of the Borrower a construction loan facility (the “Tranche B Construction Facility”, and, together with the Tranche A Construction Facility, the “Construction Facilities”) having an initial aggregate committed principal amount set forth opposite the heading “*Tranche B Loan Amount*” on Appendix B (the “Tranche B Loan Amount”).

(c) Subject to and upon the terms and conditions set forth herein:

(i) each Tranche A Lender severally agrees to make, from time-to-time during the Tranche A Construction Loan Availability Period, loans under the Tranche A Construction Facility (the “Tranche A Construction Loans”) to the Borrower in an aggregate principal amount that will not result in (x) such Tranche A Lender’s Tranche A Construction Loans exceeding the Tranche A Construction Loan Commitment of such Tranche A Lender or (y) the aggregate amount of all Tranche A Construction Loans exceeding the Tranche A Loan Amount; and

(ii) each Tranche B Lender severally agrees to make, from time-to-time during the Tranche B Construction Loan Availability Period, loans under the Tranche B Construction Facility (the “Tranche B Construction Loans” and, together with the Tranche A Construction Loans, the “Construction Loans”) to the Borrower in an aggregate principal amount that will not result in (x) such Tranche B Lender’s Tranche B Construction Loans exceeding the Tranche B Construction Loan Commitment of such Tranche B Lender or (y) the aggregate amount of all Tranche B Construction Loans exceeding the Tranche B Loan Amount.

(d) The Construction Loans are available only on the terms and subject to the conditions specified hereunder, and once repaid, in whole or in part, at maturity (in accordance with Sections 2.1(f), 2.2(e) and 3.15(a)) or by prepayment, may not be re-borrowed in whole or in part.

(e) The proceeds of the Construction Loans shall be used solely (x) to pay Project Costs in accordance with the Construction Budget and (y) to make no more than three True-Up Distributions in accordance with the next sentence and Section 7.9(c). Subject to the satisfaction of the conditions set forth in Section 4.2, on each of (i) the date of the initial Borrowing of the Construction Loans, (ii) a Business Day selected by the Borrower during the Tranche A Construction Loan Availability Period or the Tranche B Construction Loan Availability Period on which the Borrower has delivered a Borrowing Request (the “Optional True-Up Date”) and (iii) the Term Conversion Date, the Borrower may draw Construction Loans

equal to the positive difference between (x) the aggregate amount of Equity Contributions made (or, if less, deemed made in accordance with the definition thereof) prior to the date of such Disbursement and (y) the Required Equity Contribution (each such drawing, a “True-Up Drawing” and together, the “True-Up Drawings”) and make a True-Up Distribution in accordance with Section 7.9(c).

(f) The Construction Loans shall, if the Term Conversion Date has not theretofore occurred, mature and be immediately payable on the Date Certain.

2.2 Term Facilities.

(a) The Tranche A Lenders hereby establish for the benefit of the Borrower a term loan facility (the “Tranche A Term Facility”) in an aggregate principal amount equal to the Tranche A Loan Amount (or, if less on the Term Conversion Date, an amount equal to the principal amount of the Tranche A Construction Loans outstanding as of the Term Conversion Date (after giving effect to any Borrowing of Tranche A Construction Loans on such date and any prepayment of Tranche A Construction Loans on such date in accordance herewith)).

(b) The Tranche B Lenders hereby establish for the benefit of the Borrower a term loan facility (the “Tranche B Term Facility”, and together with the Tranche A Term Facility, the “Term Facility”) in an aggregate principal amount equal to the Tranche B Loan Amount (or, if less on the Term Conversion Date, an amount equal to the principal amount of the Tranche B Construction Loans outstanding as of the Term Conversion Date (after giving effect to any Borrowing of Tranche B Construction Loans on such date and any prepayment of Tranche B Construction Loans on such date in accordance herewith)).

(c) Subject to and upon the terms and conditions set forth herein:

(i) each Tranche A Lender agrees that on the Term Conversion Date, all Tranche A Construction Loans of such Tranche A Lender outstanding on such date (after giving effect to any Borrowing of Tranche A Construction Loans on such date and any prepayment of Tranche A Construction Loans on such date in accordance herewith) shall automatically convert into term loans under the Tranche A Term Facility (each, a “Tranche A Term Loan”); and

(ii) each Tranche B Lender agrees that on the Term Conversion Date, all Tranche B Construction Loans of such Tranche B Lender outstanding on such date (after giving effect to any Borrowing of Tranche B Construction Loans on such date and any prepayment of Tranche B Construction Loans on such date in accordance herewith) shall automatically convert into term loans under the Tranche B Term Facility (each, a “Tranche B Term Loan”, and together with Tranche A Term Loans, the “Term Loans”).

For the avoidance of doubt, the Tranche A Construction Loans and the Tranche B Construction Loans shall convert to Tranche A Term Loans and Tranche B Term Loans (respectively) on the same date.

(d) Construction Loans shall be deemed to be continued as and converted to Term Loans as provided hereby. The Term Loans are available only on the terms and conditions specified herein and, once repaid, in whole or in part, at maturity or by prepayment, may not be reborrowed in whole or in part.

(e) The Term Loans shall mature and be immediately payable on the earlier of (i) the tenth anniversary of the Term Conversion Date and (ii) August 31, 2023 (the "Term Maturity Date").

2.3 Revolving Facility.

(a) The Revolver Lenders hereby establish for the benefit of the Borrower a revolving facility (the "Revolving Facility") having an initial aggregate committed amount set forth opposite the heading "Revolving Amount" on Appendix B (the "Revolving Amount").

(b) Subject to and upon the terms and conditions set forth herein, each Revolver Lender agrees to:

(i) prior to the Term Conversion Date, issue one or more irrevocable standby letters of credit (collectively, the "LGIA Letter of Credit") for the account of the Borrower in respect of the Project Owner's obligation to provide performance guarantees under the Large Generator Interconnection Agreement for the benefit of the Offtaker and CAISO, pursuant to the Large Generator Interconnection Agreement, and in the form set forth below the heading identifying such LGIA Letter of Credit on Appendix D; and

(ii) make, from time-to-time during the period from the Term Conversion Date until the last day of the Revolver Availability Period, revolving loans under the Revolving Facility (together with any LC Loan resulting from a drawing on any LGIA Letter of Credit, the "Revolving Loans") to the Borrower in an aggregate principal amount that will not result in the aggregate amount of all Revolving Loans (including any LC Loans resulting from a drawing under any LGIA Letter of Credit) exceeding the Revolving Amount.

(c) Each LGIA Letter of Credit shall expire on the date set forth therein, which shall be determined in accordance with Section 3.25 and Appendix D and shall not in any event be later than the last day of the LGIA Availability Period.

(d) The Revolving Loans may be prepaid in accordance with Section 3.16 and re-borrowed, subject to the terms and conditions set forth in this Credit Agreement, including the satisfaction or waiver of the conditions precedent set forth in Section 4.3 in accordance therewith.

(e) The proceeds of the Revolving Loans shall be applied solely to O&M Expenses.

(f) The Revolving Loans shall mature and be immediately payable on the last day of the Revolver Availability Period (or, if the Term Conversion Date does not occur on or prior to the Date Certain, the Date Certain) (the “Revolver Maturity Date”).

2.4 TALC Facility.

(a) The TALC Issuing Bank and TALC Participating Banks hereby establish for the account of the Borrower a participating letter of credit facility (the “TALC Facility”) having an initial aggregate committed amount set forth opposite the heading “*TALC Facility Amount*” on Appendix B (the “TALC Facility Amount”).

(b) Subject to and upon the terms and conditions set forth herein, the TALC Issuing Bank agrees to issue, one or more irrevocable standby letters of credit (collectively, the “TA Letters of Credit”) for the account of the Borrower and the benefit of the Offtaker pursuant to the Tolling Agreement, in the form set forth below the heading identifying such TA Letters of Credit on Appendix D.

(c) The TALC Participating Banks shall participate in each TA Letter of Credit issued under the TALC Facility in accordance with Section 3.25.

(d) Each TA Letter of Credit shall expire on the date set forth therein, which shall be determined in accordance with Section 3.25 and Appendix D and shall not in any event be later than the fifth Business Day after the last day of the TALC Availability Period.

(e) Any LC Loans resulting from drawings under the TA Letters of Credit shall mature and be immediately payable on the day that is five Business Days after the last day of the TALC Availability Period (or, if the Term Conversion Date does not occur on or prior to the Date Certain, the Date Certain) (the “TALC Maturity Date”).

2.5 DSR LC Facility

(a) The DSR Issuing Banks hereby establish for the account of the Borrower a non-participating letter of credit facility (the “DSR LC Facility”) having an initial aggregate committed amount set forth opposite the heading “DSR Facility Amount” on Appendix B (the “DSR Facility Amount”).

(b) Subject to and upon the terms and conditions set forth herein, each DSR Issuing Bank agrees to issue one or more irrevocable standby letters of credit (collectively, the “DSR Letters of Credit”) for the account of the Borrower and for the benefit of the Collateral Agent in accordance with the Accounts Agreement in the form set forth below the heading identifying such DSR Letters of Credit on Appendix D.

(c) Each DSR Letter of Credit shall expire on the date set forth therein, which shall be determined in accordance with Section 3.25 and Appendix D and shall not in any event be later than the last day of the DSR Availability Period.

(d) Any LC Loans resulting from drawings under the DSR Letters of Credit shall mature and be immediately payable on the last day of the DSR Availability Period

(or, if the Term Conversion Date does not occur on or prior to the Date Certain, the Date Certain) (the “DSR Maturity Date”).

ARTICLE III

TERMS OF THE CREDIT FACILITIES

3.1 Borrowings Generally.

(a) Each Borrowing shall consist of Loans of the same Tranche and shall be made by the relevant Lenders ratably in accordance with their respective Commitments under the relevant Tranche as of the date such Loans are made hereunder. Subject to Section 3.8, each Borrowing shall be comprised entirely of Base Rate Loans or LIBOR Loans as the Borrower may request in accordance herewith. The Commitments of the Lenders are several and no Lender shall be responsible for any other Lender’s failure to make Loans as required hereunder. The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder.

(b) Each Borrowing shall be in an aggregate amount that is not less than the Borrowing Minimum and, if more than the Borrowing Minimum, is an integral multiple of the Borrowing Multiple in excess thereof; provided, that a Borrowing may be in an aggregate amount that is equal to the entire unused balance of the aggregate applicable Commitments or, with respect to any LC Loan deemed made in accordance with Section 3.25(f), the amount of the relevant drawing under the relevant Specified Letters of Credit.

(c) Borrowings of more than one Type may be outstanding at the same time. There shall not at any time be more than a total of twelve Interest Periods of LIBOR Loans outstanding hereunder at any one time. If two or more Borrowings of the same Tranche and having the same Interest Period are outstanding hereunder at any one time, then the Administrative Agent may in its sole discretion combine the Loans comprising such Borrowings into one Loan.

(d) Notwithstanding any other provision of this Credit Agreement, the Borrower shall not be entitled to request, or to elect to Convert or continue, any Borrowing of any Loan if the Interest Period requested with respect thereto would end after the Maturity Date of such Loan.

3.2 Borrowing Request. To request a Borrowing of a Construction Loan or a Revolving Loan, the Borrower shall deliver a Borrowing Request to the Administrative Agent at its Notice Office not later than 11:00 a.m. (New York City time) on (x) the third Business Day prior to the proposed date of Borrowing set forth therein in the case of LIBOR Loans or (y) the first Business Day prior to the proposed date of Borrowing set forth therein in the case of Base Rate Loans. Each Borrowing Request shall be appropriately completed to specify (i) the Tranches of Loans being requested, (ii) the aggregate principal amount of each such Tranche of Loans, (iii) the date of such Borrowing (which shall be a Business Day), (iv) the Type of Loans being requested and (v) in the case of LIBOR Loans, the initial Interest Period to be applicable

thereto. The Administrative Agent shall promptly give each Lender notice of the proposed Borrowing, of such Lender's proportionate share thereof and of the other matters required by the immediately preceding sentence to be specified in the Borrowing Request. If the Borrowing Request does not elect a Type of Borrowing, then the requested Borrowing shall be a Base Rate Loan. If the Borrowing Request elects a Borrowing of LIBOR Loans but does not specify an Interest Period, then the requested Borrowing shall have an initial Interest Period of one month. This Section 3.2 shall not apply to Borrowings of Term Loans or LC Loans.

3.3 Disbursement of Funds. Subject to the terms and conditions hereof, on the date specified in each Borrowing Request, each Lender will make available through such Lender's Applicable Lending Office its *pro rata* portion (if any) of the aggregate amount of each Tranche of Construction Loans or Revolving Loans requested on such date, in each case, by wire transfer in Dollars and in immediately available funds to the AA Disbursement Account, and the Administrative Agent will deposit the aggregate of the amounts so made available by the Lenders in accordance with the Borrowing Request and the Accounts Agreement. Unless the Administrative Agent has been notified by any Lender prior to the applicable date of the Borrowing that such Lender does not intend to make available to the Administrative Agent such Lender's *pro rata* portion of the Borrowing of any Tranche of Construction Loans or Revolving Loans on such date, the Administrative Agent may assume that such Lender has made such amount available to the Administrative Agent on such date, and the Administrative Agent may (but shall have no obligation to), in reliance upon such assumption, make available to the Borrower a corresponding amount. If such corresponding amount is not in fact made available to the Administrative Agent by such Lender, the Administrative Agent shall be entitled to recover such corresponding amount from such Lender on demand. If such Lender does not pay such corresponding amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent shall promptly notify the Borrower, and the Borrower shall be required to pay such corresponding amount to the Administrative Agent forthwith upon the Administrative Agent's demand therefor. The Administrative Agent shall also be entitled to recover on demand from such Lender or the Borrower, as the case may be, interest on such corresponding amount in respect of each day from the date such corresponding amount was made available by the Administrative Agent to the Borrower until the date such corresponding amount is recovered by the Administrative Agent, at a rate *per annum* equal to (a) if such amount is recovered from such Lender, the cost to the Administrative Agent of acquiring overnight federal funds at the then applicable rate and (b) if such amount is recovered from the Borrower, the then applicable rate of interest for the relevant Loans provided for herein. If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Credit Agreement, and the Borrower's obligation to repay the Administrative Agent such corresponding amount pursuant to this Section 3.3 shall cease. Nothing in this Section 3.3 shall be deemed to relieve any Lender from its obligation to make any Loan hereunder or to prejudice any rights which the Borrower may have against any Lender as a result of any failure by such Lender to make Loans hereunder. This Section 3.3 shall not apply to Borrowings of Term Loans or LC Loans.

3.4 Evidence of Secured Obligations and Notes.

(a) Each Lender will maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender as a result of the Loans

of such Lender made hereunder, including the amounts of principal, interest and other Secured Obligations payable and paid to such Lender from time-to-time under this Credit Agreement and (if issued) the Notes. The entries made by each Lender in such account or accounts pursuant to the foregoing sentence shall constitute *prima facie* evidence of the existence and amounts of the Loans and other Secured Obligations therein recorded; provided, that the failure of any Lender to maintain such account or accounts, or any error therein, shall not in any manner affect the obligations of the Borrower to repay or pay the Loans made by such Lender, accrued interest thereon and the other Secured Obligations of the Borrower to such Lender hereunder in accordance with the terms of this Credit Agreement and the other Financing Documents. Each Lender will advise the Borrower of the outstanding Indebtedness hereunder to such Lender upon written request therefor.

(b) At the request of any Lender, the Borrower's obligation to pay the principal of, and interest on, any Tranche of Loans made by such Lender shall be evidenced by a Note in respect of such Tranche duly executed and delivered by the Borrower with blanks appropriately completed in conformity herewith.

(c) Each Lender will note on its internal records the amount of each Loan made by it and each payment made in respect thereof and will prior to any transfer of any of its Notes endorse on the reverse side thereof the outstanding principal amount of Loans evidenced thereby. Failure to make such notation shall not affect the Borrower's obligations in respect of such Loans.

3.5 Conversions. The Borrower shall have the option to Convert on any Business Day the principal amount of the Loans made pursuant to one or more Borrowings from one Type of Loan into another Type of Loan; provided, that (a) Loans may not be so Converted into another Type unless the aggregate principal amount of Loans to be so Converted is not less than the Borrowing Minimum and, if more than the Borrowing Minimum, is an integral multiple of the applicable Borrowing Multiple in excess thereof, (b) no Conversion of all or any portion of any LIBOR Loan into a Base Rate Loan may be effected on any day other than the last day of an Interest Period applicable to such LIBOR Loan, unless the Borrower pays all amounts owing under Section 3.12 as a result of such Conversion, (c) no partial Conversion of LIBOR Loans shall reduce the outstanding principal amount of such LIBOR Loans made pursuant to a single Borrowing to less than the applicable Borrowing Minimum, (d) Base Rate Loans may only be Converted into LIBOR Loans if no Default or Event of Default is in existence on the date of Conversion and (e) no Conversion pursuant to this Section 3.5 shall result in a greater number of Interest Periods of LIBOR Loans being outstanding at any one time than is permitted under Section 3.1(c) hereof. Each such Conversion shall be effected by the Borrower by delivering a Conversion Request to the Administrative Agent at its Notice Office prior to 11:00 a.m. (New York City time) on the third Business Day prior to the proposed date of Conversion. Each Conversion Request shall be appropriately completed to specify (i) the principal amount of each Tranche of Loans to be so Converted, (ii) the date of such Conversion (which shall be a Business Day), (iii) the Type of Loans from which each such Tranche of Loans is being Converted and the Type of Loans into which each such Tranche of Loans is being Converted and (iv) if any Loans are being Converted into LIBOR Loans, the Interest Period to be initially applicable thereto. The Administrative Agent shall give each Lender prompt notice of any such proposed Conversion affecting any of its Loans.

3.6 Interest.

(a) The Borrower agrees to pay interest in respect of the unpaid principal amount of each Base Rate Loan from the date of Borrowing thereof or Conversion thereof into a Base Rate Loan, until the earlier of (i) the maturity of such Base Rate Loan (whether by acceleration or otherwise) and (ii) the Conversion of such Base Rate Loan to a LIBOR Loan pursuant hereto, at a rate *per annum* which shall be equal to the sum of (A) the Base Rate in effect from time-to-time *plus* (B) the Applicable Margin.

(b) The Borrower agrees to pay interest in respect of the unpaid principal amount of each LIBOR Loan from the date of Borrowing thereof or Conversion thereof into a LIBOR Loan until the earlier of (i) the maturity of such LIBOR Loan (whether by acceleration or otherwise) and (ii) the Conversion of such LIBOR Loan to a Base Rate Loan pursuant hereto, at a rate *per annum* which shall, during each Interest Period applicable thereto, be equal to the sum of (x) the Adjusted LIBO Rate in effect for such Interest Period *plus* (y) the Applicable Margin.

(c) Accrued (and theretofore unpaid) interest shall be payable (i) in respect of each Base Rate Loan, quarterly in arrears on the last Business Day of each February, May, August and November, (ii) in respect of each LIBOR Loan, on the last day of each Interest Period applicable thereto and, in the case of an Interest Period in excess of six months, on each date occurring at six-month intervals after the first day of such Interest Period, and (iii) in respect of each Loan, upon any repayment or prepayment (on the amount repaid or prepaid), Conversion (on the amount Converted), at maturity (whether by acceleration or otherwise) and, after such maturity, on demand. Notwithstanding the foregoing, interest payable in accordance with Section 3.23 shall be payable as provided therein.

(d) On each Interest Determination Date in respect of any LIBOR Loan, the Administrative Agent shall determine the Adjusted LIBO Rate for the applicable Interest Period to be applicable to the Loans or to any portion thereof and shall promptly notify the Borrower and the Lenders thereof. Each such determination shall, absent manifest error, be final, conclusive and binding on all parties hereto.

3.7 Interest Periods for LIBOR Loans.

(a) The Borrower shall have the right to elect (i) in the case of the initial Interest Period applicable to any LIBOR Loan, in the Borrowing Request or, in respect of any LIBOR Loan being Converted from a Base Rate Loan, in the Conversion Request and (ii) in the case of any subsequent Interest Period applicable to any LIBOR Loan, in a written notice delivered to the Administrative Agent on the third Business Day prior to the expiration of the current Interest Period applicable to such Loan, the interest period (the "Interest Period") applicable to such LIBOR Loan, which Interest Period shall, at the option of the Borrower, be one, two, three or six months or (if available to all Lenders) nine or twelve months; provided, that:

(i) the aggregate principal amount of Term Loans having an Interest Period of three months as of any date following the Term Conversion Date shall

be not less than the aggregate notional amount of the Rate Swap Transactions as of the next succeeding Principal Payment Date to occur after such date;

(ii) all LIBOR Loans comprising the same Borrowing shall have the same Interest Period;

(iii) the initial Interest Period for any LIBOR Loan shall commence on the date of Borrowing of such LIBOR Loan (or the date of Conversion thereof from a Base Rate Loan) and each Interest Period occurring thereafter in respect of such LIBOR Loan shall commence on the last day of the immediately preceding Interest Period;

(iv) if any Interest Period begins on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period, such Interest Period shall end on the last Business Day of such calendar month;

(v) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the immediately preceding Business Day;

(vi) any Interest Period that would otherwise extend beyond the relevant Maturity Date shall end on such Maturity Date; and

(vii) if the Term Conversion Date shall occur on a date that is not the last day of an Interest Period for any Construction Loans being converted to Term Loans on such date, then, notwithstanding any other provision herein to the contrary, the Interest Period applicable to such Construction Loans need not end on the Term Conversion Date but instead may be continued until the last day of such Interest Period (it being understood that the Applicable Margin relating to Term Loans shall apply to such Loans from and after the Term Conversion Date).

(b) If, upon the expiration of any Interest Period, the Borrower has failed to elect a new Interest Period to be applicable to any LIBOR Loan as provided above, the Borrower shall be deemed to have elected an Interest Period of three months effective as of the expiration date of such current Interest Period.

3.8 Inability to Determine Rates. If before the commencement of any Interest Period for any LIBOR Loan Borrowing the Administrative Agent determines that for any reason adequate and reasonable means do not exist for determining the Adjusted LIBO Rate for any Interest Period with respect to any LIBOR Loans, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or continue LIBOR Loans hereunder shall be suspended until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exists. Upon the delivery of such notice, (a) the Borrower may revoke any pending Borrowing Request or Conversion Request or notice of continuation and (b) if the Borrower does not revoke such

Borrowing Request, Conversion Request or notice, then the Lenders shall make, Convert or continue the Loans, as proposed by the Borrower, in the amount specified in the applicable notice submitted by the Borrower, but such Loans shall be made, Converted or continued as Base Rate Loans instead of LIBOR Loans.

3.9 LIBO Rate Dislocation. If the Majority Lenders notify the Administrative Agent in writing that their respective cost of obtaining matching deposits in the interbank market would be in excess of the Adjusted LIBO Rate in respect of any Interest Period, then the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the affected Lenders to maintain, make or continue LIBOR Loans hereunder shall be suspended until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exists. Upon the delivery of such notice, (a) each affected Lender may (by notice to the Administrative Agent and the Borrower) elect to convert all outstanding LIBOR Loans owed to such Lender and having such Interest Period to Base Rate Loans and the Borrower shall pay all Liquidation Costs incurred in connection therewith in accordance with Section 3.12, (b) the Borrower may revoke any pending Borrowing Request or Conversion Request or notice of continuation of any LIBOR Loans specifying such Interest Period and (c) if the Borrower does not revoke such Borrowing Request, Conversion Request or notice, then the Lenders shall make, Convert or continue the Loans, as proposed by the Borrower, in the amount specified in the applicable notice submitted by the Borrower, but such Loans shall be made, Converted or continued as Base Rate Loans instead of LIBOR Loans.

3.10 Illegality

(a) If any Lender determines that the introduction of any Law, or any change in any Law, or in the interpretation or administration of any Law, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its Applicable Lending Office to make or maintain a LIBOR Loan, then, on notice thereof by the Lender to the Borrower through the Administrative Agent, any obligation of that Lender to make such Loan as a LIBOR Loan shall be suspended until the Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist.

(b) If, pursuant to Section 3.10(a), any Lender determines that it is unlawful for such Lender or its Applicable Lending Office to maintain a LIBOR Loan, then, on notice thereof by the Lender to the Borrower through the Administrative Agent, any obligation of that Lender to maintain Loans as LIBOR Loans shall be suspended until such Lender notifies the Borrower through the Administrative Agent that the circumstances giving rise to such determination no longer exist. The Borrower shall, upon its receipt of such notice and demand to do so from such Lender, Convert the LIBOR Loans of such Lender then outstanding into Base Rate Loans, either on the last day of the Interest Period in respect of such LIBOR Loans, if the Lender may lawfully continue to maintain such LIBOR Loans until such day, or immediately, if the Lender may not lawfully continue to maintain such LIBOR Loans until such day.

(c) If the obligation of any Lender to make or maintain LIBOR Loans has been suspended in accordance with this Section 3.10, then the Borrower may elect, by giving notice to such Lender through the Administrative Agent, that all Loans which would otherwise

be made by such Lender as LIBOR Loans shall instead be made or maintained as Base Rate Loans.

(d) Before giving notice to the Borrower through the Administrative Agent under this Section 3.10, the affected Lender shall designate a different Applicable Lending Office with respect to its LIBOR Loans if such designation (i) will avoid the need for giving such notice or making any demand for Conversion and (ii) will not, in the judgment of such Lender, be illegal or otherwise disadvantageous to such Lender.

3.11 Increased Costs and Reduction of Return

(a) If any Lender in good faith determines (which determination shall, absent manifest error, be final, conclusive and binding upon all parties hereto) at any time that such Lender shall incur increased costs or reductions in the amounts received or receivable hereunder with respect to any LIBOR Loan (other than any increased cost or reduction in the amount received or receivable resulting from the imposition of or a change in the rate of net income taxes or similar charges or otherwise duplicative of the provisions of Section 3.24) because of any Change in Law, then the Borrower shall pay to such Lender, upon written demand therefor by such Lender to the Borrower through the Administrative Agent, (such written demand notice to include a statement from the Lender certifying the Lender's good faith determination of increased costs or reduction of return under this Section 3.11(a), such additional amounts as shall be required to compensate such Lender for such increased costs or reductions in amounts received or receivable hereunder; provided, that the Borrower shall be under no obligation to compensate such Lender with respect to any period before the date that is 270 days prior to the date on which such Lender makes a claim hereunder if such Lender prior to such date knew or would reasonably be expected to know of the circumstances giving rise to the claim hereunder and the fact that such circumstances would result in the claim hereunder. A written notice as to the additional amounts owed to any Lender, showing in reasonable detail the basis for the calculation thereof, submitted to the Borrower by such Lender (through the Administrative Agent) shall, absent clearly demonstrable error, be final, conclusive and binding on all parties hereto.

(b) If any Lender shall have determined in good faith that (i) the introduction of any Capital Adequacy Regulation, (ii) any change in any Capital Adequacy Regulation, (iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof, or (iv) compliance by such Lender (or its Applicable Lending Office) or any corporation controlling such Lender with any Capital Adequacy Regulation, affects or would affect the amount of capital required or expected to be maintained by such Lender or any corporation controlling such Lender and (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy and such Lender's desired return on capital) determines that the amount of such capital is increased as a consequence of its Commitment, Loans, credits or other obligations under this Credit Agreement, then, upon demand of such Lender to the Borrower through the Administrative Agent, the Borrower shall pay to such Lender, from time-to-time as specified by such Lender, upon written demand therefor by such Lender to the Borrower through the Administrative Agent (such written demand notice to include a statement from the Lender certifying such Lender's determination of increased costs under this Section

3.11(b), which shall be conclusive and binding absent clearly demonstrable error), such additional amounts sufficient to compensate such Lender for such increase; provided, that the Borrower shall be under no obligation to compensate such Lender with respect to any period before the date that is 270 days prior to the date on which such Lender makes a claim hereunder if such Lender prior to such date knew or would reasonably be expected to know of the circumstances giving rise to the claim hereunder and the fact that such circumstances would result in the claim hereunder.

(c) Before giving notice to the Borrower through the Administrative Agent under Section 3.11(a) or 3.11(b), the affected Lender shall designate a different Applicable Lending Office with respect to its Loans if such designation (i) will avoid the need for giving such notice or making any demand for compensation under such section and (ii) will not, in the judgment of such Lender, be illegal or otherwise disadvantageous to such Lender.

(d) Any determination made by Lender in accordance with Sections 3.10(a), 3.10(b), 3.11(a) or 3.11(b) shall be set forth in a certificate of an authorized signatory of such Lender and shall be delivered to the Borrower and the Administrative Agent.

3.12 Liquidation Costs. The Borrower shall reimburse each Lender and hold such Lender harmless from any loss or expense which such Lender may sustain or incur as a consequence of:

- (a) the failure of the Borrower to make on a timely basis any scheduled payment of principal of any Loan;
- (b) the failure of the Borrower to borrow or Convert a Loan after the Borrower has given (or is deemed to have given) a Borrowing Request or a Conversion Request;
- (c) the failure of the Borrower to make any prepayment in accordance with any notice delivered under Section 3.16;
- (d) the prepayment or repayment or other payment (including after acceleration thereof) of a LIBOR Loan on a day that is not the last day of the relevant Interest Period; or
- (e) the Conversion of any LIBOR Loan to a Base Rate Loan on a day that is not the last day of an Interest Period;

including any such loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Lender's Loans or from fees payable to terminate the deposits from which such funds were obtained (as applicable, "Liquidation Costs").

3.13 Fees.

(a) Commitment Fees. The Borrower agrees to pay to the Administrative Agent the following commitment commission (each a "Commitment Fee"):

(i) for the account of each Tranche A Lender, a commitment fee for the Tranche A Construction Loan Availability Period, computed at a rate equal to 0.75% *per annum* on the daily average amount of the Unutilized Commitment of such Lender in respect of the Tranche A Construction Facility during such period, commencing on the date hereof and payable in arrears on (A) each Semi-Annual Date and (B) the last day of the Tranche A Construction Loan Availability Period;

(ii) for the account of each Tranche B Lender, a commitment fee for the Tranche B Construction Loan Availability Period, computed at a rate equal to 0.75% *per annum* on the daily average amount of the Unutilized Commitment of such Lender in respect of the Tranche B Construction Facility during such period, commencing on the date hereof and payable in arrears on (A) each Semi-Annual Date and (B) the last day of the Tranche B Construction Loan Availability Period; and

(iii) for the account of the Revolver Lenders, a commitment fee for the Revolving Loan Availability Period equal to the sum of (x) 0.75% *per annum* on the daily average Unutilized Commitment of such Lender in respect of the Revolving Facility *plus* (y) prior to the Term Conversion Date, 0.50% *per annum* on daily average Unavailable Commitment of such Lender in respect of the Revolving Facility, in each case, commencing on the date hereof and payable in arrears on (A) each Semi-Annual Date and (B) the last day of the Revolver Availability Period.

(b) Administrative Agency Fee. The Borrower agrees to pay to the Administrative Agent for its own account an administrative agency fee equal to (x) on or prior to the Term Conversion Date, \$100,000 *per annum* and (y) after the Term Conversion Date, \$80,000 *per annum*, in each case *multiplied* by the Inflation Factor (pro rated for the first and last years of the term hereof) and payable annually in advance.

(c) Letter of Credit Fees(d) . The Borrower shall pay the following fees in respect of the LC Facilities (collectively, the “Letters of Credit Fees”):

(i) a commitment fee equal to the sum of (x) 0.75% *per annum* on the daily average Unutilized Commitment of each TALC Participating Bank *plus* (y) prior to the Term Conversion Date, 0.50% *per annum* on the daily average Unavailable Commitment of each TALC Participating Bank, commencing on the date hereof and payable semi-annually in arrears to the TALC Participating Banks on (A) each Semi-Annual Date and (B) the last Business Day of the TALC Availability Period;

(ii) a commitment fee equal to (x) prior to the Term Conversion Date, 0.50% *per annum* on the daily average Unavailable Commitment of each DSR Issuing Bank and (y) on and after the Term Conversion Date, 0.75% *per annum* on the daily average Unutilized Commitment of each DSR Issuing Bank, commencing on the date hereof and payable semi-annually in arrears to the DSR

Issuing Banks on (A) each Semi-Annual Date and (B) the last Business Day of the DSR Availability Period;

(iii) a letter of credit fee in respect of the aggregate average daily maximum available amount of all TA Letters of Credit equal to the then-Applicable Margin on Tranche A Construction Loans or Tranche A Term Loans (as applicable as of the time of determination) bearing interest at the Adjusted LIBO Rate, payable semi-annually in arrears ratably to the TALC Participating Banks on (A) each Semi-Annual Date and (B) the last Business Day of the TALC Availability Period;

(iv) a letter of credit fee in respect of the aggregate average daily maximum available amount of all LGIA Letters of Credit equal to the then-Applicable Margin on Revolving Loans bearing interest at the Adjusted LIBO Rate, payable semi-annually in arrears to the LGIA Issuing Bank on (A) each Semi-Annual Date and (B) the last Business Day of the Revolver Availability Period;

(v) a letter of credit fee in respect of the aggregate average daily maximum available amount of each DSR Letters of Credit equal to the then-Applicable Margin on the Tranche B Term Loans bearing interest at the Adjusted LIBO Rate, payable semi-annually in arrears to the relevant DSR Issuing Bank on (A) each Semi-Annual Date and (B) the last Business Day of the DSR Availability Period; and

(vi) a fronting fee in respect of each issued TA Letter of Credit equal to 0.20% of the undrawn stated amount of such TA Letter of Credit held by the TALC Participating Banks in accordance with Section 3.25(g) (other than the TALC Issuing Bank), payable semi-annually in arrears to the TALC Issuing Bank on (A) each Semi-Annual Date and (B) the last Business Day of the TALC Availability Period.

(e) Other Fees. The Borrower agrees to, and shall cause each other Borrower Party to, pay to the Agents, the Joint Bookrunners and the Mandated Lead Arrangers, for their respective accounts, such other fees as have been agreed to in writing by the Borrower Parties and such other Person.

3.14 Tranche A Loan Amount; Etc.

(a) The updated Base Case Model delivered in accordance with Section 4.2(m) shall set forth (i) the notional amortization for the Tranche A Term Loans constructed from the Contracted Amortization Amounts in respect of each Semi-Annual Date set forth on Appendix C (the “Tranche A Notional Amortization”) and (ii) the aggregate sum of the projected Contracted Amortization Amounts in respect of each such Semi-Annual Date (such aggregate sum being the “Tranche A Loan Amount”). For purposes of the foregoing, the “Contracted Amortization Amounts” shall mean, with respect to each Semi-Annual Date, the principal payment amount that causes the Base Case Model delivered and updated in accordance with

Section 4.2(m) to yield a 1.40:1.00 Projected DSCR as determined on a rolling twelve-month basis for the period ending on such Semi-Annual Date (for the avoidance of doubt, taking into account solely those Project Revenues projected to be payable to the Project Owner under the Tolling Agreement assuming that the Initial Delivery Date thereunder in respect of each Generating Unit occurs on the Projected Completion Date and any reimbursed or other amounts projected to be received by the Borrower pursuant to the Large Generator Interconnection Agreement).

(b) The updated Base Case Model delivered in accordance with Section 4.2(m) shall set forth the dates and the amounts (in Dollars) of the projected Disbursements under the Construction Facilities (which shall equal the Tranche A Loan Amount *plus* the Tranche B Loan Amount) (the “Notional Disbursement Schedule”).

(c) The updated Base Case Model delivered in accordance with Section 4.2(m) shall set forth a percentage amortization for the Tranche A Term Loans for each date set out on Appendix C constructed by (i) dividing (x) the Contracted Amortization Amount in respect of each Semi-Annual Date set out on Appendix C by (y) the Tranche A Term Loan Amount and (ii) with respect solely to the first Semi-Annual Date set out on Appendix C and each date prior to such first Semi-Annual Date, further dividing the percentage for such first Semi-Annual Date derived by application of subpart (i) of this Section 3.14(c) by six (the “Tranche A Percentage Amortization”).

3.15 Amortization Schedules; Repayment of Principal.

(a) Upon the conversion of the Construction Loans to Term Loans on the Term Conversion Date in accordance with Section 2.2(c), such Construction Loans will no longer be outstanding as Loans hereunder. If the Term Conversion Date does not occur on or prior to January 28, 2014 (the “Date Certain”), then the Borrower shall repay the aggregate principal amount of the Construction Loans on the Date Certain.

(b) On the Term Conversion Date, the Borrower shall deliver to the Administrative Agent an amortization schedule for each Tranche of the Term Loans (the “Amortization Schedules”) which shall be constructed by multiplying the aggregate amount of the relevant Tranche of Term Loans on the Term Conversion Date after giving effect to Section 3.15(a) by:

(i) in respect of the Semi-Annual Date occurring on or about February 28, 2014, the aggregate sum of the respective percentages set forth on the Projected Amortization Schedule under the relevant heading for such Tranche and opposite each month (if any) beginning on or after the last day of the full calendar month to occur after the Term Conversion Date and prior to February 28, 2014; and

(ii) in respect of each Semi-Annual Date set forth on the Projected Amortization Schedule that is after February 28, 2014, the respective percentages set forth on the Projected Amortization Schedule under the relevant heading for such Tranche and opposite such Semi-Annual Date.

The Amortization Schedules shall be effective solely upon the written confirmation by the Administrative Agent that such Amortization Schedules were constructed in accordance with this Section 3.15(b). The principal of the Term Loans shall be due and payable on each Semi-Annual Date in accordance with the Amortization Schedules constructed and confirmed in accordance with this Section 3.15(b).

(c) The difference between the aggregate sum of the percentages set out under the heading of each Tranche and opposite all months beginning on or prior to the second Semi-Annual Date set forth on Appendix C and the aggregate percentage of such months applied in accordance with Section 3.15(b) shall be multiplied by the aggregate amount of the relevant Tranche of Term Loans on the Term Conversion Date after giving effect to Section 3.15(a). The principal amount of the Tranche A Term Loans resulting from such calculation is the “Tranche A Deferred Principal Amount”. The principal amount of the Tranche B Term Loans resulting from such calculation is the “Tranche B Deferred Principal Amount” and, together with the Tranche A Deferred Principal Amount, the “Deferred Principal Amount”. The Deferred Principal amount shall be payable in accordance with Sections 3.16 and 3.17.

(d) The Borrower shall repay the aggregate outstanding principal amount of each Tranche of Loans on the respective Maturity Date of such Tranche of Loans.

3.16 Voluntary Prepayment of Principal. The Borrower shall have the right to prepay the Loans, without premium or penalty, in whole or in part at any time and from time-to-time after the Closing Date on the following terms and conditions: (i) the Borrower shall give the Administrative Agent at the Notice Office at least five Business Days’ prior written notice of its intent to prepay the Loans, the aggregate principal amount of the prepayment, the Types of Loans to be prepaid and, in the case of LIBOR Loans, the specific Borrowing or Borrowings pursuant to which such LIBOR Loans were made (which notice the Administrative Agent shall promptly transmit to each of the Lenders); (ii) such prepayment shall be in an aggregate principal amount not less than the Borrowing Minimum and, if more than the Borrowing Minimum, in an integral multiple of the Borrowing Multiple (unless the entire Tranche of Loans is being prepaid); (iii) prepayments of a LIBOR Loan may only be made pursuant to this Section 3.16 on the last day of an Interest Period applicable thereto (unless the Borrower pays all Liquidation Costs resulting from the prepayment of such LIBOR Loan on a day other than the last day of the Interest Period applicable thereto); and (iv) each prepayment of Loans pursuant to this Section 3.16 shall be applied *first*, to reduce the Deferred Principal Amount *pro rata* between the Tranches and among the Term Lenders within each such Tranche to \$0.00, *second*, to reduce the LC Loans resulting from a draw on the DSR Letters of Credit to \$0.00, *third*, to reduce Revolving Loans to \$0.00, *fourth*, to the scheduled principal payments of Tranche B Term Loans in inverse chronological order of their due dates to \$0.00, *fifth*, to reduce the scheduled principal payments of Tranche A Term Loans on a *pro rata* basis to \$0.00 and *finally*, to reduce any LC Loans resulting from a draw on the TA Letters of Credit on a *pro rata* basis. In no event shall any voluntary prepayment be funded from the proceeds of any Loan.

3.17 Mandatory Prepayments of Principal

(a) The Borrower shall prepay the Loans, without premium or penalty (except for any Liquidation Costs), with the Mandatory Prepayment Portion of the following Collateral Proceeds:

(i) all Loss Proceeds received by any Borrower Party that are not applied, or are not permitted to be applied, to the Restoration of the Project in accordance with the Collateral Agreement or are not allowed to be retained or re-invested by the Borrower Parties in accordance with the Collateral Agreement;

(ii) all Disposition Proceeds received by any Borrower Party that are not applied, or are not permitted to be applied, to the purchase of replacement assets in accordance with the Collateral Agreement or are not allowed to be retained or re-invested by the Borrower Parties in accordance with the Collateral Agreement;

(iii) all proceeds of any Delay Liquidated Damages in accordance with the Collateral Agreement;

(iv) all Buy-down Proceeds in accordance with the Collateral Agreement; and

(v) all Distribution Sweep Proceeds in accordance with the Collateral Agreement.

(b) On the Term Conversion Date, all proceeds of any Delay Liquidated Damages shall be applied: *first* to repay any LC Loans resulting from a draw on the TA Letters of Credit; *second*, to reduce the Deferred Principal Amount *pro rata* between the Tranches and among the Term Lenders within each such Tranche to \$0.00; *third*, to reduce remaining scheduled principal payments of the Term Loans *pro rata* between the Tranches and among the Term Lenders within each such Tranche in inverse chronological order of the due dates thereof to \$0.00; *fourth*, LC Loans resulting from a draw on the DSR Letters of Credit on a *pro rata* basis to \$0.00; and *finally*, Revolving Loans on a *pro rata* basis to \$0.00.

(c) Loss Proceeds, Disposition Proceeds and Buy-down Proceeds received prior to the Term Conversion Date shall reduce the amount of the Construction Loans converted to Term Loans in accordance with Section 3.15(a) and used to construct the Amortization Schedule in accordance with Section 3.15(b) *pro rata*.

(d) Loss Proceeds, Disposition Proceeds, Buy-down Proceeds and Distribution Sweep Proceeds received on and after the Term Conversion Date shall be applied: *first*, to reduce the Deferred Principal Amount *pro rata* between the Tranches and among the Term Lenders within each such Tranche to \$0.00; *second*, to reduce remaining scheduled principal payments of the Term Loans *pro rata* between the Tranches and among the Term Lenders within each such Tranche in inverse chronological order of their due dates to \$0.00; *third*, to reduce the LC Loans resulting from a draw on the DSR Letters of Credit on a *pro rata* basis to \$0.00; *fourth*, to reduce the Revolving Loans on a *pro rata* basis to \$0.00; and *finally* to reduce any LC Loans resulting from a draw on the TA Letters of Credit on a *pro rata* basis.

(e) Mandatory prepayments to be made with Loss Proceeds, Disposition Proceeds and Buy-down Proceeds shall be made (i) in respect of any LIBOR Loan, on the last day of the relevant Interest Period in respect thereof or on such earlier date as selected by the Borrower (provided, that Borrower pays any Liquidation Costs arising from such earlier prepayment), (ii) in respect of any Base Rate Loan, on the fifth Business Day following receipt of the relevant Collateral Proceeds in the Proceeds Account and (iii) in respect of any Loan that has been Converted from a LIBOR Loan to a Base Rate Loan prior to prepayment in accordance with subpart (i) of this Section 3.17(e), on the third Business Day following such Conversion. Mandatory prepayments to be made with Distribution Sweep Proceeds shall be made on the Monthly Transfer Date immediately following the relevant Semi-Annual Date or on the following Interest Period in respect of LIBOR Loans but in no event later than three months after such Monthly Transfer Date.

(f) Mandatory prepayments to be made with proceeds of any Delay Liquidated Damages shall be made on the Term Conversion Date (provided, that, if the Term Conversion Date occurs on a day that is not the last day of the relevant Interest Period in respect of any LIBOR Loan to be repaid, the Borrower pays any Liquidation Costs arising from such earlier prepayment).

3.18 Mandatory Reduction of Rate Swap Transactions.

(a) If the Borrower prepays the Construction Loans prior to the Term Conversion Date, then the Borrower shall (i) reconstruct the Notional Amortization on the Projected Amortization Schedule by multiplying (x) the aggregate amount of the relevant Tranche of Construction Loans after giving effect to such prepayment *plus* the aggregate remaining Construction Loan Commitments of such Tranche by (y) the percentages set forth on Appendix C and (ii) concurrently with such prepayment, partially terminate the Rate Swap Transactions by reducing the relevant notional amount thereunder in accordance with the Rate Swap Agreements to the extent necessary (if necessary) so that after giving effect to such prepayment and the application thereof in accordance with Section 3.16 or 3.17, the Borrower is in compliance with Section 7.26.

(b) If the Borrower prepays the Term Loans, then the Borrower shall, concurrently with such prepayment, partially terminate the Rate Swap Transactions by reducing the relevant notional amount thereunder in accordance with the Rate Swap Agreements to the extent necessary (if necessary) so that after giving effect to such prepayment and the application thereof in accordance with Section 3.16 or 3.17, the Borrower is in compliance with Section 7.26.

3.19 Cancellation of Commitments

(a) Subject to Section 3.19(c), the Borrower may ratably cancel all or any part of (i) the Tranche A Construction Loan Commitments by written notice to the Tranche A Lenders, (ii) the Tranche B Construction Loan Commitments by written notice to the Tranche B Lenders or (iii) (after the Term Conversion Date) the Revolving Loan Commitments by written notice to the Revolving Lenders.

(b) The Borrower may not cancel all or any part of the LC Facilities.

(c) Notwithstanding anything to the contrary set forth in this Credit Agreement, the Borrower shall not cancel all or any portion of the Tranche A Construction Loan Commitments or the Tranche B Construction Loan Commitments prior to the Term Conversion Date unless (i) no event has occurred or could reasonably be expected to occur to cause any Major Milestone Date to be delayed, (ii) the proposed reduction in Commitments requested by the Borrower will not result in a deficiency of funds necessary to achieve the Project Completion Date by the Date Certain and otherwise satisfy the condition contained in Section 4.6(e) and (iii) each Tranche A Lender or Tranche B Lender, as may be the case, shall have received a certificate from the Borrower, confirmed by the Independent Engineer, with respect to the matters set forth in this Section 3.19(c).

(d) Notwithstanding anything to the contrary set forth in this Credit Agreement, on the Term Conversion Date:

(i) all remaining Tranche A Construction Loan Commitments (after giving effect to (x) any Borrowing of Tranche A Construction Loans in accordance with Section 2.1 and (y) the Conversion of all Tranche A Construction Loans to Tranche A Term Loans in accordance with and pursuant to Sections 2.2 and 3.5(e)) shall automatically be cancelled; and

(ii) all remaining Tranche B Construction Loan Commitments (after giving effect to (x) any Borrowing of Tranche B Construction Loans in accordance with Sections 2.1 and (y) the Conversion of all Tranche B Construction Loans to Tranche B Term Loans in accordance with and pursuant to Sections 2.2 and 3.5(e)) shall automatically be cancelled.

(e) The Lenders may cancel their respective Commitments in accordance with Section 9.1.

(f) The Lenders may cancel their respective Commitments if the initial Borrowing of the Construction Loans has not occurred on or prior to the twelve month anniversary of the Closing Date.

3.20 Method and Place of Payment.

(a) Except as set forth in the following sentence or as otherwise specifically provided herein, all payments under this Credit Agreement or any Note shall be made to the Administrative Agent for the account of the Lender or Lenders entitled thereto not later than 2:00 p.m. (New York City time) on the date when due and shall be made in Dollars in immediately available funds to the AA Payment Account or pursuant to such other instructions as the Administrative Agent shall designate to the Borrower in writing. Whenever any payment to be made hereunder or under any Note is stated to be due on a day which is not a Business Day, the due date thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the applicable rate during such extension; provided, that if the day on which any such payment relating to a LIBOR Loan is due

is not a Business Day but is a day of the month after which no further Business Day occurs in such month, then the due date thereof shall be the next preceding Business Day.

(b) With respect to any repayment of Loans pursuant to Section 3.15 or any mandatory prepayment of Loans pursuant to Section 3.17, the Borrower may designate the Types of Loans which are to be repaid or prepaid and, in the case of LIBOR Loans, the specific Borrowing or Borrowings pursuant to which such LIBOR Loans were made; provided, that (i) repayments and prepayments of LIBOR Loans may only be made on the last day of an Interest Period applicable thereto unless all such LIBOR Loans with Interest Periods ending on or prior to the date of required repayment or prepayment and all Base Rate Loans have been paid in full or the Borrower pays Liquidation Costs, (ii) if any repayment or prepayment of LIBOR Loans made pursuant to a single Borrowing shall reduce the outstanding Loans made pursuant to such Borrowing to an amount less than the Borrowing Minimum, then such outstanding Loans shall immediately be Converted into Base Rate Loans, and (iii) each repayment or prepayment of Loans made pursuant to a single Borrowing shall be applied *pro rata* across such Loans. In the absence of a designation by the Borrower as described in the preceding sentence, the Administrative Agent shall, subject to the above, make such designation in its sole discretion.

3.21 Computations. All computations of interest and Fees hereunder shall be made on the basis of a 360-day year and the actual number of days elapsed; provided that computations of interest on Base Rate Loans calculated under clause (b) of the definition thereof hereunder shall be made on the basis of a 365- or 366-day year, as the case may be, and the actual number of days elapsed.

3.22 Application of Payments; Sharing.

(a) Subject to the provisions of this Section 3.22, the Administrative Agent agrees that promptly after its receipt of each payment from or on behalf of the Borrower in respect of any Secured Obligations of the Borrower hereunder or under any other Financing Document, it shall promptly distribute such payment to the Lenders *pro rata* based upon their respective shares, if any, of the Secured Obligations with respect to which such payment was received.

(b) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than its *pro rata* share thereof as provided herein, then the Lender receiving such greater proportion shall (i) notify the Administrative Agent of such fact, and (ii) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided, that: (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and (ii) the provisions of this paragraph shall not be construed to apply to (x) any payment made by the Borrower pursuant to and in accordance with the express

terms of this Credit Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or TALC Participations to any assignee or participant, other than to the Borrower or any Subsidiary thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(c) Notwithstanding the foregoing, if there are insufficient funds in the Secured Accounts to make each of the principal payments of the Loans in accordance with both Sections 3.4(e) and 7.8(iii) of the Collateral Agreement, then such funds shall be applied *first*, to the repayment in full of the outstanding principal amount of all Loans other than the Term Loans (if any); *second*, to the repayment in full of the outstanding principal amount of the Tranche A Term Loans; and *finally*, to the repayment of the outstanding principal amount of the Tranche B Term Loans.

3.23 Late Payments. If any amounts required to be paid by the Borrower under this Credit Agreement or the other Financing Documents (including the principal of or interest theretofore accrued on any Loan hereunder or any Fees or other amounts otherwise payable to the Administrative Agent, any Lender, any Issuing Bank or any Participating Banks) remain unpaid after such amounts are due, then (to the extent permitted by applicable Law) such overdue amounts shall bear interest from the date due until such amounts are paid in full at the Default Rate, with such interest to be payable on demand.

3.24 Net Payments

(a) All payments made by the Borrower hereunder or under any other Financing Document will be made without setoff, counterclaim or other defense. Except as provided in Section 3.24(b), all such payments will be made free and clear of, and without deduction or withholding for, any present or future taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments (but excluding, in the case of any Lender, except as provided in the second succeeding sentence, Excluded Taxes) and all interest, penalties or similar liabilities with respect thereto (all such non-excluded taxes, levies, imposts, duties, fees, assessments or other charges being referred to collectively as "Applicable Taxes"). If any Applicable Taxes are so levied or imposed, the Borrower agrees to pay the full amount of such Applicable Taxes, and such additional amounts as may be necessary so that every payment of all amounts due hereunder or under any other Financing Document, after withholding or deduction for or on account of any Applicable Taxes, will not be less than the amount provided for herein or in such other Financing Document. If any amounts are payable in respect of Applicable Taxes pursuant to the preceding sentence, then the Borrower shall be obligated to reimburse each Lender, upon the written request of such Lender, for (i) taxes imposed on or measured by the net income of such Lender pursuant to the laws of the jurisdiction in which such Lender is organized or the jurisdiction in which the principal office or Applicable Lending Office of such Lender is located or any political subdivision or taxing

authority thereof or therein, and (ii) any withholding of Applicable Taxes, in each case as such Lender determines are payable by, or withheld from, such Lender in respect of any amounts paid to or on behalf of such Lender pursuant to the preceding sentence and this sentence. The Borrower will furnish to the Administrative Agent within 45 days after the date of the payment of any Applicable Taxes due pursuant to applicable Law certified copies of tax receipts evidencing such payment by the Borrower. The Borrower agrees to indemnify and hold harmless each Lender, and reimburse such Lender upon its written request, for the amount of any Applicable Taxes so levied or imposed and paid by such Lender.

(b)

(i) Each Lender that is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) agrees to deliver to the Borrower and the Administrative Agent, on or prior to the Closing Date, (i) two accurate and complete original signed copies of Internal Revenue Service Form W-8ECI or Form W-8BEN (with respect to a complete exemption under an income tax treaty) (or successor forms) certifying to such Lender's entitlement as of such date to a complete exemption from United States withholding tax with respect to payments to be made to it under this Credit Agreement and under any other Financing Document or (ii) if such Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Internal Revenue Code and cannot deliver either Internal Revenue Service Form W-8ECI or Form W-8BEN (with respect to a complete exemption under an income tax treaty) pursuant to clause (i) above, (A) a certificate substantially in the form of Exhibit 3 (any such certificate, an "Applicable Tax Certificate") and (B) two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN (with respect to the portfolio interest exemption) (or successor form) certifying to such Lender's entitlement as of such date to a complete exemption from United States withholding tax with respect to payments of interest to be made to it under this Credit Agreement and under any other Financing Document. In addition, each Lender agrees that from time-to-time after the Closing Date (or, in the case of a Lender that is an assignee or transferee of an interest under this Credit Agreement pursuant to Section 11.11 (unless such Lender was already a Lender hereunder prior to such assignment or transfer), from time-to-time after the date of such assignment or transfer to such Lender), when a lapse in time or change in circumstances renders the previous forms and/or Applicable Tax Certificate (as applicable) obsolete or inaccurate in any material respect, it will deliver to the Borrower and the Administrative Agent two new accurate and complete original signed copies of Internal Revenue Service Form W-8ECI, Form W-8BEN (with respect to a complete exemption under an income tax treaty), Form W-8BEN (with respect to the portfolio interest exemption) (or successor forms) and/or an Applicable Tax Certificate, as the case may be, and such other forms as may be required in order to confirm or establish the entitlement of such Lender to a continued exemption from or reduction in United States withholding tax with respect to payments made to it under this Credit Agreement and any other Financing Document. If any Lender is unable to deliver any such form and/or Applicable Tax Certificate, it shall immediately notify the Borrower and the Administrative Agent of such inability, in which case

such Lender shall not be required to deliver any such form and/or Applicable Tax Certificate pursuant to this Section 3.24(b). Notwithstanding anything to the contrary contained in Section 3.24(a), but subject to Section 11.11[(d) and the immediately succeeding sentence: (x) the Borrower shall be entitled, to the extent it is required to do so by law, to deduct or withhold income or similar taxes imposed by the United States (or any political subdivision or taxing authority thereof or therein) from interest, fees or other amounts payable hereunder for the account of any Lender which is not a United States person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) for U.S. Federal income tax purposes to the extent that such Lender has not provided to the Borrower U.S. Internal Revenue Service forms that establish a complete exemption from such deduction or withholding and (y) the Borrower shall not be obligated pursuant to Section 3.24(a) hereof to gross-up payments to be made to a Lender in respect of income or similar taxes imposed by the United States if (I) such Lender has not provided to the Borrower the Internal Revenue Service forms required to be provided pursuant to this Section 3.24(b) or (II) in the case of a payment, other than interest, to a Lender that is not a "bank" as described in clause (ii) above, to the extent that such forms do not establish a complete exemption from withholding of such Applicable Taxes. Notwithstanding anything to the contrary contained in the preceding sentence or elsewhere in this Section 3.24, the Borrower agrees to pay additional amounts and to indemnify each Lender in the manner set forth in Section 3.24(a) (without regard to the identity of the jurisdiction requiring the deduction or withholding) in respect of any amounts deducted or withheld by it as described in the immediately preceding sentence as a result of any changes after the Closing Date in any applicable Law relating to the deducting or withholding of income or similar Applicable Taxes.

(ii) Each Lender that is a United States Person (as such term is defined in Section 7701(a)(30) of the Internal Revenue Code) shall deliver to the Borrower and the Administrative Agent executed originals of the Internal Revenue Service Form W-9 to enable the Borrower and the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements.

(c) Each Lender described in Section 3.24(b)(i) shall provide, promptly upon the reasonable demand of the Borrower or the Administrative Agent, any information, form or document as prescribed by the Internal Revenue Service to (x) demonstrate that such Lender has complied with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) and 1472(b) of the Internal Revenue Code, as applicable), or (y) to determine the amount to deduct and withhold from such payment.

(d) Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file or otherwise pursue on behalf of a Lender, or have any obligation to pay to any Lender, any refund of taxes withheld or deducted from funds paid for the account of such Lender. If the Administrative Agent or any Lender determines, in its sole discretion, that it has received a refund of any Applicable Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts

pursuant to Section 3.24(a), it shall pay to such Borrower an amount equal to such refund (but only to the extent of the indemnity payments made, or additional amounts paid, by such Borrower under Section 3.24 with respect to the Applicable Taxes giving rise to such refund), net of all out-of-pocket expenses and net of any loss or gain realized in the conversion of such funds from or to another currency incurred by the Administrative Agent or any Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Borrower, upon the written request of the Administrative Agent or any Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or any Lender in the event the Administrative Agent or any such Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

3.25 Specified Letter of Credit Mechanics.

(a) To request the issuance of a Specified Letter of Credit under the TALC Facility, the Borrower shall deliver an appropriately completed and duly executed LC Request to the TALC Issuing Bank and the Administrative Agent not less than the second Business Day prior to the proposed Issuance Date thereof. To request the issuance of a Specified Letter of Credit under any other LC Facility, the Borrower shall deliver an appropriately completed and duly executed LC Request to the relevant Issuing Bank and the Administrative Agent not less than three Business Days in advance of the proposed Issuance Date thereof. If requested by any relevant Issuing Bank, the Borrower shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Specified Letter of Credit.

(b) To request the amendment, renewal or extension of an outstanding Specified Letter of Credit (to the extent such amendment, renewal or extension is in accordance with the terms, conditions and requirements of this Credit Agreement), the Borrower shall deliver an appropriately completed and duly executed LC Request to the relevant Issuing Bank and the Administrative Agent not less than two Business Days in advance of the requested date of amendment, renewal or extension thereof.

(c) Each LC Request shall include or attach such information as shall be necessary to issue, amend, renew or extend such Specified Letter of Credit (including the beneficiary, maturity, initial stated amount, and form thereof).

(d) The making of each LC Request shall be deemed to be a representation and warranty by the Borrower to the relevant Issuing Banks and the TALC Participating Banks (as applicable) that such Specified Letter of Credit may be issued, amended, renewed or extended in accordance with, and will not violate the requirements of, this Credit Agreement or any other Financing Document. The relevant Issuing Bank shall, on the terms and subject to the conditions of this Credit Agreement, on the date requested by the Borrower in the relevant LC Request, issue, amend, renew or extend (as applicable) the requested Specified Letter of Credit in accordance with the Issuing Bank's usual and customary practices; provided, that in the case of the issuance of a Specified Letter of Credit, the relevant Issuing Bank shall not have received

notice prior to such issuance from the Borrower, the Administrative Agent or any TALC Participating Bank (as applicable) that one or more of the conditions specified in Section 4.1, Section 4.3, Section 4.4 or Section 4.5 (as applicable) are not then satisfied. Upon the issuance, amendment, renewal or extension of any Specified Letter of Credit in accordance with the terms of this Credit Agreement, the relevant Issuing Bank shall promptly notify the Borrower, and the Administrative Agent and, if applicable, the TALC Participating Banks in writing of such issuance, amendment, renewal or extension, and such notice shall be accompanied by a copy of the relevant Specified Letter of Credit or the amendment thereto, as the case may be.

(e) If the Issuing Bank shall make an LC Disbursement, the Issuing Bank shall give the Borrower, the Administrative Agent and (with respect to an LC Disbursement under a TA Letter of Credit) each TALC Participating Bank prompt written notice of such LC Disbursement; provided, that the failure to give any such notice shall in no way affect, impair or diminish the Borrower's obligations hereunder (other than in respect of timing of its reimbursement obligations hereunder). The stated amount of any Specified Letter of Credit shall be reduced by the amount of each LC Disbursement thereunder.

(f) Each LC Disbursement shall be automatically converted into loans hereunder in an aggregate initial principal amount equal to the amount of such LC Disbursement (or in the case of an LC Disbursement in respect of any TA Letter of Credit, each TALC Participating Bank's TALC Percentage of the amount of such LC Disbursement) (each, an "LC Loan"). Upon the deemed Borrowing of LC Loans in accordance with this Section 3.25(f), the relevant LC Disbursement shall be deemed retired in full. The LC Loans made pursuant to this Section 3.25(f) shall be Base Rate Loans until Converted in accordance with Section 3.5.

(g) Immediately upon the issuance by the TALC Issuing Bank of each TA Letter of Credit, the TALC Issuing Bank shall be deemed to have sold and transferred to each TALC Participating Bank and each TALC Participating Bank shall be deemed irrevocably and unconditionally to have purchased and received from the TALC Issuing Bank, without recourse or warranty, an undivided interest and participation, to the extent of such TALC Participating Bank's TALC Percentage, in such TA Letter of Credit, each LC Disbursement made thereunder and the obligations of the Borrower under this Credit Agreement with respect thereto (including any LC Disbursement and the resulting LC Loans). In determining whether to pay under any TA Letters of Credit, the TALC Issuing Bank shall have no obligation relative to the other Lenders other than to confirm that any documents required to be delivered under such TA Letters of Credit appear to have been delivered and that they appear to substantially comply on their face with the requirements thereof. Any action taken or omitted to be taken by the TALC Issuing Bank under or in connection with any TA Letters of Credit shall not create any resulting liability to the Borrower, any Lender or any other Person unless such action is taken or omitted to be taken with gross negligence or willful misconduct on the part of the TALC Issuing Bank (as determined by a court of competent jurisdiction in a final and non-appealable decision). If the TALC Issuing Bank makes an LC Disbursement, then the TALC Issuing Bank shall promptly notify the Administrative Agent, and the Administrative Agent shall promptly notify each TALC Participating Bank, and each TALC Participating Bank shall promptly and unconditionally pay to the TALC Issuing Bank the amount of such TALC Participating Bank's TALC Percentage of the amount of such LC Disbursement (less any amount received by the Issuing Bank from the Borrower in respect of such LC Disbursement prior to such payment) (as applicable to each

TALC Participating Bank, such TALC Participating Bank's "TALC Participation Amount") in Dollars and in same day funds. If the Administrative Agent so notifies a TALC Participating Bank prior to 12:00 noon (New York City time) on any Business Day, then such TALC Participating Bank shall make available to the TALC Issuing Bank its TALC Participation Amount on such Business Day in same day funds. If the Administrative Agent so notifies a TALC Participating Bank after 12:00 noon (New York City time) on any Business Day, then such TALC Participating Bank shall make available to the TALC Issuing Bank its TALC Participation Amount on the next succeeding Business Day in same day funds. If and to the extent such TALC Participating Bank shall not have made its TALC Participation Amount available to the TALC Issuing Bank in accordance with this Section 3.25(g), such TALC Participating Bank agrees to pay to the TALC Issuing Bank, forthwith on demand its TALC Participation Amount, together with interest thereon, for each day from such date until the date such amount is paid to such TALC Issuing Bank at the interest rate applicable to Tranche B Construction Loans or Tranche B Term Loans, as applicable, that are maintained as Base Rate Loans. The failure of any TALC Participating Bank to make available to the TALC Issuing Bank its TALC Participation Amount shall not relieve any other TALC Participating Bank of its obligation hereunder to make available to the TALC Issuing Bank its TALC Participation Amount on the date required, as specified above, but no TALC Participating Bank shall be responsible for the failure of any other TALC Participating Bank to make available to the TALC Issuing Bank such other TALC Participating Bank's TALC Participation Amount. Whenever the TALC Issuing Bank receives a payment of a reimbursement obligation as to which it has received any payments from the TALC Participating Banks pursuant to this Section 3.25(g), the TALC Issuing Bank shall pay to each such TALC Participating Bank which has paid a TALC Participation Amount, in Dollars and in same day funds, an amount equal to such TALC Participating Bank's share (based upon the proportionate aggregate amount originally funded by such TALC Participating Bank to the aggregate amount funded by all TALC Participating Banks) of the principal amount of such reimbursement obligation and interest thereon accruing after the purchase of the respective participations in accordance herewith. Upon the request of any TALC Participating Bank, the TALC Issuing Bank shall furnish to such TALC Participating Bank copies of any TA Letters of Credit issued by it and such other documentation as may reasonably be requested by such TALC Participating Bank. The obligations of the TALC Participating Banks to make payments to the TALC Issuing Bank hereunder shall be irrevocable and not subject to any qualification or exception whatsoever and shall be made in accordance with the terms and conditions of this Credit Agreement under all circumstances, including any of the following circumstances: (i) any lack of validity or enforceability of this Credit Agreement or any of the other Financing Documents; (ii) the existence of any claim, setoff, defense or other right which the Borrower or any other Borrower Party may have at any time against a beneficiary named in any TA Letters of Credit, any transferee of any TA Letters of Credit (or any Person for whom any such transferee may be acting), the Administrative Agent, any TALC Participating Bank, or any other Person, whether in connection with this Credit Agreement, any TA Letters of Credit, the transactions contemplated herein or any unrelated transactions (including any underlying transaction between the Borrower or any other Borrower Party and the beneficiary named in any such TA Letters of Credit); (iii) any draft, certificate or any other document presented under any TA Letters of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; (iv) the

surrender or impairment of any security for the performance or observance of any of the terms of any of the Financing Documents; or (v) the occurrence of any Default or Event of Default.

(h) The obligations of the Borrower under this Section 3.25 to reimburse the relevant Issuing Bank with respect to drafts, demands and other presentations for payment under any Specified Letter of Credit (including, in each case, interest on such payments) in cash or by the automatic conversion thereof into LC Loans shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Borrower or any other Borrower Party may have or have had against the Issuing Bank, including, any defense based upon the failure of any drawing under any Specified Letter of Credit to conform to the terms of such Specified Letter of Credit or any non-application or misapplication by the beneficiary of the proceeds of such drawing; provided, that the Borrower shall not be obligated to reimburse the Issuing Bank for any wrongful payment made by the Issuing Bank under any Specified Letter of Credit as a result of acts or omissions constituting willful misconduct or gross negligence on the part of the Issuing Bank (as determined by a court of competent jurisdiction in a final and non-appealable decision); provided, further, that such Issuing Bank shall not be excused from liability to the Borrower to the extent of any damages suffered by the Borrower that are caused by the Issuing Bank's willful misconduct or gross negligence when determining whether drafts and other documents presented under a Specified Letter of Credit comply with the terms thereof.

3.26 Replacement of Lenders.

(a) If (i) any Lender delivers a certificate requesting compensation pursuant to Section 3.11, (ii) any Lender delivers a notice described in Section 3.10, (iii) the Borrower is required to pay any additional amount to any Lender or any Governmental Authority on account of any Lender pursuant to Section 3.24, (iv) any Lender or Issuing Bank becomes a Non-Consenting Creditor, (v) any Lender becomes a Defaulting Lender or (vi) any Issuing Bank fails to issue a Specified Letter of Credit in accordance herewith, then the Borrower may, at its sole expense and effort (including with respect to the processing and recordation fee referred to in Section 11.11 except to the extent paid by the Eligible Assignee), upon notice to such Lender or Issuing Bank and the Administrative Agent, require such Lender or Issuing Bank to transfer and assign, without recourse (in accordance with and subject to the restrictions contained in Section 11.11), all of its interests, rights and obligations under this Credit Agreement to an Eligible Assignee that shall assume such assigned obligations; provided, that:

- (A) in the case of any such assignment resulting from the circumstances set forth in subparts (i), (ii) or (iii) above, such assignment will result in a reduction in the relevant compensation or payments thereafter;
- (B) in the case of any such assignment resulting from a Lender or Issuing Bank becoming a Non-Consenting Creditor, the applicable assignee shall have consented in writing to the applicable amendment, waiver or consent;

- (C) such assignment shall not conflict with any applicable requirement of Law;
- (D) the Borrower shall have received each consent required by Section 11.11 in accordance therewith;
- (E) the Borrower or such Eligible Assignee shall have paid to the affected Lender or the Issuing Bank in immediately available funds an amount equal to the sum of the principal of its Loans, accrued interest thereon, Fees and other amounts payable to it hereunder and under the other Financing Documents (including any amounts under Section 3.12) from the assignee (to the extent of such outstanding principal and accrued interest and Fees) or the Borrower (in the case of all other amounts); and
- (F) if such Defaulting Lender is an Issuing Bank, the Borrower shall have delivered the originals of all Specified Letters of Credit issued by such Issuing Bank for cancellation by such Issuing Bank.

(b) A Lender or Issuing Bank shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

3.27 Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Credit Agreement, if any Lender or Issuing Bank becomes a Defaulting Lender, then, until such time as such Lender or Issuing Bank is no longer a Defaulting Lender, to the extent permitted by applicable Law:

(a) Waivers and Amendments. The amount of such Defaulting Lender's applicable Commitment, applicable Loans and TALC Participation shall be excluded for purposes of voting, and the calculation of voting, on any matters (including the granting of any consents or waivers) with respect to any of the Financing Documents (other than consents, modification or waivers that (i) extend the final scheduled maturity of any Loan or Note held by such Defaulting Lender or extend the stated expiration date of any Specified Letter of Credit issued by such Defaulting Lender beyond the Maturity Date of such Loan, Note or Specified Letter of Credit, (ii) reduce the rate or extend the time of payment of interest or Fees on or in respect of any Loan or Note held by such Defaulting Lender or Specified Letter of Credit issued by such Defaulting Lender (except in connection with the waiver of applicability of any post-default increase in interest rates), (iii) reduce (or forgive) the principal amount of any Loan or Note held by such Defaulting Lender, (iv) increase the amount of any Commitment of such Defaulting Lender or (v) change the voting provisions hereof).

(b) Defaulting Lender Waterfall. Any payment of principal, interest, Fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to ARTICLE IX or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.14 shall be applied at such time or times as may be determined by the Administrative Agent as follows:

first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment of any amounts owing by such Defaulting Lender to the TALC Issuing Bank hereunder; *third*, if such Defaulting Lender is a TALC Participating Bank, to Cash Collateralize the TALC Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 3.28; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Credit Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released *pro rata* in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Credit Agreement and (y) if such Defaulting Lender is a TALC Participating Bank, Cash Collateralize the TALC Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future TA Letters of Credit issued under this Credit Agreement, in accordance with Section 3.28; *sixth*, to the payment of any amounts owing to the Lenders or the Issuing Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender or Issuing Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Credit Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Credit Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided, that if (x) such payment is a payment of the principal amount of any Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Specified Letters of Credit were issued at a time when the relevant conditions set forth in Article IV were satisfied or waived, such payment shall be applied solely to pay the Loans of all Non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of such Defaulting Lender until such time as all Loans are held by the Lenders *pro rata* in accordance with the Commitments under the applicable Credit Facility without giving effect to Section 3.27(d). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 3.27(b) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) Certain Fees.

(i) No Defaulting Lender shall be entitled to receive any Commitment Fee under Sections 3.13(a) for any period during which the relevant Lender is a Defaulting Lender (and, notwithstanding anything to the contrary herein, the Borrower shall not be required to pay any such Fee that otherwise would have been required to have been paid to that Defaulting Lender).

(ii) Each TALC Participating Bank that is a Defaulting Lender shall be entitled to receive Letter of Credit Fees under Sections 3.13(d)(i) or 3.13(d)(iii) for any period during which that Issuing Bank is a Defaulting Lender only to the extent allocable to that portion of the TALC Participation for which it has provided Cash Collateral pursuant to Section 3.28.

(iii) With respect to any Fees not required to be paid to any Defaulting Lender pursuant to Section 3.27(c)(ii), the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such Fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's TALC Participation that has been reallocated to such Non-Defaulting Lender pursuant to Section 3.27(d), (y) pay to the TALC Issuing Bank the amount of any such Fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such Fee.

(d) Reallocation of TALC Participations to Reduce Fronting Exposure. All or any part of any Defaulting Lender's TALC Participation shall be reallocated among the Non-Defaulting Lenders in accordance with their respective TALC Percentages (calculated without regard to such Defaulting Lender's TALC Percentages) but only to the extent that (x) the conditions set forth in Section 4.4 are satisfied at the time of such reallocation (and, unless the Borrower shall have otherwise notified the Administrative Agent at such time, the Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation would not cause the aggregate TALC Participating Amount of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's TALC Commitment. For the avoidance of doubt, the TALC Issuing Bank and the TALC Participating Banks agree that drawings under the TA Letter of Credit under the Tolling Agreement result from or are otherwise predicated upon facts that constitute Defaults or Events of Default and that no reallocation will occur hereunder if a TALC Participating Bank becomes a Defaulting Lender solely as a result of its failure to pay to the TALC Issuing Bank its relevant TALC Participation Amount upon such drawing. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that TALC Participating Bank having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(e) Cash Collateral by Borrower; Prepayment of LC Loans. If the reallocation described in Section 3.27(d) cannot, or can only partially, be effected, then the Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, Cash Collateralize the TALC Issuing Bank's Fronting Exposure in accordance with the procedures set forth in Section 3.28; provided, that if any TALC Participating Bank becomes a Defaulting Lender solely as a result of its failure to pay to the TALC Issuing Bank its relevant TALC Participation Amount upon the drawing of a TA Letter of Credit, then the Borrower shall have the right, in lieu of Cash Collateralization and notwithstanding the provisions of Section 3.22, to prepay such LC Loans as are owed to the TALC Issuing Bank in aggregate amount equal to such Defaulting Lender's TALC Participation Amount in accordance with Section 3.16 within five Business Days.

(f) Defaulting Lender Cure. If the Borrower, the Administrative Agent and (if the Defaulting Lender is a TALC Participating Bank) the TALC Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding

Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations of the Credit Facilities to be held *pro rata* by the Lenders in accordance with the Commitments under the applicable Credit Facility (without giving effect to Section 3.27(d)), whereupon such Lender will cease to be a Defaulting Lender; provided, that no adjustments will be made retroactively with respect to Fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(g) New TA Letters of Credit. So long as any TALC Participating Bank is a Defaulting Lender, the TALC Issuing Bank shall not be required to issue, extend, renew or increase any TA Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

3.28 Cash Collateralization.

(a) Cash Collateralization. If at any time there shall exist a Defaulting Lender that is a TALC Participating Bank, then within five Business Days following the written request of the Administrative Agent or the TALC Issuing Bank (with a copy to the Administrative Agent) the Borrower shall Cash Collateralize or shall cause the Cash Collateralization of the TALC Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to Section 3.27(d) and any Cash Collateral provided by such Defaulting Lender) from funds that are not credited or creditable to the Secured Accounts in an amount not less than the Minimum Collateral Amount.

(b) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the TALC Issuing Bank, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of TALC Facility, to be applied pursuant to Section 3.28(c). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the TALC Issuing Bank as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, then the Borrower will, within five Business Days of demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Credit Agreement, Cash Collateral provided under this Section 3.28 or Section 3.27 in respect of TA Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations of TA Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the TALC Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this Section 3.28 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the TALC Issuing Bank that there exists excess Cash Collateral; provided, that, subject to Section 3.27, the Person providing Cash Collateral and the TALC Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations; and, provided, further, that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Collateral Documents.

ARTICLE IV

CONDITIONS PRECEDENT

4.1 Conditions to Closing. The closing of the transactions hereunder (the "Closing") is subject to the prior satisfaction of each of the following conditions (unless waived in writing by each Financing Party):

(a) Representations and Warranties. The representations and warranties of the Borrower Parties set forth in the Financing Documents shall be true and correct in all material respects on and as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct in all material respects as of such earlier date).

(b) Transaction Documents. Each of the Transaction Documents (other than the Term Notes, any Additional Project Documents not then in existence and the Rate Swap Confirmations) shall have been duly authorized, executed, delivered and (if applicable) released from documentary escrow by each party thereto. The Administrative Agent shall have received a fully-executed version of each such Transaction Document (it being understood that, to the extent an original counterpart thereof is not required to be delivered to the Administrative Agent as a condition to the effectiveness or enforceability thereof under applicable Law, a photostatic or electronic copy thereof shall satisfy this condition).

(c) Notes. The Borrower shall have duly authorized and executed each Note (other than a Term Note) for the account of each Lender that has made a request therefor pursuant to Section 3.4(b). Each such Note shall be appropriately completed with the name of the payee, the maximum principal amount thereof and the date of issuance (which shall be the Closing Date) inserted therein. An original of each such Note shall have been delivered by the Borrower to the Administrative Agent for further distribution to the payee listed therein.

(d) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing.

(e) Funding of Equity Contributions. The Pledgor shall have contributed to the Borrower the Required Equity Contribution. The proceeds of such Required Equity

Contribution shall have been applied to the payment of Project Costs (directly by the Borrower or through the further contribution to and payment by the Procurement Sub or Project Owner).

(f) Closing Certificates. The Borrower shall have appropriately completed, duly authorized, executed, and delivered to the Administrative Agent and (if applicable) released from documentary escrow the Borrower Closing Certificate. The Pledgor shall have appropriately completed, duly authorized, executed and delivered to the Administrative Agent and (if applicable) released from documentary escrow the Pledgor Closing Certificate. Each such Closing Certificate is true and correct in all respects and attaches true and correct copies of all documents specified therein appropriately completed as specified therein.

(g) Good Standing. Each Borrower Party and the Pledgor shall be in good standing under the jurisdiction of its formation and the Administrative Agent shall have received a certificate of good standing in respect of each such Borrower Party and the Pledgor certified by the Secretary of State of such state and dated not more than ten days prior to the Closing Date. Each Borrower Party and the Pledgor shall be qualified to do business in the jurisdiction where the Project is located and the Administrative Agent shall have received a certificate of the relevant state official evidencing such qualification dated not more than ten days prior to the Closing Date.

(h) Insurance. Insurance complying with the Collateral Agreement shall be in full force and effect, and each Financing Party shall have received a binder or certificates signed by the insurer or a broker authorized to bind the insurer with respect to each policy of insurance required to be in effect pursuant to the Collateral Agreement evidencing such insurance (including the designation of the Collateral Agent as loss payee or additional insured thereunder to the extent required by the Collateral Agreement). In addition, each Financing Party shall have received a report from the Insurance Consultant in accordance with Section 4.1(i) and a certificate from the Insurance Consultant dated the Closing Date, certifying that all insurance policies required to be maintained (or caused to be maintained) by the Borrower Parties pursuant to Section 7.17 and the Collateral Agreement have been obtained and are in full force and effect on the Closing Date, and that such insurance policies comply in all respects with the requirements of the Collateral Agreement.

(i) Consultants' Reports. Each Financing Party shall have received an electronic copy of a report of each Independent Consultant as to the matters set forth opposite such report on Appendix I.

(j) Permits. Each Financing Party shall have received photostatic or electronic copies of (x) all Material Permits held in the name of the Borrower Parties and Affiliate Project Participants and, if requested, certified copies of all applications made for such Material Permits required to have been obtained on or before the Closing Date and (y) all Material Permits known to the Borrower that are held in the name of any Material Project Participants that are not Affiliate Project Participants except those Material Permits listed on Schedule 4.1(j).

(k) Creation, Perfection and Priority of Liens. The Liens of the Collateral Agent over the Collateral shall have been created and perfected in accordance with the Collateral

Agreement and such Liens shall constitute first-priority Liens subject only to (i) Permitted Priority Liens and (ii) other Permitted Liens to the extent junior to the Liens granted to the Collateral Agent under the Security Documents and the Administrative Agent shall have received evidence reasonably satisfactory to it of the foregoing.

(l) Lien Searches. The Administrative Agent shall have received lien search reports of a recent date before the Closing Date for each of the jurisdictions in which UCC-1 financing statements, fixture filings and the Mortgage are intended to be filed in respect of the Collateral which such reports shall not include any Liens other than (i) Permitted Priority Liens and (ii) other Permitted Liens to the extent junior to the Liens granted to the Collateral Agent under the Security Documents. The Administrative Agent shall have received each California 20-Day Preliminary Notice issued pursuant to California Civil Codes §3097, 3098, 3111 and 3259.5 and delivered to the Borrower Parties on or prior to the Closing Date.

(m) Legal Opinions. The Administrative Agent shall have received photostatic or electronic copies of the following legal opinions, which legal opinions shall be dated the Closing Date and addressed to, and be in form and substance satisfactory to, each Agent and each Financing Party:

(i) a legal opinion of in-house counsel to each of the Borrower Parties and the Pledgor;

(ii) a legal opinion of Jones Day, special New York and California counsel to the Borrower Parties, the Pledgor and each Affiliated Project Party;

(iii) a legal opinion of Jones Day, special federal energy regulatory and federal permitting counsel to the Borrower Parties, the Pledgor and each Affiliated Project Party;

(iv) a legal opinion of Stoel Rives LLP, special federal and state environmental counsel, state energy regulatory and state and local permitting counsel to the Borrower Parties, the Pledgor and each Affiliated Project Party;

(v) a legal opinion of counsel to the Equipment Supplier and Equipment Servicer as to the matters set forth on Appendix 2 to each Consent Agreement with the Equipment Supplier and the Equipment Servicer; and

(vi) a legal opinion of counsel to the BOP Contractor as to the matters set forth on Appendix 2 to each Consent Agreement with the BOP Contractor.

(n) Financial Information, etc. Each Financing Party shall have received an electronic copy of a *pro forma* balance sheet of each Borrower Party and the Pledgor, dated the Closing Date.

(o) U.S.A. Patriot Act. Each Financing Party shall have received, at least three Business Days prior to the Closing Date, electronic copies of all documentation and other information required by bank regulatory authorities or the generally applicable internal policies

of the such Financing Party under applicable “know your customer” and anti-money laundering rules and regulations, including the U.S.A. Patriot Act.

(p) Environmental Matters. Each Financing Party shall have received an electronic copy of a “Phase 1 Environmental Site Assessment” confirming that there are no recognized environmental conditions in connection with the Project, the Facility or the Site, except to the extent set forth on Schedule 5.14.

(q) Fees and Expenses. The Borrower shall have paid or arranged for the payment when due of all reasonable and documented Fees, expenses (including Attorney Costs) and other charges due and payable by it on or prior to the Closing Date under this Credit Agreement or under any of the other Financing Documents.

(r) Construction Budget and Project Schedule; Sources and Uses. Each Financing Party shall have received an electronic copy (whether delivered separately or as part of the Base Case Model delivered in accordance with Section 4.1(t)) of (i) the Construction Budget, (ii) each Project Schedule and (iii) a sources and uses of funds demonstrating that the Construction Facilities are sufficient to timely fund all future Project Costs set forth in the Construction Budget, including the Contingency, each of which shall be reasonably satisfactory to such Financing Party.

(s) Pro Forma Operating Budget; Pro Forma Operating Report. Each Financing Party shall have received an electronic copy (whether delivered separately or as part of the Base Case Model delivered in accordance with Section 4.1(t)) of a *pro forma* Operating Budget and a *pro forma* Operating Report, in each case, in form, scope and substance reasonably satisfactory to such Financing Party.

(t) Base Case Model. The Borrower shall have delivered to each Financing Party an electronic copy of the Base Case Model, incorporating the inputs from the Construction Budget, the Project Schedules, the projected Operating Performance and sources and uses of funds delivered in accordance with Section 4.1(r), the *pro forma* Operating Budget delivered in accordance with Section 4.1(s), and the anticipated fixed rate payable by the Borrower under each of the Rate Swap Transactions to be entered into in accordance with Section 7.26, and otherwise in form, scope and substance reasonably satisfactory to such Financing Party.

(u) Financial Ratios. The Base Case Model delivered in accordance with Section 4.1(t) shall project a minimum Projected DSCR on a rolling twelve-month basis beginning on August 30, 2013 and ending on August 31, 2023 of not less than 1.40:1.00.

(v) Commencement of Work. The Administrative Agent shall have received evidence that: (i) the Construction Manager shall have received and accepted the “Notice to Proceed” (as defined in the Construction Management Agreement); (ii) the BOP Contractor shall have received and accepted the “Full Notice to Proceed” (as defined in the BOP Contract); (iii) the Equipment Servicer shall have received and accepted the “Full Notice to Proceed” (as defined in the Equipment Services Agreement); and (iv) the Equipment Supplier shall have received and accepted the “Full Notice to Proceed” (as defined in the Equipment Purchase Agreement).

(w) Debt Repayment. Each Borrower Party shall have repaid all of its existing Indebtedness, other than Permitted Indebtedness and all Liens associated therewith encumbering any Collateral, other than Permitted Liens, shall have been released.

(x) Additional Matters. All corporate and other proceedings, and all documents, instruments and other legal matters in connection with the transactions contemplated by this Credit Agreement and the other Transaction Documents shall be reasonably satisfactory in form and substance to the Administrative Agent, and the Administrative Agent shall have received such other documents, certificates, and instruments relating to this Credit Agreement or any other Transaction Document or the transactions contemplated hereby or thereby as the Administrative Agent shall have reasonably requested, in each case in form and substance reasonably satisfactory to the Administrative Agent.

For purposes of this Section 4.1, a Financing Party shall be deemed to have received an electronic copy of any document that was posted on the Borrower's online data site located at www.intralinks.com as of 5:00 p.m. (New York time) on the day immediately preceding the Closing Date; unless, (x) such Financing Party did not receive electronic notice of such posting or (y) such Financing Party notifies the Administrative Agent and the Borrower that such Financing Party has not had reasonably sufficient time to review such electronic copy prior to the Closing Date.

4 . 2 Conditions to the Disbursement of Construction Loans. The obligation of any (a) Tranche A Lender to make any Tranche A Construction Loan or (b) Tranche B Lender to make any Tranche B Construction Loan, as the case may be, on any Disbursement Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by (x) in the case of Tranche A Construction Loans, the Requisite Tranche A Lenders or (y) in the case of Tranche B Construction Loans, Requisite Tranche B Lenders):

(a) Closing Date. The Closing shall have theretofore occurred.

(b) Borrowing Request. The Administrative Agent shall have received a Borrowing Request pursuant to and in compliance with Section 3.2 in respect of the Disbursement of Construction Loans on such Disbursement Date.

(c) Construction Requisition. The Administrative Agent shall have received (i) not less than five Business Days prior to such Disbursement Date, a Construction Requisition and (ii) not less than two Business Days prior to such Disbursement Date, a certificate of the Independent Engineer confirming such Construction Requisition.

(d) Representations and Warranties. The representations and warranties of the Borrower contained in Article V hereof and the representations and warranties of each Borrower Party, and the Pledgor and the Affiliated Project Parties contained in any other Financing Document to which any such Person is a party shall be true and correct in all material respects on and as of such Disbursement Date as if made on and as of such date (both before and after giving effect to the Disbursement to be made on such date) (or, if stated to have been made solely as of an earlier date, were true and correct in all material respects as of such earlier date).

(e) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing.

(f) Construction Budget; Notional Disbursement Schedule. The making of such Construction Loan shall be in accordance with the Construction Budget and the Notional Disbursement Schedule (subject to variances to the Notional Disbursement Schedule that are reasonably commensurate with modifications to the Construction Budget that are made in accordance with Section 7.28). The aggregate amount of Project Costs set forth in the then-applicable Construction Budget are sufficient to cause the Term Conversion Date to occur prior to the Date Certain and the Available Construction Funds both before and after giving effect to such Disbursement shall be equal to or greater than the aggregate amount of unpaid Project Costs set forth in the Construction Budget.

(g) No Liens. There shall not have been filed against or served upon the Collateral Agent or any of the Borrower Parties with respect to the Project or any part thereof any Stop Notice or notice of any Lien or claim of Lien or attachment upon or claim affecting the right to receive payment of any of the moneys payable to any of the Persons named on the relevant Construction Requisition (other than a Permitted Lien) which has not been released by prior payment (after the date hereof with the proceeds of Construction Loans) or in respect of which a bond or other security acceptable to Administrative Agent has not been posted or provided or which will not be released with the payment of the related obligation out of Construction Loans to be disbursed on the relevant Disbursement Date.

(h) Lien Releases; Etc. The Borrower shall have delivered to the Administrative Agent (i) a Lien Waiver Report completed in good faith using commercially reasonable efforts setting forth the information required thereby in respect of each M&M Party known to the Borrower Parties, including any Person identified in a notice delivered to the Borrower Parties or their Affiliates in accordance with Section 8.1 of any of the BOP Contract, the Equipment Purchase Agreement or the Equipment Services Agreement and any Person that has delivered to the Borrower Parties or (if relating to the Project) their Affiliates a California 20-Day Preliminary Notice pursuant to California Civil Codes §3097, 3098, 3111 or 3259.5, (ii) properly completed and duly executed conditional lien waivers (in the form provided under California Civil Code §3262, as amended) from each M&M Party that is to be directly or indirectly paid from funds requested under the related Borrowing of the Construction Loans, each of which shall be dated not earlier than the Relevant Work Date, (iii) one or more properly completed and duly executed unconditional lien waivers (in the form provided under California Civil Code §3262, as amended) from each M&M Party that is to be directly or indirectly paid from funds requested under the related Borrowing, each of which shall be dated not earlier than the date of the most recent conditional lien waiver delivered in accordance with subpart (ii) of this sentence. All work previously done on the Project shall have been done in all material respects in accordance with the applicable M&M Contracts. Other than with respect to the initial Borrowing of the Construction Loans (to the extent amounts are funded from sources other than the Construction Loans on the date thereof), all amounts directly or indirectly paid to any M&M Party since the initial

Borrowing of the Construction Loans have been directly or indirectly funded with the proceeds of the Construction Loans (unless otherwise approved by the Administrative Agent, such approval not to be unreasonably withheld, conditioned or delayed).

(i) Fees and Expenses. The Borrower shall have paid or arranged for the payment when due (including, to the extent permitted, out of Disbursements) of all reasonable and documented Fees, expenses (including Attorney Costs) and other charges payable by it on or prior to such Disbursement Date under this Credit Agreement or under any other Financing Document.

(j) Title Policy Endorsement. The Administrative Agent shall have received (i) a “bring-down” endorsement to the Title Policy to the Disbursement Date of such Construction Loans, insuring the continuing first priority Lien of the Mortgage (subject only to (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens for the benefit of the Secured Parties under the Mortgage) and otherwise in form and substance satisfactory to the Administrative Agent and (ii) either (A) with respect to the initial Borrowing of the Construction Loans only, a 32-06 Endorsement and (B) with respect to each other Borrowing of the Construction Loans, a 33-06 Endorsement, in each case, with a Date of Coverage (as defined therein) that is the same as the date of the relevant Borrowing of the Construction Loans with copies of all executed conditional and unconditional lien waivers required to be delivered pursuant to Section 4.2(h) attached thereto.

(k) Funding of Equity Contributions. The Pledgor shall have contributed to the Borrower the Required Equity Contribution. The proceeds of such Required Equity Contribution shall have been applied to the payment of Project Costs (directly by the Borrower or through the further contribution to and payment by the Procurement Sub or Project Owner).

(l) Remediation. With respect solely to the initial Borrowing of the Construction Loans: (i) the U.S. Environmental Protection Agency shall have issued EPA Letters that set forth, with a reasonable level of certainty, the remediation that is as of such date required in respect of all environmental conditions identified at the Site on or prior to the initial Borrowing of the Construction Loans; (ii) the Borrower shall have delivered to the Administrative Agent the Remediation Work Plan, as updated as of the initial Borrowing of the Construction Loans; (iii) the Borrower shall, or shall have caused the relevant Borrower Parties to, have entered into such Change Orders, in accordance with Section 7.15, as are necessary to reflect the Remediation Work Plan; (iv) the Borrower shall have amended the Construction Budget, in accordance with Section 7.28, to the extent necessary to incorporate the costs of all such Change Orders, (v) the Borrower shall have delivered to the Administrative Agent a sources and uses of funds demonstrating that the Construction Facilities and the Required Equity Contribution are sufficient to fund all past and future Project Costs set forth in the then-applicable Construction Budget, including the Contingency and (vi) the Borrower shall have delivered to the Administrative Agent a written confirmation of the Independent Engineer that (A) the Remediation Work Plan as of the date of the initial Borrowing of the Construction Loans sets forth with reasonable certainty all corrective actions that are

necessary or reasonably appropriate to satisfy the conditions and comply with any other requirements set forth in the EPA Letters and (B) the Change Orders referenced in subpart (iii) of this Section 4.2(l) incorporate with reasonable certainty all schedule and cost impacts to the Project that can reasonably be expected to result from the remaining execution of the Remediation Work Plan in accordance therewith. With respect solely to the initial Borrowing of the Construction Loans, the aggregate undrawn amount of the Environmental Indemnity is not less than \$37,500,000.00.

(m) Updated Base Case Model. With respect solely to the initial Borrowing of the Construction Loans, the Borrower shall have delivered to the Administrative Agent the updated Base Case Model, modified solely to reflect (x) any amendment to the Construction Budget prior to such initial Borrowing, (y) the fixed interest rate payable under the Rate Swap Transactions entered into in accordance with Section 7.26 and (z) the Tranche A Loan Amount as of the initial Borrowing of the Construction Loans, and such updated Base Case Model shall project a minimum Projected DSCR on a rolling twelve-month basis beginning on August 30, 2013 and ending on August 31, 2023 of not less than 1.40:1.00.

(n) Updated Projected Amortization Schedule. With respect solely to the initial Borrowing of the Construction Loans, the Borrower shall have delivered to the Administrative Agent an updated Projected Amortization Schedule, modified solely to include the Tranche A Notional Amortization and the Tranche A Percentage Amortization.

4.3 Conditions to the Issuance of LGIA Letters of Credit or Disbursement of Revolving Loans. The obligation of the Revolver Lenders to make (x) any Revolving Loan on any Disbursement Date, or (y) issue an LGIA Letter of Credit, on any Issuance Date, is subject to the prior satisfaction of each of the following conditions (unless waived in writing by the Requisite Revolving Lenders):

(a) Closing Date; Etc. The Closing shall have theretofore occurred. The initial Borrowing of the Construction Loans shall have been made or will be made concurrently therewith.

(b) Borrowing Request. In the case of a request for Revolving Loans, the Administrative Agent shall have received a Borrowing Request pursuant to and in compliance with Section 3.2.

(c) LGIA Letter of Credit Request. In the case of a request for the issuance of the LGIA Letter of Credit, the Revolving Lender shall have received an LC Request pursuant to and in compliance with Section 3.25(a) in respect of the issuance of such LGIA Letter of Credit.

(d) Representations and Warranties. The representations and warranties of the Borrower contained in Article V hereof and the representations and warranties of each Borrower Party, and the Pledgor and the Affiliated Project Parties contained in any other Financing Document to which any such Person is a party shall be true and correct in all

material respects on and as of such Issuance Date or Disbursement Date (both before and after giving effect to any Loans or the issuance of any Specified Letter of Credit on such Issuance Date or Disbursement Date) (or, if stated to have been made solely as of an earlier date, were true and correct in all material respects as of such earlier date).

(e) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing (unless the issuance of any LGIA Letter of Credit would cure any Default).

(f) Fees and Expenses. The Borrower shall have paid or arranged for the payment when due (including, if a Disbursement Date, out of Disbursements) of all reasonable and invoiced Fees, expenses (including Attorney Costs) and other charges payable by it on or prior to such Disbursement Date or Issuance Date under this Credit Agreement or under any other Financing Document.

4.4 Conditions to the Issuance of the TA Letter of Credit. The obligation of the TALC Issuing Bank to issue a TA Letter of Credit on any Issuance Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by the TALC Issuing Bank and the Requisite TALC Participating Banks):

(a) Closing Date; Etc. The Closing shall have theretofore occurred. The initial Borrowing of the Construction Loans shall have been made or will be made concurrently therewith.

(b) LC Request. The TALC Issuing Bank shall have received an LC Request pursuant to and in compliance with Section 3.25(a) in respect of the issuance of such TA Letter of Credit.

(c) Representations and Warranties. The representations and warranties of the Borrower contained in Article V hereof and the representations and warranties of each Borrower Party, and the Pledgor and the Affiliated Project Parties contained in any other Financing Document to which any such Person is a party shall be true and correct in all material respects on and as of such Issuance Date as if made on and as of such Issuance Date (both before and after giving effect to the issuance of the TA Letter of Credit on such date) (or, if stated to have been made solely as of an earlier date, were true and correct in all material respects as of such earlier date).

(d) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing (unless the issuance of any TALC Letter of Credit would cure any Default).

(e) Fees and Expenses. The Borrower shall have paid or arranged for the payment when due (including, to the extent such Issuance Date is also a Disbursement Date, out of Disbursements) of all reasonable and invoiced Fees, expenses (including Attorney Costs) and other charges payable by it on or prior to such Issuance Date under this Credit Agreement or under any other Financing Document.

4.5 Conditions to the Issuance of the DSR Letter of Credit. The obligation of each DSR Issuing Bank to issue a DSR Letter of Credit on any Issuance Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by such DSR Issuing Bank):

(a) Closing Date; Etc. The Closing shall have theretofore occurred. The initial Borrowing of the Construction Loans shall have been made. The Term Conversion Date shall have theretofore occurred.

(b) LC Request. Such DSR Issuing Bank shall have received an LC Request pursuant to and in compliance with Section 3.25(a) in respect of the issuance of such DSR Letter of Credit.

(c) Representations and Warranties. The representations and warranties of the Borrower contained in Article V hereof and the representations and warranties of each Borrower Party, and the Pledgor and the Affiliated Project Parties contained in any other Financing Document to which any such Person is a party shall be true and correct in all material respects on and as of such Issuance Date as if made on and as of such date (both before and after giving effect to the issuance of the DSR Letters of Credit on such Issuance Date) (or, if stated to have been made solely as of an earlier date, were true and correct in all material respects as of such earlier date).

(d) No Default or Event of Default. No Default or Event of Default shall have occurred and be continuing (unless the issuance of any DSR Letter of Credit would cure any Default).

(e) Fees and Expenses. The Borrower shall have paid or arranged for the payment when due (including, to the extent such Issuance Date is also a Disbursement Date, out of Disbursements) of all reasonable and invoiced Fees, expenses (including Attorney Costs) and other charges payable by it on or prior to such Disbursement Date under this Credit Agreement or under any other Financing Document.

4.6 Conditions to the Term Conversion Date. The occurrence of the Term Conversion Date shall be subject to the conditions precedent that the Administrative Agent shall have received, or the Requisite Term Lenders shall have waived receipt of, the following documents, materials and other written information, each of which shall be in form and substance satisfactory to the Requisite Term Lenders, and that the other conditions set forth below shall have been satisfied or waived by the Requisite Term Lenders:

(a) Term Notes. Each Lender that has made a request therefor pursuant to Section 3.4(b) shall have received original Term Notes in respect of the Term Loans made or maintained by it, duly completed, executed and delivered by the Borrower, each of which shall (i) be dated the Term Conversion Date, (ii) mature on the Term Maturity Date, and (iii) bear interest as provided in Article III.

(b) Insurance. The Administrative Agent shall have received a certified copy of the insurance policies required to have been obtained and be in effect on the Term Conversion Date in accordance with Section 7.17 and the Collateral Agreement or

certificates of insurance with respect thereto, together with evidence of the payment of all premiums therefor, and a certificate of the Insurance Consultant, certifying that insurance complying with the Collateral Agreement, covering the risks and otherwise satisfying the requirements referred to therein, has been obtained and is in full force and effect.

(c) Permits. All Material Permits shall have been duly obtained, shall be held solely in the name of the Project Owner (or, if necessary, the applicable Project Participant) shall be in full force and effect, shall be final and not subject to any appeal or modification and all appeal periods applicable hereto have expired and shall be free from conditions or requirements the compliance with which could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party, or which the relevant Borrower Party does not reasonably expect to be able to satisfy; provided, that with respect to Material Permits which cannot be obtained on or prior to the Term Conversion Date in the exercise of reasonable diligence (but which are routinely obtainable, can be obtained only after completion of certain operations testing or can be obtained only after a period of operations), the Administrative Agent shall have received assurances satisfactory to the Independent Engineer that such Permits will be obtained by the time needed in connection with the operation of the Project.

(d) Completion Certificates. The Administrative Agent shall have received (i) an original executed counterpart of the Borrower Completion Certificate (the statements contained in which shall be true and correct in all material respects), and (ii) an original executed counterpart of the Independent Engineer Completion Certificate.

(e) Project Completion Date. The Project Completion Date shall have occurred.

(f) Opinions. The Administrative Agent shall have received supplemental opinions of counsel to the Borrower, dated as of the Term Conversion Date, opining as to each of the matters set forth on Appendix K, subject to such qualifications and assumptions as are customary in New York, California or Federal opinion practice (as applicable).

(g) Operating Budget. The Borrower shall have proposed an Operating Budget in accordance with Section 6.6 for the period described in Section 6.6, and such Operating Budget shall have been adopted in accordance with Section 6.6.

(h) Title Insurance; Survey.

(i) The Borrower shall have delivered to the Administrative Agent a Title Policy which has been reissued by the Title Insurer (the "Reissued Title Policy") and such Reissued Title Policy (a) insures the continuing first priority of the Mortgage (subject only to (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Secured Parties pursuant thereto) and otherwise in form and substance reasonably satisfactory to Administrative Agent, (b) is

issued as of the Term Conversion Date, (c) contains only the coverage exceptions set forth in the Title Policy as of the Closing Date or that are otherwise approved by the Administrative Agent (provided, that any mechanics' and materialmen's exceptions included in the Title Policy shall be deleted in the Reissued Title Policy), (d) provides that the ALTA 32 endorsement to the Title Policy is of no further force or effect and (e) is in an amount equal to the Title Policy Amount.

(ii) The Borrower shall have delivered to the Administrative Agent a final "as-built" survey of the Site, addressed to the Collateral Agent for the benefit of the Secured Parties, the Title Insurance Companies and the Borrower, updated to within thirty days of the Term Conversion Date, showing the completed Project, which survey shall be in form and substance reasonably satisfactory to the Collateral Agent and the Title Insurance Companies, and shall disclose no easements, rights-of-way or encumbrances, other than (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Secured Parties pursuant to the Mortgage.

(iii) The Borrower shall have prepared and caused to be executed and recorded such amendments to the Mortgage or other confirmatory documents as may be reasonably requested by the Collateral Agent in order to protect, confirm or maintain the first-priority Lien of the Mortgage on the Mortgaged Property, as reflected in the final survey delivered pursuant to this Section 4.6(h).

(i) Lien Releases; Etc. The Borrower shall have delivered to the Administrative Agent (i) a properly completed and duly executed unconditional lien waiver upon final payment (in the form provided under California Civil Code §3262, as amended) from each M&M Party, each of which waivers shall be substantially consistent with any relevant requirements of the applicable M&M Contract, (ii) a properly completed and duly executed conditional lien waiver upon final payment (in the form provided under California Civil Code §3262, as amended) from each M&M Party together with evidence reasonably satisfactory to Administrative Agent that the amount set forth in such conditional lien waiver upon final payment has been paid, each of which waivers shall be substantially consistent with any relevant requirements of the applicable M&M Contract or (iii) other evidence reasonably satisfactory to Administrative Agent that such M&M Party has been paid in full or otherwise has no mechanics lien rights with respect to the Project. Notwithstanding anything to the contrary with the foregoing, the requirements under this Section 4.6(i) shall not be applicable with respect to work performed prior to the Closing Date by an M&M Party that does not perform work after the Closing Date to the extent payment for such work and such M&M Party are identified on the certificate delivered to the Title Company and attached hereto as Schedule 4.6(i).

(j) No Liens. (i) There shall not have been filed against or served upon the Collateral Agent or any of the Borrower Parties with respect to the Project or any part thereof any Stop Notice or notice of any Lien or claim of Lien or attachment upon or claim affecting the right to receive payment of any of the moneys payable to any of the Persons named on any relevant Construction Requisition in respect of Construction Loans to be disbursed on the Term Conversion Date (other than a Permitted Lien) which

has not been released by prior payment (after the date hereof, with the proceeds of Construction Loans) or in respect of which a bond or other security acceptable to Administrative Agent has not been posted or provided or which will not be released with the payment of the related obligation out of Construction Loans to be disbursed on the Term Conversion Date and (ii) all applicable filing periods for any such Liens that are mechanics' and/or materialmen's Liens shall have expired; unless, the Reissued Title Policy delivered pursuant to Section 4.6(h) above insures against any and all losses arising by reason of any such pending or potential relevant mechanics or materialmen's Lien or other Lien gaining priority over the Mortgage.

- (k) Merger. The Procurement Sub and the Project Owner shall have effected the Merger contemplated by Section 7.33.
- (l) Borrower Equity Interests. The Borrower shall own no assets, other than the Pledged Equity Interests of the Project Owner.
- (m) Expected Initial Delivery Date. The Expected Initial Delivery Date shall have theretofore occurred.
- (n) Funding of DSRA. The Debt Service Reserve Account shall have been funded in cash or by the posting of DSR Letters of Credit to the DSR Required Balance in accordance with the Collateral Agreement.
- (o) TALC Facility. All LC Loans resulting from drawings under any TA Letter of Credit, together with any Liquidation Costs incurred by the Borrower as a result of such prepayment, have been repaid in accordance with Sections 3.17(b) and 3.17(f).
- (p) Other Documents. The Administrative Agent shall have received original counterparts of such other statements, certificates and documents as the Administrative Agent may reasonably request.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND AGREEMENTS

In order to induce each of the Lenders to enter into this Credit Agreement and to make the Loans and issue or participate in the Specified Letters of Credit, the Borrower makes the following representations, warranties and agreements as of the date hereof (or as of such other date as may be expressly specified with respect to such representation, warranty or agreement), all of which shall survive the execution and delivery of this Credit Agreement and the Notes, the making, Conversion and continuance of the Loans and the issuance of the Specified Letters of Credit:

5.1 Organization. Each Borrower Party is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware. Each Borrower Party is duly authorized and qualified to do business and is in good standing in each jurisdiction in which it owns or leases Property or in which the conduct of its business requires it to so qualify, except where the failure to so qualify would not have a Material Adverse Effect. Each

Borrower Party has the requisite limited liability company power and authority to own or lease and operate its Properties, to carry on its business (including with respect to the Project), to borrow money, to create the Liens as contemplated by the Security Documents and to execute, deliver and perform each Transaction Document (including the Notes) to which it is or will be a party.

5.2 Authority and Consents.

(a) The execution, delivery and performance by each Borrower Party of each Financing Document to which it is or will be a party, and the transactions contemplated by the Financing Documents: (i) have been duly authorized by all necessary limited liability company action (including any necessary member action); (ii) will not breach, contravene, violate, conflict with or constitute a default under (A) any of its Charter Documents, (B) any applicable Law or (C) any contract, loan, agreement, indenture, mortgage, lease or other instrument to which it is a party or by which it or any of its Properties may be bound or affected, including all Permits and the Transaction Documents; and (iii) except for the Liens created by the Security Documents, will not result in or require the creation or imposition of any Lien upon or with respect to any of the Properties of the Borrower.

(b) Each Financing Document (i) has been duly executed and delivered by each Borrower Party and (ii) when executed and delivered by each of the other parties thereto will be the legal, valid and binding obligation of each such Borrower Party, enforceable against each Borrower Party, as the case may be, in accordance with its terms, except as the enforceability thereof may be limited by (A) applicable bankruptcy, insolvency, moratorium or other similar Laws affecting the enforcement of creditors' rights generally and (B) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(c) Except for the authorizations, consents, approvals, notices and filings listed on Schedule 5.2 or as contemplated under Section 4.6(c), no authorization, consent or approval of, or notice to or filing with, any Governmental Authority or any other Person has been, is or will be required to be obtained or made (i) for the due execution, delivery, recordation, filing or performance by each Borrower Party of any of the Financing Documents to which it is a party or any transaction contemplated by the Financing Documents, (ii) for the grant by each Borrower Party, or the perfection and maintenance, of the Liens contemplated by the Security Documents (including the first priority nature thereof) or (iii) for the exercise by the Collateral Agent or any other Secured Party of any of its rights under any Financing Document or any remedies in respect of the Collateral pursuant to the Security Documents, except for the authorizations, consents, approvals, notices and filings listed on Schedule 5.2, all of which have been duly obtained, taken, given or made, have been (where applicable) validly issued, are in full force and effect, are final and not subject to modification or appeal and all appeal periods applicable thereto have expired.

5.3 Capitalization; Indebtedness; Investments.

(a) Schedule 5.3 contains a true and complete list of all of the authorized and outstanding Equity Interests of each Borrower Party by class, all commitments by the Pledgor to

make capital contributions to the Borrower and all capital contributions previously made by the Pledgor to the Borrower. All of the Equity Interests of each Borrower Party have been duly authorized and validly issued and are fully paid and nonassessable. None of such Equity Interests have been issued in violation of any applicable Law. Except as set forth in Schedule 5.3, no Borrower Party is a party or subject to, has outstanding and is bound by, any subscriptions, options, warrants, calls, agreements, preemptive rights, acquisition rights, redemption rights or any other rights or claims of any character that restrict the transfer of, require the issuance of, or otherwise relate to any shares of its Equity Interests. The Equity Interests of each Borrower Party are owned beneficially and of record by the Persons set forth in Schedule 5.3. Except for the Liens created by the Pledge Agreements, there is no Lien on any of the Equity Interests of any Borrower Party, and no Borrower Party has been notified of the assignment of all or any part of (x) the Pledgor's Investments in the Borrower other than the assignment in favor of the Collateral Agent pursuant to the Pledgor Pledge Agreement and (y) the Borrower's investments in each of the Procurement Sub and the Project Owner other than the assignment in favor of the Collateral Agent pursuant to the Borrower Pledge Agreement.

(b) As of the Closing Date, (i) none of the Borrower Parties has Indebtedness of any nature, whether due or to become due, absolute, contingent or otherwise (other than Permitted Indebtedness set forth on Schedule 5.3), and (ii) none of the Borrower Parties holds Investments other than Investments permitted by Section 7.7.

5.4 Financial Condition.

(a) Each of the financial statements of the Borrower Parties and the Pledgor delivered in accordance with Sections 4.1(n), 6.1(a) and 6.1(b) fairly present the financial condition of such Person as at the relevant dates specified and (if applicable) the results of its operations for the periods ended on such dates, subject, in the case of interim statements, to normal year-end audit adjustments. Such financial statements have been prepared in accordance with U.S. GAAP consistently applied.

(b) None of the Borrower Parties or the Pledgor has outstanding obligations or liabilities, fixed or contingent, except as disclosed in the financial statements described in Section 5.4(a) above. Since the date of the last financial statements described in 5.4(a) above, no event, condition or circumstance exists or has occurred which has resulted in or could reasonably be expected have a Material Adverse Effect.

5.5 Litigation; Labor Disputes. Except as set forth in Schedule 5.5, there is no action, suit, other legal proceeding, arbitral proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened, by or before any Governmental Authority or in any arbitral or other forum, nor any order, decree or judgment in effect, pending, or, to the Borrower's knowledge, threatened, (a) against or affecting any Borrower Party or any of its Properties or rights or (b) to the Borrower's knowledge, against or affecting any Project Participant or any of its Properties or rights, that, in the case of this clause (b), (i) relates to the Project, any of the Transaction Documents or any of the transactions contemplated thereby or (ii) has, or if adversely determined, could reasonably be expected to have, either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it

is a party. There are no ongoing, or, to the knowledge of the Borrower, currently threatened, strikes, slowdowns or work stoppages by the employees of any Borrower Party, any EPC Contractor or any Operator.

5.6 Material Permits.

(a) As of the date hereof, to the knowledge of the Borrower, (i) all Material Permits are set forth in Schedule 5.6 hereto and (ii) the Material Permits set forth in Part B of Schedule 5.6 hereto are not currently required by the applicable Governmental Authorities but will be required at a later stage of the acquisition, importation, ownership, construction, installation, operation, insurance or maintenance of the Project.

(b) The Project Owner, the Procurement Sub (prior to the Merger) and the Affiliated Project Parties and, to the knowledge of the Borrower, each other Material Project Participant holds each Material Permit required to be held by it for the current stage of the acquisition, importation, ownership, construction, installation, operation, insurance or maintenance of the Project. Each such Material Permit held by Project Owner, the Procurement Sub (prior to the Merger) and the Affiliated Project Parties and, to the knowledge of the Borrower, each other Material Project Participant has been duly obtained or made, was validly issued, is in full force and effect, is final and not subject to modification or appeal and all appeal periods applicable thereto have expired, is held in the name of such Person and is free from conditions or requirements the compliance with which could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party. No event has occurred that could reasonably be expected to (A) result in the reversal, rescission, revocation, termination or adverse modification of any such Material Permit held by the Project Owner, the Procurement Sub (prior to the Merger) or the Affiliated Project Parties or, to the knowledge of the Borrower, each other Material Project Participant or (B) adversely affect any rights of the Project Owner, the Procurement Sub (prior to the Merger) or the Affiliated Project Parties or, to the knowledge of the Borrower, each other Material Project Participant under any such Material Permit.

(c) The Borrower has no reason to believe that any Material Permits which are not required to have been obtained as of the date of this Credit Agreement, but which will be required in the future (including those set forth in Part B of Schedule 5.6), will not be granted in due course prior to the time needed free from conditions or requirements which the Borrower does not reasonably expect the relevant Person to be able to satisfy or compliance with which could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(d) The information set forth in each application submitted by or on behalf of the Project Owner, the Procurement Sub (prior to the Merger) or the Affiliated Project Parties or, to the knowledge of the Borrower, each other relevant Person in connection with each Material Permit held by such Person and in all correspondence sent by or on behalf of any such Person in respect of each such application is accurate and complete in all material respects.

(e) The Project, if imported, installed, constructed, owned and operated in accordance with the Plans and Specifications and the Transaction Documents, will conform to and comply in all material respects with all covenants, conditions, restrictions and requirements in all Material Permits, in the Transaction Documents applicable thereto and under all zoning, environmental, land use and other Laws applicable thereto.

5.7 Material Project Documents.

(a) As of the date hereof (i) all Material Project Documents are set forth in Schedule 5.7 hereto, (ii) all Project Documents that have been entered into by the Borrower, the Project Owner, or the Procurement Sub (prior to the Merger) or the Affiliated Project Parties but are not Material Project Documents are set forth in Part B of Schedule 5.7 and (iii) each of the Affiliated Project Documents are denoted on Schedule 5.7 with an “*”. Each of the Project Documents set forth in Schedule 5.7 consist only of the original document (including appendices, exhibits, schedules and disclosure letters) and any amendments, waivers or supplements thereto expressly described in the relevant definitions appearing in Schedule 5.7 hereto, and there are no other amendments, waivers or supplements, written or oral, with respect thereto. The Financing Parties have received a true and complete copy of each Project Document set forth in Schedule 5.7, including all appendices, exhibits, schedules, disclosure letters, amendments, waivers or supplements referred to therein or delivered pursuant thereto, if any.

(b) Each Material Project Document entered into by the Borrower, the Project Owner, or the Procurement Sub (prior to the Merger) or the Affiliated Project Parties has been duly authorized, executed and delivered by such Person, is in full force and effect and constitutes the legal, valid and binding obligation of such Person, enforceable against such Person (and, to the knowledge of the Borrower, each other Material Project Participant) in accordance with its terms, except as the enforceability thereof may be limited by (A) applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors’ rights generally and (B) the application of general principles of equity (regardless of whether such enforceability is considered in a proceeding at law or in equity). Each of the Borrower, the Project Owner, and the Procurement Sub (prior to the Merger) and the Affiliated Project Parties, and to the knowledge of the Borrower, each other Material Project Participant, is in compliance in all material respects with the terms and conditions of the Material Project Documents to which it is a party, and no event has occurred that could reasonably be expected to (x) result in a default under, or a material breach of, any Material Project Document, (y) result in the revocation, termination or adverse modification of any Material Project Document or (z) adversely affect the rights of any Borrower Party under any Material Project Document.

(c) All representations and warranties of the Borrower, the Project Owner, and the Procurement Sub (prior to the Merger) and the Affiliated Project Parties and, to the Borrower’s knowledge, the other parties thereto, contained in the Material Project Documents are true and correct in all material respects (except to the extent that any such representation or warranty is expressed to be made only as of an earlier date, in which case such representation or warranty was true and correct in all material respects on and as of such earlier date).

(d) All conditions precedent to the obligations of the respective parties under the Material Project Documents have been satisfied, except for such conditions precedent which by their terms cannot be (and are not required to be) met until a later stage in the construction or operation of the Project, and the Borrower has no reason to believe that any such conditions precedent cannot be satisfied prior to the time when such conditions are required to be met pursuant to the applicable Project Document.

5.8 Use of Proceeds.

(a) The proceeds of the Loans will be used in accordance with Section 7.27.

(b) None of the Borrower Parties is engaged principally, or as one of its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock and no part of the proceeds of any Loan will be used to purchase or carry any Margin Stock.

(c) Neither the making of any Loan nor the use of the proceeds thereof will violate or be inconsistent with the provisions of Regulation U or Regulation X.

(d) Since the date of this Agreement, no Project Costs have been paid except from the proceeds of Construction Loans in accordance with Construction Requisitions properly issued in accordance with the Accounts Agreement.

5.9 ERISA.

(a) Each Pension Plan is in compliance in form and operation with its terms and with ERISA and the Code and all other applicable laws and regulations, except where any failure to comply would not reasonably be expected to have a Material Adverse Effect. No ERISA Event has occurred, or is reasonably expected to occur, other than as would not, individually or in the aggregate, have a Material Adverse Effect.

(b) There exists no Unfunded Pension Liability with respect to any Pension Plan, except as would not reasonably be expected to have a Material Adverse Effect.

(c) No Multiemployer Plan is insolvent or in reorganization and no member of the ERISA Group has incurred a complete or partial withdrawal from any Multiemployer Plan, except, in each case, as would not reasonably be expected to have a Material Adverse Effect. If each member of the ERISA Group were to withdraw in a complete withdrawal from all Multiemployer Plans as of the date this assurance is given, the aggregate withdrawal liability that would be incurred would not reasonably be expected to have a Material Adverse Effect.

(d) Except as would not reasonably be expected, either singly or in the aggregate, to have a Material Adverse Effect, there are no actions, suits or claims pending against or involving a Pension Plan (other than routine claims for benefits) or, to the knowledge of any member of the ERISA Group, which would reasonably be expected to be asserted successfully against any Pension Plan.

(e) All members of the ERISA Group have made all contributions to or under each Pension Plan and Multiemployer Plan required by law within the applicable time limits prescribed thereby, the terms of such Pension Plan or Multiemployer Plan, respectively, or any contract or agreement requiring contributions to a Pension Plan or Multiemployer Plan, save in each case where any failure to comply, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(f) Except as would not reasonably be expected to have a Material Adverse Effect, (i) no Pension Plan which is subject to Section 412 of the Code or Section 302 of ERISA has applied for or received an extension of any amortization period, within the meaning of Section 412 of the Code or Section 302 or 304 of ERISA; (ii) no member of the ERISA Group has ceased operations at a facility so as to become subject to the provisions of Section 4062(e) of ERISA, withdrawn as a substantial employer so as to become subject to the provisions of Section 4063 of ERISA or ceased making contributions to any Pension Plan subject to Section 4064(a) of ERISA to which it made contributions; (iii) no member of the ERISA Group has incurred or reasonably expects to incur any liability to the PBGC save for any liability for premiums in the ordinary course; (iv) no lien imposed under the Code or ERISA on the assets of any member of the ERISA Group exists or is likely to arise on account of any Pension Plan; and (v) no member of the ERISA Group has any liability under Section 4069 or 4212(c) of ERISA.

(g) Each Foreign Pension Plan has been maintained in compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders and has been maintained, where required, in good standing with applicable regulatory authorities, except as would not reasonably be expected to result in a Material Adverse Effect. Except as would not reasonably be expected to result in a Material Adverse Effect, (i) all contributions required to be made with respect to a Foreign Pension Plan have been timely made, and (ii) neither the Borrower nor any of its Subsidiaries has incurred any obligation in connection with the termination of, or withdrawal from, any Foreign Pension Plan. Except as would not reasonably be expected to result in a Material Adverse Effect, the present value of the accrued benefits liabilities (whether or not vested) under each Foreign Pension Plan, determined as of the end of the Borrower's most recently ended fiscal year, did not exceed the current value of the assets of such Foreign Pension Plan allocable to such benefit liabilities.

5.10 Taxes.

(a) Each Borrower Party has timely filed with the appropriate taxing authority all federal and material state, county and municipal income tax returns, and all other material tax and informational returns which are required to be filed by or with respect to the income, Properties or operations of the relevant Borrower Party. Each Borrower Party has paid all material taxes due pursuant to such returns or otherwise payable by the relevant Borrower Party, except such taxes, if any, as are being contested in good faith and by proper proceedings and as to which adequate reserves have been provided or the failure to pay which could not reasonably be expected to have a Material Adverse Effect. There is no action, suit, proceeding, investigation, audit, or claim now pending or, to the knowledge of the Borrower, threatened by any authority regarding any material taxes relating to any Borrower Party. The Base Case Projections accurately reflect all material taxes that, under present Law, will be due and payable

by the Borrower Parties assuming that such Borrower Parties have the income and expenses reflected in the Base Case Projections.

(b) No material liability for any tax will be incurred by any Borrower Party as a result of the execution, delivery or performance of this Credit Agreement or any other Transaction Document or the consummation of the transactions contemplated hereby or thereby.

5.11 Investment Company Act. None of the Borrower Parties is an “investment company,” or an “affiliated person” of, or “promoter” or “principal underwriter” for, an “investment company,” as such terms are defined in the Investment Company Act of 1940, as amended. Neither the making of any Disbursement, nor the application of the proceeds or repayment thereof by the Borrower or any other Borrower Party, nor the consummation of the other transactions contemplated hereby will violate any provisions of such act or any rule, regulation or order of the U.S. Securities and Exchange Commission promulgated thereunder or pursuant thereto.

5.12 Regulation.

(a) The Borrower Parties, their respective Affiliates, and any Affiliate that is a holding company as such term is defined in the Public Utility Holding Company Act of 2005 and the rules and regulations promulgated thereunder (as amended, “PUHCA”), are exempt in accordance with 18 CFR § 366.3 from the accounting, record-retention and reporting requirements of PUHCA or, to the extent an Affiliate of the Borrower Party is not exempt, the requirements of PUHCA could not reasonably be expected to result in a Material Adverse Effect.

(b) Other than the Project Owner, no Borrower Party is or will be subject to, or is or will not be exempt from, regulation as a “public utility” under the Federal Power Act (the “Federal Power Act”) as such term is defined therein.

(c) None of the Borrowing Parties or Affiliates thereof, is subject to any state laws or state regulations respecting rates or the financial or organizational regulation of utilities, other than (i) with respect to those that are QFs, such state regulations contemplated by 18 C.F.R. Section 292.602(c)(2), (ii) “lightened regulation” by the New York State Public Service Commission (the “NYPSC”) of the type described in the NYPSC’s order issued on September 23, 2004 in Case 04-E-0884, and (iii) with respect to Affiliates of the Borrower Parties that are Texas retail electric providers, regulations issued by the Public Utility Commission of Texas (“PUCT”) and (iv) such state laws and state regulations which, if not satisfied, would not be expected to result in a Material Adverse Effect. No approval is required to be obtained in connection with this transaction from the FERC, or any other state or federal Governmental Authority.

(d) Prior to placing test power onto the grid, the Project Owner will obtain an order from FERC accepting for filing pursuant to Section 205 of the Federal Power Act and the rules and regulations promulgated thereunder a market based rate schedule for sale at wholesale of electric energy, capacity and ancillary services to be offered by the Project

Owner and that are regulated under the Federal Power Act and authorizing the Project Owner to sell at wholesale electric energy, capacity and ancillary services at market based rates, and granting to the Project Owner all of the waivers and blanket authorizations customarily granted to wholesale power sellers with market based rate authority (the "Market Rate Authorization"). The information to be submitted in connection with the application for the Market Rate Authorization will be accurate and complete. The Project Owner will comply with all requirements imposed by FERC as a holder of a Market Rate Authorization, including filing of electric quarterly reports and tariff amendments.

(e) Prior to placing test power onto the grid, the Project Owner will be an exempt wholesale generator ("EWG") pursuant to PUHCA. The Project Owner will file with FERC a notice of self-certification as an EWG. Any information submitted in connection with the notice of self-certification will be accurate and complete. The Project Owner shall comply with any and all requirements necessary to maintain EWG status.

(f) The Project Owner will obtain authorization from FERC to issue securities and assume liabilities under Section 204 of the Federal Power Act and Part 34 of FERC's regulations prior to placing test power onto the grid.

(g) The (i) Project Owner, as owner of the Project, (ii) O&M Operator, as operator of the Project and (iii) Energy Marketer, as seller of power, shall register with the North American Electric Reliability Corporation ("NERC"), to the extent required by law, in connection with such ownership of the Project, operation of the Project and/or sale of power generated by the Project, and neither the Project Owner nor to its knowledge the O&M Operator or the Energy Marketer is in receipt of any notice of violation of, and the Project is not the subject of any pending proceeding relating to a violation of, any reliability requirement promulgated by NERC, except as could not reasonably be expected to result in a Material Adverse Effect.

(h) There is no action, suit, proceeding, pending notice of investigation or alleged violation or investigation at law or in equity or by or before any court, arbitrator or governmental agency or authority pursuant to any applicable Law which may result in: (i) denial of (A) the Market Rate Authorization or (B) the status of the Project Owner as an EWG (except, in each case, applications associated with acquiring such regulatory approvals as contemplated in this Credit Agreement which the Borrower expects to receive in the ordinary course); or (ii) the assessment of any criminal or civil penalties against any Borrower Party; and to the Borrower's knowledge, no such action, suit, proceeding or investigation is threatened.

(i) The Project is not subject to, or is exempt from, the Power Plant & Industrial Fuel Use Act, 42 USC Section 8301, *et seq.*

5.13 Title: Security Documents.

(a) The applicable Borrower Party will, upon payment of the amounts payable by it under the BOP Contract, the Equipment Purchase Agreement and the Equipment Services Agreement, own and have good and marketable title to the Project and, upon payment of the amounts payable by it under the Site Agreements and due registration of the relevant public deed in respect of the Site, own and have a good and marketable leasehold interest in the Site, in each case free and clear of all Liens other than (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Collateral Agent (on behalf of the Secured Parties) pursuant to the Security Documents.

(b) Each Borrower Party has good and marketable title to all of the Property purported to be owned by it, free and clear of all Liens, other than (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Collateral Agent (on behalf of the Secured Parties) pursuant to the Security Documents and holds such title and all of such Property in its own name and not in the name of any nominee or other Person. The Project Owner is lawfully possessed of a valid and subsisting leasehold estate in and to all Property which it purports to lease, free and clear of all Liens, other than (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Collateral Agent (on behalf of the Secured Parties) pursuant to the Security Documents. The Project Owner holds such leasehold estates in its own name and not in the name of any nominee or other Person. No Borrower Party has created nor is contractually bound to create any Lien

on or with respect to any of its assets, Properties, rights or revenues, except for (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Collateral Agent (on behalf of the Secured Parties) pursuant to the Security Documents, and, except (x) for this Credit Agreement, in the case of the Borrower, and (y) for the relevant Guaranty, in the case of the Project Owner and the Procurement Sub and (z) the Collateral Documents, no Borrower Party is restricted by contract, law or otherwise from creating Liens on any of its Properties.

(c) Except as set forth on Schedule 5.12(a), all Property owned, leased or otherwise used by any Borrower Party is located in the State of California.

(d) The provisions of the Security Documents are effective to create, in favor of the Collateral Agent, for the benefit of the Secured Parties, legal, valid and enforceable Liens on or in all of the Collateral intended to be covered thereby, and all necessary recordings and filings have been made in all necessary public offices and all other necessary and appropriate action has been taken so that the Liens created by each Security Document constitute perfected Liens on or in the Collateral intended to be covered thereby, prior and superior to all other Liens other than Permitted Priority Liens, and all necessary consents to the creation, effectiveness, priority and perfection of each such Lien have been obtained. No mortgage or financing statement or other instrument or recordation covering all or any part of the Collateral is on file in any recording office, except such as may have been filed in favor of the Secured Parties or in respect of (A) Permitted Priority Liens and (B) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Collateral Agent (on behalf of the Secured Parties) pursuant to the Security Documents.

5.14 Environmental Matters.

(a) Except as set forth in the materials listed on Schedule 5.14, copies of which have been made available to the Administrative Agent, each Borrower Party has complied and is now complying in all respects with (i) all Environmental Laws applicable to the Project or such Borrower Party and (ii) the requirements of any Permits issued under such Environmental Laws with respect to the Project,

including Federal and State Clean Air Act and South Coast Air Quality Management District air quality permitting requirements applicable to the Project, including but not limited to, as and if necessary, the United States Environmental Protection Agency's Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, except in each case for non-compliance that would not reasonably be expected either individually or in the aggregate to have a Material Adverse Effect.

(b) Except as set forth in the materials listed on Schedule 5.14, copies of which have been made available to the Administrative Agent, there are no facts, circumstances, conditions or occurrences regarding the Project that, to the knowledge of the Borrower, (i) form or could reasonably be anticipated to form the basis of an Environmental Claim against the Project, any Borrower Party, any Site Owner, any EPC Contractor or any Operator or any other Person occupying or conducting operations on or about the Site, (ii) could reasonably be anticipated to cause the Site to be subject to any restrictions on its ownership, occupancy, use or transferability under any Environmental Law or (iii) could reasonably be anticipated to require the filing or recording of any notice, registration, permit or disclosure document under any Environmental Law (other than filings or recordings described in Schedule 5.6 hereto), in each case which if adversely determined could reasonably be expected either individually or in the aggregate to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(c) Except as set forth in the materials listed on Schedule 5.14, copies of which have been made available to the Administrative Agent, there are no pending, or, to the knowledge of the Borrower, any past or threatened, Environmental Claims against (i) any Borrower Party or the Project or (ii) any Site Owner, any EPC Contractor or any Operator or any other Person occupying, using, or conducting operations on or about the Site, which could reasonably be expected either individually or in the aggregate to have a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(d) Except as set forth in the materials listed on Schedule 5.14, copies of which have been made available to the Administrative Agent, Hazardous Materials have not at any time been generated, used, treated, recycled, stored on, or transported to or from, or Released, deposited or disposed of on all or any portion of the Site by the Borrower Parties, the Affiliate Project Participants or, to the knowledge of the Borrower, any other Project Participant, other than in compliance at all times with all applicable Environmental Laws, except as would not reasonably be expected either individually or in the aggregate to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(e) Except as set forth in the materials listed on Schedule 5.14, copies of which have been made available to the Administrative Agent, to the knowledge of the Borrower, there are not now and never have been any underground storage tanks located on the Site, there is no asbestos contained in, forming part of, or contaminating any part of the Project, and no polychlorinated biphenyls (PCBs) are used, stored, located at or contaminate any part of the Project.

(f) Except as set forth in the materials listed on Schedule 5.14, copies of which have been made available to the Administrative Agent, the Borrower does not have knowledge of any groundwater contamination or pollution at, on, under, or migrating from the Site.

(g) The Borrower has delivered or otherwise made available to the Administrative Agent copies of each “Phase 1 Environmental Site Assessment” delivered pursuant to Section 4.1(p) and the RCRA Facility Investigation Work Plan. As of the Closing Date, the Borrower has no knowledge of any other environmental studies that contain any environmental information material to the Project and/or the Site that are not addressed in substance in the documents referenced in the immediately preceding sentence.

(h) The Borrower is in material compliance with all normative requirements of the Equator Principles applicable to it and the Project as and to the extent specifically required in writing by any Lender.

5.15 Subsidiaries. Except to the extent constituting Permitted Investments, (a) the Borrower does not beneficially own any Equity Interests or other ownership interest of any other Person other than the Pledged Equity Interests of the Project Owner and (prior to the Merger) of the Procurement Sub; (b) the Borrower has no Subsidiaries other than the Project Owner and (prior to the Merger) the Procurement Sub; and (c) neither the Project Owner nor the Procurement Sub beneficially owns any Equity Interests of any Person or has any Subsidiaries.

5.16 Intellectual Property. The Borrower Parties (prior to the Merger) together have, and the Project Owner (on and after the Merger) alone has, the right to use all patents, trademarks, permits, service marks, trade names, copyrights, franchises, formulas, licenses and other intellectual property rights of whatsoever nature and has obtained assignment of all licenses and other intellectual property rights of whatsoever nature, in each case as necessary for the ownership and operation of the Project as contemplated by the Transaction Documents, without any conflict with the rights of others. The Borrower Parties do not own any patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses or other intellectual property rights of whatsoever nature. No product, process, method, substance, part or other material sold or employed or presently contemplated to be sold or employed by any Borrower Party or the Affiliated Project Parties in connection with the ownership and operation of the Project as contemplated by the Transaction Documents infringes or will infringe any patent, trademark, permit, service mark, trade name, copyright, franchise, formula, license or other intellectual property right, except for any such infringement that could not reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

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

5.18 Compliance with Laws. None of the Borrower Parties or the Affiliated Project Parties is in violation of any Law, Permit, order, writ, injunction or decree or its Charter

Documents, except for any violation of any Law, Permit, order, writ, injunction or decree that could not reasonably be expected to have a Material Adverse Effect.

5.19 Disclosure.

(a) All documents, reports or other written information pertaining to any Borrower Party, the Affiliated Project Parties or the Project that have been furnished to any Financing Party by or on behalf of any such party (including (i) any application to any Lender for the extensions of credit provided for in the Financing Documents, (ii) in connection with the preparation, negotiation and/or execution of the Financing Documents, including the appendices, exhibits and schedules attached thereto, (iii) all other information relating to any Borrower Party or the Project provided by any such party to any Financing Party and (iv) any such documents, reports or other written information provided by the Pledgor, any Sponsor or any Affiliate thereof, but excluding the Base Case Projections, the Construction Budget and other forecasts and projections), taken as a whole, are true and correct in all material respects and do not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained herein or therein not materially misleading. There is no fact, event or circumstance known to the Borrower that has not been disclosed to the Administrative Agent in writing, the existence of which could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(b) The Construction Budget specifies in all material respects all costs and expenses incurred as of the date thereof, and the Borrower's best estimate of all costs and expenses anticipated by the Borrower to be incurred after the date thereof and prior to the Date Certain, in each case in connection with the acquisition, importation, installation, construction, financing and implementation of the Project in the manner contemplated by the Transaction Documents. The Construction Budget and the Base Case Projections (i) are, as of the Closing Date, based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, (ii) are, as of the Closing Date, consistent with the provisions of the Transaction Documents in all material respects, (iii) have been prepared in good faith and with due care and (iv) fairly represent the Borrower's reasonable expectations as to the matters covered thereby as of the date thereof. All projections and budgets to be furnished to the Lenders by or on behalf of the Borrower after the Closing Date (A) will be based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, (B) will be consistent with the provisions of the Transaction Documents in all material respects, (C) will be prepared in good faith and with due care and (D) will fairly represent the Borrower's reasonable expectations as to the matters covered thereby as of the respective dates thereof.

5.20 Utilities, etc. All utility services, means of transportation, facilities and other materials necessary for the acquisition, importation, installation, construction, operation and maintenance of the Project (including gas, electrical, potable and raw water supply, storm, telephone and sewage services and facilities, as necessary) are or will be available to the Project (in the case of utility services, at the boundaries of the Site) when necessary for construction, operations testing and start-up of the Project and arrangements have been or will, when necessary, be made on commercially reasonable terms for such services, means of transportation,

facilities and other materials, in each case on terms consistent with those reflected in the Construction Budget and the Base Case Projections.

5.21 Transactions with Affiliates. As of the date hereof, other than the Affiliated Project Documents set forth on Schedule 5.7, none of the Borrower Parties has engaged or agreed to engage in any transactions (including any transactions relating to the buying or selling of any Properties or any products of the Project or involving the receipt of money as payment for goods or services) with any Affiliate of such Borrower Party.

5.22 Project Completion Date: Project Costs.

(a) As of the date hereof, the Borrower estimates, in good faith, that the Project Completion Date will occur no later than the Date Certain and that the aggregate proceeds of the Construction Loans will be sufficient to achieve the Project Completion Date.

(b) As of the date hereof, except as set forth on Schedule 5.22, no Change Order has been proposed and no Change Order is being contemplated for proposal in the future by the Borrower Parties, or, to the knowledge of the Borrower, by any EPC Contractor.

5.23 Single-Purpose Entity. None of the Borrower Parties has engaged in any business other than acquisition, importation, installation, construction, operation or maintenance of the Project and other activities incidental thereto. The Pledgor has not engaged in any business other than directly owning the Pledged Ownership Interests in the Borrower which constitute 100.00% of the Equity Interests of the Borrower. Each Borrower Party has established offices in the State of California, and does not have a principal place of business or chief executive office at any other location.

5.24 Ranking. The Secured Obligations of the Borrower constitute unconditional and unsubordinated Indebtedness of the Borrower Parties and rank at least *pari passu* in priority of payment with all other present and future unsubordinated Indebtedness of the Borrower Parties (other than obligations preferred by statute or by operation of Law).

5.25 Anti-Terrorism Laws. No Borrower Party nor any Affiliate of any such Borrower Party is in violation of any Anti-Terrorism Laws. The use of the proceeds of the Loans by the Borrower will not violate any Anti-Terrorism Laws.

5.26 Collateral Not in Flood Zone. None of the Collateral located on the Site is located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards or in which flood insurance is required and has been made available under the National Flood Insurance Act of 1968, unless the Borrower has provided the Administrative Agent with proof of appropriate flood insurance with respect thereto.

5.27 Accounts. None of the Borrower Parties has opened or holds any bank account other than the Accounts.

5.28 Taking; Event of Loss. No Taking or Event of Loss has occurred.

ARTICLE VI

COMPLIANCE COVENANTS

The Borrower covenants and agrees with each of the Lenders that, so long as any Commitment remains in effect, any Specified Letter of Credit remains outstanding, any Loan or other amount is owing to any Lender or the Administrative Agent hereunder, and until payment in full of all amounts payable by any Borrower Party under the Financing Documents to which they are a party:

6.1 Annual and Quarterly Information Covenants: Financial Statements. The Borrower shall, and shall cause each other Borrower Party to, deliver or cause to be delivered to the Administrative Agent at the times and covering the periods set forth below:

(a) Annual Financial Statements. As soon as available and in any event within 120 days after the end of each fiscal year of the Borrower Parties, a copy of the complete audited, and consolidated statements of income, retained earnings and cash flow of the Borrower Parties, and the related audited, and consolidated balance sheet of the Borrower Parties as at the end of such year and any related audit letter, in each case with footnotes, if any, and setting forth in each case in comparative form the corresponding figures for the preceding fiscal year, and accompanied by an unqualified opinion thereon (but subject to any explanatory provisions) of KPMG, or such other firm of independent certified public accountants of recognized national standing as may be acceptable to the Requisite Financing Parties, which opinion shall state that said financial statements fairly present the financial condition and results of operations of the relevant Person as at the end of, and for, such fiscal year in accordance with U.S. GAAP, and a certificate of such accountants stating that, in making the examination necessary for their opinion, they obtained no knowledge, except as specifically stated, of any Default or Event of Default.

(b) Quarterly Financial Statements. As soon as available and in any event within ninety days after the end of each quarterly fiscal period of the Borrower Parties, a copy of the complete unaudited, and consolidated statements of income, retained earnings and cash flow of the Borrower Parties, and the related unaudited, and consolidated balance sheet of the Borrower Parties as at the end of such period, setting forth in each case in comparative form the corresponding figures for the corresponding period in the preceding fiscal year, if any, accompanied by a certificate of an Authorized Officer of the relevant Person, which certificate shall state that said financial statements fairly present the financial condition and results of operations of the relevant Person, in accordance with U.S. GAAP, consistently applied, as at the end of, and for, such periods (subject to normal year-end audit adjustments).

(c) Officer's Certificate. At the time it furnishes each set of financial statements pursuant to Section 6.1(a) or 6.1(b) above, an Officer's Certificate from each Borrower Party to the effect that no Default or Event of Default has occurred and is continuing

(or, if any Default or Event of Default has occurred and is continuing, describing the same in reasonable detail and describing what action the Borrower has taken and proposes to take with respect thereto).

(d) DSCR Certificates. Within fifteen Business Days after each Semi-Annual Date, an Officer's Certificate from the Borrower setting forth the calculation of the Historical DSCR for the DSCR Calculation Period ending on such Semi-Annual Date. Each such Officer's Certificate shall set forth, in reasonable detail, the inputs or assumptions, as applicable, upon which the relevant calculations were based and in the form set forth on Exhibit 16 hereto (each, a "DSCR Certificate"). The Historical DSCR set forth in each DSCR Certificate shall become effective for purposes of the Financing Documents on the fifth Business Day following delivery of the relevant Officer's Certificate to the Administrative Agent unless the Administrative Agent notifies the Borrower that the methodology or any input or assumption employed by the Borrower in making such calculation is not satisfactory to the Administrative Agent in any respect.

(e) Operating Reports. As soon as available and in any event within thirty days after the end of each fiscal quarter following the First Unit Operation Date, an operating report in the form set forth on Exhibit 17 hereto with respect to the Project for such quarterly period and for the portion of the Operating Year then ended, which report shall (i) correspond to the items and classifications and periods set forth in the applicable Operating Budget, (ii) show all Project Revenues, all O&M Expenses, the Operating Performance of the Project and a reasonably detailed accounting of the use of any amounts transferred from the Operating Account, (iii) be certified as complete and correct by an Authorized Officer of the Borrower, which certification shall also state that the O&M Expenses reflected therein complied with the requirements contained in Section 7.25 hereof, or, if any such certifications cannot be given, shall state in detail any necessary qualifications to such certifications and (iv) be in substantially the form of the *pro forma* Operating Report delivered in accordance with Section 4.1(s).

(f) Environmental Report. Within 45 days after the end of each year, a report summarizing the environmental performance of the Project during such year, which report shall include narrative summaries in reasonable detail of (i) the results of any environmental monitoring or sampling activity, (ii) accidents having an impact on the environment or resulting in the loss of life, (iii) environmental deficiencies identified by any Governmental Authority, and (iv) any non-compliance with any Environmental Law and any remedial actions taken with respect thereto.

(g) Insurance Report and Certificates. Within 45 days after the end of each year, a report of an independent broker, signed by an Authorized Officer of such independent broker, stating that in the opinion of such broker, the insurance then carried or to be renewed complies with the terms of the Collateral Agreement. The Borrower shall deliver to the Administrative Agent, within ten Business Days after each annual policy renewal date for each policy, (1) certificates of insurance or binders, in form and substance reasonably satisfactory to the Administrative Agent in consultation with the Insurance Consultant, evidencing all of the insurance required by the Collateral Agreement. Such certificates of insurance/binders shall be executed by an Authorized Officer of each insurer where it is not practical for such insurer to execute the certificate

itself. Such certificates of insurance/binders shall identify underwriters, the type of insurance, the insurance limits and the policy term and shall specifically list the special provisions enumerated for such insurance required by the Collateral Agreement. Upon request, the Borrower will promptly furnish the Administrative Agent with copies of all insurance policies (except in the case of corporate insurance programs where detailed insurance summaries shall be acceptable), binders and cover notes or other evidence of such insurance relating to the insurance required to be maintained by the Borrower Parties. The schedule of insurance shall include the name of the insurance company, policy number, type of insurance, major limits of liability and expiration date of the insurance policies.

6.2 Monthly Construction Reporting. The Borrower shall deliver or cause to be delivered to the Administrative Agent, promptly upon receipt, but in any event not later than five Business Days after receipt thereof, each IE Construction Report, Monthly Progress Report (as defined in the BOP Contract), each Monthly Report (as defined in the Construction Management Agreement), each Monthly Progress Report (as defined in the Equipment Services Agreement) and each Monthly Progress Report (as defined in the Equipment Purchase Agreement).

6.3 Further Distribution of Operational Notices. The Borrower shall promptly, but in any event not later than five Business Days after delivery or receipt of any of the following communications, deliver or cause to be delivered to the Administrative Agent:

(a) Governmental Authorities. A copy of each material notice, demand or other communication given to a Governmental Authority by or on behalf of any Borrower Party or received by any Borrower Party from a Governmental Authority or from any Person on behalf of a Governmental Authority.

(b) Material Project Participants. A copy of each material notice, demand or other communication given or received by or on behalf of any Borrower Party to or from a Material Project Participant pursuant to or relating to any of the Material Project Documents (including all requests for assignments, amendments or waivers thereto).

(c) Change Orders; Amendments to Construction Budget. A copy of any Change Order entered into in accordance Section 7.15 or any revision to the Construction Budget as provided in Section 7.28.

(d) Management Letters; Accountant Communications. A copy of any "management letter" or other similar communication received by any Borrower Party from the such Borrower Party's accountants relating to such Borrower Party's financial, accounting and other systems, management or accounts.

(e) Environmental Studies. A copy of each environmental study regarding the Project or the Site that (i) is or has been prepared by or under the direction of Affiliates of the Sponsor (including the Remediation Work Plan and all updates thereto) or (ii) is or has been prepared by or under the direction of Persons other than Affiliates of the Sponsor and is in the possession of the Borrower (it being understood that the Borrower

shall use commercially reasonable efforts to obtain possession of such environmental studies prepared by or under the direction of Persons other than Affiliates of the Sponsor upon attaining knowledge thereof).

6.4 Notice of Certain Events and Circumstances. The Borrower shall promptly, but in any event not later than five Business Days after obtaining knowledge of any of the following events or circumstances, deliver or cause to be delivered to the Administrative Agent:

(a) Material Permits. Copies of any Material Permits issued after the date hereof that are held in the name of any Borrower Party or Affiliate Project Participant and any Material Permits held in the name of any other Material Project Participant received by any Borrower Party or Affiliated Project Participant (it being understood that the Borrower shall use commercially reasonable efforts to obtain possession of such Material Permits upon attaining knowledge thereof) and notice of any pending or threatened application or proceeding by or before any Governmental Authority for the purpose of reversing, revoking, rescinding, terminating, withdrawing, suspending, modifying or withholding any Material Permit.

(b) Dispositions. Notice of any Disposition in excess of \$500,000 for any one Disposition or \$1,500,000 in the aggregate in any calendar year.

(c) Takings, Loss Events, Etc. Notice of any (i) Taking or (ii) Event of Loss or other casualty, damage or loss to any Property of any Borrower Party, whether or not the relevant Property is insured, through fire, theft, other hazard or casualty, that could reasonably be expected to result in Loss Proceeds (or if uninsured would have reasonably been expected to result in Loss Proceeds if insured) in excess of \$500,000 for any one casualty or loss or \$1,500,000 in the aggregate in any calendar year.

(d) Disputes. Notice of any litigation, investigation, arbitration or other contentious proceeding or dispute that is pending or threatened against any Borrower Party, the Pledgor or the Project in which the amount involved could reasonably be expected to exceed \$500,000 or in which injunctive, declaratory or similar relief is requested or any litigation, investigation, arbitration or other contentious proceeding affecting any Material Project Participant which if adversely determined could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(e) Environmental Matters.

(i) Notice of (A) any fact, circumstance, condition, occurrence or Release at, on, under or from the Project or the Site that results or could reasonably be expected to result in noncompliance with any Environmental Law applicable to the Project or the Site, (B) any Release at, on, under or from the Project or the Site that has resulted or could reasonably be expected to result in personal injury or material property damage or an Environmental Claim or

that otherwise has or could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party or (C) any pending Environmental Claim or any Environmental Claim threatened in writing against or affecting any Borrower Party or any other Persons occupying or conducting operations at the Project or the Site that could, if adversely determined, be reasonably expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party;

(ii) copies of all material communications with any Governmental Authority relating to any Environmental Law or any Environmental Claim promptly after the giving or receiving of any such communications (including any such communications in respect of each EPA Letter); and

(iii) such other information concerning any Environmental Claim relating to the Project or the Site as may be reasonably requested by the Administrative Agent.

(f) Force Majeure. Notice of any event constituting *force majeure* under any of the Project Documents or any claim by any Project Participant alleging that a *force majeure* event thereunder has occurred.

(g) Delay. Notice of any delay for any reason in the construction of the Project beyond the Major Milestone Dates.

(h) Cessation; Suspension. Any actual, proposed or threatened (in writing) cessation or suspension of the Work for any reason by any EPC Contractor for a period in excess of three consecutive Business Days or any unscheduled shutdown or reduction in operation of the Project, or any substantial labor dispute which could lead to such a shutdown or reduction.

(i) Material Adverse Effect. Any event, circumstance, development or condition which could reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

(j) Bankruptcy Events. The occurrence of any Bankruptcy Event suffered by the Pledgor, the Borrower, the Project Owner, the Procurement Sub or any other Material Project Participant.

(k) Defaults. Without limiting the foregoing, the occurrence of any Default or Event of Default.

(1) ERISA. To the extent that any of the following events, individually or in the aggregate, would reasonably be expected to result in a liability to a Borrower Party of greater than \$1,500,000: (i) the occurrence of any ERISA Event and the filing of any notice with the PBGC or the IRS pertaining to such ERISA Event or the receipt of any notice by any member of the ERISA Group from the PBGC or any other governmental agency with respect thereto, but only to the extent that such ERISA Event, individually or in the aggregate, would reasonably be expected to result in a liability to a Borrower Party of greater than \$1,500,000; (ii) a material increase in Unfunded Pension Liabilities (taking into account only Pension Plans with positive Unfunded Pension Liabilities) since the date the representations hereunder are given, or from any prior notice, as applicable; (iii) the existence of potential withdrawal liability under Section 4201 of ERISA, if any member of the ERISA Group were to withdraw completely from any and all Multiemployer Plans; (iv) the adoption of, or the commencement of contributions to, any Pension Plan subject to Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA by any member of the ERISA Group; or (v) the adoption of any amendment to a Pension Plan subject to Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA.

Each notice delivered pursuant to this Section 6.4 shall be accompanied by a statement signed by an Authorized Officer of the Borrower setting forth a description in reasonable detail of the occurrence referred to therein and stating what action the Borrower proposes to take with respect thereto.

6.5 Further Information. From time-to-time, the Borrower shall provide the Administrative Agent with such other information regarding the financial condition, operations, business or prospects of any Borrower Party or the Project or, to the extent obtainable by the Borrower upon the exercise of its commercially reasonable efforts, any Project Participant, as may be reasonably requested by the Administrative Agent.

6.6 Operating Budget.

(a) On or prior to the thirtieth day prior to the First Unit Operation Date, the Borrower shall deliver to the Administrative Agent a proposed Operating Budget in substantially the form of the *pro forma* Operating Budget delivered in accordance with Section 4.1(s) for the period commencing on such First Unit Operation Date and ending on the next succeeding December 31 (or, if such First Unit Operation Date is projected to occur on or after September 30, on the second succeeding December 31).

(b) On or prior to the thirtieth day prior to the beginning of each Operating Year, the Borrower shall deliver to the Administrative Agent a proposed Operating Budget in substantially the form of the Operating Budget delivered in accordance with Section 6.6(a) for the period commencing on January 1 of such Operating Year and ending on the next succeeding December 31.

(c) Each proposed Operating Budget shall set forth the Borrower's reasonable projection of the anticipated amount of O&M Expenses for each month covered thereby. Such O&M Expenses shall be itemized in the Operating Budget in accordance with U.S. GAAP using

substantively the same line items as set forth in the *pro forma* Operating Budget delivered in accordance with Section 6.6(a). Any O&M Expenses that cannot be (or should not be in accordance with U.S. GAAP) itemized in accordance with the immediately preceding sentence shall be set forth as separate line items, shall be clearly described and shall be denoted as extraordinary O&M Expenses (“Extraordinary O&M Expenses”). The aggregate annual, aggregate monthly, and monthly line-item amounts of O&M Expenses set forth in the proposed Operating Budget shall be compared against each of the following (expressed as a percentage thereof): (i) the amount of such O&M Expenses set forth in the Base Case Model; (ii) the amount of such O&M Expenses set forth in the then-current Operating Budget (unless the proposed Operating Budget is delivered in accordance with Section 6.6(a)); and (iii) the amount of such O&M Expenses actually incurred by the Borrower in the then-current Operating Year, as set forth in the latest Operating Report delivered in accordance with Section 6.1(e) (unless the proposed Operating Budget is delivered in accordance with Section 6.6(a)). In addition, each Operating Budget shall attach, in narrative form, a description in reasonable detail of: (A) the maintenance and overhaul schedule (including any major maintenance or overhauls which are projected for the relevant Operating Year); (B) anticipated staffing plans; (C) mobilization schedules; (D) capital expenditure requirements; (E) equipment acquisitions; (F) spare parts and consumable inventories; (G) administrative activities and (H) any other material underlying assumptions in connection with the proposed Operating Budget.

[(d) If no OB Approval Threshold is exceeded or triggered in respect of a proposed Operating Budget, then no consent of the Administrative Agent or any other Person shall be required and such Operating Budget shall be deemed adopted as of the first day of the relevant Operating Year (or, in the case of the proposed Operating Budget referred to in Section 6.6(a), as of the First Unit Operation Date), unless the Administrative Agent notifies the Borrower in writing prior to such day that any OB Approval Threshold has been exceeded or triggered.

[(e) If any OB Approval Threshold is exceeded or triggered in respect of a proposed Operating Budget, then such proposed Operating Budget shall be subject to the prior written approval of the Administrative Agent (acting, if applicable, at the direction of the Requisite Financing Parties). If such prior written approval is not obtained prior to the first day of the Operating Year to which such proposed Operating Budget relates (or, in the case of the proposed Operating Budget referred to in Section 6.6(a), prior to the First Unit Operation Date), then the Borrower shall cause the Project Owner to operate the Project in accordance with an interim Operating Budget that does not exceed or trigger any OB Approval Threshold and is delivered to the Administrative Agent prior to the first day of such Operating Year, the First Unit Operation Date, until such time as a final Operating Budget is adopted in accordance with Section 6.6[(c) or this Section 6.6[(e).

[(f) The Borrower may at any time (or, in the case of Section 7.25, shall) propose to amend the Operating Budget for the remainder of the then current Operating Year by not less than thirty days prior written notice to the Administrative Agent. Sections 6.6[(c), 6.6[(d) and 6.6[(e) shall apply *mutatis mutandis* to the form, scope, substance and approval of any proposed amended Operating Budget.

6.7 Inspection.

[(a) The Borrower shall permit, shall cause each Borrower Party and the Affiliated Project Parties to permit, and shall use commercially reasonable efforts to cause the EPC Contractors to permit, in accordance with the terms of the applicable Transaction Documents, at the expense of the Borrower, representatives of the Administrative Agent, the Independent Engineer and during the continuance of an Event of Default, the Lenders, with reasonable advance notice, during normal business hours and at such intervals as such Person shall reasonably request, to visit and inspect the Project and to witness and verify the Completion Tests, to examine, copy and make extracts from its (and their) books and records relating to the Project, to inspect its Properties, and to discuss its (and their) business and affairs related to the Project with its (and their) officers and engineers, all to the extent reasonably requested by the Administrative Agent, the Independent Engineer or, during the continuance of an Event of Default, the Lenders (as the case may be). The Borrower will, and will cause each other Borrower Party to, authorize its auditors (whose fees and expenses shall be for the account of the Borrower) to communicate directly with the officers and designated representatives of the Administrative Agent and, if reasonably necessary, the Independent Engineer, in each case with reasonable cause at any reasonable time and upon prior written notice to the Borrower, regarding its accounts and operations; provided, that any written correspondence shall be made with a concurrent copy delivered to the Borrower Parties; and provided, further, that only two communications shall be made outside the presence of the Borrower in a given fiscal year (other than such communications made during the continuance of a Default or Event of Default).

[(b) The Borrower shall permit, and shall cause each other Borrower Party to permit, the Administrative Agent, the Independent Engineer and, to the extent reasonably necessary, any other Independent Consultant to review (i) all Plans and Specifications, (ii) any quality control data and performance test data, and (iii) any other data relating to the Project or to the progress of construction as may be reasonably requested by the Administrative Agent, the Independent Engineer or such other Independent Consultant. Further, the Borrower shall permit, and shall cause each other Borrower Party to permit, the Administrative Agent, the Independent Engineer and, to the extent reasonably necessary, any other Independent Consultant to monitor, witness and review the Work.

[(c) The Borrower shall give timely notice of and permit, and shall cause each other Borrower Party, and use commercially reasonable efforts to cause the EPC Contractors, to give timely notice of and permit, the Administrative Agent, the Independent Engineer, and, to the extent reasonably necessary, any other Independent Consultant to attend, (i) all Project construction progress review meetings held by any such Person or its agents or representatives and (ii) any and all Completion Tests or other performance tests of the Project or any component thereof (whether any such test is to be conducted on or off the Site).

ARTICLE VII

RESTRICTIVE COVENANTS

The Borrower covenants and agrees that, so long as any Commitment or any Loan or any other Secured Obligation is outstanding and until payment in full of all amounts payable

by the Borrower under the Financing Documents, the Borrower shall (or shall cause the relevant Borrower Party to) comply with the following covenants:

7.1 Maintenance of Existence; Conduct of Business. Each Borrower Party shall (a) preserve and maintain its legal existence as a limited liability company under the laws of Delaware, and all of its material licenses, rights, privileges and franchises necessary for the maintenance of its limited liability company existence, and comply, in all material respects, with its Charter Documents, (b) engage solely in the business of constructing, owning, operating and maintaining the Project and performing its obligations pursuant to the Transaction Documents to which it is a party or (c) not cancel, terminate, permit the cancellation or termination of, amend, modify or change any material terms or conditions of, or grant any material consent, waiver or approval under, or take or fail to take any other material action the result of which would impair the value of the interest or impair the rights of any Borrower Party under, any of its Charter Documents.

7.2 Compliance with Laws. Each Borrower Party shall conduct its business in compliance with all applicable requirements of Law, including all relevant Permits and Environmental Laws, except where any failure to comply could not individually or in the aggregate have a Material Adverse Effect, and except that the relevant Borrower Party may, at its expense, contest by appropriate proceedings conducted in good faith the validity or application of any such requirement of Law, so long as (a) none of the Secured Parties or the relevant Borrower Party would be subject to any criminal liability for failure to comply therewith, (b) all proceedings to enforce such requirement of Law against the Secured Parties, the relevant Borrower Party, the Project or any part thereof shall have been duly stayed and (c) such contest does not involve any risk of the sale, forfeiture or loss of any of the Collateral.

7.3 Accounting and Financial Management. Each Borrower Party shall (a) maintain adequate management information and cost control systems and (b) maintain a system of accounting in which full and correct entries shall be made of all financial transactions and the assets and business of the relevant Borrower Party in accordance with U.S. GAAP. In the event that any Borrower Party replaces its existing auditors for any reason, the relevant Borrower Party shall appoint and maintain as auditors another firm of independent public accountants, which firm shall be internationally recognized and approved by the Requisite Financing Parties.

7.4 Tax Elections, Payment of Taxes, etc.

[(a) The Borrower shall not, and shall ensure that the Borrower Parties shall not, take any action or fail to take any action (including electing to be treated as a corporation for Federal income tax purposes) that would cause any Borrower Party to be subject to (i) any material taxes other than as set forth in the Base Case Model or (ii) any material obligations under any agreements or arrangements with respect to any taxes.

[(b) Each Borrower Party shall duly pay and discharge before they become overdue (i) all material taxes, assessments and other governmental charges or levies imposed upon it or any of its Property, income or profits, (b) all material utility and other governmental charges incurred in connection with the ownership, operation, maintenance, use, occupancy and upkeep of its business and (c) all lawful claims and obligations that, if unpaid, could result in the

imposition of a Lien upon any of its Property; provided, that the relevant Borrower Party may contest in good faith any such tax, assessment, charge, levy, claim or obligation and, in such event, may permit the tax, assessment, charge, levy, claim or obligation to remain unpaid during any period, including any period during which an appeal is pending, when the relevant Borrower Party is in good faith contesting the same by proper proceedings, so long as (i) adequate reserves shall have been established with respect to any such tax, assessment, charge, levy, claim or obligation, accrued interest thereon and potential penalties or other costs relating thereto, or other adequate provision for payment thereof shall have been made, (ii) such contest does not involve any risk of the sale, forfeiture or loss of any of the Collateral and (iii) enforcement of the contested item shall be effectively stayed.

7.5 Borrower's Equity Interests. None of the Borrower Parties shall (a) permit or consent to the transfer (by assignment, sale or otherwise) of the Pledged Equity Interests (other than by way of the Merger in accordance with Section 7.33) or (b) issue any new Equity Interests.

7.6 Merger; Etc. The Borrower shall not merge into or consolidate with any other Person, or liquidate or dissolve itself (or suffer any liquidation or dissolution), or sell, lease, transfer, or otherwise dispose of all or substantially all of its assets. Neither the Project Owner nor the Procurement Sub shall merge or consolidate with any other Person, or liquidate or dissolve itself (or suffer any liquidation or dissolution), or sell, lease, transfer, or otherwise dispose of all or substantially all of its assets, except for the Merger in accordance with Section 7.33.

7.7 Investments; Subsidiaries. None of the Borrower Parties shall make or permit to remain outstanding any Investments except Permitted Investments. None of the Borrower Parties shall establish, create or acquire any Subsidiary (other than, with respect to the Borrower, the Procurement Sub (prior to the Merger) and the Project Owner).

7.8 Transactions with Affiliates. Except as provided in the Affiliate Project Documents or the Intercompany Notes and in the Accounts Agreement, none of the Borrower Parties shall directly or indirectly (a) make any payment to an Affiliate of any Borrower Party, (b) transfer, sell, lease, assign or otherwise dispose of any Property to an Affiliate of any Borrower Party, (c) purchase or acquire Property from an Affiliate of any Borrower Party or (d) enter into any other transaction or arrangement directly or indirectly with or for the benefit of an Affiliate of any Borrower Party.

7.9 Distributions; Restricted Payments.

(a) Except as set forth in Sections 7.9(b), 7.9(c) and 7.9(d), none of the Borrower Parties shall (i) make any distributions to Pledgor or to any other Person (other than, with respect to the Procurement Sub (prior to the Merger) and the Project Owner, to the Borrower) in respect of its Equity Interests or any other ownership interest in such Borrower Party, whether in cash or other Property, or redeem, purchase or otherwise acquire any interest of Pledgor in such Borrower Party, or permit Pledgor to withdraw any capital from such Borrower Party (all of the foregoing being referred to as "Distributions") or (ii) make any payment of any Affiliate O&M Fees to any Affiliate of

such Borrower Party (each such Distribution or payment of Affiliate O&M Fees, a “Restricted Payment”).

(b) Unless a Default or Event of Default shall have occurred and be continuing, the Borrower may pay Affiliate O&M Fees when due and payable under the Affiliated Project Documents pursuant to and in accordance therewith and with the Accounts Agreement.

(c) Amounts constituting True-Up Drawings may be Distributed by the Borrower as directed by it in its sole discretion (the “True-Up Distributions”), notwithstanding any other provision of the Financing Documents to the contrary; provided, that (x) no Default or Event of Default shall have occurred and be continuing as of such Distribution, (y) the Debt-To-Equity Ratio (after giving *pro forma* effect to the relevant True-Up Distribution) will be no greater than 80:20 and (z) the Projected DSCR on the date of such True-Up Distribution is equal to or greater than 1.40x (calculated using the Base Case Model delivered in accordance with Section 4.2(m), updated in respect of any True-Up Distribution to occur more than thirty days after the date of the initial Borrowing to take account of any Operating Budget delivered in accordance with Section 6.6(a) and the projected Operating Performance of the Project in light of the results of any Completion Tests, and using an initial DSCR Calculation Period ending on the first Semi-Annual Date following the one-year anniversary of (x) the Projected Completion Date, in respect of any True Up Distribution to occur prior to the Term Conversion Date or (y) the Term Conversion Date, in respect of any True Up Distribution to occur on the Term Conversion Date).

(d) Amounts on deposit in the Distribution Reserve Account as of any Semi-Annual Date may be transferred to the Distribution Account by the Borrower in accordance with the Collateral Agreement and the Accounts Agreement, so long as each of the Distribution Conditions is satisfied on such Semi-Annual Date.

(e) Amounts on deposit in the Distribution Account may be distributed to Pledgor as Distributions and/or Restricted Payments or to any other Person for any other purpose at any time and from time-to-time.

7.10 Separateness. The Borrower Parties shall:

the Pledgor; [(a) maintain separate bank accounts and separate books of account from the Pledgor and any Affiliate (other than the Borrower Parties) of

[(b) cause the liabilities of the Borrower Parties to be readily distinguishable from the liabilities of the Pledgor and any Affiliate (other than the Borrower Parties) of the Pledgor;

[(c) conduct their business solely in their own names in a manner not misleading to other Persons as to its identity, including by ensuring that oral and written communications (including letters, invoices, purchase orders, contracts, statements, and applications) shall be made in the name of such Borrower Party;

[(d) comply with the provisions set forth on Appendix H;

[(e) in the case of the Borrower, comply with the separateness covenants set forth in the Borrower Pledge Agreement; and

[(f) cause the Pledgor and each permitted successor or assignee of the Pledgor to comply with the separateness covenants set forth in the Pledgor Pledge Agreement;

it being understood and agreed by the parties that *de minimis* breaches of this Section 7.10 that (i) are not, in the aggregate, misleading as to the identity of the relevant Borrower Party or the Pledgor (as applicable), (ii) do not call into question the corporate separateness of the Borrower Party or the Pledgor (as applicable) from their respective Affiliates and (iii) otherwise do not materially adversely undermine the purpose intended to be served by the provisions of this Section 7.10 shall not be deemed a breach of this Section 7.10.

7.11 Chief Place of Business; etc. The place of business or, if it has more than one place of business, the chief executive office of each Borrower Party and the place where the records of the Borrower Parties concerning the Collateral are kept is at 5790 Fleet Street, Suite 200, Carlsbad, CA 92008. The originals of all documents evidencing the Collateral and the only original books of account and records of the Borrower Parties relating thereto are, and will continue to be, kept at such place of business or chief executive office, or at such new location as the Borrower may establish in accordance with this Credit Agreement. Each Borrower Party's jurisdiction of organization and "location" for the purposes of Section 9-307 of the Uniform Commercial Code is Delaware. The exact legal name of the Borrower is as set forth on the signature pages hereto. The Borrower shall not (a) establish a new "location" for the purposes of Section 9-307 of the Uniform Commercial Code, (b) change its chief executive office or its jurisdiction of organization, (c) change its name or (d) do business under any name other than the name set forth on the signature pages hereto until (i) it shall have given to the Administrative Agent not less than thirty days' prior written notice of its intention so to do, clearly describing such new location, jurisdiction and/or name and providing such other information in connection therewith as the Administrative Agent may reasonably request and (ii) with respect to such new location, jurisdiction and/or name, it shall have taken all action, satisfactory to the Administrative Agent, to maintain the Liens in the Collateral granted for the benefit of one or more of the Secured Parties pursuant to the Security Documents at all times fully perfected and in full force and effect.

7.12 Permits. Each Borrower Party shall (i) from time-to-time obtain and maintain, and comply with, or cause the applicable Material Project Participant to maintain and comply with, all Material Permits to which such Borrower Party or Material Project Participant (as applicable) is a party as shall now or hereafter be required under applicable Laws, (ii) cause the Project to be duly constructed, completed, operated and maintained in all material respects in accordance with all applicable Laws, and (iii) intervene in and contest or cause the applicable Material Project Participant to intervene in and contest any proceeding which seeks or may reasonably be expected, to rescind, terminate, modify or suspend any Material Permit and, if reasonably requested by the Administrative Agent on the recommendation of the Independent Engineer, appeal or cause the applicable Material Project Participant to appeal any such rescission, termination, modification or suspension in the manner and to the fullest extent

permitted by applicable Law; provided, that the obligations of the Borrower Parties under this Section 7.12 shall not in any way limit or impair the rights or remedies of the Secured Parties under any Financing Document directly or indirectly arising as a result of any such rescission, termination, modification or suspension.

7.13 Security Documents.

[(a) Each Borrower Party shall take all actions necessary or requested by the Administrative Agent or the Collateral Agent to maintain each Security Document in full force and effect and enforceable in accordance with its terms and to maintain and preserve the Liens created by the Security Documents and the priority thereof in accordance with the Collateral Agreement. In furtherance of the foregoing, (A) the Borrower shall ensure that all Property acquired by any Borrower Party shall become subject to the Lien of the Security Documents having the priority contemplated thereby promptly following the acquisition thereof and (B) none of the Borrower Parties shall open or maintain any bank account (other than the Accounts).

[(b) Each Borrower Party shall take all action necessary to cause each Additional Project Document to be or become subject to the Liens of the Security Documents (whether by amendment to any Security Document, execution of a new Security Document or otherwise) in favor of the Collateral Agent, and shall deliver or cause to be delivered to the Administrative Agent such legal opinions of counsel to such Borrower Party, certificates of such Borrower Party or other documents with respect to each such Additional Material Project Document as the Administrative Agent may reasonably request. The Borrower shall cause each Material Project Participant that is a party to an Additional Material Project Document to execute and deliver a Consent Agreement in the form attached to the relevant Security Agreement or otherwise reasonably satisfactory to the Administrative Agent and the related opinion with respect to such Additional Material Project Document specified therein.

7.14 Material Project Documents.

[(a) Each Borrower Party shall perform and observe all of its covenants and agreements contained in any of the Material Project Documents to which it is or becomes a party.

[(b) Each Borrower Party shall take any and all action as may be reasonably necessary to promptly enforce its rights and to promptly collect any and all sums due to it under the Material Project Documents to which it is or becomes a party and shall not waive any default under or breach of any Material Project Document to which it is or becomes a party or waive, fail to enforce, forgive or release any right, interest or entitlement, howsoever arising, under or in respect of any such Material Project Document (except to the extent the Administrative Agent, in consultation with the Independent Engineer, has determined in writing that the failure to comply with this Section 7.14(b) is in the best interest of the Project).

[(c) Each Borrower Party shall take all necessary action to prevent the cancelation, suspension or termination of any Material Project Document to which it is or becomes a party in accordance with the terms thereof or otherwise and shall not permit a Material Project Participant to cancel, suspend or terminate any Material Project Document to

which it is or becomes a party or petition, request or take any other legal or administrative action that seeks, or may be expected, to cancel, suspend or terminate any Material Project Document to which it is or becomes a party or amend or modify all or any part thereof. Prior to, concurrently with, or promptly after the expiration of each SoCalGas Transportation Contract, the Borrower will cause the Project Owner to enter into a new SoCalGas Transportation Contract and will use commercially reasonable efforts to cause such SoCalGas Transportation Contract to provide for Firm Priority Service.

[(d) Each Borrower Party shall not sell, assign (other than pursuant to the Security Documents) or otherwise dispose of (by operation of law or otherwise) any part of its interest in any Material Project Document to which it is or becomes a party.

[(e) Each Borrower Party shall not agree to or permit the assignment of any rights or the delegation of any obligations of any Material Project Participant under any Material Project Document to which it is or becomes a party except (i) as permitted without the consent of the Borrower by the terms of such Material Project Document or (ii) with the prior written consent of the Administrative Agent (acting, in respect of the Tolling Agreement, upon the instructions of the Requisite Financing Parties).

[(f) Except as provided in Section 7.15, no Borrower Party shall amend, supplement, modify or give any consent under any Material Project Document or exercise any material option thereunder (except to the extent the Administrative Agent, in consultation with the Independent Engineer, has determined in writing that such amendment, supplement, modification, consent or exercise is in the best interest of the Project).

[(g) No Borrower Party shall enter into any Additional Material Project Document other than (i) upon the prior written consent of the Administrative Agent (acting upon the instructions of the Requisite Financing Parties) or (ii) in accordance with Section 8.8[(e).

[(h) The Borrower Parties shall instruct all Project Participants to make all payments payable to any of the Borrower Parties to the Account Bank for deposit in the appropriate Account in accordance with the Accounts Agreement.

[(i) Each of the Borrower Parties shall, on the date hereof and on the date it enters into any Material Project Document after the date hereof, (i) enter into a Consent Agreement in accordance with the Collateral Agreement and (ii) deliver to the Collateral Agent a fully-executed version of each such Consent Agreement and (unless otherwise agreed by the Administrative Agent) the related opinion required to be delivered to the Collateral Agent in accordance therewith.

[(j) Prior to the Term Conversion Date, no Borrower Party shall enter into any Material Project Document or execute any Change Order in accordance with Section 7.15 unless (A) 100% of all Project Costs to be incurred thereunder are set forth in the Construction Budget and (B) after giving *pro forma* effect to the execution of such Material Project Document or Change Order, the Borrower Parties have Available Construction Funds at their disposal that are equal to or greater than the aggregate amount of unpaid Project Costs set forth in the

Construction Budget. The Borrower shall provide the Administrative Agent with prompt notice of its consent to any subcontractor granted under any EPC Contractor.

7.15 Change Orders. Notwithstanding the provisions of Section 7.14(f) (but without limiting Section 7.14(j)), the Borrower may permit the Project Owner, upon five Business Days' prior notice to the Independent Engineer and the Administrative Agent, to enter into any Change Order if (a) such Change Order does not change the Plans and Specifications, (b) the CO Cost of such Change Order does not exceed \$5,000,000 or cause the aggregate CO Cost of all Change Orders theretofore made, together with the CO Cost of such Change Order, to exceed \$15,000,000, (c) such Change Order does not result in an extension of any Major Milestone Date beyond the applicable date set forth on Appendix J, (d) such Change Order does not result in any change to, or amendment of, the Completion Tests, the Delay Liquidated Damages, the Buy-down Proceeds, the Performance Guarantees or the conditions pursuant to which payment of any such damages is required to be made, either directly or indirectly and (e) such Change Order could not otherwise reasonably be expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party.

7.16 Certain Agreements. No Borrower Party shall enter into any agreement or undertaking (except for the Financing Documents and except pursuant to any agreement approved by the Requisite Financing Parties for the refinancing of any of the Loans) restricting, or purporting to restrict, the ability of any Borrower Party to (a) amend this Credit Agreement or any other Financing Document, (b) sell any of its assets, (c) create Liens, (d) create or incur Indebtedness or (e) make any Restricted Payment.

7.17 Insurance Requirements. Each Borrower Party shall maintain or cause to be maintained in full force and effect all insurance coverages for the Project set forth in the Collateral Agreement.

7.18 Events of Loss. If an Event of Loss shall occur with respect to any Collateral, then the relevant Borrower Party shall (a) diligently pursue all its rights to compensation against any Person with respect to such Event of Loss, (b) cause all Loss Proceeds to be deposited in the Proceeds Account pursuant to the Accounts Agreement, (c) cause all Business Interruption Proceeds to be deposited in the Business Interruption Proceeds Account pursuant to the Accounts Agreement and (d) cause all Loss Proceeds and any Business Interruption Proceeds to be applied in accordance with the Collateral Agreement, the Accounts Agreement and Section 3.17 hereof.

7.19 Asset Acquisitions. No Borrower Party shall purchase or acquire any assets or Property other than (a) assets reasonably required for the completion of the Project in accordance with the Construction Budget, (b) assets in consideration of O&M Expenses expended in accordance with Section 7.25, (c) assets acquired in connection with any Restoration of the Project in accordance with the Collateral Agreement and the Accounts Agreement and (iv) Permitted Investments.

7.20 Asset Dispositions. No Borrower Party shall make any Disposition other than: (a) sales of electrical energy, capacity, ancillary services and other products pursuant to the Revenue Contracts; (b) subject to the requirements of Sections 3.17(a)(ii) and 6.4(b), Dispositions having a value of equal to or less than \$3,000,000 per asset or \$5,000,000 in the aggregate in any year by all Borrower Parties since the date hereof, and otherwise determined by the relevant Borrower Party (in its reasonable opinion) to be obsolete, redundant, no longer best in class, or otherwise no longer used by or useful to the relevant Borrower Party for the operation or maintenance of the Project; (c) sales of Permitted Investments prior to the maturity thereof; and (d) Distributions, Restricted Payments or other payments in accordance with Section 7.9.

7.21 Indebtedness. No Borrower Party shall create, incur, suffer to exist or otherwise become liable for any Indebtedness except for the following ("Permitted Indebtedness"):

- (a) Indebtedness arising under the Financing Documents;
- (b) Indebtedness arising under the Rate Swap Transactions entered into and maintained in accordance with Section 7.26;
- (c) Capital Lease Obligations incurred in the ordinary course of business that do not at any time exceed \$500,000;
- (d) trade accounts payable (other than Indebtedness for borrowed money) arising, and accrued expenses incurred, in the ordinary course of the relevant Borrower Party's business so long as such trade accounts payable are payable within 60 days of the date the respective goods are delivered or the respective services are rendered and are not more than 60 days past due;
- (e) unsecured Indebtedness owed by any Borrower Party to the Borrower or owed by the Borrower to the Pledgor, provided, that such Indebtedness is subordinated to the Secured Obligations, is collaterally assigned by the Pledgor or the Borrower (as applicable) to the Collateral Agent in accordance with the terms specified in the relevant Pledge Agreement and is issued pursuant to the subordination and other terms required by such Pledge Agreement;
- (f) purchase money obligations to the extent incurred in the ordinary course of business to finance equipment (and Indebtedness incurred to finance any such obligations); provided, that (A) if such obligations are secured, they are secured only by Liens upon the equipment being financed and (B) the aggregate principal amount and the capitalized portion of such obligations by all Borrower Parties do not at any time exceed \$2,000,000; and
- (g) additional unsecured Indebtedness owed by any Borrower Party in an aggregate principal amount (for all Borrower Parties and including all capitalized interest) not to exceed \$5,000,000 at any time.

7.22 Leases. No Borrower Party shall enter into any agreement, or be or become liable as lessee under any agreement, for the lease, hire or use of any real or personal

Property, except for (i) the Site Agreements, (ii) the Real Property Agreements and (iii) operating leases of personal Property to the extent that (a) no such operating lease constitutes a Capital Lease Obligation, (b) each such operating lease is provided for in the then current Operating Budget, (c) the relevant personal Property is not affixed to the Project, (d) the relevant personal Property does not constitute “fixtures” under applicable Law, (e) the relevant personal Property is composed of standard, non-customized items; and (f) the aggregate payment obligations of all Borrower Parties under all such leases of personal Property does not exceed \$1,000,000 in any year.

7.23 Limitation on Liens. No Borrower Party shall create, incur, assume or suffer to exist any Lien upon any of its Property, whether now owned or hereafter acquired, except for Permitted Liens.

7.24 Operation and Maintenance.

[(a) Each Borrower Party shall maintain and preserve the Project, the Facility, the Site and all of its other Properties necessary or useful in or to the proper conduct of its business in good working order and in such condition that the Project will have the capacity and functional ability to perform, on a continuing basis (ordinary wear and tear excepted), in normal commercial operation, the functions for which it was specifically designed in accordance with the EPC Contracts at substantially the levels contemplated thereby. The Borrower shall, and shall cause the other Borrower Parties to, cause the Project, the Facility and the Site to be operated, serviced, maintained and repaired so that the condition and Operating Performance thereof will be maintained and preserved (ordinary wear and tear excepted) in all material respects in accordance and compliance with (i) Good Utility Practices, (ii) such operating standards as shall be required to enforce any material warranty claims against dealers, manufacturers, vendors, contractors, and sub-contractors, (iii) the terms and conditions of all insurance policies maintained with respect to the Project at any time, (iv) all requirements of Law and all Material Permits applicable to the Project, and (v) the terms of the Project Documents.

[(b) No Borrower Party shall alter, remodel, add to, reconstruct, improve or demolish any part of the Project, the Facility, the Site or any other Collateral after the Project Completion Date, except in accordance with any Restoration of the Project in accordance with the Collateral Agreement and the Accounts Agreement.

[(c) No Borrower Party shall appoint or allow the appointment of any replacement Operator without the prior written consent of the Administrative Agent (acting at the direction of the Requisite Financing Parties).

7.25 O&M Expenses. No Borrower Party shall expend any amount for O&M Expenses during any month if such expenditure would exceed any OB Approval Threshold without the prior written consent of the Administrative Agent (acting, if applicable, at the direction of the Requisite Financing Parties), unless such O&M Expense could not reasonably be anticipated and failure to make such expenditure would create an abnormal risk of personal injury to employees or significant physical damage to the Project and, in any such event, the Borrower shall immediately advise the Administrative Agent of such excess expenditure and,

within fifteen days of the making of any such excess expenditure, prepare and file with the Administrative Agent an amended Operating Budget that reflects such expenditure in accordance with Section 6.6(f).

7.26 Rate Swap Transactions. The Borrower shall execute, on the same Business Day as the initial Borrowing of the Construction Loans, and thereafter maintain in full force and effect one or more Rate Swap Transactions with Rate Swap Counterparties which effectively protect the Borrower against the risk of LIBO Rate fluctuations above the weighted average of the fixed rates set forth in the Base Case Model delivered in accordance with Section 4.2(m) and have an aggregate notional amount with respect to each Semi-Annual Date to occur after the Rate Swap Commencement Date equal to not less than 75.00% and not more than 105.00% of the Notional Loan Amount in respect of such Semi-Annual Date. For purposes of the foregoing, the “Notional Loan Amount” in respect of each Semi-Annual Date shall be (x) if determined prior to the Term Conversion Date (1) with respect to each Semi-Annual Date to occur prior to the last projected Disbursement on the Notional Disbursement Schedule, the aggregate principal amount of the Construction Loans that are projected to be outstanding on the immediately preceding Semi-Annual Date based on the Notional Disbursement Schedule and (2) with respect to each Semi-Annual Date to occur on or after the last projected Disbursement on the Notional Disbursement Schedule, the aggregate principal amount of the Construction Loans then-outstanding *plus* the aggregate undrawn Construction Loan Commitments *minus* the aggregate amount of Notional Amortization projected prior to such Semi-Annual Date, as set forth on the Projected Amortization Schedule and (y) if determined on and after the Conversion Date, the aggregate principal amount of the Term Loans outstanding as of the date of such determination *minus* the aggregate amount of scheduled principal payments projected to be made on the Term Loans prior to such Semi-Annual Date in accordance with the Amortization Schedules (in each case, after giving full effect to the application of prepayments of the Construction Loans or the Term Loans, as applicable, in accordance with Section 3.16 or 3.17(c)).

7.27 Use of Proceeds. The Borrower will use the proceeds of the Loans solely for the purposes set forth in Article II.

7.28 Construction Budget. The Borrower shall not amend, revise or modify the Construction Budget to increase or decrease or otherwise change the number or type of Construction Budget categories, allocate or reallocate the Contingency to any Construction Budget category, or request any Construction Loans for the purpose of funding any Project Costs in excess of the amount contained in the Construction Budget for such category of Project Costs; except, (x) to the extent no CB Approval Threshold is triggered or exceeded or (y) if a CB Approval Threshold is triggered or exceeded upon obtaining the prior written approval specified on Appendix E. The Borrower shall promptly deliver to the Administrative Agent a copy of any revisions to the Construction Budget effected without the consent of the Administrative Agent pursuant to this Section 7.28.

7.29 Engineering, Procurement and Construction. Each Borrower Party shall cause the Project to be duly engineered and constructed and all equipment procured in accordance with the Construction Budget, the EPC Contracts and Good Utility Practices and shall cause the Project Completion Date and the Term Conversion Date to occur on or before the

Date Certain. The Borrower shall not, and shall not permit the other Borrower Parties to, directly or indirectly, make or commit to make any expenditure in respect of the purchase or other acquisition of fixed or capital assets prior to the Project Completion Date, other than expenditures contemplated by the Construction Budget.

7.30 Completion: Completion Tests.

[(a) No Borrower Party shall, without the prior written consent of the Administrative Agent (after consultation with the Independent Engineer), (i) take any action or fail to take any action (other than the execution of a Change Order in accordance with Section 7.15(c)) which could extend, or which could permit an extension of, any guaranteed completion or acceptance date (including the Mechanical Completion Guaranteed Dates (as such term is defined in the BOP Contract), Substantial Completion Guaranteed Date and the Final Completion Guaranteed Date (as each such term is defined in the Equipment Services Agreement) under the EPC Contracts, (ii) accept or confirm that the Project or any Generating Unit, as the case may be, has achieved Mechanical Completion (as such term is defined in the BOP Contract), Substantial Completion (as such term is defined in the Equipment Services Agreement), Final Completion (as such term is defined in the Equipment Services Agreement) or fail to advise the Construction Manager, the BOP Contractor, the Equipment Supplier and the Equipment Servicer of any defects, deficiencies or discrepancies in the Work of which such Borrower Party has knowledge, (iii) notify the Equipment Servicer that it accepts the Final Punchlist (as such term is defined in the Equipment Services Agreement), (iv) notify the BOP Contractor and that it accepts the Final Completion Punch List (as such term is defined in the BOP Contract), (v) issue, approve or execute any acceptance or completion certificate or otherwise confirm acceptance or completion of the Project or any portion or phase thereof, (vi) waive, defer or reduce any of the requirements of any of the Completion Tests or Performance Guarantees, (vii) reject the Project or (viii) deliver any written direction to pay all or any portion of the Retainage Balance (as defined in the Retainage Escrow Agreement).

[(b) No Borrower Party shall schedule or agree or permit to the scheduling of any Completion Tests without at providing at least five Business Days' prior written notice to the Administrative Agent and the Independent Engineer; provided, that if any such Completion Test is canceled or fails and a new Completion Test is scheduled within 72 hours of the originally scheduled Completion Test, then the relevant Borrower Party shall be required to promptly notify the Administrative Agent and Independent Engineer of its intent to run or rerun such Completion Test within such 72-hour period and shall give the Administrative Agent and the Independent Engineer reasonable advance notice prior to the conduct of such Completion Test within such 72-hour period.

7.31 Payment of Project Costs: Project Revenues.

[(a) Any Project Revenues (other than proceeds of any Delay Liquidated Damages) received prior to the Term Conversion Date shall be deposited into the Construction Account and applied, in accordance with the Accounts Agreement, to the payment of Project Costs.

[(b) Any proceeds of any Delay Liquidated Damages received prior to the Term Conversion Date shall be deposited into the Proceeds Account and applied, in accordance with the Accounts Agreement, to the mandatory prepayment of Loans in accordance with Section 3.17(a)(iii).

7.32 EWG Status, etc. The Project Owner shall, prior to placing test power onto the grid, and at all times thereafter, (i) maintain its status as an EWG, (ii) be exempt in accordance with 18 CFR § 366.3 from the accounting, record-retention and reporting requirements of PUHCA, (iii) be authorized by FERC pursuant to the Market Rate Authorization to sell electric energy, capacity and ancillary services at negotiated rates under a market-based rate tariff and be in compliance with all requirements and regulations imposed by FERC in connection with such authorization and all waivers of regulation and blanket authorizations granted by FERC in connection with such authorization and (iv) be exempt from or not subject to, the Power Plant & Industrial Fuel Use Act set forth in 42 USC § 8301, *et. seq.*

7.33 Merger Merger On or prior to the Term Conversion Date, the Borrower shall cause the Merger to occur on terms and conditions satisfactory to the Requisite Financing Parties. Prior to effecting the Merger, the Borrower shall deliver to the Administrative Agent a plan of merger setting out each of the actions necessary to accomplish the Merger and attaching all documents required to be executed, delivered or filed to effect the Merger, including all such documents under the Delaware Limited Liability Company Act. The Merger shall not be effected without the prior written consent of the Administrative Agent (in consultation with White & Case LLP), such approval not to be unreasonably delayed. Promptly upon effecting the Merger, the Borrower shall deliver to the Administrative Agent evidence thereof, including duly executed, delivered and filed copies of each of the documents referred to in the immediately preceding sentence.

7.34 Equipment. On the Business Day immediately following the Closing Date, the Borrower shall contribute, transfer, convey and deliver to the Procurement Sub, and the Procurement Sub shall accept from the Borrower, all of the Borrower's right, title and interest in any Equipment (as defined in the Equipment Purchase Agreement), including the Generating Units, in which the Borrower has title as of the Closing Date, free and clear of all Liens, other than (i) Permitted Priority Liens and (ii) other Permitted Liens to the extent junior to the Liens granted to the Collateral Agent under the Security Documents.

7.35 Further Assurances. Each Borrower Party shall make commercially reasonable efforts to promptly and duly execute and deliver to the Administrative Agent such documents and assurances to take such further action as the Administrative Agent may from time-to-time reasonably request in order to carry out more effectively the intent and purpose of the Financing Documents and to establish, protect and perfect the rights and remedies created or intended to be created in favor of the Secured Parties pursuant to the Financing Documents.

ARTICLE VIII EVENTS OF DEFAULT

The occurrence of any of the following events or circumstances shall constitute an “Event of Default” hereunder:

8.1 Failure to Make Payments. (a) The Borrower shall fail to pay, in accordance with the terms of this Credit Agreement, any principal on any Loan on the date that such sum is due; (b) the Borrower shall fail to pay, in accordance with the terms of this Credit Agreement, any interest or fees on any Loan or Specified Letter of Credit within three Business Days after the date that such sum is due; or (c) the Borrower shall fail to pay, in accordance with the terms of this Credit Agreement, any cost, charge or other amount payable under any Financing Document (other than principal of, or interest or fees on, the Loans or any Specified Letter of Credit) within ten Business Days after the due date thereof, including amounts in respect of any required Liquidation Costs.

8.2 Certain Other Fundamental Breaches. (a) The Borrower shall fail (or shall fail to cause any Borrower Party) to perform, comply with or observe any covenant or agreement set forth in Sections 3.28(a), 3.28(b), 7.1, 7.5, 7.6, 7.7, 7.9, 7.11, 7.14(d), 7.14(e), 7.14(f) or 7.14(g), 7.17, 7.19, 7.20, 7.21, 7.23, 7.27, 7.30, 7.33 and 7.34; (b) Borrower shall fail (or shall fail to cause any Borrower Party) to perform, comply with or observe any covenant or agreement set forth in Article VI; or (c) any Borrower Party shall fail (or Borrower shall fail to cause any Borrower Party) to perform, comply with or observe any covenant or agreement set forth in any other Financing Document within the cure period therein specified (to the extent such cure period is therein specified).

8.3 Breach of Covenant. The Borrower shall fail to perform or observe (including by failing to cause any Borrower Party to fail to perform or observe) any covenant or agreement to be performed or observed by it hereunder or under any other Financing Document and not otherwise specifically provided for in Section 8.1 or 8.2 and such failure shall continue unremedied for a period of thirty days after any Borrower Party has knowledge of the circumstances giving rise to such failure; provided that, if (a) such failure cannot be cured within such thirty-day period, (b) such failure is susceptible to cure within an additional sixty days, (c) the Borrower and any other relevant Borrower Party are proceeding with diligence and in good faith to cure such failure, (d) the existence of such failure does not impair the Liens on the Collateral and cannot reasonably be expected within the next succeeding sixty days to impair the Liens on the Collateral, (e) the existence of such failure has not had and cannot be reasonably expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party within the next sixty days and (f) prior to the expiration of the initial thirty-day cure period specified above, the Administrative Agent shall have received an Officer's Certificate certifying to the matters set forth in clauses (a), (b), (c), (d) and (e) above and stating what actions the Borrower and any other relevant Borrower Party are taking to cure such failure, then no Event of Default shall occur under this Section 8.3 until the earlier of (i) the date that the Borrower or any other relevant Borrower Party are no longer

diligently and in good faith attempting to cure such failure and (ii) the sixtieth day following the last day of the initial thirty-day cure period specified above.

8.4 Breach of Representation or Warranty. Any representation or warranty made by the Borrower herein or in any other Financing Document or in any certificate delivered by or on behalf of the Borrower in accordance with any Financing Document to the Administrative Agent or any Secured Party shall contain in any material respect an untrue or misleading statement of a material fact as of the date such representation or warranty is made (or, if expressly made as of an earlier date, as of such earlier date); provided, that if (a) the circumstances that rendered such representation, warranty or certification untrue or misleading are reasonably susceptible of being removed, reversed or remedied within sixty days, (b) the Borrower and any other relevant Borrower Party are proceeding with diligence and in good faith to remove, reverse or remedy such circumstances, (c) the existence of such circumstances does not impair the Liens on the Collateral and cannot reasonably be expected within the next succeeding sixty days to impair the Liens on the Collateral, (d) the existence of such circumstances has not had and cannot be reasonably expected to have either a Material Adverse Effect or a material adverse effect on the ability of any Material Project Participant to timely perform any of its material obligations under any of the Material Project Documents to which it is a party within the next sixty days and (e) the Administrative Agent shall have received an Officer's Certificate certifying to the matters set forth in clauses (a), (b), (c) and (d) above and stating what actions the Borrower and any other relevant Borrower Party are taking to remove, reverse or remedy such circumstances, then no Event of Default shall occur under this Section 8.4 until the earlier of (i) the date that the Borrower or any other relevant Borrower Party are no longer diligently and in good faith attempting to remove, reverse or remedy such circumstances and (ii) the ninetieth day following the date that any Borrower Party has knowledge of such circumstances.

8.5 Breach of Financing Documents by Borrower Affiliates. (a) The Pledgor, the Procurement Sub, the Project Owner or any other Affiliate of the Borrower that is a party to a Financing Document (if any) shall fail to perform or observe any covenant or agreement to be performed or observed by it thereunder; (b) any representation or warranty made by the Pledgor, the Procurement Sub, the Project Owner or any other Affiliate of the Borrower that is a party to a Financing Document (if any) in any Financing Document or in any certificate delivered by or on behalf of such Person in accordance with any Financing Document to the Administrative Agent or any Secured Party shall contain in any material respect an untrue or misleading statement of a material fact as of the date such representation or warranty is made (or, if expressly made as of an earlier date, as of such earlier date); or (c) any other "default" or "event of default" (or event of substantively the same import) shall occur under any Financing Document and the Pledgor, the Procurement Sub, the Project Owner or any other Affiliate of the Borrower that is a party to such Financing Document is the defaulting party; and, in each such case, all applicable cure periods under such Financing Document have expired.

8.6 Loss of Financing Documents. Any of the Financing Documents shall fail (a) to be in full force and effect, (b) to be enforceable or (c) to provide the Lenders, the Administrative Agent, the Collateral Agent, the Account Bank or any other Financing Party or their respective trustees, agents or other representatives with the material rights, titles, interest, remedies, powers or privileges intended to be created thereby (if any).

8.7 Actual or Prospective Failure of Security.

[(a) The Collateral Agent shall fail to have a first-priority perfected Lien in any portion of the Collateral (on behalf of the Financing Parties as Secured Parties), subject only to (i) Permitted Priority Liens and (ii) other Permitted Liens to the extent junior to the Liens granted for the benefit of the Collateral (on behalf of the Financing Parties as Secured Parties) under the Security Documents.

[(b) The validity of any Security Document or the applicability thereof to the Loans, any Notes, any Specified Letter of Credit or any other obligations purported to be secured or guaranteed thereby or any part thereof shall be disaffirmed by or on behalf of the Borrower or any other party thereto.

8.8 Breach or Loss of Material Project Documents.

[(a) Any MPD Termination Event shall have occurred and be continuing under any Material Project Document.

[(b) Any Material Project Participant that is a party to a Revenue Contract or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement shall breach or be in default under any material term, condition, provision or covenant contained in such Revenue Contract, Equipment Purchase Agreement or Equipment Services Agreement (other than to the extent constituting a Bankruptcy Event) and such breach or default shall remain unremedied for the relevant cure period specified therein *plus* thirty days.

[(c) Any Material Project Participant (other than in respect of a Revenue Contract or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement) shall breach or be in default under any material term, condition, provision or covenant contained in any Material Project Document (other than to the extent constituting a Bankruptcy Event) and such breach or default shall remain unremedied for the relevant cure period specified in such Material Project Document; unless, within ninety days after the last day of such cure period (x) the relevant Borrower Party terminates such Material Project Document in accordance with its terms and (y) the relevant Borrower Party has entered into a replacement Material Project Document with a new counterparty in accordance with Section 8.8[(e).

[(d) Any Revenue Contract or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement shall cease for any reason to be in full force and effect.

[(e) Any Material Project Document (other than a Revenue Contract or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement) shall cease for any reason to be in full force and effect unless terminated in accordance with its terms and not as a result of a default of the relevant Borrower Party thereunder; unless such other Material Project Document has been replaced by a replacement Material Project Document on substantively the same terms, subject to substantively the same conditions, and with a counterparty that is reasonably acceptable to the Administrative Agent within ninety days after the earliest of (x) the last day of any cure period afforded to the relevant

Material Project Participant if terminated as a result of the breach of or default affecting such Material Project Participant (including a Bankruptcy Event), (y) the occurrence of such termination and (z) the failure to be in full force and effect.

8.9 Voluntary Bankruptcy Events.

[(a) The Borrower, the Procurement Sub, the Project Owner, any Affiliated Project Party or any Material Project Participant that is a party to a Revenue Contract, or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement shall suffer a Voluntary Bankruptcy Event.

(b) Any Material Project Participant that is not an Affiliated Project Party, a party to a Revenue Contract, or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement shall suffer a Voluntary Bankruptcy Event; unless (i) such Material Project Participant has been replaced as the counterparty under the relevant Material Project Document within ninety days of such Voluntary Bankruptcy Event by another Person reasonably acceptable to the Administrative Agent, (ii) the Material Project Participant has assumed such Material Project Document in accordance with the Bankruptcy Code and the Borrower has confirmed to the reasonable satisfaction of the Administrative Agent that such Material Project Participant is performing its post-petition obligations under, and has not rejected, such Material Project Document or (iii) both (A) such Material Project Document is rejected in bankruptcy or the Borrower terminates such Material Project Document in accordance with its terms and (B) the Borrower enters into a replacement Material Project Document with a new counterparty in accordance with Section 8.8[(e) within the time period therein specified.

8.10 Involuntary Bankruptcy Events. The Borrower, the Procurement Sub, the Project Owner or any Material Project Participant shall suffer an Involuntary Bankruptcy Event; provided, that it shall not be an Event of Default under this Section 8.10 if:

(a) within sixty days after the occurrence of the relevant Involuntary Bankruptcy Event, such Involuntary Bankruptcy Event shall have been cured by: (i) the lifting by the relevant Governmental Authority of the relevant suspension of payments, moratorium or similar arrangement; or (ii) the dismissal by the relevant court of the relevant petition commencing an involuntary case under applicable Debtor Relief Law or the relevant complaint or other action commencing any similar proceeding under any other applicable federal, state or other Law;

(b) within ninety days after the occurrence of the relevant Involuntary Bankruptcy Event, with respect solely to an Involuntary Bankruptcy Event suffered by a Material Project Participant that is not an Affiliated Project Party, a party to a Revenue Contract, or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement, such Material Project Participant has been replaced as the counterparty under the relevant Material Project Document by another Person reasonably acceptable to the Administrative Agent; or

(c) within ninety days after the occurrence of the relevant Involuntary Bankruptcy Event, with respect solely to an Involuntary Bankruptcy Event suffered by a

Material Project Participant that is not an Affiliated Project Party, a party to a Revenue Contract, or, prior to the Term Conversion Date, the Equipment Purchase Agreement or the Equipment Services Agreement either (i) the Material Project Participant has affirmed such Material Project Document in accordance with the Bankruptcy Code and the Borrower has confirmed to the reasonable satisfaction of the Administrative Agent that such Material Project Participant is performing its obligations under such Material Project Document or (ii) both (A) such Material Project Document is rejected in bankruptcy or the relevant Borrower Party terminates such Material Project Document in accordance with its terms and (B) the relevant Borrower Party enters into a replacement Material Project Document with a new counterparty in accordance with Section 8.8[(e).

8.11 Judgments. A final judgment or final judgments that is or are not covered by available insurance, as acknowledged in writing by the provider of such insurance or as certified to the Administrative Agent by the Insurance Consultant, or that is or are not otherwise covered by an indemnity in favor of the relevant Borrower Party, shall be entered against any Borrower Party in the aggregate amount of \$7,000,000 or more and remains or remain unstayed or unsatisfied, or no bond is posted in respect of such judgment or judgments, for more than 45 consecutive days after entry of the relevant judgment or judgments..

8.12 Loss of Material Permits. Any Material Permit shall be modified in a materially adverse manner, reversed, rescinded, revoked, terminated, withdrawn, suspended or cancelled or the Borrower shall fail (or fail to cause the relevant other Borrower Party or Material Project Participant) to obtain or renew any Material Permit when required by applicable Law, unless, in each such case, such Material Permit is reinstated, renewed or obtained (as applicable) within fifteen days after the expiration of any grace period in such Material Permit or under applicable Law in respect of such modification, reversal, rescission, revocation, termination, withdrawal, suspension, cancellation, lapse, or non-renewal or failure to obtain when required.

8.13 Loss of Collateral. Any material portion of any of the Borrower Parties' respective Property is Taken without fair value being paid therefor such as to allow replacement of such Property and/or prepayment in full of all Secured Obligations (other than indemnities) in each case, unless such Taking allows the relevant Borrower Party, in the Administrative Agent's reasonable judgment, to continue satisfying its obligations hereunder and under the other Transaction Documents notwithstanding the same.

8.14 Abandonment of Project. Any Borrower Party, any EPC Contractor or the O&M Operator shall have abandoned the construction or operation of the Project for fifteen consecutive days.

8.15 Environmental Claim.

(a) Any Environmental Claim shall have been asserted against any Borrower Party or any Project Participant; unless, any of the following apply (i) such Environmental Claim is adjudicated or otherwise resolved and the amount payable by the Borrower Parties thereunder is equal to or less than \$7,000,000, (ii) the Independent Engineer confirms in writing at such times and from time-to-time as requested by the

Administrative Agent that, if adversely determined, such Environmental Claim could not reasonably be expected to exceed \$7,000,000 or otherwise have a Material Adverse Effect or (iii) such Environmental Claim has remained unadjudicated or unresolved for less than 365 days and the relevant Borrower Party or Project Participant confirms in writing at such times and from time-to-time as requested by the Administrative Agent that, in its reasonable determination, based on consultation with reputable counsel, such Environmental Claim has no reasonable likelihood of success.

(b) Any Release, emission, discharge or disposal of any Hazardous Materials shall have occurred in violation of any Environmental Law; unless, such event could not reasonably be expected to have a Material Adverse Effect.

8.16 Change in Control. A Change in Control shall have occurred.

8.17 Term Conversion. The Term Conversion Date shall not have occurred by the Date Certain.

8.18 Cross-Default. Any Secured Party that is not a Financing Party issues a Default Notice as defined in and in accordance with the Collateral Agreement in respect of an Event of Default (as defined therein). The occurrence or existence of either (a) a default, event of default or other similar condition or event (however described) in respect of any Borrower Party under one or more agreements or instruments relating to Permitted Indebtedness (other than the Secured Obligations) of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (b) below, is not less than \$5,000,000 which has resulted in such Permitted Indebtedness becoming due and payable under such agreements or instruments before it would otherwise have been due and payable or (b) a default by any Borrower Party (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (a) above, of not less than \$5,000,000.

8.19 ERISA. Both (a) any of the following shall occur: (i) one or more ERISA Events shall have occurred; (ii) there is or arises an Unfunded Pension Liability (taking into account only Pension Plans with positive Unfunded Pension Liability); or (iii) there is or arises any potential withdrawal liability under Section 4201 of ERISA, if any member of the ERISA Group were to withdraw completely from any and all Multiemployer Plans; and (b) there shall result from any such event or events described in clause (a) of this Section 8.19 the imposition of any Liens and such Liens, individually or in the aggregate, has had, or would reasonably be expected to have, a Material Adverse Effect.

ARTICLE IX REMEDIES

9.1 Acceleration.

[(a) If any Event of Default specified in Section 8.9 or Section 8.10 shall occur with respect to the Borrower, any other Borrower Party or the Pledgor, then automatically all Commitments shall immediately terminate and all Loans (with accrued and unpaid interest thereon) and all other amounts owing to the Secured Parties under the Financing Documents shall immediately become due and payable.

[(b) If any Event of Default (other than an Event of Default referred to in Section 9.1[(a)) shall occur, then the Administrative Agent (acting at the direction of the Requisite Financing Parties) may by notice to the Borrower (i) declare the Commitments to be terminated, whereupon all Commitments shall immediately terminate and/or (ii) declare the Loans, all accrued and unpaid interest thereon and all other amounts owing to the Secured Parties under the Financing Documents to be due and payable, whereupon the same shall become immediately due and payable.

[(c) Except as expressly provided above in this Section 9.1, presentment, demand, protest and all other notices and other formalities of any kind are hereby expressly waived by the Borrower.

9.2 Letters of Credit.

[(a) With respect to all Specified Letters of Credit for which presentment for honor shall not have occurred at the time of an acceleration of the Loans pursuant to Section 9.1, the Borrower shall at such time deposit in a cash collateral account opened by the Administrative Agent an amount (without duplicating any amounts on deposit in accordance with Section 3.28) equal to the aggregate then undrawn and unexpired amount of such Specified Letters of Credit.

[(b) Amounts held in such cash collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Specified Letters of Credit, and the unused portion thereof after all such Specified Letters of Credit shall have expired or been fully drawn upon, all LC Loans shall have been paid in full and all other obligations of the Borrower hereunder and the Borrower Parties under the other Financing Documents shall have been paid in full, the balance, if any in such cash collateral account shall be returned to the Borrower (or such other Person as may be lawfully entitled thereto).

9.3 Other Remedies. Upon the occurrence and during the continuation of an Event of Default:

(a) The Administrative Agent may (and if instructed by the Requisite Financing Parties shall) direct the Collateral Agent, in accordance with the Collateral Agreement, to exercise any or all rights and remedies at law or in equity (in any combination or order that the Administrative Agent may elect to direct), including,

without prejudice to the Collateral Agent's other rights and remedies, any and all rights and remedies available under any of the Collateral Documents.

(b) The Administrative Agent may (and if instructed by the Requisite Financing Parties shall) direct the EPC Contractors or any subcontractor to submit invoices to the account of the Borrower or any Borrower Party to the Administrative Agent, and the Lenders may, in their respective sole discretion, elect to make payments directly to the EPC Contractors, such subcontractor or any other Person.

(c) Any funds of any Lender or the Administrative Agent (including the proceeds of any Loans) used for any purpose referred to in this Section 9.3, whether or not in excess of the relevant Commitments (without obligating any Lender to fund any Loans in excess of such Commitments) shall (i) be governed hereby, (ii) constitute part of the Secured Obligations secured by the Security Documents, (iii) bear interest at the Default Rate and (iv) be payable upon demand by such Lender or the Administrative Agent, as applicable.

ARTICLE X THE AGENTS; VOTING

10.1 Appointment and Authorization.

[(a) Each Financing Party hereby irrevocably (subject to Section 10.9) appoints, designates and authorizes the Administrative Agent to take such action on its behalf under the provisions of this Credit Agreement and each other Financing Document to which it is a party and to exercise such powers and perform such duties as are expressly delegated to it by the terms of this Credit Agreement or any such other Financing Document, together with such powers as are reasonably incidental thereto.

[(b) Each Financing Party hereby irrevocably consents to (i) the appointment by the Administrative Agent of Credit Agricole Corporate and Investment Bank as Collateral Agent under the Collateral Agreement, and (ii) the appointment by the Collateral Agent of Union Bank, N.A. as Account Bank under the Accounts Agreement (each such person, together with the Administrative Agent, an "Agent").

[(c) Each of the Financing Parties authorizes the Administrative Agent to execute, deliver and perform (and authorizes the Administrative Agent to direct each other Agent to execute, deliver and perform) each of the Financing Documents to which the Administrative Agent (or such other Agent) is or is intended to be a party and each Financing Party agrees to be bound by all of the agreements of the Administrative Agent (and each such other Agent) contained in the Financing Documents. Each of the Financing Parties agrees that upon execution of the Collateral Agreement such Financing Party will be bound by the provisions thereof in accordance therewith as a Secured Creditor (as defined therein) to the same extent as if such Financing Party were a party thereto.

[(d) Notwithstanding any provision to the contrary contained elsewhere in this Credit Agreement or in any other Financing Document, none of the Agents shall have any duties

or responsibilities except those expressly set forth herein and in the other Financing Documents, nor shall any of the Agents have or be deemed to have any fiduciary relationship with any Financing Party, and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Credit Agreement or any other Financing Document or otherwise exist against any of the Agents. Without limiting the generality of the foregoing sentence, the use of the terms “Administrative Agent”, “Collateral Agent” or “Account Bank” in this Credit Agreement with reference to the Administrative Agent, or the Collateral Agent or the Account Bank is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead, such terms are used merely as a matter of market custom, and are intended to create or reflect only a relationship between independent contracting parties.

10.2 Delegation of Duties. The Administrative Agent may execute any of its duties under this Credit Agreement or any other Financing Document by or through agents, employees or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible to the Financing Parties or the Borrower for the negligence or misconduct of any agent or attorney-in-fact that it selects with reasonable care.

10.3 Liability of the Administrative Agent. The Administrative Agent shall not (a) be liable for any action taken or omitted to be taken by it under or in connection with this Credit Agreement or any other Transaction Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and non-appealable decision) or (b) be responsible in any manner to any of the Financing Parties or any other Person for any recital, statement, representation or warranty made by the Borrower or any Affiliate of the Borrower, or any officer thereof, contained in this Credit Agreement or in any other Transaction Document, or in any certificate, report, statement or other document referred to or provided for in, or received by the Administrative Agent under or in connection with, this Credit Agreement or any other Transaction Document, or for the value of or title to any Collateral, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Credit Agreement or any other Transaction Document, or for any failure of the Borrower or any other party to any Transaction Document to perform its obligations hereunder or thereunder. The Administrative Agent shall not be under any obligation to any Secured Party to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Credit Agreement or any other Transaction Document, or to inspect the Properties, books or records of the Borrower or any Affiliate of the Borrower.

10.4 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to the Borrower), independent accountants and other experts selected by the Administrative Agent. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Credit Agreement or any other Transaction Document (a) if such action would, in the opinion of the Administrative Agent (upon consultation with legal counsel), be contrary to applicable Law or the terms of any Financing Document, (b) if such action is not

specifically provided for in the Financing Documents to which the Administrative Agent is a party, and it shall not have received advice as provided in the foregoing sentence approving or concurring in any such action or the approval of the Requisite Financing Parties, as it deems appropriate or (c) unless, if it so requests, the Administrative Agent shall first be indemnified to its satisfaction by the Financing Parties against any and all liabilities and expenses which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Credit Agreement or any other Transaction Document in accordance with a request or consent of the Requisite Financing Parties and such request or consent and any action taken or failure to act pursuant thereto shall be binding upon all of the Financing Parties.

10.5 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest and fees required to be paid to the Administrative Agent for the account of the Financing Parties, unless the Administrative Agent shall have received written notice from a Financing Party or the Borrower referring to this Credit Agreement, describing such Default or Event of Default and stating that such notice is a "Notice of Default." If the Administrative Agent receives any such notice of the occurrence of a Default or an Event of Default from the Borrower, it shall give notice thereof to the Financing Parties. The Administrative Agent shall take such action with respect to such Default or Event of Default as may be requested by the Requisite Financing Parties in accordance with this ARTICLE X; provided, that unless and until the Administrative Agent has received any such request, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interest of the Financing Parties.

10.6 Credit Decision. Each Financing Party acknowledges that none of the Agents or the Agent-Related Persons, any Joint Bookrunner or any Mandated Lead Arranger (collectively, the "Applicable Group") has made any representation or warranty to it, and that no act by any member of the Applicable Agent hereafter taken, including any review of the Project or of the affairs of any Borrower Party, shall be deemed to constitute any representation or warranty by any member of the Applicable Group to any Financing Party. Each Financing Party represents to each member of the Applicable Group that it has, independently and without reliance upon any member of the Applicable Group and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, Property, financial and other condition and creditworthiness of each Borrower Party, the Pledgor, the Project, the value of and title to any Collateral, and all applicable bank regulatory Laws relating to the transactions contemplated hereby, and made its own decision to enter into this Credit Agreement and to extend credit to the Borrower hereunder. Each Financing Party also represents that it will, independently and without reliance upon any member of the Applicable Group and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Credit Agreement and the other Transaction Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, Property, financial or other condition and creditworthiness of each Borrower Party, the Pledgor, the Project, the value of and title to any Collateral, and all applicable bank regulatory Laws relating to the transaction contemplated hereby. Except for

notices, reports and other documents expressly required pursuant to any Financing Document to be furnished to the Financing Parties by the Agents, no member of the Applicable Group shall have any duty or responsibility to provide any Financing Party with any credit or other information concerning the business, prospects, operations, Property, financial and other condition or creditworthiness of the Project, the Borrower Parties or the Pledgor, the value of and title to any Collateral, and all applicable bank regulatory Laws relating to the transactions contemplated hereby which may come into the possession of any Agent or any member of the Applicable Group.

10.7 Indemnification of Administrative Agent.

[(a) Whether or not the transactions contemplated hereby are consummated, the Financing Parties shall indemnify upon demand the Administrative Agent (to the extent not reimbursed by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), *pro rata* in accordance with the aggregate principal amount of the Loans held or committed by such Financing Party, from and against any and all Indemnified Liabilities; provided, that (i) such Indemnified Liabilities were incurred by or asserted against the Administrative Agent (or the relevant Indemnified Person) in its capacity as such and (ii) no Financing Party shall be liable for the payment to the Administrative Agent of any portion of such Indemnified Liabilities resulting solely from the gross negligence or willful misconduct of the relevant Indemnified Person (as determined by a court of competent jurisdiction in a final and non-appealable decision).

[(b) Without limiting the foregoing, each Financing Party shall reimburse the Administrative Agent upon demand for its ratable share as provided above of any costs and out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Credit Agreement, any other Transaction Document or any document contemplated by or referred to herein, to the extent that the Administrative Agent is not reimbursed for such expenses by or on behalf of the Borrower; provided, that such costs and out-of-pocket expenses (including Attorney Costs) incurred by the Administrative Agent were incurred by it in its capacity as such.

[(c) The undertakings of the Financing Parties in this Section 10.7 shall survive the payment of all Secured Obligations hereunder and the resignation or replacement of the Administrative Agent.

10.8 Individual Capacity. The Administrative Agent and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting or other business with the Borrower or its Affiliates as though it were not the Administrative Agent hereunder and without notice to or consent of the Financing Parties. The Financing Parties acknowledge that, pursuant to such activities, the Administrative Agent or any of its Affiliates may receive information regarding the Borrower or its Affiliates (including information that may be subject to confidentiality obligations in favor of the Borrower or such Affiliates) and acknowledge that the Administrative Agent shall be under no obligation to

provide such information to them. The Administrative Agent, in its capacity as Financing Party, shall have the same rights and powers under this Credit Agreement as any other Financing Party and may exercise the same as though it were not an agent, and the terms “Financing Party” and “Financing Parties” shall include the Administrative Agent in its individual capacity.

10.9 Successor Agent.

[(a) Subject to the appointment and acceptance of a successor as provided below, (i) the Administrative Agent may resign at any time by giving thirty days prior written notice thereof to the other Agents, the Financing Parties and the Borrower and (ii) the Administrative Agent may be removed at any time with or without cause by the Requisite Financing Parties (excluding, for purposes of the determination thereof, the Commitments and Loans held by the Administrative Agent). Upon any such resignation or removal, the Requisite Financing Parties (in consultation with the Borrower unless an Event of Default has occurred and is continuing) shall have the right to appoint a successor to the Administrative Agent. If no successor Administrative Agent shall have been appointed by the Requisite Financing Parties and shall have accepted such appointment within thirty days after the giving of notice by the Administrative Agent of its resignation or the giving of notice by the Requisite Financing Parties of their removal of the Administrative Agent, then the resigning or removed Administrative Agent may appoint a successor satisfactory to the Requisite Financing Parties. Upon the acceptance of its appointment as a successor Administrative Agent hereunder, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of such resigning or removed Administrative Agent, and such resigning or removed Administrative Agent shall be discharged from its duties and obligations hereunder.

[(b) The Administrative Agent shall, on the instructions of the Requisite Financing Parties, vote to cause the removal and replacement of any other Agent in accordance with the relevant Financing Documents.

[(c) After the Administrative Agent’s resignation or removal, the provisions of this ARTICLE X and of Sections 11.1 and 11.2 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was the Administrative Agent.

10.10 Registry. The Borrower hereby designates the Administrative Agent, and the Administrative Agent agrees, to serve as the Borrower’s agent, solely for purposes of this Section 10.10, to maintain a register at one of its offices in New York, New York (the “Register”) on which it will record the Commitments from time-to-time of each of the Financing Parties, the Loans made by each of the Financing Parties and each repayment in respect of the principal amount of the Loans of each Financing Party. Failure to make any such recordation, or any error in such recordation shall not affect the Borrower’s obligations in respect of such Loans. With respect to any Financing Party, the transfer of the Commitments of such Financing Party and the rights to the principal of, and interest on, any Loan made pursuant to such Commitments shall not be effective until such transfer is recorded on the Register with respect to ownership of such Commitments and Loans, and prior to such recordation all amounts owing to the transferor with respect to such Commitments and Loans shall remain owing to the transferor. The registration of an assignment or transfer of all or part of any Commitments and Loans shall be recorded by the Administrative Agent on the Register only upon the acceptance by the

Administrative Agent of a properly executed and delivered Assignment and Acceptance pursuant to Section 11.11.

10.11 Voting.

[(a) Whenever the Administrative Agent, pursuant to any provision of this Credit Agreement or any other Financing Document, is requested or required to or may act at the direction or with the approval or consent of the Requisite Financing Parties, an affirmative vote of the Requisite Financing Parties shall be required to give such direction, approval or consent, which vote shall be taken in accordance herewith. The Administrative Agent may at any time solicit direction from the Requisite Financing Parties as to any action that it may be requested or required to take, or which it may propose to take, in the performance of its obligations under this Credit Agreement and the other Financing Documents, and shall be fully justified in failing or refusing to act whether under this Credit Agreement or any other Financing Document until it shall have received such direction.

[(b) Notwithstanding the foregoing, no waiver, amendment, supplement or modification to this Credit Agreement or any other Financing Document shall (i) increase the Commitment of any Financing Party (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in any Commitment, shall not constitute an increase of any Commitment of any Financing Party), without the prior written consent of such Financing Party, (ii) postpone or delay the scheduled Maturity Date of any Loan, without the prior written consent of each affected Financing Party, or postpone or delay any date fixed by this Credit Agreement or any other Financing Document for any payment of principal, interest or Fees due to any Financing Party hereunder or under any other Financing Document, without the prior written consent of such Financing Party, (iii) reduce the principal of, or the rate of interest specified in any Financing Document on, any Loan of any Financing Party, without the prior written consent of such Financing Party, (iv) direct the Administrative Agent to direct or permit any other Agent to release all or substantially all of the Collateral except as shall be otherwise provided in any Security Document or other Financing Document or consent to the assignment or transfer by the Borrower of any of its respective obligations under this Credit Agreement or any other Financing Document, without the prior written consent of each Financing Party, (v) amend, modify or waive any provision of this Section 10.11 or Sections 11.1 or 11.2, without the prior written consent of each Financing Party, (vi) reduce the percentage specified in or otherwise amend the definition of Requisite Financing Parties, without the prior written consent of each Financing Party (it being understood that, with the consent of the Requisite Financing Parties (determined before giving effect to the additional extensions of credit), extensions of credit pursuant to this Credit Agreement in addition to those set forth in or contemplated by this Credit Agreement on the Closing Date may be included for the purposes of the definition of the term "Requisite Financing Parties" on substantially the same basis as the extensions of Loans and Commitments are included on the Closing Date) or (vii) amend, modify or waive any provision of Section 3.22 or direct the Administrative Agent to vote in favor of the amendment, modification or waiver of Sections 7.1, 7.7 or 7.8 of the Collateral Agreement or the definitions of Secured Debt or Secured Obligations set forth therein, without the prior written consent of each Financing Party.

[(c) If any Affiliate of the Borrower Parties is a Financing Party, then the amount of Loans and Commitments held by such Affiliate of the Borrower Parties shall be disregarded for purposes of calculating the aggregate Loans and Commitments underlying the definitions of Majority Lenders, Requisite Financing Parties, Requisite Revolver Lenders, Requisite TALC Participating Banks, Requisite Tranche A Lenders, Requisite Tranche B Lenders, Requisite Term Lenders and for all other voting provisions hereunder.

[(d) The Administrative Agent shall act under the Collateral Agreement (including, without limitation, in connection with any actions pursuant to Sections 5.4 and 6.1 of the Collateral Agreement) in accordance with the provisions of this Credit Agreement and such actions by the Administrative Agent shall be subject to the rights of the Financing Parties set forth in Section 10.11[(b) hereof.

10.12 Acknowledgement of Collateral Agreement. Notwithstanding anything herein to the contrary, the Liens granted to the Collateral Agent for the benefit of the Secured Parties pursuant to this Credit Agreement and the exercise of any right or remedy by the Collateral Agent for the benefit of the Secured Parties hereunder are subject to the provisions of the Collateral Agreement. In the event of any conflict between the terms of the Collateral Agreement and this Credit Agreement, the terms of the Collateral Agreement shall govern and control.

ARTICLE XIMISCELLANEOUS

11.1 Costs, Expenses and Attorneys' Fees. On the Closing Date, the Borrower shall pay to the Administrative Agent, the other Agents, the Joint Bookrunners, the Lead Arrangers, the Lenders and the Issuing Bank all reasonable costs and expenses of each such party and their respective Affiliates in connection with the preparation, issuance, delivery, filing, recording and administration of this Credit Agreement, the other Transaction Documents, and any other documents which may be delivered in connection herewith or therewith, including the reasonable and documented fees, expenses and disbursements of White & Case LLP, Sheppard Mullin Richter and Hampton LLP, and each Independent Consultant. In addition, from and after the Closing Date, the Borrower shall pay to the Administrative Agent all of its reasonable out-of-pocket costs and expenses in connection with the costs of administering this Credit Agreement, the Loans or Commitments or any Specified Letter of Credit, and any other documents contemplated hereby (including any amendments, waivers or consents thereof or thereto, whether or not granted), including, without duplication, (a) the reasonable and documented fees, expenses and disbursements of White & Case LLP, one other counsel in respect of each specialty or jurisdiction not within the competency of White & Case LLP, (b) the reasonable and documented fees, expenses and disbursements of the Independent Consultants incurred in connection with such administration of this Credit Agreement or the Loans or Commitments or any Specified Letter of Credit and any other documents contemplated hereby and (c) the reasonable out-of-pocket travel, telecommunication, filing and recording, due diligence, computer, duplication, messenger, appraisal, Intralinks or similar services, audit costs, and other expenses incurred by the Administrative Agent in connection with the administration of this Credit Agreement; provided, that the Borrower shall be responsible only for the cost of two visits to

the Site per calendar year by the Administrative Agent prior to the Term Conversion Date and one visit to the Site per calendar year by the Administrative Agent after the Term Conversion Date (in each case, unless an Event of Default has occurred and is continuing). The Borrower shall reimburse the Administrative Agent, the Lenders and the Issuing Banks for all costs and expenses, including attorneys' fees, expended or incurred by the Administrative Agent, any Lender and/or the Issuing Banks in enforcing this Credit Agreement or the other Financing Documents in connection with any Event of Default or Default (including any Bankruptcy Event suffered by the Borrower), or in connection with preservation of their rights hereunder or thereunder or in connection with any refinancing, any restructuring or similar work-out negotiations with the Borrower in respect of this Credit Agreement, in actions for declaratory relief in any way related to this Credit Agreement, in collecting any sum which becomes due to the Administrative Agent, any Lender and/or the Issuing Banks on the Notes or any Specified Letter of Credit or under any Financing Document. All undisputed amounts payable pursuant to this Section 11.1 after the Closing Date shall be payable within thirty days following the date of receipt by the Borrower of written notice thereof (together with reasonable supporting documentation in respect thereof); provided, that if a Default or Event of Default has occurred and is continuing, then such amounts shall be payable within five days following receipt by the Borrower of written notice thereof.

11.2 Indemnity. Whether or not the transactions contemplated hereby are consummated:

[(a) The Borrower shall, and shall cause each other Borrower Party to, defend, protect, indemnify, save and hold the Administrative Agent and each Secured Party, Joint Bookrunners and Mandated Lead Arranger and each of their respective officers, directors, employees, counsel, agents, attorneys-in-fact and Affiliates (each, an "Indemnified Person") harmless from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, judgments, suits, costs, charges, expenses or disbursements (including Attorney Costs and consultants' fees and disbursements) of any kind or nature whatsoever which may at any time (including at any time following repayment of the Loans, the termination, resignation or replacement of the Administrative Agent or the replacement of any Financing Party) be imposed on, incurred by or asserted against any such Person in any way relating to or arising out of this Credit Agreement or any other Transaction Document, including the Security Documents and any other document or instrument contemplated by or referred to herein or therein, or the transactions contemplated hereby and thereby, or any action taken or omitted by any such Person under or in connection with any of the foregoing, including with respect to the exercise by any Secured Party of any of its respective rights or remedies under any of the Financing Documents, and any investigation, litigation or proceeding (including any bankruptcy, insolvency, reorganization or other similar proceeding or appellate proceeding) related to this Credit Agreement or any other Transaction Document or the Loans, or the use of the proceeds thereof, whether or not any Indemnified Person is a party thereto (all the foregoing, collectively, the "Indemnified Liabilities"); provided, that no Borrower Party shall have an obligation hereunder to any Indemnified Person with respect to Indemnified Liabilities arising from the gross negligence or willful misconduct of such Indemnified Person (as determined by a court of competent jurisdiction in a final and non-appealable decision).

[(b) Environmental Indemnity.

(i) Without in any way limiting the generality of the other provisions contained in this Section 11.2, the Borrower agrees, and shall cause each other Borrower Party, to defend, protect, indemnify, save and hold harmless each Indemnified Person, whether as beneficiary of any of the Security Documents, as a mortgagee in possession, as successor-in-interest to the Borrower or any other Borrower Party by foreclosure deed or deed in lieu of foreclosure or otherwise, from and against any and all liabilities, obligations, losses, damages (including foreseeable and unforeseeable consequential damages and punitive claims), penalties, claims, actions, judgments, suits, costs, fees, charges, expenses or disbursements (including Attorney Costs and consultants' fees and disbursements) and expenses (collectively, "Losses") of any kind or nature whatsoever that may at any time be incurred by, imposed on, asserted or awarded against any such Indemnified Person directly or indirectly based on, or arising out of or resulting from: (A) the actual or alleged presence of Hazardous Materials on, in, under or affecting all or any portion of the Site whether or not the same originates or emanates from the Site or any property adjoining or adjacent to the Site or from properties at which any Hazardous Materials generated, stored or handled by the Borrower were Released or disposed of; (B) any Environmental Claim relating to the Site or the Project; or (C) the exercise of any Secured Party's rights under any of the provisions of the Security Documents (the "Indemnified Matters"), whether any of the Indemnified Matters arise before or after foreclosure of any of the Liens or other taking of title to all or any portion of the Collateral by any Secured Party, including: (x) the costs of removal of any and all Hazardous Materials from all or any portion of the Site or any Property adjoining or adjacent to the Site; (y) costs required to take reasonable precautions to protect against the Release of Hazardous Materials at or from the Site into the air, any body of water, any other public domain or any surrounding areas; and (z) costs incurred to comply, in connection with all or any portion of the Site or, to the extent actually or potentially affected by Hazardous Materials at or from the Site, any surrounding areas, with all applicable Environmental Laws with respect to Hazardous Materials, except to the extent that any such Indemnified Matter arises from the gross negligence or willful misconduct of such Indemnified Person (as determined by a court of competent jurisdiction in a final and non-appealable decision).

(ii) In no event shall any Site visit, observation or testing by any Indemnified Person (or any representative of any such Indemnified Person) be deemed to be a representation or warranty that Hazardous Materials are or are not present in, on, or under the Site, or that there has been or shall be compliance with any Environmental Law. Except to the extent provided in a reliance letter, neither the Borrower nor any other Person is entitled to rely on any Site visit, observation or testing by any Indemnified Person. No Indemnified Person owes any duty of care to protect the Borrower or any other Person against, or to inform the Borrower or any other Person of, any Hazardous Materials or any other adverse condition affecting the Site or the Project, except and only to the extent such Hazardous Materials were actually Released or such adverse condition was actually caused by the negligent actions of such Indemnified Person or its representatives in connection with a Site visit or invasive testing at the Site. No Indemnified Person shall be obligated to disclose to the Borrower or any other Person any report or findings made as a result of, or in connection with, any Site visit, observation or testing by any Indemnified Person.

[(c) Survival; Defense. The obligations in this Section 11.2 shall survive repayment in full of the Loans and payment of all other Secured Obligations. At the election of any Indemnified Person, the Borrower's indemnification obligations under this Section 11.2 shall include the obligation to defend such Indemnified Person using legal counsel satisfactory to such Indemnified Person, at the sole cost and expense of the Borrower. All amounts owing under this Section 11.2 shall be paid within thirty days after written demand therefore.

[(d) Contribution. To the extent that any undertaking in the preceding paragraphs of this Section 11.2 may be unenforceable because it is violative of any Law or public policy, the Borrower will contribute the maximum portion that it is permitted to pay and satisfy under applicable Law to the payment and satisfaction of such undertaking.

[(e) Settlement. So long as the Borrower is in compliance with its obligations under this Section 11.2, the Borrower shall not be liable to any Indemnified Person under this Section 11.2 for any settlement made by such Indemnified Person without the Borrower's consent.

11.3 Notices.

[(a) All notices, requests and other communications provided for hereunder shall be in writing and shall be faxed, sent or delivered to the physical or e-mail address or facsimile number specified on Appendix G or to such other physical or e-mail address or facsimile number as shall be designated by such party in a written notice to the other parties hereto.

[(b) All such notices, requests and communications (i) sent by express courier will be effective upon delivery to or refusal to accept delivery by the addressee, (ii) transmitted by facsimile will be effective when sent and facsimile confirmation is received, (iii) on the date on which such notice or other communication has been made generally available on an Approved Electronic Platform, Internet website or similar telecommunication device to the class of Person(s) being notified (regardless of whether any such Person must accomplish, and whether or not any such Person shall have accomplished, any action prior to obtaining access to such items, including registration, disclosure of contact information, compliance with a standard user agreement or undertaking a duty of confidentiality) and such Person has been notified in respect of such posting that a communication has been posted to such Approved Electronic Platform, Internet website or similar telecommunication device if delivered by posting to such Approved Electronic Platform, Internet website or similar telecommunication device requiring that a user have prior access to such Approved Electronic Platform, Internet website or similar telecommunication device and (iv) sent by e-mail will be effective when sent and electronic confirmation of receipt is received, except that (x) all notices and other communications to the Administrative Agent shall not be effective until actually received during normal business hours and (y) any communications transmitted by the Borrower by facsimile or e-mail shall be immediately confirmed by a telephone call to the recipient at the number specified on Appendix G and shall be followed promptly by a hard copy original thereof by express courier.

[(c) Notwithstanding Sections 11.3[(a) and 11.3[(b) (unless the Administrative Agent requests that the provisions of Sections 11.3[(a) and 11.3[(b) be followed) and any other

provision in this Credit Agreement or any other Financing Document providing for the delivery of any Approved Electronic Communication by any other means, the Borrower, the other Borrower Parties and the Pledgor, as the case may be, shall deliver all Approved Electronic Communications to the Administrative Agent by properly transmitting such Approved Electronic Communications in an electronic/soft medium in a format acceptable to the Administrative Agent to lindsay.scully@ca-cib.com or such other electronic mail address (or similar means of electronic delivery) as the Administrative Agent may notify to the Borrower. Nothing in this Section 11.3[(c) shall prejudice the right of the Administrative Agent or any Lender to deliver any Approved Electronic Communication to any Secured Party in any manner authorized in this Credit Agreement or to request that the relevant Borrower Parties or the Pledgor effect delivery in such manner.

[(d) Posting of Approved Electronic Communications.

(i) The Borrower and each Lender agree that the Administrative Agent may, but shall not be obligated to, make the Approved Electronic Communications available to the Lenders by posting such Approved Electronic Communications on IntraLinks™ or a substantially similar electronic platform chosen by the Administrative Agent to be its electronic transmission system (the “Approved Electronic Platform”).

(ii) Although the Approved Electronic Platform and its primary web portal are secured with generally-applicable security procedures and policies implemented or modified by the Administrative Agent from time to time (including, as of the date of this Credit Agreement, a dual firewall and a User ID/Password Authorization System) and the Approved Electronic Platform is secured through a single-user-per-deal authorization method whereby each user may access the Approved Electronic Platform only on a deal-by-deal basis, each Lender and each Secured Party acknowledges and agrees that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution. In consideration for the convenience and other benefits afforded by such distribution and for the other consideration provided hereunder, the receipt and sufficiency of which is hereby acknowledged, each Lender and each Secured Party hereby approves distribution of the Approved Electronic Communications through the Approved Electronic Platform and understands and assumes the risks of such distribution.

[(e) THE APPROVED ELECTRONIC PLATFORM AND THE APPROVED ELECTRONIC COMMUNICATIONS ARE PROVIDED “AS IS” AND “AS AVAILABLE”. NONE OF THE ADMINISTRATIVE AGENT NOR ANY OF ITS AFFILIATES WARRANT THE ACCURACY, ADEQUACY OR COMPLETENESS OF THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM AND EACH EXPRESSLY DISCLAIMS ANY LIABILITY FOR ERRORS OR OMISSIONS IN THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR

FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE ADMINISTRATIVE AGENT OR ANY OF ITS AFFILIATES IN CONNECTION WITH THE APPROVED ELECTRONIC COMMUNICATIONS OR THE APPROVED ELECTRONIC PLATFORM.

(f) Each Lender agrees that the Administrative Agent may, but (except as may be required by applicable law) shall not be obligated to, store the Approved Electronic Communications on the Approved Electronic Platform in accordance with the Administrative Agent's generally-applicable document retention procedures and policies.

(g) The Borrower acknowledges and agrees, and shall cause each other Borrower Party to acknowledge and agree, that any agreement of the Lenders to receive certain notices by telephone, Approved Electronic Platform, e-mail or facsimile is solely for the convenience and at the request of the Borrower Parties and the Pledgor. The Lenders shall be entitled to rely on the authority of any Person purporting to be a Person authorized by the Borrower to give such notice and the Lenders shall not have any liability to the Borrower or other Person on account of any action taken or not taken by any of the Secured Parties in reliance upon such telephonic, e-mail or facsimile notice.

(h) Notwithstanding any other provision of this Section 11.3 to the contrary, any communication in respect of the Borrower Parties and their Affiliates which is transmitted through the Approved Electronic Platform shall be subject to any confidentiality agreements entered into between any Borrower Party and any Lender or Agent or Issuing Bank in respect of this Credit Agreement, the other Financing Documents and Transaction Documents and the transactions contemplated.

11.4 Benefit of Agreement. This Credit Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto. The Borrower may not assign or otherwise transfer any of its rights or obligations under this Credit Agreement or any of the other Financing Documents.

11.5 No Waiver; Remedies Cumulative. No failure or delay on the part of any of the Secured Parties or the holder of any Note in exercising any right, power or privilege hereunder or under any other Financing Document and no course of dealing between the Borrower and any Secured Party or the holder of any Note shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Financing Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. No notice to or demand on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Secured Party or the holder of any Note to take any other or further action in any circumstances without notice or demand. All remedies, either under this Credit Agreement or any other Financing Document or pursuant to any applicable Law or otherwise afforded to any Secured Party or the holder of any Note shall be cumulative and not alternative or exclusive in nature.

11.6 Third Party Beneficiaries. (a) The agreement of each Lender to make extensions of credit to the Borrower and each Issuing Bank to issue any Specified Letter of

Credit on the terms and conditions set forth in this Credit Agreement and the other Financing Documents is solely for the benefit of the Borrower and the other Borrower Parties, and no other Person (including any other Project Participant, or any contractor, sub-contractor, supplier, worker, carrier, warehouseman, materialman or vendor furnishing supplies, goods or services to or for the benefit of the Borrower, any other Borrower Party or the Project or receiving services from the Project) shall have any rights hereunder against any Secured Party with respect to the Loans, the Specified Letters of Credit, the proceeds thereof or otherwise.

(b) Each Indemnified Person is an intended third party beneficiary of Section 11.2 hereof.

11.7 Reinstatement. To the extent that any Secured Party receives any payment by or on behalf of the Borrower, which payment or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to the Borrower or to its estate, trustee, receiver, custodian or any other party under any Debtor Relief Law or otherwise, then to the extent of the amount so required to be repaid, the obligation or part thereof which has been paid, reduced or satisfied by the amount so repaid shall be reinstated by the amount so repaid and shall be included within the Secured Obligations as of the date such initial payment, reduction or satisfaction occurred.

11.8 No Immunity. To the extent that the Borrower may be entitled, in any jurisdiction in which judicial proceedings may at any time be commenced with respect to this Credit Agreement or any other Financing Document, to claim for itself or its revenues, assets or Properties any immunity from suit, the jurisdiction of any court, attachment prior to judgment, attachment in aid of execution of judgment, set-off, execution of a judgment or any other legal process, and to the extent that in any such jurisdiction there may be attributed to such Person such an immunity (whether or not claimed), the Borrower hereby irrevocably agrees not to claim and hereby irrevocably waives such immunity to the fullest extent permitted by the Law of the applicable jurisdiction.

11.9 Counterparts. This Credit Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart to this Credit Agreement by facsimile or electronic transmission in “.pdf” format shall be as effective as delivery of a manually signed original.

11.10 Amendment or Waiver. No provision of this Credit Agreement may be amended, supplemented, modified or waived, except by a written instrument signed by the Administrative Agent (acting in accordance with Section 10.11) and the Borrower. Any waiver and any amendment, supplement or modification made or entered into in accordance with this Section 11.10 shall be binding upon each of the Lenders.

11.11 Assignments, Participations, etc.

(a) Subject to first obtaining any prior approvals set forth in Section 11.11(b) and otherwise complying with this Section 11.11, each Financing Party may assign to one or

more Eligible Assignees all or any part of any Loan, Commitment, Specified Letter of Credit, TALC Percentage or TALC Participating Amount and the other rights and obligations of such Lender or Issuing Bank hereunder and under the other Financing Documents; provided, that (A) each such assignment by a Lender of Construction Loans, Construction Notes, and Construction Loan Commitments shall only be assigned contemporaneously with a corresponding portion of Term Loan Commitments; (B) in the case of an assignment of any part of a Loan or Commitment to any Eligible Assignee, such assignment shall not be for an amount less than (x) \$1,000,000 in respect of any Eligible Assignee that is a Financing Party prior to giving effect to such assignment or (y) \$5,000,000 in respect of any Eligible Assignee that is not a Financing Party prior to giving effect to such assignment, (or a higher integral multiple of 1,000,000 in excess thereof) in each instance; and (C) the Borrower and the Administrative Agent may continue to deal solely and directly with the assigning Lender or Issuing Bank in connection with the interest so assigned until (1) written notice of such assignment, together with payment instructions, addresses and related information with respect to the Eligible Assignee, shall have been given to the Borrower and the Administrative Agent by such assigning Lender or Issuing Bank and the Eligible Assignee, (2) the assigning Lender, Issuing Bank or Eligible Assignee has paid to the Administrative Agent a processing fee in the amount of \$3,500 and (3) the assigning Lender or Issuing Bank shall have delivered to the Borrower and the Administrative Agent an Assignment and Acceptance substantially in the form of Exhibit 13 hereto (an "Assignment and Acceptance") with respect to such assignment from the assigning Lender or Issuing Bank; provided, further, that, if the Eligible Assignee is an Affiliated Lender, then (A) such Affiliated Lender (whether as a direct purchaser of the Loans or as the ultimate purchaser of the Loans through a broker or other intermediary) shall ensure that its identity as an Affiliate of the Borrower is known to the assigning Lender and the Administrative Agent and (B) at the time of such assignment and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing.

[(b) Prior to making any assignment of Loan, Commitment, Specified Letter of Credit, TALC Percentage or TALC Participating Amount hereunder, the assigning Lender or Issuing Bank (or the Borrower if the Borrower is proceeding in accordance with Section 3.26) shall obtain the written consent of (i) the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed), (ii) except upon the occurrence and continuance of a Default or Event of Default, the Borrower (such consent not to be unreasonably withheld, conditioned or delayed) and (iii) if constituting an assignment of a TALC Percentage or a TALC Participating Amount, the TALC Issuing Bank (which consent may be granted or withheld in the TALC Issuing Bank's sole discretion); provided, that no written consent of the Administrative Agent or Borrower shall be required in connection with any such assignment by a Lender to (i) an Eligible Assignee that is an Affiliate of such Lender or (ii) to another Lender that is an Eligible Assignee.

[(c) Subject to Section 10.10, from and after the date that the Administrative Agent notifies the assigning Lender and the Borrower that it has received (and, where required in accordance with Section 11.11[(a), provided its consent with respect to) an executed Assignment and Acceptance and payment of the above-referenced processing fee, (i) the Eligible Assignee under such Assignment and Acceptance shall be a party hereto and, to the extent that rights and obligations hereunder and under the other Financing Documents have been assigned to it pursuant to such Assignment and Acceptance, shall have the rights and obligations of a Lender

hereunder and under the other Financing Documents, and this Credit Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to effect the addition of the Eligible Assignee, and any reference to the assigning Lender hereunder or under the other Financing Documents shall thereafter refer to such Lender and to the Eligible Assignee to the extent of their respective interests and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Financing Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights and be released from its obligations hereunder and under the other Financing Documents; provided, that any Lender that assigns all of its Commitments and Loans hereunder in accordance with Section 11.11[(a) shall continue to have the benefit of any indemnification provisions under this Credit Agreement (including Sections 3.10, 3.24, 11.1 and 11.2) and under the other Financing Documents (to the extent having arisen prior to such assignment), which shall survive such assignment as to such assigning Lender. At the time of each assignment pursuant to Section 11.11[(a) to a Person which is not already a Lender hereunder, the relevant Eligible Assignee shall provide to the Borrower and the Administrative Agent the appropriate Internal Revenue Service Forms (and, if applicable, an Applicable Tax Certificate) described in Section 3.24(b) to the extent such forms would provide a complete exemption from or reduction in United States withholding tax. To the extent that an assignment of all or any portion of a Lender's Commitments and related outstanding Obligations pursuant to this Section 11.11 would, at the time of such assignment, result in increased costs under Section 3.24 from those being charged by the respective assigning Lender prior to such assignment, then the Borrower shall not be obligated to pay such increased costs (although the Borrower, in accordance with and pursuant to the other provisions of this Credit Agreement, shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective assignment).

(d) Promptly after the Borrower receives notice from the Administrative Agent that the Administrative Agent has received an executed Assignment and Acceptance and payment of the above-referenced processing fee, upon the request of the Eligible Assignee, the Borrower shall execute and deliver to the Administrative Agent new Notes evidencing the Eligible Assignee's assigned Commitments and Loans and, upon the request of the assigning Lender, if the assigning Lender has retained a portion of its Loans, the Borrower shall execute and deliver to the Administrative Agent replacement Notes reflecting the Commitments and Loans retained by the assigning Lender (such Notes to be in exchange for, but not in payment of, the Notes, if any, held by such Lender).

(e) Any Lender (the "Originating Lender") may at any time sell to one or more commercial banks or other Persons not Affiliates of the Borrower (a "Participating Bank") participating interests in any Loans; provided, that (i) the Originating Lender's obligations under this Credit Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) the Borrower and the Administrative Agent shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Credit Agreement and the other Financing Documents and (iv) no Lender shall transfer or grant any participating interest under which the Participating Bank shall have rights to approve any amendment or modification to, or give any consent or waiver with respect to, this Credit Agreement or any other Transaction Document, except to the extent such amendment, modification, consent or waiver would require unanimous consent of the Lenders as described in Section 11.10. In the case of any such

participation, the Participating Bank shall not have any rights under this Credit Agreement or any of the other Financing Documents (the Participating Bank's rights against the Originating Lender in respect of such Participation to be those set forth in the agreement executed by the Originating Lender in favor of the Participating Bank relating thereto) and all amounts payable by the Borrower hereunder shall be determined as if such Lender had not sold such participation.

[(f) Notwithstanding any other provision contained in this Credit Agreement or any other Transaction Document to the contrary, any Lender may assign all or any portion of the Loans or Notes held by it as collateral security; provided, that any payment in respect of such assigned Loans or Notes made by the Borrower to or for the account of the assigning or pledging Lender in accordance with the terms of this Credit Agreement shall satisfy the Borrower's obligations hereunder in respect to such assigned Loans or Notes to the extent of such payment. No such assignment shall release the assigning Lender from its obligations hereunder.

[(g) Notwithstanding any other provision contained in this Credit Agreement or any other Transaction Document to the contrary, no Affiliated Lender shall have any right to (i) attend (including by telephone or electronic means) any meeting or discussions (or portion thereof) among the Administrative Agent or any Financing Party to which representatives of the Borrower Parties are not invited or (ii) receive any information or material prepared by the Administrative Agent or any other Financing Party or any communication by or among the Administrative Agent and one or more other Financing Parties or have access to Intralinks or such other Electronic Platform used to distribute information to the other Financing Parties, except to the extent such information or materials have been made available to any Borrower Party or its representatives.

[(h) Each Affiliated Lender agrees that it (i) shall not disclose any information it receives in its capacity as a Lender to the Borrower Parties and (ii) shall not have any right to make or bring (or participate in, other than as a passive participant in or recipient of its *pro rata* benefits of) any claim, in its capacity as a Lender, against the Agents or any Financing Party with respect to any duties or obligations or alleged duties or obligations of such Agent or any other such Financing Party under the Financing Documents, except with respect to any claims that any such Agent or any other such Financing Party is treating such Affiliated Lender, in its capacity as a Lender, in a disproportionate manner relative to the other Financing Parties (other than as expressly provided herein or in any other Financing Document).

[(i) Notwithstanding anything in this Section 11.11 or the definition of "Required Financing Parties" to the contrary, for purposes of determining whether the Required Financing Parties, all affected Financing Parties or all Financing Parties have (A) consented (or not consented) to any amendment, modification, waiver, consent or other action with respect to any of the terms of any Financing Document or any departure by any Financing Party therefrom, (B) otherwise acted on any matter related to any Financing Document, or (C) directed or required the Administrative Agent, the Collateral Agent or any Financing Party to undertake any action (or refrain from taking any action) with respect to or under any Financing Document, each Affiliated Lender shall be deemed to have voted its interest as a Financing Party without its discretion in the same proportion as the allocation of voting with respect to such matter by Financing Parties who are not Affiliated Lenders; provided, that no amendment, modification, waiver, consent or other action with respect to any Financing Document shall deprive any

Affiliated Lender of its *pro rata* share of any payments to which such Affiliated Lender is entitled under the Financing Documents without such Affiliated Lender providing its consent; and in furtherance of the foregoing, (x) each Affiliated Lender agrees to execute and deliver to the Administrative Agent any instrument reasonably requested by the Administrative Agent to evidence the voting of its interest as a Lender in accordance with the provisions of this Section 11.11 (provided, that if such Affiliated Lender fails to promptly execute such instrument such failure shall in no way prejudice any of the Administrative Agent's rights under this paragraph) and (y) the Administrative Agent is hereby appointed (such appointment being coupled with an interest) by such Affiliated Lender as such Affiliated Lender's attorney-in-fact, with full authority in the place and stead of such Affiliated Lender and in the name of such Affiliated Lender from time to time in the Administrative Agent's discretion to take any action and to execute any instrument that the Administrative Agent may deem reasonably necessary to carry out the provisions of this Section 11.11.

(j) Each Affiliated Lender, solely in its capacity as a Lender, hereby agrees, and each Assignment and Acceptance shall provide a confirmation that, if any Borrower Party or any of their assets shall be subject to any voluntary or involuntary proceeding commenced under the Bankruptcy Code ("Bankruptcy Proceedings"), (i) such Affiliated Lender shall not take any step or action in such Bankruptcy Proceeding to object to, materially impede, or materially delay the exercise of any right or the taking of any action by the Administrative Agent (or the taking of any action by a third party that is supported by the Administrative Agent) in relation to such Affiliated Lender's claim with respect to its Loans (an "Affiliated Lender Claim") (including objecting to any debtor in possession financing, use of cash collateral, grant of adequate protection, sale or disposition, compromise, or plan of reorganization) so long as such Affiliated Lender is treated in connection with such exercise or action on the same or better terms as the other Lenders and (ii) with respect to any matter requiring the vote of Financing Parties during the pendency of a Bankruptcy Proceeding (including voting on any plan of reorganization), the Loans held by such Affiliated Lender (and any Affiliated Lender Claim with respect thereto) shall be deemed to be voted in accordance with this Section 11.11(j), so long as such Affiliated Lender is treated in connection with the exercise of such right or taking of such action on the same or better terms as the other Financing Parties. For the avoidance of doubt, each Affiliated Lender and the other Financing Parties agree and acknowledge that the provisions set forth in this Section 11.11(j), and the related provisions set forth in the Assignment and Acceptance, constitute a "subordination agreement" as such term is contemplated by, and utilized in, Section 510(a) of the Bankruptcy Code, and, as such, would be enforceable for all purposes in any case where a Borrower Party has filed for protection under the Bankruptcy Code.

11.12 Survival. All indemnification and expense reimbursement provisions set forth herein, including those set forth in Sections 11.1 and 11.2, shall survive the execution and delivery of this Credit Agreement and the Notes and the making and repayment of the Loans. In addition, each representation and warranty made or deemed to be made pursuant hereto shall survive the making of such representation and warranty, and no Lender shall be deemed to have waived, by reason of making any extension of credit, any Default or Event of Default which may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that such Lender may have had notice or knowledge or reason to believe that such representation or warranty was false or misleading at the time such extension of credit was made.

11.13 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS CREDIT AGREEMENT, THE NOTES OR ANY OTHER FINANCING DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE FINANCING PARTIES TO ENTER INTO THIS CREDIT AGREEMENT.

11.14 Right of Set-off. If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Bank, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held, and other obligations (in whatever currency) at any time owing, by such Lender, such Issuing Bank or any such Affiliate, to or for the credit or the account of the Borrower or any other Borrower Party against any and all of the obligations of the Borrower or such Borrower Party now or hereafter existing under this Credit Agreement or any other Financing Document to such Lender or such Issuing Bank or their respective Affiliates, irrespective of whether or not such Lender, Issuing Bank or Affiliate shall have made any demand under this Credit Agreement or any other Loan Document and although such obligations of the Borrower or such Borrower Party may be contingent or unmaturred or are owed to a branch, office or Affiliate of such Lender or such Issuing Bank different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 3.27 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Secured Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each Issuing Bank and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Bank or their respective Affiliates may have. Each Lender and Issuing Bank agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided, that the failure to give such notice shall not affect the validity of such setoff and application.

11.15 Severability. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of any provision in any other jurisdiction.

11.16 Domicile of Loans. Each Lender may transfer and carry its Loans at, to or for the account of any office, Subsidiary or Affiliate of such Lender.

11.17 Limitation of Recourse. There shall be full recourse to the Borrower and to all of its assets for the liabilities of the Borrower under this Credit Agreement and the other Financing Documents and its other Secured Obligations, but in no event shall any of the Financing Parties have any claims with respect to the Transactions contemplated under the Transaction Documents against the Sponsor, the Pledgor or any of the Sponsor's or Pledgor's Affiliates (other than any Borrower Party), or in either case any of their respective shareholders, officers, directors, employees, representatives or agents (collectively, the "Non-Recourse Parties"), provided, that the foregoing shall not: (a) constitute a waiver, release or discharge (or otherwise impair the enforceability) of any of the Secured Obligations, or of any of the terms, covenants, conditions, or provisions of this Credit Agreement or any other Financing Document and the same shall continue (but without personal liability of the Non-Recourse Parties) until fully paid, discharged, observed, or performed; (b) constitute a waiver, release or discharge of any Lien purported to be created pursuant to any Security Document (or otherwise impair the ability of any Secured Party to realize or foreclose upon any Collateral); (c) limit or restrict the right of the Administrative Agent, the Collateral Agent or any other Secured Party (or any assignee, beneficiary or successor to any of them) to name any Borrower Party or any other person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Credit Agreement or any other Financing Document, or for injunction or specific performance, so long as no judgment in the nature of a deficiency judgment shall be enforced against any Non-Recourse Party, except as set forth in other provisions of this Section 11.17; (d) in any way limit or restrict any right or remedy of the Administrative Agent, the Collateral Agent or any other Financing Party (or any assignee or beneficiary thereof or successor thereto) with respect to, and each Non-Recourse Party shall remain fully liable to the extent that it would otherwise be liable for its own actions with respect to, any fraud (which shall not include innocent or negligent misrepresentation), wilful misrepresentation, or misappropriation of revenues, profits of or proceeds from each of the Project or any Collateral, that should or would have been paid as provided herein or paid or delivered to the Administrative Agent, the Collateral Agent or any other Financing Party (or any assignee or beneficiary thereof or successor thereto) towards any payment required under this Credit Agreement or any other Financing Document; or (e) affect or diminish in any way or constitute a waiver, release or discharge of any specific written obligation, covenant, or agreement made by any of the Non-Recourse Parties (or any security granted by the Non-Recourse Parties in support of the obligations of any person) under any Financing Document (including the Pledge Agreements) or as security for the Secured Obligations. The limitations on recourse set forth in this Section 11.17 shall survive the termination of this Credit Agreement, the termination of all Commitments and the full payment and performance of the Secured Obligations under this Credit Agreement and the other Financing Documents.

11.18 Governing Law; Submission to Jurisdiction.

[(a) THIS CREDIT AGREEMENT AND EACH OF THE OTHER FINANCING DOCUMENTS (UNLESS ANY SUCH DOCUMENT EXPRESSLY STATES OTHERWISE THEREIN) SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW RULES THEREOF (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

[(b) The Borrower hereby submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York State court sitting in New York City for the purposes of all legal actions and proceedings arising out of or relating to this Credit Agreement, any other Financing Document or the transactions contemplated hereby or thereby. The Borrower hereby irrevocably waives, to the fullest extent permitted by applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such action or proceeding brought in such a court and any claim that any such action or proceeding brought in such a court has been brought in an inconvenient forum. Nothing herein shall affect the right to serve process in any other manner permitted by applicable Law or any right to bring any legal action or proceeding in any other competent jurisdiction, including judicial or non-judicial foreclosure of real property interests which are part of the Collateral. The Borrower further agrees that the aforesaid courts of the State of New York and of the United States for the Southern District of New York shall have exclusive jurisdiction with respect to any claim or counterclaim of the Borrower based upon the assertion that the rate of interest charged by or under this Credit Agreement or under the other Financing Documents is usurious. To the extent permitted by applicable Law, the Borrower further irrevocably agrees to the service of process of any of the aforementioned courts in any such action or proceeding by the mailing of copies thereof by certified mail, postage prepaid, return receipt requested, to the Borrower at the address referenced in Section 11.3, such service to be effective upon the date indicated on the postal receipt returned from the Borrower.

11.19 Complete Agreement. THIS CREDIT AGREEMENT AND THE OTHER FINANCING DOCUMENTS REPRESENT THE FINAL AND COMPLETE AGREEMENT OF THE PARTIES HERETO, AND ALL PRIOR NEGOTIATIONS, REPRESENTATIONS, UNDERSTANDINGS, WRITINGS AND STATEMENTS OF ANY NATURE ARE HEREBY SUPERSEDED IN THEIR ENTIRETY BY THE TERMS OF THIS CREDIT AGREEMENT AND THE OTHER FINANCING DOCUMENTS.

* * *

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Credit Agreement as of the date first above written.

[EXECUTABLE SIGNATURE PAGES TO BE DISTRIBUTED SEPARATELY]

DEFINED TERMS AND RULES OF INTERPRETATION

1. Defined Terms.

“AA Disbursement Account” means the account of the Administrative Agent so-designated on Appendix G to this Credit Agreement or such other account as so-designated by the Administrative Agent by notice to the Lenders.

“AA Payment Account” means the account of the Administrative Agent so-designated on Appendix G to this Credit Agreement or such other account as so-designated by the Administrative Agent by notice to the Lenders.

“Accounts” has the meaning set forth in the Accounts Agreement and shall include any other accounts or sub-accounts established pursuant to the Accounts Agreement.

“Accounts Agreement” means the Accounts Agreement, dated the date hereof, among the Borrower, the Project Owner, the Procurement Sub, the Collateral Agent and the Account Bank.

“Account Bank” means the institution appointed as such in accordance with the Accounts Agreement or any successor institution so-appointed pursuant to the Accounts Agreement.

“Additional Material Project Document” means any Additional Project Document that is a Material Project Document.

“Additional Project Document” means any Project Document entered into by any Borrower Party with any other Person subsequent to the date of this Credit Agreement (including Project Documents entered into in substitution for any Project Document that has been terminated in accordance with its terms or otherwise).

“Adjusted LIBO Rate” means, for any LIBOR Loan for any Interest Period therefor, the rate *per annum* (rounded upwards, if necessary, to the nearest 1/100 of 1%) determined by the Administrative Agent to be equal to the quotient obtained by dividing (a) the LIBO Rate for such LIBOR Loan for such Interest Period by (b) 1 *minus* the Reserve Requirement for such LIBOR Loan for such Interest Period.

“Administrative Agent” means Credit Agricole Corporate and Investment Bank, acting in its capacity as agent for the Lenders pursuant to this Credit Agreement, or any successor Administrative Agent appointed in accordance with Section 10.9 of this Credit Agreement.

“Affiliate” means, as to any Person, any Subsidiary of such Person and any other Person which, directly or indirectly, controls or is controlled by or is under direct or indirect common control with such specified Person. For the purposes of this definition and any obligation to cause another Person to take or refrain from taking any action, “control”, when

used with respect to any Person, shall mean the possession of the power to direct or cause the direction of management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract, management agreement, common directors, officers or trustees or otherwise. The terms “controlling” and “controlled” shall have correlative meanings.

“Affiliate O&M Fee” means all amounts, whether fees or otherwise, payable by the Borrower or any other Borrower Party to any Affiliated Project Party pursuant to any Affiliated Project Document, other than (x) in the case of the O&M Agreement, Reimbursable Expenses (as such term is defined in the O&M Agreement) and (y) in the case of the Project Administration Agreement, Reimbursable Expenses (as such term is defined in the Project Administration Agreement).

“Affiliated Lender” means each Lender that is an Affiliate of the Borrower Parties (other than the Borrower Parties).

“Affiliated Project Documents” means any Project Document with any Affiliated Project Party.

“Affiliated Project Party” means each Affiliate of the Sponsor (other than the Borrower or any other Borrower Party) that is a party to a Project Document.

“Agent” has the meaning set forth in Section 10.1[(b) of this Credit Agreement.

“Agent-Related Persons” means, with respect to the Administrative Agent, its officers, directors, employees, representatives, attorneys, agents and Affiliates.

“ALTA” means the American Land Title Association.

“Amortization Schedule” has the meaning set forth in Section 3.15.

“Anti-Terrorism Laws” means (i) the anti-money laundering provisions of the U.S.A. Patriot Act, (ii) any of the foreign asset control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto and (iii) Executive Order No. 13,224 Fed. Reg. 49,079 (2001) issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism).

“Applicable Group” has the meaning set forth Section 10.6 of this Credit Agreement

“Applicable Lending Office” means, for each Lender and for each Type of Loan, the “*Lending Office*” of such Lender (or of an Affiliate thereof) designated for such Type of Loan in Appendix G or such other office of such Lender (or its Affiliate) as such Lender may from time-to-time specify to the Administrative Agent and the Borrower by written notice in accordance with the terms hereof as the office by which its Loans of such Type are to be made and maintained.

“Applicable Margin” means, with respect to any Tranche and any period, the percentage set forth below such Tranche and opposite such period on Appendix B.

“Applicable Taxes” has the meaning set forth in Section 3.24 of this Credit Agreement.

“Applicable Tax Certificate” has the meaning set forth in Section 3.24 of this Credit Agreement.

“Approved Electronic Communications” means each Communication that the Borrower, any other Borrowing Party or the Pledgor is obligated to, or otherwise chooses to, provide to the Administrative Agent, the Collateral Agent or the Account Bank pursuant to any Financing Document or the transactions contemplated therein, including any financial statement, financial and other report, notice, request, certificate and other information material; provided, that, solely with respect to delivery of any such Communication by any of the Borrower, any other Borrowing Party or the Pledgor to any such Agent and without limiting or otherwise affecting either the Administrative Agent’s right to effect delivery of such Communication by posting such Communication to the Approved Electronic Platform or the protections afforded hereby to the Administrative Agent in connection with any such posting, “Approved Electronic Communication” shall exclude (i) any Borrowing Request or Specified Letter of Credit, notice of conversion or continuation, and any other notice, demand, communication, information, document and other material relating to a request for a new, or a conversion of an existing, Borrowing, (ii) any notice pursuant to Sections 3.16 and 3.17 and any other notice relating to the payment of any principal or other amount due under any Financing Document prior to the scheduled date therefor, (iii) all notices of any Default or Event of Default and (iv) any notice, demand, communication, information, document and other material required to be delivered to satisfy any of the conditions set forth in Article IV or any other condition to any Borrowing or other extension

“Approved Electronic Platform” has the meaning set forth in Section 11.3[(a) to this Credit Agreement.

“Assignment and Acceptance” has the meaning set forth in Section 11.11 of this Credit Agreement.

“Assignment of Project Labor Agreement” means the Assignment of Project Labor Agreement, dated January 3, 2001, by El Segundo Power II LLC to the Project Owner.

“Assumed Interest Expense” means, with respect to any period, the aggregate of (x) the amount of interest projected to be payable during such period hereunder (based on the actual rate established hereunder during any current Interest Period or a reasonable published or third party proprietary forward rate in respect of any future Interest Period) *plus* or *minus* (y) the aggregate amount payable by or to the Borrower in accordance with each Rate Swap Transaction entered into in accordance with Section 7.26 of this Credit Agreement during such period.

“Attorney Costs” means all reasonable and invoiced fees and disbursements of any law firm or other external counsel, the reasonable allocated cost of internal legal services and all reasonable disbursements of internal counsel; provided, that the Administrative Agent shall

not be required to establish the reasonability of fees or the allocated cost of internal legal services in respect of or relating to: any alleged, potential or actual Defaults or Events of Default; the prospective or actual exercise of remedies hereunder; the preservation of any rights or remedies hereunder or under any Collateral Document; or any claim for indemnification hereunder.

“Authorized Officer” means (i) with respect to any Person that is a corporation, the chairman, president, chief executive officer, any vice president or secretary of such Person, (ii) with respect to any Person that is a manager-managed limited liability company, any such manager, (iii) with respect to any Person that is a member-managed limited liability company, such member (or if such member is not a natural Person, the Authorized Officer of such member), (iv) with respect to any Person that is a partnership, the general partner or managing partner of such Person (or if such general partner or managing partner is not a natural Person, the Authorized Officer of such general partner or managing partner) and (v) any Person that has been duly and specifically authorized by all necessary and appropriate corporate, limited liability company or partnership action (as applicable) to take the relevant action, as evidenced by a duly executed and delivered certificate of a Person who is an Authorized Officer of the relevant Person in accordance with subparts (i), (ii), (iii) or (iv) of this definition that has theretofore been delivered to the Administrative Agent setting forth the name, title and specimen signature of such duly and specifically authorized Person.

“Available Construction Funds” means, as of any day, the sum of (x) the aggregate amount of proceeds from the Construction Loans on deposit in or credited to the Construction Account on such day, without giving effect to any withdrawals therefrom on such day, *plus* (y) the aggregate amount of the Construction Loan Commitments on such day (other than the Construction Loan Commitment of any Defaulting Lender), without giving effect to any Disbursement of Construction Loans on such day.

“Bankruptcy Code” means the United States Federal Bankruptcy Code of 1978, 11 U.S.C. § 101 et seq.

“Bankruptcy Event” means a Voluntary Bankruptcy Event or an Involuntary Bankruptcy Event.

“Base Case Model” means the Microsoft Excel file entitled “CLOSING MODEL ESEC 0818 Syndication” posted to www.intralinks.com on August 19, 2011, as modified in accordance with Sections 4.2(m) and 7.9(c).

“Base Case Projections” means a projection of operating results for the Project over a period ending no sooner than December 31, 2030, showing the Borrower’s reasonable good faith estimates, as of the Closing Date, of projected Project Costs, projected Project Revenues, projected O&M Expenses, Assumed Interest Expense, all Fees payable hereunder, and scheduled principal payments in respect of the Loans over the forecast period.

“Base Rate” means, for any day, means the rate *per annum* equal to the highest of (a) the Federal Funds Rate for such day *plus* 0.50%, (b) the Prime Rate for such day and (c) unless Section 3.9 applies in respect of the one-month LIBO Rate, the LIBO Rate for one month commencing on such day. Any changes in the Base Rate due to a change in the Prime Rate or

the Federal Funds Rate shall be effective on the effective date of such change in the Prime Rate or Federal Funds Rate.

“Base Rate Loans” means Loans which bear interest based upon the Base Rate.

“BOP Contract” means the Amended and Restated Construction Agreement, dated June 6, 2011, between the BOP Contractor and the Project Owner.

“BOP Contractor” means ARB, Inc., a California corporation.

“BOP Guarantor” means Primoris Services Corporation, a Delaware corporation.

“BOP Guaranty” means the Parent Guaranty, dated as of May 31, 2011, by the BOP Guarantor in favor of the Project Owner.

“Borrower” has the meaning set forth in the Preamble of this Credit Agreement.

“Borrower Closing Certificate” means the certificate, substantially in the form of Exhibit 11 to this Credit Agreement, dated the Closing Date, duly completed and signed by an Authorized Officer of the Borrower.

“Borrower Completion Certificate” means a certificate, substantially in the form of Exhibit 14 to the Credit Agreement, dated the Term Conversion Date, duly completed and signed by an Authorized Officer of the Borrower.

“Borrower Parties” means each of the Borrower, the Project Owner and the Procurement Sub.

“Borrower Pledge Agreement” means the Pledge Agreement dated the date hereof between the Borrower and the Collateral Agent in respect of, *inter alia*, the Equity Interests of the Project Owner and the Procurement Sub.

“Borrowing” means a borrowing of Loans of one Type from the Lenders on a given date (or the Conversion of a Loan or Loans of a Lender or Lenders on a given date) having, in the case of LIBOR Loans, the same Interest Period.

“Borrowing Minimum” means the amount set forth opposite the heading “*Borrowing Minimum*” on Appendix B.

“Borrowing Multiple” means the amount set forth opposite the heading “*Borrowing Multiple*” on Appendix B.

“Borrowing Request” means a request for Loans in substantially the form set forth as Exhibit 1, appropriately completed and duly executed by an Authorized Officer of the Borrower.

“Business Day” means (i) with respect to any payment to be made by the Borrower or any Borrower Party, a “Business Day” as defined in the Accounts Agreement, (ii)

with respect to any other action to be taken by the Borrower or any other Person, any day except Saturday, Sunday and any day which shall be in the location where such action is to be taken, a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close in any such location and (iii) without limiting the foregoing, with respect to all notices and determinations in connection with, and payments of principal and interest on, LIBOR Loans, any day which is a Business Day described in clause (i) above and which is also a day for trading by and between banks in the London interbank eurodollar market.

“Business Interruption Proceeds” has the meaning set forth in the Collateral Agreement.

“Buy-down Proceeds” has the meaning set forth in the Collateral Agreement.

“CAISO” means the California Independent System Operator Corporation.

“Capital Adequacy Regulation” means any rule, regulation, order, guideline, directive or request of any central bank or other Governmental Authority (whether or not having the force of Law), or any other Law, in each case regarding the capital adequacy of any bank or of any corporation controlling a bank.

“Capital Lease Obligations” means, for any Person, the obligations of such Person to pay rent or other amounts under a lease of (or other agreement conveying the right to use) real or personal Property which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under U.S. GAAP (including Statement of Financial Accounting Standards No. 13 of the Financial Accounting Standards Board (for the purposes hereof, “Statement No. 13”)) and, for purposes of this Credit Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with U.S. GAAP (including such Statement No. 13).

“Cash Collateralize” means, to deposit in a Controlled Account or to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the TALC Issuing Bank, as collateral for TALC Participations, cash or deposit account balances or, if the Administrative Agent and the TALC Issuing Bank shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the TALC Issuing Bank. “Cash Collateral” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“CB Approval Threshold” means each threshold set forth on Appendix E under the heading “*CB Approval Threshold*”.

“CFADS” means, in respect of any DSCR Calculation Period, the sum of (i) the aggregate amount deposited (or, as applicable, projected to be deposited) in the Operating Account (other than transfers from any other Secured Account to the Operating Account or the proceeds of any Indebtedness or Equity Contributions deposited therein) during such DSCR Calculation Period *minus* (ii) the aggregate amount transferred (or, as applicable, projected to be transferred) from the Operating Account to the O&M Expense Account during such DSCR Calculation Period.

“Change in Control” means any event as a result of which (i) on or prior to the Term Conversion Date, the Sponsor ceases to directly or indirectly own at least 50.1% of each class of Equity Interests of the Borrower, (ii) after the Term Conversion Date, the Sponsor ceases to directly or indirectly own at least 35% of each class of Equity Interests of the Borrower, (iii) after the Term Conversion Date, 50.1% of all Equity Interests of the Borrower cease to be owned by the Sponsor or (iv) the Sponsor ceases to have the unilateral power to direct or cause the direction of the management and policy of the Borrower, whether through ownership of voting securities, by contract, management agreement, or common directors, officers or trustees or otherwise (other than with respect to customary significant and enumerated matters requiring the approval of minority equity holders).

“Change in Law” means the occurrence, after the date of the Credit Agreement, of any of the following: (a) the adoption or taking effect of any applicable Law, (b) any change in any applicable Law or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) without limiting the foregoing, the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change Order” means, as applicable, Change Orders (as defined in each of the BOP Contract, the Equipment Purchase Agreement or the Equipment Services Agreement) and change orders described in Section 4.5 of the Construction Management Agreement.

“Charter Documents” means, with respect to any Person and as applicable to such Person, (i) the articles of incorporation, limited liability company agreement, partnership agreement, or other similar organizational document of such Person, (ii) the by-laws or other similar document of such Person, (iii) any certificate of designation or instrument relating to the rights of preferred shareholders or other holders of Equity Interests of such Person, and (iv) any shareholder rights agreement or other similar agreement.

“Closing” has the meaning set forth in Section 4.1 of this Credit Agreement.

“Closing Certificate” means each of the Borrower Closing Certificate and the Pledgor Closing Certificate.

“Closing Date” means the date upon which the conditions precedent set forth in Section 4.1 of this Credit Agreement have been satisfied (or waived by the Financing Parties).

“CO Cost” means, in respect of any Change Order, the aggregate sum of (i) all costs incurred or to be incurred by any Borrower Party in respect thereof *plus* (ii) any Assumed Interest Expense, fees or other costs attributable to a delay in any Major Milestone Date as a

result of such Change Order *plus* (iii) any other cost incurred by any Borrower Party directly or indirectly as a result of such Change Order.

“Code” shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

“Collateral” has the meaning set forth in the Collateral Agreement.

“Collateral Agent” means the institution appointed as such in accordance with the Collateral Agreement or any successor institution so-appointed pursuant to the Collateral Agreement.

“Collateral Agreement” means the Collateral Agreement dated the date hereof among the Borrower, the Procurement Sub, the Project Owner, the Pledgor, the Administrative Agent (on behalf of the Financing Parties) and the Collateral Agent.

“Collateral Documents” has the meaning set forth in the Collateral Agreement.

“Collateral Proceeds” has the meaning set forth in the Collateral Agreement.

“Commercial Operation Date” means the first date on which both Generating Units have achieved the Initial Delivery Date.

“Commitment Fee” has the meaning set forth in Section 3.13(a) of this Credit Agreement.

“Commitments” means, as applicable, the Tranche A Construction Loan Commitments, the Tranche B Construction Loan Commitments, the Term Commitments, the Revolving Commitments, the DSR Commitments and the TALC Commitments.

“Communications” means each notice, demand, communication, information, document and other material provided for hereunder or under any other Financing Document or otherwise transmitted between the parties hereto relating to this Credit Agreement, the other Financing Documents, the Borrower, the other Borrower Parties or the Pledgor, or any of their respective Affiliates, or the transactions contemplated by this Credit Agreement or the other Financing Documents including all Approved Electronic Communications.

“Completion Tests” means, for each Generating Unit and for the Project, (i) each “Acceptance Test” (as such term is defined in the Equipment Services Agreement), (ii) each emissions, source or other acceptance or final test required to be performed by any Borrower Party in connection with the issuance to any such Borrower Party by the South Coast Air Quality Management District of a final permit to operate the Project and (iii) each test required by Article Seven of the Tolling Agreement.

“Consent Agreement” has the meaning set forth in the Collateral Agreement.

“Construction Account” has the meaning set forth in the Accounts Agreement.

“Construction Budget” means the construction budget dated the Closing Date, setting forth all Project Costs theretofore incurred and thereafter expected to be incurred by the Borrower Parties on or prior to the Term Conversion Date, as the same may be amended from time-to-time in accordance with Section 7.28 of this Credit Agreement.

“Construction Coordination Agreement” means the Construction Coordination Agreement, dated March 21, 2011, among the Project Owner, the Procurement Sub, the Equipment Servicer and the BOP Contractor.

“Construction Facilities” has the meaning set forth in Section 2.1(b) of this Credit Agreement.

“Construction Lender” means each Lender that has a Construction Loan Commitment or Construction Loans.

“Construction Loan Commitments” means the Tranche A Construction Loan Commitments and the Tranche B Construction Loan Commitments.

“Construction Loans” has the meaning set forth in Section 2.1(c) of this Credit Agreement.

“Construction Management Agreement” means the Construction Management Agreement, dated as of March 31, 2011 between the Project Owner and the Construction Manager.

“Construction Manager” means NRG Construction LLC, a Delaware limited liability company.

“Construction Notes” means each Note issued as evidence of one or more Construction Loans.

“Construction Requisition” has the meaning set forth in the Accounts Agreement.

“Contingency” means the amount so-specified in the Construction Budget.

“Contingent Obligation” means, as to any Person, any obligation of such Person guaranteeing or intending to guarantee any Indebtedness, leases, dividends or other obligations (for the purposes hereof, “primary obligations”) of any other Person (for the purposes hereof, the “primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person, whether or not contingent (i) to purchase any such primary obligation or any Property constituting direct or indirect security therefore, (ii) to advance or supply funds (a) for the purchase or payment of any such primary obligation or (b) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase Property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of such primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary

obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder) as determined by such Person in good faith.

“Contracted Amortization Amount” has the meaning set forth in Section 3.14(a).

“Controlled Account” means each deposit account that is established for holding Cash Collateral and is subject to a deposit account control agreement in form and substance satisfactory to the Administrative Agent and the TALC Issuing Bank.

“Conversion” means the conversion of one Type of Loan into another Type of Loan in accordance with Section 3.5 of this Credit Agreement. The term “Convert” shall have a correlative meaning.

“Conversion Request” means a request for the Conversion of one or more Tranches of Loans in substantially the form set forth as Exhibit 2.

“Credit Agreement” means the Credit Agreement to which this Appendix A is attached.

“Credit Facility” means the Tranche A Construction Facility, the Tranche B Construction Facility, the Tranche A Term Facility, the Tranche B Term Facility, the Revolving Facility, the DSR LC Facility or the TALC Facility.

“Date Certain” has the meaning set forth in Section 3.15(a) of this Credit Agreement.

“Debt-to-Equity Ratio” means, as at any date, the ratio of (x) the aggregate outstanding principal amount of all Loans to (y) the aggregate amount of Equity Contributions made by the Pledgor to the Borrower *minus* the aggregate amount of Distributions made in accordance herewith.

“Debt Service Reserve Account” has the meaning set forth in the Accounts Agreement.

“Debtor Relief Law” means the Bankruptcy Code and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“Default” means any event or circumstance which with notice or lapse of time or both would become an Event of Default.

“Default Rate” means a *per annum* rate equal to the Base Rate *plus* the Applicable Margin *plus* (ii) 2%.

“Defaulting Lender” shall mean, subject to Section 3.27(f), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such

Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied or (ii) pay to the Administrative Agent, the TALC Issuing Bank or any other Lender any other amount required to be paid by it hereunder (including in respect of its TALC Participation, if any) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or, if a TALC Participating Bank, the TALC Issuing Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (A) become the subject of a proceeding under any Debtor Relief Law, or (B) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity (provided that a Lender shall not be a Defaulting Lender pursuant to this clause (d) solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender). Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 3.27(f)) upon delivery of written notice of such determination to such Defaulting Lender, the Borrower, the TALC Issuing Bank and each other Lender.

"Deferred Principal Amount" has the meaning set forth in Section 3.15(c).

"Delay Liquidated Damages" means all liquidated damages payable under Section 13.1 of the BOP Contract and Section 15.2 and 15.3 of the Equipment Services Agreement.

"Disbursement" means any disbursement of a Loan pursuant hereto.

"Disbursement Date" means (i) prior to the Disbursement of any Loans, the date specified in a Borrowing Request as the date on which Disbursements of such Loans are requested by the Borrower and (ii) after the Disbursement of any Loans, the date such Loans are actually Disbursed.

“Disposition” has the meaning set forth in the Collateral Agreement.

“Disposition Proceeds” has the meaning set forth in the Collateral Agreement.

“Distribution” has the meaning set forth in Section 7.9 of this Credit Agreement.

“Distribution Account” has the meaning set forth in the Accounts Agreement.

“Distribution Conditions” means, as of any date, each of the following conditions: (i) the Term Conversion Date shall have occurred; (ii) no LC Loans (other than LC Loans that are Revolving Loans as a result of a draw on the LGIA Letters of Credit) are then-outstanding; (iii) no Deferred Principal Amount is then-outstanding; (iv) no Default or Event of Default has occurred and is continuing or would result from the making of such Distribution or other payment; (v) no Event of Loss has occurred unless the Project has been Restored in accordance with this Credit Agreement and the other Financing Documents; (vi) the Historical DSCR for the most recently ending DSCR Calculation Period was at least 1.20x, as confirmed by the most recent DSCR Certificate delivered by the Borrower in accordance with Section 6.1(d); and (vii) the Debt Service Reserve Account has been funded up to the DSR Required Balance.

“Distribution Reserve Account” has the meaning set forth in the Accounts Agreement.

“Distribution Sweep Proceeds” has the meaning set forth in the Collateral Agreement.

“Dollars” and the sign “\$” shall each mean freely transferable, lawful money of the United States.

“DSCR Calculation Period” means in respect of each Semi-Annual Date, the four consecutive quarterly periods preceding such Semi-Annual Date.

“DSCR Certificate” has the meaning set forth in Section 6.1(d) of this Credit Agreement.

“DSR Availability Period” means the period commencing on the Term Conversion Date and ending on the seventh anniversary of the Closing Date.

“DSR Commitments” means, as to any Issuing Bank, the applicable percentage set forth opposite such Issuing Bank’s name in Appendix F to this Credit Agreement under the heading “*DSR Commitment*” multiplied by the DSR LC Facility Amount.

“DSR Issuing Banks” means each Financing Party with a DSR Commitment.

“DSR LC Facility” has the meaning set forth in Section 2.5(a) of this Credit Agreement.

“DSR LC Facility Amount” has the meaning set forth in Section 2.5(a) of this Credit Agreement.

“DSR Letters of Credit” has the meaning set forth in Section 2.5(b) of this Credit Agreement.

“DSR Maturity Date” has the meaning set forth in Section 2.5(d) of this Credit Agreement.

“DSR Required Balance” has the meaning set forth in the Collateral Agreement.

“Eligible Assignee” means (a) with respect to any assignment, (i) a commercial bank or other financial institution having a combined capital and surplus of at least \$1,000,000,000, (ii) a Person that is primarily engaged in the business of commercial banking and that is a Lender or an Affiliate of a Lender and (iii) the United States Federal Reserve, (b) with respect to each assignment of an Issuing Bank of its obligation to issue a TA Letter of Credit under the TALC Facility, a Person that fulfills the requirements set forth in the definition of “Letter of Credit” in the Tolling Agreement, (c) with respect to each assignment of an Issuing Bank of its obligation to issue an LGIA Letter of Credit under the Revolving Facility, a Person that fulfills the requirements set forth in Section 11.5 of the LGIA, (d) with respect to each assignment of an Issuing Bank of its obligation to issue an DSR Letter of Credit under the DSR Facility, a Person that fulfills the requirements set forth in Section 3.6(b) of the Collateral Agreement and (e) with respect to only to an assignment of Construction Loans or Term Loans, any Affiliate of the Borrower Parties (other than the Borrower Parties).

“Energy Marketing Agreement” means the Energy Marketing Services Agreement, dated March 31, 2011, between the Energy Marketer and the Project Owner.

“Energy Marketer” means NRG Power Marketing LLC, a Delaware limited liability company.

“Environmental Claim” has the meaning set forth in the Collateral Agreement.

“Environmental Indemnity” means the Environmental Indemnity Agreement, dated the date hereof, between NRG Energy, Inc. and the Project Owner.

“Environmental Laws” has the meaning set forth in the Collateral Agreement.

“Environmental Remediation Contractor” means AECOM or any other environmental remediation contractor reasonably acceptable to the Administrative Agent (in consultation with the Independent Engineer) that is retained to develop the Remediation Work Plan.

“EPA Letters” means, collectively, (i) the conditional approval letter from the USEPA, dated April 1, 2011, approving El Segundo Power, LLC’s letter of notification, dated March 2, 2011, (ii) the second conditional approval letter from the USEPA, dated June 6, 2011, modifying the April 1, 2011 letter referred to in subpart (i) above, (iii) the third conditional approval letter from the USEPA, dated July 15, 2011, further modifying the April 1, 2011 letter referred to in subpart (i) above, (iv) the fourth conditional approval letter from the USEPA, dated August 4, 2011, addressing the groundwater issue at the Site as it relates to polychlorinated biphenyls contamination, and (v) any other correspondence received from the USEPA or any

other relevant Governmental Authority in respect of remediation of the contamination by polychlorinated biphenyls in concrete foundations below ground surface, soils, and groundwater at, on and under the Site.

“EPC Contracts” means the BOP Contract, the BOP Guaranty, the Construction Management Agreement, the Equipment Purchase Agreement, the Equipment Supplier Guaranty, the Equipment Services Agreement, the Equipment Servicer Guaranty, the Construction Coordination Agreement, the Project Labor Agreement and the Assignment of Project Labor Agreement or any other Project Document providing for construction services on, or delivery of any equipment or materials to, the Site.

“EPC Contractors” means the BOP Contractor, the Equipment Supplier, the Equipment Supplier Guarantor, the Equipment Servicer, the Equipment Servicer Guarantor, the Construction Manager and each other counterparty to an EPC Contract.

“Equator Principles” “Equator Principles” means those principles so entitled and described in “The ‘Equator Principles’ — A financial industry benchmark for determining, assessing and managing social and environmental risk in project financing” (July 2006) and available at: http://www.equator-principles.com/documents/Equator_Principles.pdf, as adopted in such form by certain financial institutions.

“Equipment Purchase Agreement” means the Equipment Purchase Agreement, dated as of July 15, 2010, between the Borrower and the Equipment Supplier.

“Equipment Services Agreement” means the Services Agreement, dated as of July 19, 2010, between the Equipment Servicer and the Procurement Sub.

“Equipment Servicer” means Siemens Energy, Inc., a Delaware corporation.

“Equipment Servicer Guaranty” means the Guaranty, dated November 2, 2010, by the Equipment Servicer Guarantor for the benefit of the Procurement Sub and the Borrower.

“Equipment Servicer Guarantor” means Siemens Corporation, a Delaware corporation.

“Equipment Supplier” means Siemens Energy, Inc., a Delaware corporation.

“Equipment Supplier Guaranty” means the Guaranty, dated November 2, 2010, by the Equipment Supplier Guarantor for the benefit of the Procurement Sub and the Borrower.

“Equipment Supplier Guarantor” means Siemens Corporation, a Delaware corporation.

“Equity Contributions” means equity contributions made in cash or in-kind by the Pledgor to the Borrower; provided, that for purposes of Sections 2.1(e), 4.1(e) and 7.9(c) of the Agreement and the definition of “Debt-to-Equity Ratio”, the amount of Equity Contributions deemed contributed in-kind by the Pledgor shall not exceed 105% of the amount of Project Costs

that have been validated by the Independent Engineer as being properly incurred by Affiliates of the Borrower and contributed in-kind (directly or indirectly) to the Borrower.

“Equity Interests” means (i) as to any Person organized as a limited liability company or a partnership, any and all shares of the profits and losses of such Person, any and all rights to receive distributions of such Person’s assets, and any and all rights, benefits or privileges pertaining to any of the foregoing, including voting rights and the right to participate in management, (ii) as to any Person organized as a corporation, any ordinary shares, preferential shares, convertible shares, warrants or other securities representing or convertible into any of the foregoing and (iii) as to any other Person (other than a natural Person), any equity interests of any kind in such Person whether or not analogous to the foregoing.

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974 and the regulations promulgated and rulings issued thereunder or pursuant thereto.

“ERISA Affiliate” means each person (as defined in Section 3(9) of ERISA) which, together with the Borrower or any Subsidiary of the Borrower, would be deemed to be a “single employer” (i) within the meaning of Section 414(b), (c), (m) or (o) of the Internal Revenue Code or (ii) as a result of the Borrower or any Subsidiary of the Borrower being or having been a general partner of such person.

“ERISA Event” means (a) any reportable event, as defined in Section 4043 of ERISA, with respect to a Pension Plan, as to which the PBGC has not waived the requirement of Section 4043(a) of ERISA that it be notified of such event, (b) the filing of a notice of intent to terminate any Pension Plan, if such termination would require material additional contributions in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA, the filing under Section 4041(c) of ERISA of a notice of intent to terminate any Pension Plan, or the termination of any Pension Plan under Section 4041(c) of ERISA, (c) the institution of proceedings by the PBGC under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, (d) the failure to make a required contribution to any Pension Plan that would result in the imposition of a Lien or the provision of security under Section 430 of the Code or Section 303 or 4068 of ERISA, or the arising of such a Lien, (e) the failure to satisfy the minimum funding standard under Section 412 of the Code or Section 302 of ERISA, whether or not waived, or the filing of any request for or receipt of a minimum funding waiver under Section 412 of the Code with respect to any Pension Plan or Multiemployer Plan or a determination that any Pension Plan is considered an at-risk plan within the meaning of Section 430 of the Code or Section 303 of ERISA, (f) engaging in a non-exempt prohibited transaction within the meaning of Section 4975 of the Code or Section 406 of ERISA with respect to a Pension Plan, (g) the complete or partial withdrawal of any member of the ERISA Group from a Multiemployer Plan if there is any potential liability therefor; the reorganization or insolvency under Title IV of ERISA of any Multiemployer Plan or the receipt by any member of the ERISA Group of any notice, or the receipt by any Multiemployer Plan from any member of the ERISA Group of any notice that a Multiemployer Plan is in endangered or critical status under Section 432 of the Code or Section 305 of ERISA or (h) any Borrower Party incurring any liability under Title IV of ERISA with respect to any Pension Plan (other than premiums due and not delinquent under Section 4007 of ERISA).

“ERISA Group” means the Borrower Parties and their ERISA Affiliates.

“Event of Default” has the meaning set forth in ARTICLE VIII of this Credit Agreement.

“Event of Loss” has the meaning set forth in the Collateral Agreement.

“EWG” has the meaning set forth in Section 5.12 of this Credit Agreement.

“EWG Order” has the meaning set forth in Section 5.12 of this Credit Agreement.

“Excess Fuel Consumption Liquidated Damages” has the meaning set forth in the Equipment Services Agreement.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the Laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable Lending Office is located, or by any jurisdiction as a result of a present or former connection between such recipient and the jurisdiction imposing such tax (or any political subdivision thereof), other than any such connection arising solely from such recipient having executed, delivered or performed its obligations or received a payment under, or enforced, this Credit Agreement or any other Financing Document, (b) any branch profits taxes imposed by the United States, (c) any backup withholding tax that is required by the Code to be withheld from amounts payable to a Lender, and (d) in the case of a Lender described in Section 3.24(b)(i) (other than an assignee pursuant to a request by the Borrower under Section 11.11 and Section 3.26), any United States withholding tax that is required to be imposed on amounts payable to such Lender pursuant to the Laws in force at the time such Lender becomes a party hereto (or designates a new Lending Office) except to the extent that such Lender (or its assignor, if any) was entitled, at the time of the designation of a new lending office (or assignment) to receive additional amounts from any Borrower with respect to such withholding tax pursuant to Section 3.24 or (ii) is imposed with respect to the requirements of FATCA.

“Expected Initial Delivery Date” means 12:01 a.m. on August 1, 2013.

“Expropriation Event” means (i) any condemnation, nationalization, seizure or expropriation by a Governmental Authority of all or a substantial portion of the Project or the Property or the assets of any Borrower Party or of its Equity Interests, (ii) any assumption by a Governmental Authority of control of the Property, assets, business or operations of any Borrower Party or of its Equity Interests, (iii) any taking of any action by a Governmental Authority for the dissolution or disestablishment of any Borrower Party or (iv) any taking of any action by a Governmental Authority that would prevent any Borrower Party from carrying on its business or operations or a substantial part thereof.

“Extraordinary O&M Expenses” has the meaning set forth in Section 6.6(c).

“Facility” means, collectively, the two Generating Units to be located on the Site and all associated facilities (including all associated electrical, gas, steam and water interconnection, transmission, storage and treatment facilities, to the extent owned by any Borrower Party) designed to generate approximately 550MW of electrical energy.

“FATCA” means sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Credit Agreement (or any amended or successor version of FATCA that is substantively comparable and not materially more onerous to comply with), and any current or future regulations or official interpretations thereof.

“Federal Funds Rate” means, for any day, the rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that (i) if the day for which such rate is to be determined is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (ii) if such rate is not so published for any day, the Federal Funds Rate for such day shall be the average rate charged to the Administrative Agent (in its individual capacity) on such day on such transactions as determined by the Administrative Agent.

“Federal Power Act” has the meaning set forth in Section 5.12 of this Credit Agreement.

“Fees” means all amounts payable pursuant to or referred to in Section 3.13 of this Credit Agreement.

“FERC” means the Federal Energy Regulatory Commission of the United States or any successor agency thereto.

“Financing Documents” means, collectively, (i) this Credit Agreement, the Guaranties, the Collateral Agreement, the Title Indemnity and each Security Document, (ii) each other document that is specified to be a Financing Document either in such document or in any of the documents referred to in clause (i) and (iii) each amendment, consent or waiver granted in respect of or pursuant to any of the documents referred to in clauses (i) and (ii) (whether or not such amendment, consent or waiver specifies therein that such amendment, consent or waiver is a Financing Document).

“Financing Parties” means the Lenders, the TALC Issuing Bank, the LGIA Issuing Banks, the DSR Issuing Banks and the TALC Participating Banks.

“Firm Priority Service” has the meaning set forth in the Tolling Agreement.

“First Unit Operation Date” means the Substantial Completion Date (as defined in the Equipment Services Agreement) of the first Unit (as defined in the Equipment Services Agreement).

“Foreign Pension Plan” means shall mean any plan, fund (including any superannuation fund) or other similar program established or maintained outside the United States by the Borrower or any one or more of its Subsidiaries primarily for the benefit of employees of the Borrower or such Subsidiaries residing outside the United States, which plan, fund or other similar program provides, or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which plan is not subject to ERISA or the Code.

“Fronting Exposure” means, at any time there is a Defaulting Lender that is a TALC Participating Bank, such Defaulting Lender’s TALC Participation *minus* the amount thereof that has been reallocated to other TALC Participating Banks or Cash Collateralized in accordance with the terms hereof.

“Generating Units” means the gas-fired combined cycle combustion turbines to be procured, installed and constructed in accordance with the EPC Contracts and located at the Site.

“Good Utility Practices” means the professional practices, methods, equipment, specifications and safety and output standards and industry codes of the electrical generation industry for projects of the same approximate type, location and capacity as the Project, with respect to the design, installation, operation, maintenance and use thereof, all of the above in compliance with applicable standards of safety, output, dependability, efficiency and economy, including recommended practice, of a good, safe, prudent and workman-like character and in compliance with all applicable Laws. Good Utility Practices are not intended to be limited to the optimum or minimum practice or method to the exclusion of all others, but rather to be a spectrum of reasonable and prudent practices and methods as practiced in the electrical generation industry.

“Governmental Authority” means any government, governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, domestic or foreign, federal, state or local having jurisdiction over the matter or matters in question, including those of the State of California, the State of New York, and the United States.

“Guaranties” has the meaning set forth in the Collateral Agreement.

“Hazardous Material” has the meaning set forth in the Collateral Agreement.

“Hedging Agreement” means any agreement in respect of any interest rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of the foregoing transactions) or any combination of the foregoing transactions entered into by any Person.

“Historical DSCR” means, in respect of any DSCR Calculation Period, the ratio of (i) CFADS for such DSCR Calculation Period to (ii) the Scheduled Debt Service for such DSCR Calculation Period.

“IE Construction Report” means, in respect of any month, a construction report of the Independent Engineer for such month in substantially the form set forth as Exhibit 19.

“Indebtedness” of any Person means (i) all indebtedness of such Person for borrowed money, (ii) the deferred purchase price of assets or services which in accordance with U.S. GAAP would be shown on the liability side of the balance sheet of such Person, (iii) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder, (iv) all Indebtedness of a second Person secured by any Lien on any Property owned by such first Person, whether or not such Indebtedness has been assumed, (v) all Capital Lease Obligations of such Person, (vi) all obligations of such Person to pay a specified purchase price for goods or services whether or not delivered or accepted (*i.e.*, take-or-pay and similar obligations), (vii) all net obligations of such Person under Hedging Agreements and (viii) all Contingent Obligations of such Person; provided, that Indebtedness shall not include trade payables arising in the ordinary course of business so long as such trade payables are payable within ninety days of the date the respective goods are delivered or the respective services are rendered and are not overdue.

“Indemnified Liabilities” has the meaning set forth in Section 11.2[(a) of this Credit Agreement.

“Indemnified Matters” has the meaning set forth in Section 11.2[(b)(i) of this Credit Agreement.

“Indemnified Person” has the meaning set forth in Section 11.2[(a) of this Credit Agreement.

“Independent Consultant” means each of the Independent Engineer and the Insurance Consultant.

“Independent Engineer” means SAIC Energy, Environment & Infrastructure, LLC or any other Person from time-to-time appointed by the Requisite Financing Parties to act as Independent Engineer for the purposes of this Credit Agreement.

“Independent Engineer Completion Certificate” means the certificate of the Independent Engineer in the form attached hereto as Exhibit 15.

“Inflation Factor” means, in respect of any payment in any year, the sum of 1 *plus* the positive difference (if any) between (x) the Inflation Index for the immediately preceding year, expressed as a percentage of the base year thereof, *minus* (y) the Inflation Index for the year in which the Closing Date occurs, expressed as a percentage of the base year thereof.

“Inflation Index” means the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers, reported monthly by the Bureau of Labor Statistics of the US Department of Labor (unrevised) (Series Id: CUUR0000SA0) (Base Period: 1982-1984 = 100), and as published on Bloomberg page CPURNSA; provided, that if the base year of such index changes, the Inflation Index shall be such index converted in accordance with the relevant conversion factor published by the US Department of Labor.

“Initial Delivery Date” has the meaning set forth in Section 2.04 of the Tolling Agreement.

“Insurance Consultant” means Moore McNeil, LLC or any other Person from time-to-time appointed by the Required Creditors to act as Insurance Consultant for the purposes of this Credit Agreement.

“Intercompany Notes” means, collectively, the Intercompany Subordinated Note, dated as of the date hereof, issued by the Project Owner for the benefit of the Borrower, the Intercompany Subordinated Note, dated as of the date hereof, issued by the Procurement Sub for the benefit of the Borrower and the Intercompany Subordinated Note, dated as of the date hereof, issued by the Borrower for the benefit of the Pledgor, in each case, evidencing Indebtedness extended in accordance with Section 7.21(e).

“Interest Determination Date” means, with respect to any LIBOR Loan, the second Business Day prior to the commencement of any Interest Period relating to such LIBOR Loan.

“Interest Period” has the meaning set forth in Section 3.7 of this Credit Agreement.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended from time-to-time, and the regulations promulgated and rulings issued thereunder.

“Investment” in any Person means, without duplication: (a) the acquisition (whether for cash, securities, other Property, services or otherwise) or holding of capital stock, bonds, notes, debentures, partnership or other ownership interests or other securities of such Person, or any agreement to make any such acquisition or to make any capital contribution to such Person; or (b) the making of any deposit with, or advance, loan or other extension of credit to, such Person.

“Involuntary Bankruptcy Event” means, with respect to any Person, (i) the declaration by a Governmental Authority of a generally applicable suspension of payments, moratorium or any similar arrangement in respect of the Indebtedness of such Person or (ii) the commencement of an involuntary case against such Person seeking the liquidation or reorganization of such Person under Debtor Relief Law or any similar proceeding under any other applicable federal, state or other applicable Law.

“Issuance Date” means (i) prior to the issuance of any Specified Letter of Credit, the date specified in an LC Request as the date on which such Specified Letter of Credit is requested by the Borrower to be issued and (ii) after the issuance of any Specified Letter of Credit, the date such Specified Letter of Credit was actually issued.

“Issuing Banks” means, as the context may require, (i) each DSR Issuing Bank, (ii) the TALC Issuing Bank and (iii) each LGIA Issuing Bank.

“Joint Bookrunner” means each of the financial institutions designated as such in the Preamble of this Credit Agreement.

“Large Generator Interconnection Agreement” means the Large Generator Interconnection Agreement among El Segundo Power II LLC, the Offtaker and CAISO, with an effective date of March 9, 2007, as amended by the first amendment with an effective date of December 1, 2007, the second amendment with an effective date of July 24, 2009 and the third amendment, dated March 14, 2011.

“Law” means, with respect to any Person (i) any statute, law, regulation, ordinance, rule, judgment, order, decree, permit, concession, grant, franchise, license, agreement, treaty, or other governmental restriction or any interpretation or administration of any of the foregoing by any Governmental Authority (including Permits) and (ii) any directive, guideline, policy, requirement or any similar form of decision of or determination by any Governmental Authority which is binding on such Person, in each case, whether now or hereafter in effect (including, in each case, any Environmental Law).

“LC Disbursement” means any payment to the beneficiary of any Specified Letter of Credit in accordance therewith.

“LC Facilities” means the Revolving Facility (in respect solely of the LGIA Letters of Credit), the TALC Facility and the DSR LC Facility.

“LC Loan” has the meaning set forth in Section 3.25(f).

“LC Request” means a request for a Specified Letter of Credit in substantially the form set out as Exhibit 10.

“LGIA Availability Period” means the period commencing on the Closing Date and ending on the Term Conversion Date.

“LGIA Issuing Banks” means each of the Revolver Lenders.

“LGIA Letter of Credit” has the meaning set forth in 2.3(b).

“Lender” means each Lender named on Appendix G and any Assignee thereof pursuant to Section 11.11 of this Credit Agreement.

“Letters of Credit Fees” has the meaning set forth in 3.13(c).

“LIBOR Loan” means Loans which bear interest based on the Adjusted LIBOR Rate.

“LIBO Rate” means, with respect to any Interest Period for any LIBOR Loan, the rate *per annum* (rounded upwards, if necessary, to the nearest 1/100 of 1%) appearing on Reuters LIBOR01 Page (or any successor page, or any substitute for such page, providing rate quotations comparable to those currently provided on such page or such pages, as determined by the Administrative Agent from time-to-time for purpose of providing quotations or

interest rates applicable to deposits in Dollars in the London interbank market) as the London interbank offered rate for overnight deposits in Dollars at approximately 11:00 a.m. (London time) on the second Business Day prior to the first day of such Interest Period. If for any reason the Reuters LIBOR01 Page (or any such agreed page or any successor or substitute page is not available), the term "LIBO Rate" means, with respect to any Interest Period for any LIBOR Loan, the rate determined by taking the average (rounded upward to the nearest whole multiple of 1/16 of 1% *per annum*, if such average is not a multiple) of the rates *per annum* at which overnight deposits in Dollars in an amount equal to \$5,000,000 are offered by the principal office of each of the Reference Banks to prime banks in the London interbank market at approximately 11:00 a.m. (London time) on such day.

"Lien" means, with respect to any Property of any Person, any mortgage, lien, deed of trust, hypothecation, fiduciary transfer of title, assignment by way of security, pledge, charge, lease, sale and lease-back arrangement, easement, servitude, trust arrangement, security interest or encumbrance of any kind in respect of such Property, or any preferential arrangement having the practical effect of constituting a security interest with respect to the payment of any obligation with, or from the proceeds of, any Property of any kind (and a Person shall be deemed to own subject to a Lien any Property that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, any agreement in respect of Capital Lease Obligations or other title retention agreement relating to such Property).

"Lien Waiver Report" means, in respect of any proposed Borrowing, a lien waiver report of the Borrower in substantially the form set forth as Exhibit 20.

"Liquidation Costs" has the meaning set forth in Section 3.12 of this Credit Agreement.

"Loan" means any loan made by any Lender pursuant to this Credit Agreement, including any Construction Loan, Term Loan, Revolving Loan or LC Loan.

"Losses" has the meaning set forth in Section 11.2[(b)(i) of this Credit Agreement.

"Loss Proceeds" has the meaning set forth in the Collateral Agreement.

"M&M Contract" means any EPC Contract and any other Project Document under which the Title Insurance Companies require Lien waivers as conditions to the issuance of the 32-06 Endorsement or any 33-06 Endorsement.

"M&M Party" means (i) any EPC Contractor, (ii) any subcontractor, supplier or vendor of any EPC Contractor of any tier, or any other Project Participant party to any other M&M Contract, in each case, if and to the extent that any of the foregoing Persons has or may reasonably be expected to have mechanics' lien rights in respect of the Project and (iii) any other Person from whom the Title Insurance Companies require Lien waivers as conditions to the issuance of the 32-06 Endorsement or any 33-06 Endorsement.

"Major Milestone Dates" means each of the milestones so designated under the heading "Major Milestone Dates" on Appendix J.

“Majority Lenders” means Lenders whose aggregate remaining Commitments *plus* aggregate outstanding principal amount of funded Loans exceeds 50.0% of the total aggregate remaining Commitments *plus* the total aggregate principal amount of funded Loans of all Lenders.

“Mandated Lead Arrangers” means each of the financial institutions designated as such in the Preamble of this Credit Agreement.

“Mandatory Prepayment Portion” has the meaning set forth in the Collateral Agreement.

“Margin Stock” means margin stock within the meaning of Regulation U and Regulation X.

“Market Rate Authorization” has the meaning set forth in Section 5.12 of this Credit Agreement.

“Material Adverse Effect” has the meaning set forth in the Collateral Agreement.

“Material Permit” means (i) each Permit that is or will be required by any Governmental Authority to be held by any Borrower Party or an Affiliated Project Party to acquire, import, own, construct, install, operate, insure or maintain the Project or any material portion of the Project, (ii) each Permit in respect of the Project or any material portion of the Project that is or will be required by any Governmental Authority to be held by a Material Project Participant (whether or not required to be held on behalf of or for the benefit of any Borrower Party) in order for such Material Project Participant to (as applicable) acquire, import, construct, install, operate, insure or maintain the Project or any material portion of the Project in accordance with each Material Project Document to which it is a party, (iii) each Permit that is or will be required by any Governmental Authority to be held by any Borrower Party or any relevant Material Project Participant to duly execute, deliver or perform any Material Project Document, (iv) each Permit that is or will be required by any Governmental Authority to be held in the name of any Borrower Party or any Affiliated Project Party to cause any Material Project Document to be the legal, valid and binding obligation of such Person or of the Material Project Participant that is a party to any such Material Project Document and (v) each Permit that is or will be required by any Governmental Authority to be held in the name of any Borrower Party or an Affiliated Project Party in order to conduct its business generally or to maintain its existence.

“Material Project Document” means (i) each Project Document that is or will be necessary or advisable for the Borrower Parties to enter into in order to acquire, import, own, construct, install, operate, insure or maintain the Project or any material portion of the Project (other than services, materials or rights that can reasonably be expected to be readily available on commercially reasonable terms), (ii) each Project Document that is or will be necessary or advisable for the Borrower Parties to enter into in order for such Borrower Party to obtain, maintain in full force and effect or comply with any other Material Project Document, any Material Permit or any material applicable Law, (iii) each Project Document that is or will be necessary or advisable for the Borrower Parties to enter into in order to maintain their respective business generally or to maintain their respective existence, (iv) without limiting the foregoing

(other than the parenthetical set forth in subclause (i) of this definition), each Project Document where (A) the aggregate cost or value of goods and services to be acquired by any Borrower Party pursuant thereto could reasonably be expected to exceed \$2,000,000 or the equivalent in any other currency in any year, (B) the aggregate amount of termination fees or liquidated damages which could be incurred by any Borrower Party in respect of such Additional Project Document in any single year could reasonably be expected to exceed \$2,000,000 or the equivalent in any other currency or (C) such Project Document provides for the sale of any goods, services, capacity, or other right, title or interest in any Property of any Borrower Party (other than Dispositions permitted in accordance with Section 7.20) and (v) without limiting the foregoing, any and all EPC Contracts and the Environmental Indemnity.

“Material Project Participant” means each party to a Material Project Document (other than the Borrower Parties).

“Maturity Date” means, as applicable, to the relevant Tranche of Loans, the Date Certain, the Term Maturity Date, the Revolver Maturity Date, the TALC Maturity Date or the DSR Maturity Date.

“Merger” has the meaning set forth in the Collateral Agreement.

“Minimum Collateral Amount” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 100% of the Fronting Exposure of the TALC Issuing Bank with respect to TA Letters of Credit issued and outstanding at such time and (ii) otherwise, an amount determined by the TALC Issuing Bank in its sole discretion.

“Modified Business Day Convention” has the meaning set forth in the Swap Definitions.

“Monthly Period” means a period commencing on the day succeeding a Monthly Transfer Date and ending on the next succeeding Monthly Transfer Date.

“Monthly Transfer Date” means the last Business Day of each calendar month commencing on the first such day occurring on or after the Term Conversion Date.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Mortgage” has the meaning set forth in the Collateral Agreement.

“Mortgaged Property” has the meaning set forth in the Collateral Agreement.

“MPD Termination Event” means, with respect to any Material Project Document, any event or condition that would, either immediately or with the giving of notice, entitle the relevant Material Project Participant to terminate or suspend its obligations thereunder (and shall include, in any event, the occurrence of any “Termination Event” or other analogous event as defined in the Consent Agreement entered into in respect of such Material Project Document).

“Multiemployer Plan” means an employee pension benefit plan within the meaning of Section 4001(a)(3) of ERISA to which any member of the ERISA Group is then making or accruing an obligation to make contributions or has within the preceding five plan years made or accrued obligations to make contributions.

“NERC” has the meaning set forth in Section 5.12 of this Credit Agreement.

“Non-Consenting Creditor” means any Lender or Issuing Bank that does not approve any consent, waiver or amendment that (a) requires the approval of all affected Financing Parties in accordance with Section 10.11 and has been approved by all other affected Financing Parties in accordance with Section 10.11 and (b) has been approved by the Requisite Financing Parties.

“Non-Recourse Parties” has the meaning set forth in Section 11.7 of this Credit Agreement.

“Note” means, with respect to any Tranche of Loans, each promissory note delivered in respect of such Tranche of Loans to a Lender hereunder, in substantially the form set out as Exhibit 4, Exhibit 5, Exhibit 6, Exhibit 7 or Exhibit 8 (as applicable).

“Notice of Merger Certificate” has the meaning set forth in Section 7.33 of this Credit Agreement.

“Notice Office” means the office of the Administrative Agent set forth on Appendix G or such other office as the Administrative Agent may hereafter designate in writing as such to the Borrower and each Lender.

“Notional Amortization” means, in respect of any Semi-Annual Date, the notional principal amount projected to be payable on such Semi-Annual Date, as set forth under the heading “Tranche A \$” or “Tranche B \$” on the Projected Amortization Schedule, as applicable.

“Notional Disbursement Schedule” has the meaning set forth in Section 3.14(b).

“Notional Loan Amount” has the meaning set forth in Section 7.26 of this Credit Agreement.

“NYPSC” has the meaning set forth in Section 5.12(c) of this Credit Agreement.

“O&M Agreement” means the Operation and Maintenance Management Agreement, dated as of March 31, 2011, between the Project Owner and the O&M Operator, as amended by the first amendment to the O&M Agreement, dated June 1, 2011.

“O&M Operator” means NRG El Segundo Operations Inc., a Delaware corporation.

“O&M Expenses” means, collectively, without duplication, all (i) expenses of administering and operating the Project and of maintaining it in accordance with Good Utility Practices incurred by the Borrower Parties (including any items properly chargeable by U.S.

GAAP to fixed capital accounts or that are or should be classified as capital expenditures), (ii) fuel procurement and transportation costs payable by the Borrower Parties, (iii) direct operating and maintenance costs of the Project payable by the Borrower Parties, (iv) insurance premiums payable by the Borrower Parties (including construction insurance premiums paid for coverage obtained prior to the Project Completion Date), (v) property, sales, value-added and excise taxes payable by the Borrower Parties (other than taxes imposed on or measured by income or receipts), (vi) costs and fees incurred by the Borrower Parties in connection with obtaining and maintaining in effect the Permits required in connection with the Project, (vii) legal, engineering, accounting, construction, management and other professional fees incurred in the ordinary course of business in connection with the Project payable by the Borrower Parties (viii) "Reimbursable Expenses" as defined in the O&M Agreement and the Project Administration Agreement, respectively; provided, that "O&M Expenses" shall not include payments into the Debt Service Reserve Account.

"OB Approval Threshold" means each threshold set forth on Appendix E under the heading "*OB Approval Threshold*".

"Officer's Certificate" means, with respect to each Borrower Party, an officer's certificate signed by an Authorized Officer of such Borrower Party in respect of such Borrower Party.

"Offtaker" means Southern California Edison Company, a California corporation.

"Operating Account" has the meaning set forth in the Accounts Agreement.

"Operating Agreements" means the O&M Agreement, the Energy Marketing Agreement, the Spare Parts Agreement and the Project Administration Agreement.

"Operating Budget" means, for, any Operating Year, the operating and O&M Expense budget forecasts for the Project showing the costs and expenses necessary to operate, service, maintain and repair the Project, which includes (i) a detailed line item breakdown of the total costs of the Project at a level of detail satisfactory to Administrative Agent, (ii) a detailed description of the methodology and all material assumptions used to produce such estimates and the Base Case Projections.

"Operating Performance" means the operating and performance parameters of the Project, including power production, fuel consumption and efficiency, heat rate information, availability, capacity, maintenance performed, outages, changes in operating status, inspections and any other significant events relating to the operation of the Project, including each Generating Unit.

"Operating Report" means an operations report prepared quarterly by the Borrower in accordance with Section 6.1(e).

"Operating Year" means each calendar year (or portion thereof) occurring after the First Unit Operation Date and prior to the Term Maturity Date.

“Operators” means the O&M Operator, the Energy Marketer, the Spare Parts Supplier and the Project Administrator.

“Optional True-Up Date” has the meaning set forth in Section 2.1(e) of this Credit Agreement.

“Originating Lender” has the meaning set forth in Section 11.11[(d) of this Credit Agreement.

“Participating Bank” has the meaning set forth in Section 11.11[(d) of this Credit Agreement.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“Pension Plan” means an employee pension benefit plan (other than a Multiemployer Plan) which is covered by Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and either is, or at any time within the preceding five years has been, maintained, or contributed to, by any member of the ERISA Group for employees of any member of the ERISA Group.

“Performance Guarantees” has the meaning set forth in the Equipment Services Agreement.

“Permit” means any authorization, consent, approval, license, ruling, permit, tariff, rate, certification, exemption, filing, variance, claim, order, judgment, decree, publication, notice to, declaration of or with, or registration by or with, any Governmental Authority.

“Permitted Indebtedness” has the meaning set forth in Section 7.21 of this Credit Agreement.

“Permitted Investments” has the meaning set forth in the Accounts Agreement.

“Permitted Lien” has the meaning set forth in the Collateral Agreement.

“Permitted Priority Liens” has the meaning set forth in the Collateral Agreement.

“Person” means any individual, corporation, limited liability company, company, voluntary association, partnership, joint venture, trust, or other enterprise or unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

“Plans and Specifications” means the plans and specifications relating to the Project as set forth in or contemplated by the EPC Contracts.

“Pledge Agreements” means each of the Pledgor Pledge Agreement and the Borrower Pledge Agreement.

“Pledged Equity Interests” means the Equity Interests pledged pursuant to the relevant Pledge Agreement.

“Pledgor” means Natural Gas Repowering LLC, a limited liability company duly organized and existing under the laws of Delaware.

“Pledgor Closing Certificate” means a certificate, substantially in the form of Exhibit 12, dated the Closing Date, appropriately completed and duly executed by an Authorized Officer of the Pledgor.

“Pledgor Pledge Agreement” means the Pledge Agreement dated the date hereof between the Pledgor and the Collateral Agent in respect of, *inter alia*, the Equity Interests of the Borrower.

“Prime Rate” means the *per annum* rate of interest established from time-to-time by the Administrative Agent as its prime rate, which rate may not be the lowest rate of interest charged by the Administrative Agent to its customers.

“Principal Payment Date” means each date on which principal of the Loans is due in accordance with the Amortization Schedule.

“Proceeds Account” has the meaning set forth in the Accounts Agreement.

“Procurement Sub” means NRG West Procurement Company LLC, Delaware limited liability company and a wholly-owned Subsidiary of the Borrower.

“Project” means the engineering, construction, procurement, installation, testing, commissioning, operation, maintenance and ownership of the Facility to be located at the Site, including all buildings, structures and improvements erected on the Site, all alterations thereto or replacements thereof, all fixtures, attachments, equipment, machinery, parts and other articles which may from time-to-time be incorporated or installed in or attached thereto, all associated facilities (including all associated electrical, gas, steam and water interconnection, transmission, storage and treatment facilities), and all easements, leasehold interests, licenses, permits, contract rights and other real and personal property interests, in each case, now owned or hereafter acquired by the Borrower Parties or in which the Borrower Parties have any rights.

“Project Administration Agreement” means the Project Administration Services Agreement, dated as of March 31, 2011, among the Borrower, the Project Owner and the Project Administrator.

“Project Administrator” means NRG West Coast LLC, a Delaware limited liability company.

“Project Completion Date” means the date upon which all of the following events shall have occurred:

- (i) Unit Mechanical Completion (as defined in the BOP Contract) of each Unit (as defined in the BOP Contract) shall have occurred;

(ii) the Project shall have been started up and operated, and Final Completion (as such term is defined in the Equipment Services Agreement) of each Unit (as such term is defined in the Equipment Services Agreement) shall have occurred;

(iii) the Work (except for the Final Completion Punch List (as such term is defined in the BOP Contract) and the Final Punchlist (as such term is defined in the Equipment Services Contract)) items the total cost of which to complete shall not exceed \$250,000) shall have been completed in accordance with the BOP Contract and the Equipment Services Contract, as the case may be, and in compliance with all applicable Laws and Permits, and all clearing, landscaping, lighting and paving of the Project site, and all ancillary construction, upgrades and improvements necessary for the operation of the Project as contemplated by the Transaction Documents, including the interconnection and transmission facilities contemplated by the Revenue Contracts, the Large Generator Interconnection Agreement and the SoCalGas Transportation Contract, shall have been completed;

(iv) issuance to the Project Owner of a final permit to operate the Project by the South Coast Air Quality Management District;

(v) the Borrower shall have delivered the Borrower Completion Certificate to the Administrative Agent;

(vi) the Administrative Agent shall have received an executed counterpart of the Independent Engineer Completion Certificate; and

(vii) the Commercial Operation Date.

“Project Costs” means (a) all costs and expenses incurred or to be incurred by the Borrower Parties to develop, finance, complete and start-up the Project and achieve the Project Completion Date (and complete all Punch List items) in the manner contemplated by the Transaction Documents, including all amounts payable to third parties under the Project Documents and other contracts for the supply of equipment or services relating to the construction of the Facility, all costs and expenses incurred in connection with the negotiation and preparation of the Transaction Documents, and all other expenses required for the financing, development, design, engineering, construction, equipment procurement, installation, start-up and initial operation of the Project that are properly capitalized or expensed in accordance with U.S. GAAP, (b) all Fees and interest payable on the Secured Obligations prior to the Term Conversion Date and (c) all O&M Expenses payable prior to the Term Conversion Date. “Project Costs” shall not include (a) payments of principal of any Indebtedness, (b) any indemnification payments to any Secured Party or (c) any payments of any kind to any Borrower Party or any Affiliate thereof other than (x) the letter of credit fees set forth in the First Amended Intercompany Note, dated as of July 1, 2010, issued by the Project Owner for the benefit of the Sponsor and the Third Amended and Restated Credit Agreement, dated as of June 30, 2010, among, *inter alia*, the Sponsor, as borrower, Citicorp North America Inc., as administrative agent and collateral agent, and the lenders party thereto from time to time, and (y) other amounts payable pursuant to the Affiliated Project Documents.

“Project Documents” means all contracts, agreements, side letters, leases, powers of attorney or other instruments or documents entered into or to be entered into by any Borrower Party in connection with the Project that are not Financing Documents.

“Project Labor Agreement” means the Project Labor Agreement, dated as of 2001, among El Segundo Power II LLC, the State Building and Construction Trades Council of California and its affiliated local unions who have executed the Project Labor Agreement.

“Project Owner” means El Segundo Energy Center LLC, a Delaware limited liability company and a wholly-owned Subsidiary of the Borrower.

“Project Participants” means each party (other than the Borrower) to any Project Document.

“Project Revenues” means, for any period, without duplication, the aggregate of (i) payments to the Borrower Parties under the Revenue Contracts *plus* (ii) interest accrued on, and other income derived from, the balance outstanding during such period in the Secured Accounts *plus* (iii) Business Interruption Proceeds *plus* (iv) the proceeds of any Delay Liquidated Damages *plus* (v) the proceeds of any Excess Fuel Consumption Liquidated Damages. For the avoidance of doubt, Project Revenues shall exclude (a) net amounts payable to the Borrower under any Hedging Agreements, (b) proceeds payable in respect of any insurance (other than business interruption insurance), (c) the proceeds of any Buy-down Proceeds and any liquidated damages payable to the Borrower Parties under any Operating Agreement in respect of performance deficiencies and (d) warranty or indemnity payments or damages payable to the Borrower Parties under any Project Document.

“Project Schedules” means, collectively, each project schedule attached to each EPC Contract on the date hereof.

“Projected Amortization Schedule” means the percentage and notional amortization schedule attached hereto as Appendix C, as updated in accordance with Section 3.15 and 3.18(a).

“Projected Completion Date” means August 1, 2013 *plus* the number of days (if any) that the Substantial Completion Guaranteed Date (as defined in the Equipment Services Agreement) has been extended pursuant to a Change Order entered into in accordance with Section 7.15.

“Projected DSCR” means, for any applicable period, the ratio of (i) the expected CFADS for such period, to (ii) the Scheduled Debt Service for such period (including scheduled principal payments in respect of the Loans required to be paid during such period but excluding mandatory prepayments in respect of the Loans payable during such period pursuant to the Financing Documents) and the Assumed Interest Expense in respect of the Loans required to be paid during such period.

“Property” means any property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, and any right or interest therein.

“PUHCA” has the meaning set forth in Section 5.12 of this Credit Agreement.

“Punch List” has the meaning set forth in the BOP Contract.

“Punch List Amount” has the meaning set forth in the Accounts Agreement.

“Rate Swap Agreement” has the meaning set forth in the Collateral Agreement.

“Rate Swap Commencement Date” means the first Semi-Annual Date to occur after January 1, 2012.

“Rate Swap Confirmation” has the meaning set forth in the Collateral Agreement.

“Rate Swap Counterparty” has the meaning set forth in the Collateral Agreement.

“Rate Swap Transaction” has the meaning set forth in the Collateral Agreement.

“RCRA Facility Investigation Work Plan” means the RCRA Facility Investigation Work Plan, dated August 2007 (as revised June 23, 2008 and October 19, 2010, and as further revised, amended, supplemented or otherwise modified from time to time) prepared by Shaw Environmental, Inc. for El Segundo Power II LLC.

“Real Property Agreements” has the meaning set forth in the Collateral Agreement.

“Reference Banks” means those reference banks selected from time-to-time by the British Bankers Association as the panel of banks that contribute to the fixing of US Dollar bbalibor, as set forth as of the date hereof at <http://www.bbalibor.com/panels/usd>.

“Register” has the meaning set forth in Section 10.10 of this Credit Agreement.

“Regulation D” means Regulation D of the Board of Governors of the Federal Reserve System (or any successor).

“Regulation U” means Regulation U of the Board of Governors of the Federal Reserve System (or any successor).

“Regulation X” means Regulation X of the Board of Governors of the Federal Reserve System (or any successor).

“Reissued Title Policy” has the meaning set forth in Section 4.6(h)(i).

“Release” has the meaning set forth in the Collateral Agreement.

“Relevant Work Date” means, with respect to any amount to be paid to any M&M Party from proceeds of the Construction Loans, the date reasonably determined by Borrower in good faith and set forth on the Lien Waiver Report that the milestone or similar event entitling the M&M Party to such payment was achieved, the goods entitling such M&M Party to such payment were delivered to the site, the services entitling such M&M Party to such payment were performed at the site, or the work entitling such M&M Party to such payment was otherwise performed, as applicable.

“Remediation Work Plan” means the work plan agreed to among the Project Owner, El Segundo Power, LLC and the Environmental Remediation Contractor setting forth all corrective actions necessary or appropriate to satisfy the conditions and other requirements set forth in the EPA Letters.

“Required Equity Contribution” means the greater of (x) the positive difference between the aggregate amount of historical and projected Project Costs (including the Contingency) set forth in the then-applicable Construction Budget minus the sum of the Tranche A Loan Amount and the Tranche B Loan Amount and (y) 20% of the aggregate amount of historical and projected Project Costs (including the Contingency) set forth in the then-applicable Construction Budget.

“Requisite Financing Parties” means, at any time, Lenders holding at least:

(i) 50.1% of the sum of (A) the Tranche A Construction Commitment (or after the termination thereof, outstanding Tranche A Construction Loans or the Tranche A Term Loans, as applicable), (B) the Revolving Loan Commitments (or after the termination thereof, outstanding Revolving Loans), (C) the DSR Commitments (or after the termination thereof, outstanding LC Loans in respect of any draws on the DSR Letters of Credit) and (D) the TALC Commitments (or after the termination thereof, outstanding LC Loans in respect of any draw on the TA Letters of Credit);

(ii) 50.1% of the Tranche B Construction Commitment (or after termination thereof, outstanding Tranche B Construction Loans or Tranche B Term Loans, as applicable); and

(iii) 66.6% of the sum of (A) the Tranche A Construction Commitment (or after the termination thereof, outstanding Tranche A Construction Loans or the Tranche A Term Loans, as applicable), (B) Tranche B Construction Commitment (or after termination thereof, outstanding Tranche B Construction Loans or Tranche B Term Loans, as applicable); (C) Revolving Loan Commitments (or after the termination thereof, outstanding Revolving Loans), (D) the DSR Commitments (or after the termination thereof, outstanding LC Loans in respect of any draws on the DSR Letters of Credit) and (E) the TALC Commitments (or after the termination thereof, outstanding LC Loans in respect of any draw on the TA Letters of Credit).

“Requisite Revolver Lenders” means Revolver Lenders holding at least 50.1% of the aggregate outstanding principal amount of the Revolving Loans or, if no Revolving Loans have been made, at least 50.1% of the aggregate Revolving Loan Commitments of all Revolver Lenders.

“Requisite TALC Participating Banks” means TALC Participating Banks holding at least 50.1% of the aggregate outstanding principal amount of the LC Loans resulting from a drawing on the TALC Letters of Credit or, if no LC Loans have been made, at least 50.1% of the aggregate LC Loan Commitments of all TALC Participating Banks.

“Requisite Tranche A Lenders” means Tranche A Lenders holding at least 50.1% of the aggregate outstanding principal amount of the Tranche A Construction Loans or the Tranche A Loans, as applicable, or, if no Tranche A Construction Loans have been made, at least 50.1% of the aggregate Tranche A Construction Loan Commitments of all Tranche A Lenders.

“Requisite Tranche B Lenders” means Tranche B Lenders holding at least 50.1% of the aggregate outstanding principal amount of the Tranche B Construction Loans or the Tranche B Term Loans, as applicable, or, if no Tranche B Construction Loans have been made, at least 50.1% of the aggregate Tranche B Construction Loan Commitments of all Tranche B Lenders.

“Requisite Term Lenders” means each of the Requisite Tranche A Lenders and the Requisite Tranche B Lenders.

“Requisition Date” has the meaning set forth in the Accounts Agreement.

“Reserve Requirement” means, at any time, the maximum rate at which reserves (including any marginal, special, supplemental, or emergency reserves) are required to be maintained under regulations issued from time-to-time by the Board of Governors of the Federal Reserve System (or any successor) by member banks of the Federal Reserve System against “Eurocurrency liabilities” (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the Adjusted LIBO Rate is to be determined, and (ii) any category of extensions of credit or other assets which include LIBOR Loans. The Adjusted LIBO Rate shall be adjusted automatically on and as of the effective date of any change in the Reserve Requirement.

“Restore” has the meaning set forth in the Collateral Agreement.

“Restricted Payment” has the meaning set forth in Section 7.9 of this Credit Agreement.

“Retainage Escrow Agreement” means the Escrow Agreement dated May 18, 2011 among the Project Owner, the BOP Contractor and California Bank & Trust.

“Revenue Contracts” means (i) the Tolling Agreement and (ii) at all times after the execution thereof, each Additional Material Project Document specified in subpart (iii) of the definition thereof.

“Revolver Availability Period” means the period commencing on the Closing Date and ending on the earlier to occur of (i) the termination of the Revolving Commitment pursuant to the provisions of this Credit Agreement, and (ii) the seventh anniversary of the Closing Date.

“Revolver Lender” means each Lender that has a Revolving Commitment or Revolving Loans.

“Revolver Maturity Date” has the meaning set forth in Section 2.3(f) of this Credit Agreement.

“Revolving Amount” has the meaning set forth in Section 2.3(a) of this Credit Agreement.

“Revolving Commitment” means, as to any Lender, the applicable percentage set forth opposite such Lender’s name in Appendix F to this Credit Agreement under the heading “*Revolving Commitment*” multiplied by the Revolving Amount.

“Revolving Facility” has the meaning set forth in Section 2.3(a) of this Credit Agreement.

“Revolving Loans” has the meaning set forth in Section 2.3(b) of this Credit Agreement.

“Scheduled Debt Service” means, in respect of any DSCR Calculation Period, the sum of (i) the aggregate amount of interest paid during such DSCR Calculation Period (or, as applicable, the Assumed Interest Expense for such DSCR Calculation Period) plus (ii) the aggregate amount of Fees paid (or, as applicable, projected to be paid) during such DSCR Calculation Period plus (iii) the aggregate amount of amortized principal of the Loans paid (or, as applicable, required to be paid) during such DSCR Calculation Period.

“Secured Accounts” has the meaning set forth in the Collateral Agreement.

“Secured Parties” has the meaning set forth in the Collateral Agreement.

“Secured Obligations” has the meaning set forth in the Collateral Agreement.

“Security Agreements” means (a) the Security Agreement dated the date hereof between the Borrower and the Collateral Agent, (b) the Security Agreement dated the date hereof between the Procurement Sub and the Collateral Agent and (c) the Security Agreement dated the date hereof between the Project Owner and the Collateral Agent.

“Security Documents” has the meaning set forth in the Collateral Agreement.

“Semi-Annual Dates” means the last day of each of August and February; provided, that if a payment is required to be made on a Semi-Annual Date and such last day is not a Business Day, then such payment shall be made in accordance with the Modified Business Day Convention.

“Site” means the site upon which the Project will be installed, together with any fixtures and civil works constructed thereon and any other easements, licenses and other real property rights and interests required for the installation and operation of the Project, including the land referred to in the Site Agreements and the Real Property Agreements.

“Site Agreements” means , collectively, (i) the Amended and Restated Ground Lease and Easement Agreement, dated as of July 15, 2011, by and between El Segundo Power LLC and Project Owner, a memorandum of which was recorded on August 19, 2011, in the Los Angeles County Recorder’s Office as document number 20111121480, (ii) the Amended and Restated Easement Agreement , dated as of July 15, 2011, by and between El Segundo Power II LLC and the Project Owner, which was recorded on August 19, 2011, in the Los Angeles County Recorder’s Office as document number 20111121480, (iii) the Land Lease, dated as of July 1, 2010, as amended by the First Amendment to Land Lease, dated as of September 22, 2010, by and between First Industrial, L.P. and the Project Owner, (iv) the License Agreement, dated April 27, 2011, by and between Chevron Products Company and the Project Owner, and (v) the License Agreement, dated as of March 31, 2011, by and between Long Beach Generation LLC and the Project Owner.

“Site Owners” means, collectively, (i) El Segundo Power LLC and (ii) El Segundo Power II LLC.

“SoCalGas Transportation Contract” has the meaning set forth in the Tolling Agreement.

“Spare Parts Agreement” means the Program Parts, Miscellaneous Hardware, Program Management Services and Scheduled Outage Services Contract, dated February 11, 2011, between the Project Owner and the Spare Parts Supplier.

“Spare Parts Supplier” means Siemens Energy, Inc., a Delaware corporation.

“Specified Letter of Credit” means each LGIA Letter of Credit, DSR Letter of Credit and the TA Letter of Credit.

“Sponsor” means NRG Energy, Inc. or any Person into whom the Sponsor is merged, amalgamated or otherwise combined to the extent that NRG Energy, Inc. is not the surviving entity.

“Stop Notice” has the meaning provided under California Civil Code Section 3103.

“Subsidiary” means, for any Person, any corporation, partnership or other entity of which at least a majority of the securities or other ownership interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other

persons performing similar functions of such corporation, partnership or other entity (irrespective of whether or not at the time securities or other ownership interests of any other class or classes of such corporation, partnership or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person.

“Substantial Completion” has the meaning set forth in the Services Agreement.

“Swap Definitions” means the 2006 ISDA® Definitions, as published by the International Rate Swaps and Derivatives Association, Inc.

“Taking” means any circumstance or event, or series of circumstances or events (including an Expropriation Event), in consequence of which the Project or any portion thereof is condemned, nationalized, seized, compulsorily acquired or otherwise expropriated by any Governmental Authority under power of eminent domain or otherwise. The term “Taken” shall have a correlative meaning.

“TALC Availability Period” means the period commencing on the Closing Date and ending on the seventh anniversary of the Closing Date.

“TALC Commitment” means, as to any TALC Participating Bank, the applicable percentage set forth opposite such Participating Bank’s name in Appendix F to this Credit Agreement under the heading “*TALC Percentage*” multiplied by the TALC Facility Amount.

“TALC Issuing Bank” means The Royal Bank of Scotland plc.

“TALC Facility” has the meaning set forth in 2.4(a) of this Credit Agreement.

“TALC Facility Amount” has the meaning set forth in 2.4(a) of this Credit Agreement.

“TALC Maturity Date” has the meaning set forth in Section 2.4(e) of this Credit Agreement.

“TALC Participating Amount” has the meaning set forth in Section 3.25(g) of this Credit Agreement.

“TALC Participating Bank” means each Lender having a TALC Percentage.

“TALC Participation” means, in respect of any TALC Participating Bank as of any day, the aggregate face amount of all TA Letters of Credit multiplied by such TALC Participating Bank’s TALC Percentage.

“TALC Percentage” means, in respect of each TALC Participating Bank, the percentage set forth under the heading “*TALC Percentage*” and opposite such TALC Participating Bank’s name on Appendix F.

“TA Letters of Credit” has the meaning set forth in 2.4(b) of this Credit Agreement.

“Term Conversion” means the conversion of the Construction Loans into Term Loans on the Term Conversion Date.

“Term Conversion Date” means the date on which the conditions precedent set forth in Section 4.6 of this Credit Agreement are satisfied and Term Conversion occurs.

“Term Facility” has the meaning set forth in Section 2.2(c) of this Credit Agreement.

“Term Lender” means each Lender that has a Term Loan Commitment or Term Loans.

“Term Loans” has the meaning set forth in Section 2.2(c) of this Credit Agreement.

“Term Loan Commitment” means, as to any Lender, an amount equal to the aggregate amount of Construction Loans of such Lender as of the Term Conversion Date (after giving effect to any Borrowing of Construction Loans on such date in accordance with Section 2.1 of this Credit Agreement and any prepayment of Construction Loans on such date in accordance with 3.16 or 3.17 of this Credit Agreement).

“Term Maturity Date” has the meaning set forth in Section 2.2(e) of this Credit Agreement.

“Term Note” means each Note issued as evidence of one or more Term Loans.

“Termination Amount” means, in respect of any Rate Swap Transaction, the amount payable pursuant to Section 6(e) of the 1992 ISDA® Master Agreement or 2002 ISDA® Master Agreement (as applicable).

“33-06 Endorsement” means the ALTA Form 33-06 title insurance endorsement in the form attached to and made a part of the Title Policy.

“32-06 Endorsement” means means the ALTA Form 32-06 title insurance endorsement in the form attached to and made a part of the Title Policy.

“Title Indemnity” means the Title Indemnity and Guaranty Agreement, dated the date hereof, by Natural Gas Repowering LLC in favor of the Collateral Agent.

“Title Insurance Company” has the meaning set forth in the Collateral Agreement.

“Title Policy” has the meaning set forth in the Collateral Agreement.

“Title Policy Amount” has the meaning set forth in the Collateral Agreement.

“Tolling Agreement” means the Amended and Restated Power Purchase Tolling Agreement, dated August 24, 2010, between the Offtaker and the Project Owner, as amended by the Amendment No. 1 thereto dated on or about the date hereof.

“Tranche” means the tranche of Loan determined with regard to the credit facility under which such Loan was issued, *i.e.*, whether a Tranche A Construction Loan, Tranche B Construction Loan, Tranche A Term Loan, Tranche B Term Loan, Revolving Loan or LC Loan.

“Tranche A Construction Facility” has the meaning set forth in Section 2.1(a) of this Credit Agreement.

“Tranche A Construction Loan Availability Period” means the period commencing on the Closing Date and ending on the earliest to occur of (i) the full utilization of the Tranche A Construction Loan Commitments of the Tranche A Lenders, (ii) the Date Certain, (iii) the Term Conversion Date and (iv) the termination of the Tranche A Construction Loan Commitments pursuant to the provisions of this Credit Agreement.

“Tranche A Construction Loan Commitment” means, as to any Lender, the applicable percentage set forth opposite such Lenders’ name in Appendix F to this Credit Agreement under the heading “*Tranche A Construction Loan Commitment*” multiplied by the (a) at all times prior to the date of the initial Borrowing of the Construction Loans, \$480,000,000 and (b) at all times on and after the initial Borrowing of the Construction Loans, the lesser of (x) \$480,000,000 and (y) the Tranche A Loan Amount.

“Tranche A Construction Loans” has the meaning set forth in Section 2.1(c) of this Credit Agreement.

“Tranche A Deferred Principal Amount” has the meaning set forth in Section 3.15(c) of this Credit Agreement.

“Tranche A Lender” means each Lender that has a Tranche A Construction Loan Commitment or that holds a Tranche A Construction Loan or a Tranche A Term Loan.

“Tranche A Loan Amount” has the meaning set forth in Section 3.14(a).

“Tranche A Notional Amortization” has the meaning set forth in Section 3.14(a).

“Tranche A Percentage Amortization” has the meaning set forth in Section 3.14(c).

“Tranche A Term Facility” has the meaning set forth in Section 2.2(a) of this Credit Agreement.

“Tranche A Term Loans” has the meaning set forth in Section 2.2(c) of this Credit Agreement.

“Tranche B Construction Facility” has the meaning set forth in Section 2.1(b) of this Credit Agreement.

“Tranche B Construction Loan Availability Period” means the period commencing on the Closing Date and ending on the earliest to occur of (i) the full utilization of the Tranche B Construction Loan Commitments of the Tranche B Lenders, (ii) the Date Certain, (iii) the Term Conversion Date and (iv) the termination of the Tranche B Construction Loan Commitments pursuant to the provisions of this Credit Agreement.

“Tranche B Construction Loan Commitment” means, as to any Lender, the applicable percentage set forth opposite such Lenders’ name in Appendix F to this Credit Agreement under the heading “*Tranche B Construction Loan Commitment*” multiplied by the Tranche B Loan Amount.

“Tranche B Construction Loans” has the meaning set forth in Section 2.1(c) of this Credit Agreement.

“Tranche B Deferred Principal Amount” has the meaning set forth in Section 3.15(c) of this Credit Agreement.

“Tranche B Lender” means each Lender that has a Tranche B Construction Loan Commitment or that holds a Tranche B Construction Loan or a Tranche B Term Loan.

“Tranche B Loan Amount” has the meaning set forth in Section 2.1(b) of this Credit Agreement.

“Tranche B Term Facility” has the meaning set forth in Section 2.2(b) of this Credit Agreement.

“Tranche B Term Loans” has the meaning set forth in Section 2.2(c) of this Credit Agreement.

“Transaction Documents” means, collectively, the Project Documents and the Financing Documents.

“Transfer Date Certificate” means has the meaning set forth in the Accounts Agreement.

“True-Up Distributions” has the meaning set forth in Section 7.9(c) of this Credit Agreement.

“True-Up Drawings” has the meaning set forth in Section 2.1(e) of this Credit Agreement.

“Type” means the type of Loan determined with regard to the interest option applicable thereto, *i.e.*, a Base Rate Loan or a LIBOR Loan.

“Unavailable Commitment” means, at any time and in respect of any Credit Facility and any Financing Party, the aggregate Commitment of such Financing Party under such Credit Facility that is not available at such time as a result solely of the fact that the Term Conversion Date or the Initial Delivery Date has not theretofore occurred.

“Unfunded Pension Liability” of any Pension Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan, determined on a plan termination basis, exceeds the fair market value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

“Uniform Commercial Code” means the Uniform Commercial Code as adopted in any applicable jurisdiction.

“United States” and “U.S.” shall each mean the United States of America.

“Unutilized Commitment” means, in respect of any Credit Facility and any Financing Party, the aggregate Commitment of such Financing Party less the Unavailable Commitment of such Financing Party in respect of such Credit Facility less the aggregate principal amount of all Loans or the aggregate (or, in the case of the TALC Facility, the relevant TALC Participating Bank’s pro rata share of the aggregate) stated amount of all Specified Letters of Credit made or issued by (or, in the case of the TALC Facility, purchased by) such Financing Party under such Credit Facility (as applicable).

“USEPA” means the United States Environmental Protection Agency.

“U.S. GAAP” means generally accepted accounting principles applied on a consistent basis in the United States (except to the extent approved or required by the independent public accountants certifying such statements and disclosed therein).

“U.S.A. Patriot Act” means the U.S.A. PATRIOT Improvement and Reauthorization Act, Title III of Pub. L. 109-177 (signed into law March 9, 2009).

“Voluntary Bankruptcy Event” means, with respect to any Person, (i) the institution by such Person of a voluntary case seeking liquidation or reorganization under any Debtor Relief Law, (ii) the consent by such Person to the institution of an involuntary case against it under any Debtor Relief Law, (iii) the application by such Person for, or the consent or acquiescence of such Person to, the appointment of a receiver, liquidator, sequestrator, trustee or other officer with similar powers, (iv) the making by such Person of an assignment of its assets for the benefit of creditors or (v) the admission of such Person in writing of its inability to pay its debts generally as they become due.

“Work” has the respective meanings provided in the EPC Contracts.

2. Rules of Interpretation. In each Financing Document, unless otherwise indicated:

- (a) each reference to, and the definition of, any document (including any Financing Document) shall be deemed to refer to such document as it may be amended, supplemented, revised or modified from time-to-time in accordance with its terms and, to the extent applicable, the terms of this Credit Agreement;

- (b) each reference to a Law or Permit shall be deemed to refer to such Law or Permit as the same may be amended, supplemented or otherwise modified from time-to-time;
- (c) any reference to a Person in any capacity includes a reference to its permitted successors and assigns in such capacity and, in the case of any Governmental Authority, any Person succeeding to any of its functions and capacities;
- (d) references to days shall refer to calendar days unless Business Days are specified; references to weeks, months or years shall be to calendar weeks, months or years, respectively;
- (e) all references to the “Preamble”, “Recitals”, a “Section,” an “Appendix,” a “Schedule” or an “Exhibit” in a Financing Document are to the preamble, recitals or relevant section of such Financing Document or to the relevant appendix, schedule or exhibit attached thereto;
- (f) the table of contents and Section headings and other captions therein are for the purpose of reference only and do not affect the interpretation of such Financing Document;
- (g) defined terms in the singular shall include the plural and vice versa, and the masculine, feminine or neuter gender shall include all genders;
- (h) the words “hereof,” “herein” and “hereunder,” and words of similar import, when used in any Financing Document, shall refer to such Financing Document as a whole and not to any particular provision of such Financing Document;
- (i) the words “include,” “includes” and “including” are deemed to be followed by the phrase “without limitation”;
- (j) where the terms of any Financing Document require that the approval, opinion, consent or other input of any Secured Party be obtained, such requirement shall be deemed satisfied only where the requisite approval, opinion, consent or other input is given by or on behalf of the relevant party in writing;
- (k) where the terms of any Financing Document require or permit any action to be taken by the Collateral Agent, such action shall be taken strictly in accordance with the applicable provisions of the relevant Financing Documents; and
- (l) any reference to a document shall be deemed to include all exhibits, annexes, appendices and schedules thereto.

KEY TERMS OF THE FINANCING

Tranche A Loan Amount: Determined in accordance with Section 3.14(a)

Tranche B Loan Amount: \$60,000,000

Revolving Amount: \$10,000,000

TALC Facility Amount: \$30,140,000 (prior to the commencement of the Delivery Period (as such term is defined in the Tolling Agreement))/\$90,000,000 (thereafter)

DSR Facility Amount \$48,000,000

Required Equity Contribution Amount Determined in accordance with the definition thereof.

Date Certain: January 28, 2014

Term Maturity Date: Earlier of (i) the 10th ann. of the Term Conversion Date and (ii) August 31, 2023

Revolver Maturity Date: 7th anniversary of Closing Date

TALC Maturity Date: 7th anniversary of Closing Date

DSR Maturity Date: 7th anniversary of Closing Date

Applicable Margin		
<u>Tranche</u>	<u>Period</u>	<u>Applicable Margin</u>
Tranche A Construction Loans Revolving Loans TALC LC Loans	Closing Date through but excluding the Term Conversion Date	LIBO Rate: 2.25% Base Rate: 1.25%
Tranche B Construction Loans	Closing Date through but excluding the Term Conversion Date	LIBO Rate: 2.75% Base Rate: 1.75%
Tranche A Term Loans Revolving Loans TALC LC Loans	Term Conversion Date through but excluding the 3rd anniversary of Term Conversion Date	LIBO Rate: 2.25% Base Rate: 1.25%
Tranche A Term Loans Revolving Loans TALC LC Loans	3rd anniversary of Term Conversion Date through but excluding the 6th ann. of Term Conversion Date	LIBO Rate: 2.375% Base Rate: 1.375%
Tranche A Term Loans	6th anniversary of Term Conversion Date through but excluding the 8th ann. of Term Conversion Date	LIBO Rate: 2.50% Base Rate: 1.50%
Tranche A Term Loans	8th anniversary of Term Conversion Date through and including the Term Maturity Date	LIBO Rate: 2.625% Base Rate: 1.625%
Tranche B Term Loans DSR LC Loans	Term Conversion Date through but excluding the 3rd anniversary of Term Conversion Date	LIBO Rate: 2.875% Base Rate: 1.875%
Tranche B Term Loans DSR LC Loans	3rd anniversary of Term Conversion Date through but excluding the 6th ann. of Term Conversion Date	LIBO Rate: 3.00% Base Rate: 2.00%
Tranche B Term Loans	6th anniversary of Term Conversion Date through but excluding the 8th ann. of Term Conversion Date	LIBO Rate: 3.125% Base Rate: 2.125%

Tranche B Term Loans	8th anniversary of Term Conversion Date through and including the Term Maturity Date	LIBO Rate: 3.375% Base Rate: 2.375%
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Borrowing Minimum: \$1,000,000

Borrowing Multiple: \$100,000

NEWYORK 8115155 (2K)

PROJECTED AMORTIZATION SCHEDULE

<u>DATE</u>	<u>Tranche A %</u>	<u>Tranche B %</u>	<u>Tranche A \$</u>	<u>Tranche B \$</u>
September 30, 2013		0.083%		NA
October 31, 2013		0.083%		NA
November 30, 2013		0.083%		NA
December 31, 2013		0.083%		NA
January 31, 2014		0.083%		NA
February 28, 2014		0.085%		\$300,000.00
August 31, 2014		0.50%	TO	BE \$300,000.00
February 28, 2015		0.50%	CONSTRUCTED IN	\$300,000.00
August 31, 2015		0.50%	ACCORDANCE	\$300,000.00
February 28, 2016		0.50%	WITH SECTION 3.14	\$300,000.00
August 31, 2016		0.50%		\$300,000.00
February 28, 2017		0.50%		\$300,000.00
August 31, 2017		0.50%		\$300,000.00
February 28, 2018		0.50%		\$300,000.00
August 31, 2018		0.50%		\$300,000.00
February 28, 2019		0.50%		\$300,000.00
August 31, 2019		0.50%		\$300,000.00
February 28, 2020		0.50%		\$300,000.00
August 31, 2020		0.50%		\$300,000.00
February 28, 2021		0.50%		\$300,000.00
August 31, 2021		0.50%		\$300,000.00
February 28, 2022		0.50%		\$300,000.00
August 31, 2022		0.50%		\$300,000.00
February 28, 2023		0.50%		\$300,000.00
August 31, 2023		<u>90.50%</u>		<u>\$54,300,000.00</u>
Total	100%	100.0%		\$60,000,000.00

SPECIFIED LETTERS OF CREDIT

1. TA Letter of Credit

Beneficiary: Southern California Edison Company

Relevant Contractual Provision: Section 13.02 of Tolling Agreement

Stated Amount: \$30,140,000 prior to the Initial Delivery Date

\$90,000,000.00 on and after the Initial

Delivery Date

Posting Term (per Project Document): Closing Date through last day of Delivery Period

Expiration Date: 7th anniversary of Closing Date

Renewals: None.

Form Appendix 13.04.02 of Tolling Agreement

2. LGIA Letter of Credit

Beneficiary: CAISO

Relevant Contractual Provision: Section 11.5 of Large Generator Interconnection Agreement

Stated Amount: Up to \$10,000,000

Posting Term (per Project Document): Closing Date until completion of all works under the LGIA

Expiration Date: Term Conversion Date

Renewals: None

Form Exhibit 18 hereto

3. DSR Letter of Credit

Beneficiary: Administrative Agent

Relevant Contractual Provision: Accounts Agreement

Stated Amount: Proportionate share of up to \$48,000,000

Posting Term (per Project Document): N/A

Expiration Date: 7th anniversary of Closing Date

Renewals: Yes

Form Exhibit 11 of the Collateral Agreement

NEWYORK 8115155 (2K)

CB/OB APPROVAL THRESHOLDS

A. CB Approval Thresholds

Any reduction of the Contingency below \$64,200,000 on or prior to the date of the initial Borrowing of the Construction Loans.	Requisite Financing Parties.
Reallocation of the Contingency to pay for Change Orders permitted under this Credit Agreement.	None.
Reallocation of the Contingency to pay for fees and expenses of advisors and consultants (including legal counsel) incurred as contemplated by the Transaction Documents in excess of the amounts then budgeted.	None.
Application of cost-savings from any completed Construction Budget category (which completion has been confirmed by the Independent Engineer) to one or more other Construction Budget categories.	Prior written confirmation from Independent Engineer that Construction Budget category has been completed, such confirmation not to be unreasonably withheld, conditioned or delayed
Reallocation of cost savings from a fixed price line item (based upon an executed contract for that fixed price item) to one or more other Construction Budget categories.	Prior written approval of Independent Engineer, such approval not to be unreasonably withheld, conditioned or delayed
Reallocation of the Contingency to other Construction Budget categories.	<p>Prior written consent of Independent Engineer.</p> <p>If the aggregate amount of Contingency theretofore allocated to Change Orders, consultant fees or other Construction Budget categories since the date of this Credit Agreement equals or is less than \$30,000,000, prior written notice to Administrative Agent.</p> <p>If the aggregate amount of Contingency theretofore allocated to Change Orders, consultant fees or other Construction Budget categories since the date of this Credit Agreement exceeds \$30,000,000, the prior written consent of the Administrative Agent (such consent not to be unreasonably withheld, conditioned or delayed).</p>

B. OB Approval Thresholds

<p>Increase in the aggregate amount of O&M Expenses set forth in any Operating Budget in respect of the period covered thereby above 115% of the aggregate amount of O&M Expenses set forth in the Base Case Model in respect of such period.</p>	<p>Prior written approval of the Administrative Agent, in consultation with the Independent Engineer.</p>
<p>Decrease in the aggregate forecast Project Revenues set forth in any Operating Budget in respect of the period covered thereby below 85% of the aggregate amount of Project Revenues set forth in the Base Case Model in respect of such period.</p>	<p>Prior written approval of the Administrative Agent, in consultation with the Independent Engineer.</p>
<p>Decrease in the forecast CFADS set forth in any Operating Budget in respect of the period covered thereby below 85% of the forecast CFADS set forth in the Base Case Model in respect of such period.</p>	<p>Prior written approval of the Administrative Agent, in consultation with the Independent Engineer.</p>

COMMITMENTS

Lender and/or Issuing Bank	Tranche A Construction Loan Commitment	Tranche B Construction Loan Commitment	Revolving Commitment	TALC Percentage	DSR Commitment
Credit Agricole Corporate and Investment Bank	4.38%	16.67%	0.00%	23.33%	8.33%
Mizuho Corporate Bank, Ltd.	1.67%	16.67%	0.00%	0.00%	79.17%
The Royal Bank of Scotland plc	2.08%	16.67%	0.00%	27.78%	0.00%
ING Capital LLC	1.88%	16.67%	0.00%	27.78%	12.50%
Union Bank, N.A.	8.33%	16.67%	0.00%	0.00%	0.00%
Siemens Financial Services, Inc.	9.58%	0.00%	0.00%	0.00%	0.00%
CoBank, ACB	6.88%	0.00%	0.00%	0.00%	0.00%
DnB Nor Bank ASA	6.88%	0.00%	0.00%	0.00%	0.00%
Landesbank Hessen Thüringen Girozentrale, New York Branch	6.88%	0.00%	0.00%	0.00%	0.00%
Societe Generale	5.83%	8.33%	0.00%	0.00%	0.00%
Lloyds TSB Bank plc	6.88%	0.00%	0.00%	0.00%	0.00%
Sumitomo Mitsui Banking Corporation	6.88%	0.00%	0.00%	0.00%	0.00%
Sovereign Bank	6.88%	0.00%	0.00%	0.00%	0.00%
The Bank of Nova Scotia	0.00%	0.00%	100.00%	21.11%	0.00%
CIT Capital USA Inc.	2.08%	4.17%	0.00%	0.00%	0.00%
CIT Bank	2.08%	4.17%	0.00%	0.00%	0.00%

Associated Bank, N.A.	5.21%	0.00%	0.00%	0.00%	0.00%
Credit Industriel et Commercial	5.21%	0.00%	0.00%	0.00%	0.00%
Landesbank Baden-Wuerttemberg, New York Branch	5.21%	0.00%	0.00%	0.00%	0.00%
DekaBank Deutsche Girozentrale	5.21%	0.00%	0.00%	0.00%	0.00%
	100.00%	100.00%	100.00%	100.00%	100.00%

NOTICES

Administrative Agent

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK

1301 Avenue of the Americas
New York, NY 10019-6022
Attn: Lindsay Scully, Structured Finance International Agency Group
Tel: (212) 261-3708
Fax: (917) 849-5054
E-mail: lindsay.scully@ca-cib.com

AA Disbursement Account

Pay to: Credit Agricole CIB
ABA: 026008073
Account Name: Loan Syndications
Account: 01-88179-2145-00
Attention: Agnes Castillo

AA Payment Account

Pay to: Credit Agricole CIB
ABA: 026008073
Account Name: Loan Syndications
Account: 01-88179-2145-00
Attention: Agnes Castillo

Borrower

NRG West Holdings LLC
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Attn: President
Fax: (760) 918-0310

With a copy to:

5790 Fleet Street, Suite 200
Carlsbad, CA 92008

Attn: Regional General Counsel
Fax: (760)918-0310

Jennifer A. Hein
General Counsel – West Region
NRG Energy, Inc.
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Tel: (760) 710-2187
Fax: (760) 918-0310
E-mail: jennifer.hein@nrgenergy.com

Lenders

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK

Applicable Lending Office and Notice Office
1301 Avenue of the Americas
New York, NY 10019-6022
Attn: Lindsay Scully, Structured Finance International Agency Group
Tel: (212) 261-3708
Fax: (917) 849-5054

MIZUHO CORPORATE BANK, LTD.

Applicable Lending Office and Notice Office
Harborside Financial Center
1800 Plaza Ten
Jersey City, NJ 07311
Attn: Maxine Bunbury
Tel: (201) 626-9139
Fax: (201) 626-9935
Email: maxine.bunbury@mizuhocbus.com

THE ROYAL BANK OF SCOTLAND PLC

Applicable Lending Office and Notice Office
The Royal Bank of Scotland plc
600 Washington Blvd
Stamford, CT 06901
Attn: Matthew Wilson, Senior Vice President, Head of Banking Middle Office Americas

Tel: (203) 897-7664
Fax: (203) 873-5300
email: matthew.wilson@rbs.com

The Royal Bank of Scotland plc
600 Washington Blvd
Stamford, CT 06901
Attn: Simon Mockford, Managing Director, Portfolio Management-Power & Infrastructure Finance
Tel: (203) 897-3719
Fax: (203) 873-3365
email: simon.mockford@rbs.com

The Royal Bank of Scotland plc
600 Washington Blvd
Stamford, CT 06901
Attn: Samira Siskind, Vice President, Portfolio Management- Power & Infrastructure Finance
Tel: (203) 897-3898
Fax: (203) 873-3373
email: samira.siskind@rbs.com

with a copy to:

The Royal Bank of Scotland plc
600 Washington Blvd
Stamford, CT 06901
Attn: Matthew Wilson, Senior Vice President, Head of Banking Middle Office Americas
Tel: (203) 897-7664
Fax: (203) 873-5300
email: matthew.wilson@rbs.com

The Royal Bank of Scotland plc
600 Washington Blvd
Stamford, CT 06901
Attn: Shankar Subramanyam, Banking Operations
Tel: (203) 897-4431
Fax: (203) 873-5019
email: shankar.subramanyam@rbs.com

The Royal Bank of Scotland plc
600 Washington Blvd
Stamford, CT 06901
Attn: Vijay Shankar, Banking Operations
Tel: (203) 897-4431

Fax: (203) 873-5019
email: vijay.shankar@rbs.com

ING CAPITAL LLC

Applicable Lending Office and Notice Office

1325 Avenue of the Americas
New York, NY 10019
Attn: Sven Wellock, Director, Utilities
Tel: (646) 424-7204
Fax: (646) 424-6440
Email: Sven.Wellock@americas.ing.com

If sent electronically, with a copy to:

Steve Fischer
Email: Steve.Fischer@americas.ing.com

Laurence Lapeyre
Email: Laurence.lapeyre@americas.ing.com

Julie Chu
Email: Julie.chu@americas.ing.com

UNION BANK, N.A.

Applicable Lending Office & Notice Office

445 S. Figueroa Street, 15th Floor
Los Angeles, CA 90071
Attn: Kevin Zitar, Senior Vice President
Tel: (213) 236-5503
Fax: (213) 236-4096
E-mail: Kevin.Zitar@unionbank.com

LANDESBANK BADEN-WUERTEMBERG, NEW YORK BRANCH

Applicable Lending Office & Notice Office

280 Park Avenue, 31st Floor - West Building
New York, NY 10017
Attn: Mary Power
Tel: 212-907-9320
Cell: 914-479-9162
Email: Mary.Power@LBBWus.com
Web: www.LBBW-international.com

CREDIT INDUSTRIEL ET COMMERCIAL

Applicable Lending Office & Notice Office

4 rue Gaillon
75107 Paris Cedex 02
France
Attn: Mark Palin / Patrick Bordes
Tel: 33 1 42 66 76 27 / 33 1 42 66 74 60
Fax: 33 1 42 66 78 38 / 33 1 42 66 78 97
Email: palinma@cic.fr / bordespa@cic.fr

SIEMENS FINANCIAL SERVICES, INC.

Applicable Lending Office

170 Wood Avenue South
Iselin, NJ 08830
Attn: Kevin Keaton
Tel: (732) 590-6563
Fax: (919)374-9105
E-Mail: SFSPOPS.SFS@siemens.com

with a copy to:

170 Wood Avenue South
Iselin, NJ 08830
Attn: April Greaves-Bryan
Tel (732)476-3443
Fax (919)374-9105
E-Mail: SFSPOPS.SFS@siemens.com

Notice

400 Interstate North Pkwy, Suite 1150
Atlanta, GA 30339
Attn: Mark Brewer
Tel: (770) 370-2230
Fax: (770) 370-2234
E-Mail: Energy.SFS@siemens.com

ASSOCIATED BANK, N.A.

Applicable Lending Office

176 Snelling Ave. N
St. Paul, MN 55104
Attn: Cheri Smith
Tel: (651) 523-6453
Fax: (651) 523-6462
Email: Cheri.Smith@associatedbank.com

Notice Office

2870 Holmgren Way
Green Bay, WI 54301
Attn: Julie Nelson
Tel: (920) 405-2840
Fax: (920) 405-2799
Email: Julie.Nelson@associatedbank.com

SOCIETE GENERALE

Applicable Lending Office

Sabryna El Khemir
Societe Generale
1221 Avenue of the Americas
New York, New York 10020
Tel: (212) 278 - 5666
Fax: (212) 278 - 6136
E-mail: sabryna.el-khemir@sgcib.com

Notice Office

Annette Megargel
Société Générale
480 Washington Blvd. –20th floor
Jersey City, NJ 07310
Tel: 201-839-8450
Fax: 201-839-8115
E-mail: annette.megargel@sgcib.com

LLOYDS TSB BANK PLC

Applicable Lending Office

Lloyds Bank Corporate Markets
1095 Avenue of the Americas, 34th Floor
New York, NY, 10036
Attn: Abraham Asoli, Vice President

Tel: (212) 827-3109
Fax: (212) 930-5098
Email: Abraham.Asoli@lbusa.com

Notice Office

Lloyds Bank Corporate Markets
1095 Avenue of the Americas, 35th Floor
New York, New York 10036
Attn: Sarah O'Connor, Assistant Vice President Bobby Mei – Associate
Tel: (212) 450-0874, (212) 803-3446
Fax: (212) 930-5033
Email: Sarah.O'Connor@lbusa.com
Bobby.Mei@lbusa.com
NewYorkLoansAdmin@lbusa.com

SUMITOMO MITSUI BANKING CORPORATION

Applicable Lending Office

277 Park Avenue
New York, NY 10172
Attn: Anna Lapinska
Tel: (212) 224-4003
Fax: (212) 224-5222
Email: alapinska@smbclf.com

Attn: Van Dao
Tel: (212) 224-4389
Fax: (212) 224-5222
Email: vdao@smbclf.com

Notice Office

277 Park Avenue
New York, NY 10172
Attn: Antonette Mendoza
Tel: (212) 224-4786
Fax: (212) 224-4391
Email: antonette_mendoza@smbcgroup.com

LANDESBANK HESSEN THÜRINGEN GIROZENTRALE, NEW YORK BRANCH

Applicable Lending Office and Notice Office

420 Fifth Avenue
New York, NY 10018-2729
Attention: David Leech (credit notices)
Tel: 212-703-5303
Fax: 212-703-5256
Email: david.leech@helabany.com

Gudrun Dronca (operational notices)
Tel: 212-703-5244
Fax: 212-703-5256
Email: gudrun.dronca@helabany.com

DEKABANK DEUTSCHE GIROZENTRALE

Applicable Lending Office
DekaBank Deutsche Girozentrale
Mainzer Landstrasse 16
60325 Frankfurt (Main)
Germany
Attn: Mrs. Stefania Merletti-Iwanowsky
Phone: +49-69-7147-2349
Fax: +49-69-7147-5087
Email: kredit-support.kreditservice@deka.de

Notice Office
DekaBank Deutsche Girozentrale
Mainzer Landstrasse 16
60325 Frankfurt (Main)
Germany
Attn.: Mr. Achim Grobosch
Phone: +49-69-7147-5895
Fax: +49-69-7147-3809
Email: achim.grobosch@deka.de / international-finance@deka.de

SOVEREIGN BANK

Applicable Lending and Notice Office
Sovereign Bank
450 Penn Street
Reading, PA 19602
Attn: Susan Kissinger, COML Ops Specialist
Tel: 610-988-1617

Fax: 484-338-2831
Email: participations@sovereignbank.com

with a copy to:

Sovereign Bank
75 State Street
Boston, MA 02109
Attn: Robert Lanigan, Senior Global Banker
Tel: 617-346-7384
Fax: 617-757-3567
Email: rlanigan@sovereignbank.com

Sovereign Bank
75 State Street
Boston, MA 02109
Attn: Daniela Hofer, Global Banker
Tel: 617-346-7365
Fax: 617-757-3567
Email: dhofer@sovereignbank.com

Santander Investment Securities Inc
45 East 53rd Street
New York, NY 10022
Attn: Manuel Garcia Lizasoain, Assistant Vice President
Tel: 212-583-4639
Fax: 212-407-7850
Email: mgarcializasoain@santander.us

Banco Santander SA - New York Branch
45 East 53rd Street
New York, NY 10022
Attn: Manuel Perez, Vice President
Tel: 212-407-0997
Fax: 212-407-7850
Email: mperez@santander.us

DNB NOR BANK ASA

Applicable Lending Office

DnB NOR Bank ASA
200 Park Avenue, 31 floor, New York, N.Y 10166
Attn: Mark Dennes
Tel: (212) 681-3929
Fax: (212) 681-3800 Email: mark.dennes@dnbnor.no

Notice Office

DnB NOR Bank ASA
333 Clay street, suite 3950, Houston, TX 77002
Attn: Alberto Caceda
Tel: (832) 214-5807
Fax: (832) 214-5839 Email: alberto.caceda@dnbnor.no

THE BANK OF NOVA SCOTIA

Applicable Lending Office

One Liberty Plaza
New York, NY, 10006
Attn: Joshua Dale
Tel: (212) 225-5383
Fax: (212) 225-5480
Email: joshua_dale@scotiacapital.com

Notice Office

One Liberty Plaza
New York, NY, 10006
Attn: Joshua Dale
Tel: (212) 225-5383
Fax: (212) 225-5480
Email: joshua_dale@scotiacapital.com

COBANK, ACB

Applicable Lending Office and Notice Office

5500 South Quebec Street
Greenwood Village, CO 80111
Attn: Graham Kaiser
Tel: (303) 740-4386
Fax: (303) 740-4021
Email: agencybank@cobank.com

5500 South Quebec Street
Greenwood Village, CO 80111
Attn: Lori Kepner
Tel: (303) 740-6535
Fax: (303) 224-2579
Email: lkepner@cobank.com

CIT CAPITAL USA Inc. and CIT BANK

Applicable Lending Office and Notice Office

CIT Energy

11 West 42nd Street

New York, NY 10036

Attn: Joseph Gyurindak, Director

Head of Portfolio Management

Tel: (212) 461-5263

Fax: (212) 771-6023

Email: joseph.gyurindak@cit.com

SEPARATENESS PROVISIONS

The Borrower Parties shall maintain their existence separate and distinct from any other Person, including taking the following actions:

Maintaining in full effect each such party's existence, rights and franchises as a limited liability company existing under the laws of the State of Delaware and obtaining and preserving their respective qualification to do business in each jurisdiction in which such qualification is or will be necessary to protect the validity and enforceability of its respective LLC Agreement and each other instrument or agreement necessary or appropriate to properly administer its respective LLC Agreement and permit and effectuate the transactions contemplated in its respective LLC Agreement;

Maintaining their own deposit accounts, separate from those of the Pledgor and its respective Affiliates;

Conducting all material transactions between each Borrower Party and any of their respective Affiliates on an arm's length basis on commercially reasonable terms;

Allocating fairly and reasonably the cost of any shared office space with the Pledgor or any of its respective Affiliates;

Conducting their affairs separately from those of the Pledgor or any of its respective Affiliates and maintaining accurate and separate books, records and accounts;

Acting solely in their own limited liability company name and not that of any other Person, including the Pledgor or any of its respective Affiliates, and at all times use their own stationary, invoices and checks separate from those of the Pledgor and its respective Affiliates;

Not holding itself out as having agreed to pay, or as being liable for, the obligations of the Pledgor or any of its respective Affiliates;

Not commingling their assets with those of any other Person;

Paying their own obligations out of their own funds;

Observing all corporate formalities required under its LLC Agreement and, in the case of the Borrower, its Certificate of Formation, dated July 18, 2008 (as amended June 2, 2010), in the case of the Procurement Sub, its Certificate of Formation, dated June 2, 2010 and, in the case of the Project Owner, its Certificate of Formation, dated February 26, 2008;

Paying the salaries of their own employees;

Not acquiring obligations of their members or any of their respective Affiliates;

Each such Borrower Party holding itself out as a separate entity;

Not forming, acquiring or holding any subsidiaries;

Paying their debts and liabilities (including, as applicable, shared personnel and overhead expenses) from their own assets;

Maintaining separate financial statements (including not listing its assets on the financial statements of any other Person); provided that Borrower Parties' assets may be included in a consolidated financial statement of its Affiliates so long as (i) appropriate notations are made on such consolidated financial statements to indicate separateness of the Borrower Parties and such Affiliates and to indicate that the Borrower Parties' assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person and (ii) such assets shall be listed on each Borrower Party's own separate balance sheet; and

Filing each Borrower Party's own tax returns (to the any such Borrower Party is required to file any such tax returns).

“LLC Agreement” means any of the Third Amended and Restated Limited Liability Company Agreement of the Borrower, dated as of June 21, 2011, entered into by the Pledgor, the Third Amended and Restated Limited Liability Company Agreement of the Project Owner, dated as of June 21, 2011, entered into by the Borrower, or the Amended and Restated Limited Liability Company Agreement of the Procurement Sub, dated as of June 21, 2011, entered into by the Borrower, as applicable.

INDEPENDENT CONSULTANTS' REPORTS

Independent Engineer

As set forth in the Independent Engineer's Report – El Segundo Energy Center, dated August 23, 2011, by SAIC Energy, Environmental & Infrastructure, LLC.

Insurance Consultant

As set forth in the Insurance Report on El Segundo Power Project, dated August 23, 2011, by Moore-McNeil, LLC.

MAJOR MILESTONE DATE EXTENSIONS

Scheduled Delivery Dates (as currently defined in the Equipment Services Agreement)		
Scheduled Delivery Date for Gas Turbine Longitudinal	March 2, 2012	April 1, 2012
Scheduled Delivery Date for Gas Turbine Step Up Transformer	March 13, 2012	April 11, 2012
Scheduled Delivery Date for Gas Turbine Generator	March 5, 2012	April 3, 2012
Scheduled Delivery Date for GT Electrical Package	February 29, 2012	March 29, 2012
Scheduled Delivery Date for HRSG First Delivery Structural Steel	December 2, 2011	January 1, 2012
Scheduled Delivery Date for HRSG Modules	March 7, 2012	March 7, 2012
Scheduled Delivery Date for Steam Turbine Assembly	June 1, 2012	June 1, 2012
Scheduled Delivery Date for Steam Turbine Generator	June 1, 2012	June 1, 2012
Scheduled Delivery Date for ACHE First Delivery Structural Steel	January 1, 2012	February 1, 2012
Scheduled Delivery Date for ACHE Air Cooler Fan Assembly	May 2, 2012	May 31, 2012
Mechanical Completion Guaranteed Dates (as currently defined in the BOP Contract)		
Mechanical Completion Guaranteed Date for HRSG Hydro Final Flush	September 18, 2012	November 18, 2012
Mechanical Completion Guaranteed Date for CTG First Fire	October 21, 2012	December 21, 2012
Mechanical Completion Guaranteed Date for STG Synchronization	December 19, 2012	February 18, 2013
Substantial Completion Guaranteed Date (as currently defined in the Equipment Services Agreement)	May 31, 2013	May 31, 2013

TERM CONVERSION OPINION MATTERS

I. Addressees:

To the Secured Parties and the Agent Referred to Below
c/o Credit Agricole Corporate and Investment Bank, as Administrative Agent
1301 Avenue of the Americas New York, NY 10019-6022

II. Opinion Parties: The Borrower Parties, the Pledgor and any other Affiliate of the Borrower that is a party to any Transaction Document.

III. Opinion Documents: Additional Project Documents

IV. Opinion Laws: Federal, California, New York and Delaware

V. Opinions:

A. Corporate Housekeeping Opinions

Each of the opinions set forth in the in-house opinion referenced in Section 4.1(m)(i) of the Credit Agreement.

B. Enforceability, No Violation of Laws and No Consents

Each of the opinions set forth in paragraphs (a) and (b) of the opinion of Jones Day referenced in Section 4.1(m)(ii) of the Credit Agreement.

C. Federal Energy Regulatory; Federal Permitting

The Borrower has filed with FERC a Notice of Self-Certification as an EWG and FERC has issued a Notice of Effectiveness with respect thereto, and such Notice of Effectiveness is final and in full force and effect.

Each of the opinions set forth in paragraphs (8), (9) and (10) of the opinion of Jones Day referenced in Section 4.1(m)(iii) of the Credit Agreement.

D. Environmental; State Energy Regulatory; State and Local Permitting

Each of the opinions set forth in the opinion of Stoel Rives LLP referenced in Section 4.1(m)(iv) of the Credit Agreement, in each case, as they relate to the use, ownership and/or operation of the Project; provided, that the first sentence of paragraph C4 shall be modified as follows:

“Each of the permits set forth in Part B of Schedule I is not required to be obtained as of the date of this opinion and is not obtainable until after a period of operations.”

AMENDMENT NO. 1

This AMENDMENT (this "Amendment") dated as of October 7, 2011 is by and between NRG West Holdings LLC, as Borrower and Credit Agricole Corporate and Investment Bank, as Administrative Agent. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed thereto in Appendix A to the Credit Agreement.

WITNESSETH:

WHEREAS, the Borrower, the Administrative Agent and the Lenders are parties to that certain Credit Agreement, dated as of August 23, 2011 (the "Credit Agreement");

WHEREAS, the Borrower has requested that the Requisite Financing Parties approve the amendment of the Credit Agreement on the terms and subject to the conditions herein specified; and

WHEREAS, the Requisite Financing Parties have consented to the amendment of the Credit Agreement on the terms and subject to the conditions herein specified and directed the Administrative Agent to therefore execute and deliver this Amendment in accordance with Section 11.10 of the Credit Agreement;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby established and confirmed, the parties hereto hereby agree as follows:

1. Amendments to the Credit Agreement. The Parties hereby agree that as of the date hereof, the Credit Agreement is hereby amended as follows:

(a) By deleting the definition of "Affiliate O&M Fee" in Appendix A of the Credit Agreement in its entirety and replacing it with the following new definition:

""Affiliate O&M Fee" means all amounts, whether fees or otherwise, payable by the Borrower or any other Borrower Party to any Affiliated Project Party pursuant to any Affiliated Project Document, other than Reimbursable Expenses (as such term is defined in the O&M Agreement, Project Administration Agreement or Construction Management Agreement)."

(b) By deleting the definition of "EPC Contracts" in Appendix A of the Credit Agreement in its entirety and replacing it with the following new definition:

""EPC Contracts" means any Project Document providing for construction services on, or delivery of any equipment or materials to, the Site."

Agreement:

- (c) By inserting the following new definition in Appendix A to the Credit

““Material EPC Contracts” means the (i) BOP Contract, the BOP Guaranty, the Construction Management Agreement, the Equipment Purchase Agreement, the Equipment Supplier Guaranty, the Equipment Services Agreement, the Equipment Servicer Guaranty, the Construction Coordination Agreement, the Project Labor Agreement and the Assignment of Project Labor Agreement and (ii) each other EPC Contract or series of related EPC Contracts with the same contractor, vendor or supplier wherein the aggregate cost or value of goods and services to be acquired by any Borrower Party pursuant thereto either (x) could reasonably be expected to exceed \$2,000,000 or the equivalent in any other currency or (y) are not reflected in the then-current Construction Budget (as confirmed by the Administrative Agent in consultation with the Independent Engineer).”

- (d) By deleting the words “any and all EPC Contracts” in the last line of the definition of “Material Project Document” in Appendix A of the Credit Agreement and inserting the words “any and all Material EPC Contracts” *in lieu* thereof.

- (e) By deleting Schedule 5.7 to the Credit Agreement in its entirety and replacing it with the new Schedule 5.7 as set forth in Appendix A hereto.

- (f) By inserting the following proviso at the end of Section 7.14(i) of the Credit Agreement:

“provided, that, no Borrower Party shall be required to enter into or obtain such Consent Agreement and related opinion pursuant to this Section 7.14(i) in respect of any EPC Contract or series of related EPC Contracts with the same contractor, vendor or supplier where the aggregate cost or value of goods and services to be acquired by any Borrower Party pursuant thereto could not reasonably be expected to exceed \$5,000,000 or the equivalent in any other currency.”

2. Waivers; Etc.

- (a) The Administrative Agent, at the direction of the Requisite Creditors, hereby waives each Default or Event of Default that occurred on or prior to the date hereof to the extent that (but solely to the extent that) such Default or Event of Default would not have occurred if this Amendment were effective as of the date of the underlying circumstance, action or other event that gave rise to such Default or Event of Default.

- (b) Except as expressly provided in this Amendment, (i) all of the terms and conditions of the Financing Documents remain in full force and effect and none of such terms
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and conditions are, or shall be construed as, otherwise amended or modified and (ii) neither the Administrative Agent nor any Financing Party waives any Default or Event of Default, or any right or remedy available to the Administrative Agent or any Financing Party under the Financing Documents, whether any such defaults, rights or remedies presently exist or arise in the future. Notwithstanding anything contained herein, the waivers, consents and amendments contained in this Amendment (i) are limited as specified, (ii) are effective only with respect to the transactions described in this Amendment for the specific instance and the specific purpose for which it is given, (iii) shall not be effective for any other purpose or transaction and (iv) do not constitute an amendment or basis for a subsequent consent or waiver of any of the provisions of the Financing Documents.

3. Representations and Warranties. The Borrower hereby represents and warrants that each of the representations and warranties set forth in the Credit Agreement are true and correct on and as of the date hereof as they relate to the execution and delivery of this Amendment and are otherwise true and correct on the date hereof in all material respects after giving effect thereto.

4. Full Force and Effect; Ratification. This Amendment shall be construed in connection with and as part of the Credit Agreement, and except as modified and expressly amended by this Amendment, all terms, conditions and covenants contained in the Credit Agreement are hereby ratified and shall remain in full force and effect, enforceable in accordance with their respective terms.

5. References to the Credit Agreement. Any and all notices, requests, certificates and other instruments executed and delivered after the Effective Date may refer to any Financing Document without making specific reference to this Amendment but nevertheless all such references shall include this Amendment unless the context otherwise requires.

6. Financing Document. Each of the parties hereto acknowledges and agrees that this Amendment shall be deemed a "Financing Document" for all purposes under the Credit Agreement.

7. Governing Law. THIS AMENDMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE-OF- LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE.

[Remainder of Page Intentionally Left Blank]

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

NRG WEST HOLDINGS LLC,
as Borrower

By: /s/ Scott Valentino
Name: Scott Valentino
Title: President

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,
as Administrative Agent

By: /s/ Edward Chu
Name: Edward Chu
Title: Vice President

By: /s/ Schillio
Name: Schillio
Title: Director

SCHEDULE 5.7 MATERIAL PROJECT DOCUMENTS

PART A.

Site, Lease and Easement Agreements

1. Option Agreement, dated March 4, 2008, by and between El Segundo Power, LLC and El Segundo Energy Center LLC *
2. Option Agreement, dated March 4, 2008, by and between El Segundo Power II LLC and El Segundo Energy Center LLC *
3. Amended and Restated Ground Lease and Easement Agreement, by and between El Segundo Power, LLC, and El Segundo Energy Center LLC, dated as of July 15, 2011*
4. Amended and Restated Easement Agreement by and between El Segundo Energy Center LLC and El Segundo Power II LLC, dated as of July 15, 2011 *

Equipment, Construction and Labor Agreements

1. Construction Management Agreement, by and between El Segundo Energy Center LLC and NRG Construction LLC, dated as of March 31, 2011*
 2. Equipment Purchase Agreement, dated as of July 15, 2010, by and between NRG West Holdings LLC and Siemens Energy, Inc., as modified by Change Order No. 1, dated December 30, 2010, Change Order No. 2, dated February 24, 2011, Change Order No. 3, dated May 13, 2011, and Change Order No. 4, dated August 12, 2011
 3. Service Agreement, dated as of July 19, 2010, by and between NRG West Procurement Company LLC and Siemens Energy, Inc., as modified by Change Order No. 1, dated December 30, 2010, Change Order No. 2, dated May 13, 2011, Change Order No. 3, dated June 16, 2011, and Change Order No. 4, dated August 12, 2011
 4. Amended and Restated Construction Agreement by and between ARB, Inc. and El Segundo Energy Center LLC, dated as of June 6, 2011, as amended by the First Amendment thereto, dated as of August 17, 2011
 5. Limited Assignment of Rights by and between El Segundo Energy Center LLC and Fidelity National Title Insurance Company, dated as of August 23, 2011
 6. Construction Coordination Agreement by and among El Segundo Energy Center LLC, NRG West Procurement Company LLC, Siemens Energy, Inc. and ARB,
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Inc., dated as of March 31, 2011

7. Transfer Agreement, dated as of May 2, 2011, by and between NRG West Holdings LLC and NRG West Procurement Company LLC*

8. Project Labor Agreement by and among El Segundo Power II LLC, the State Building and Construction Trades Council of California, and its affiliated local unions who have executed the Agreement, dated as of 2001

9. Assignment of Project Labor Agreement by El Segundo Power II LLC to El Segundo Energy Center LLC, dated January 3, 2011 *

Interconnection Agreements

10. Large Generator Interconnection Agreement (LGIA) among El Segundo Power II LLC, Southern California Edison Company and California Independent System Operator Corporation, with an effective date of March 9, 2007

11. First Amendment to LGIA with an effective date of December 1, 2007

12. Second Amendment to LGIA with an effective date of July 24, 2009

13. LGIA Assignment and Assumption Agreement, by and between El Segundo Power II LLC, and El Segundo Energy Center LLC, dated as of March 7, 2011 *

14. Third Amendment to LGIA among El Segundo Energy Center LLC, Southern California Edison Company and California Independent System Operator Corporation, dated as of March 14, 2011

15. Standard Large Generator Interconnection Agreement (LGIA) among El Segundo Energy Center LLC, Southern California Edison Company and California Independent System Operator Corporation, as accepted by the Federal Energy Regulatory Commission in Docket No. ER11-3165 on April 20, 2011.

Project Agreements

16. Operation and Maintenance Management Agreement, between El Segundo Energy Center LLC and NRG El Segundo Operations Inc. dated as of March 31, 2011*

17. Project Administration Services Agreement, by and among Natural Gas Repowering LLC, El Segundo Energy Center LLC and NRG West Coast LLC, dated as of March 31, 2011*

18. Energy Marketing Services Agreement, by and between NRG Power Marketing LLC and El Segundo Energy Center LLC, dated as of March 31, 2011*

19. Amended and Restated Power Purchase Tolling Agreement by and between

- Southern California Edison Company and El Segundo Energy Center LLC, dated August 24, 2010, as amended by the First Amendment thereto, dated August 23, 2011
20. Facilities Services Agreement, dated February 28, 2011, by and between El Segundo Power, LLC and Plains West Coast Terminals LLC
 21. Amended and Restated Facilities Services Agreement dated March 30, 2011, by and between El Segundo Power, LLC and Southern California Edison Company
 22. Shared Facilities Agreement by and between El Segundo Power, LLC and El Segundo Energy Center LLC dated as of March 31, 2011 *
 23. Shared Facilities Agreement by and between El Segundo Power II LLC and El Segundo Energy Center LLC dated as of March 31, 2011 *
 24. Memorandum of Understanding between El Segundo Energy Center LLC and El Segundo Power, LLC, dated as of January 31, 2011, to establish priority usage of firm transfer capacity on the Southern California Gas Company pipeline system to the El Segundo site *
 25. Contract Relating to Delivery of Recycled Water to City Water Corporation and El Segundo Energy Center LLC, by and among West Basin Municipal Water District, El Segundo Energy Center LLC and the City of El Segundo, dated as of January 24, 2011
 26. Purchase and Sale Agreement, by and between El Segundo Power, LLC and El Segundo Energy Center LLC, dated as of April 30, 2010, relating to Emission Reduction Credits*
 27. Purchase and Sale Agreement, by and between El Segundo Power, LLC and El Segundo Energy Center LLC, dated as of February 23, 2011, relating to NOx RECLAIM Trading Credits and SO2 Allowances*
 28. Assignment of Permit Rights, by and between El Segundo Power II LLC and El Segundo Energy Center LLC, dated as of February 27, 2008*
 29. Program Parts, Miscellaneous Hardware, Program Management Services and Scheduled Outage Services Contract, by and between El Segundo Energy Center LLC and Siemens Energy, Inc., dated as of February 11, 2011
 30. Guaranty by Siemens Corporation, dated November 2, 2010, for the benefit of NRG West Procurement Company and NRG West Holdings LLC relating to the Service Agreement and the Equipment Purchase Agreement
 31. Guaranty by Primoris Services Corporation, dated June 9, 2011, for the benefit of El Segundo Energy Center LLC, relating to the Construction Agreement
 32. Performance Bond from Liberty Mutual Insurance Company issued in favor of
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El Segundo Energy Center LLC, dated June 8, 2011 (as amended by the first rider thereto, dated June 8, 2011, and the second rider thereto, dated August 17, 2011)

33. Guaranty by NRG West Holdings LLC, dated August 22, 2011, for the benefit of ARB, Inc., relating to the Construction Agreement

34. Consent to Assignment for LGIA by and among Southern California Edison Company, the California Independent System Operator Corporation, El Segundo Power II, LLC and El Segundo Energy Center LLC, dated as of March 7, 2011

35. Letter from Southern California Gas Company, dated October 14, 2010, relating to firm gas transportation service request for El Segundo facility

36. Environmental Indemnity and Guaranty Agreement, dated August 23, 2011, between NRG Energy, Inc. and El Segundo Energy Center LLC

Other Contracts

37. Limited Liability Company Agreement of Natural Gas Repowering LLC, dated as of February 24, 2011*

38. Limited Liability Company Agreement of NRG West Procurement Company LLC, dated as of June 2, 2010*

39. Third Amended & Restated Limited Liability Company Agreement of NRG West Holdings LLC, dated as of June 21, 2011*

40. Second Amended & Restated Limited Liability Company Agreement of El Segundo Energy Center LLC, dated as of June 2, 2010*

41. Title Indemnity, dated as of August 23, 2011, made by NRG Repowering Holdings in favor of Fidelity National Title Insurance Company.

42. Certificate by El Segundo Energy Center LLC to Fidelity National Title Insurance Company dated as of August 23, 2011

43. Document Collection and Review Agreement between Fidelity National Title Insurance Company and El Segundo Energy Center LLC, dated as of August 23, 2011

44. Purchase Order #0082010 by and between El Segundo Energy Center LLC and URS Energy & Construction Inc., dated September 8, 2010, relating to owner's engineer services

45. Purchase Order #C80731200 by and between El Segundo Energy Center LLC and AIMS Corporation, dated July 16, 2008, relating to Chief Building Officer services

46. Purchase Order #M062311 by and between El Segundo Energy Center LLC and McGriff Seibels & Williams Inc. relating to builders risk insurance

PART B

1. Land Lease by and between First Industrial, L.P. and El Segundo Energy Center LLC, dated as of July 1, 2010

2. First Amendment to Lease by and between First Industrial, L.P. and El Segundo Energy Center LLC, dated as of September 22, 2010
 3. License Agreement, dated March 31, 2011, by and between Long Beach Generation, LLC and El Segundo Energy Center LLC
 4. License Agreement by and between Chevron Products Company, a division of Chevron U.S.A. Inc. and El Segundo Energy Center LLC, dated as of April 27, 2011
 5. Letter Agreement by and between Chevron Products Company, a division of Chevron U.S.A. Inc. and El Segundo Energy Center LLC, dated as of April 28, 2001, setting forth Change No. 1 to approved scope of work for License Agreement
 6. Collectible Work Authorization by and between El Segundo Energy Center LLC and Southern California Gas Company, effective as of July 6, 2011
 7. Letter from City of Manhattan Beach, California to El Segundo Energy Center, dated February 9, 2011, regarding City's intention to provide sewer service
 8. Memorandum of Understanding, dated August 16, 2010, by and between El Segundo Energy Center LLC and West Basin Municipal Water District for Procurement of Pipeline Design Services
 9. Amendment Number 1 to Memorandum of Understanding, dated December 20, 2010, by and between El Segundo Energy Center LLC and West Basin Municipal Water District for Procurement of Pipeline Design Services
 10. Memorandum of Understanding relating to the purchase and sale of ammonia and the construction of related facilities dated as of February 22, 2011 by and between El Segundo Energy Center LLC and Chevron Products Company
 11. Union Pacific Rail Access Memorandum of Understanding, by and between Union Pacific Railroad Company and El Segundo Energy Center LLC, dated as of June 23, 2011
 12. Facilities Services Agreement, dated April 1, 1998, by and between El Segundo Power, LLC and Southern California Edison Company
 13. Assignment and Assumption Agreement, dated July 8, 2011, by and between NRG Repowering Holdings LLC and NRG West Holdings LLC relating to Agreement with SAIC
 14. Professional Services Agreement dated November 4, 2010, together with Task Authorizations dated November 12, 2010, April 22, 2011, May 23, 2011, and July 1, 2011, by and between SAIC Energy, Environment & Infrastructure, LLC, and NRG West Holdings LLC (as successor-in-interest to NRG Repowering Holdings LLC)
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15. Agreement between NRG Western Affiliate Services Inc. and Utility Workers Union of America Local 246, effective March 1, 2009
 16. Retainage Escrow Agreement, among California Bank and Trust, El Segundo Energy Center LLC and ARB Inc., dated as of May 18, 2011
 17. Purchase Order #D082211 by and between El Segundo Energy Center LLC and J. A. Placek Construction Company, dated June 15, 2011, relating to rail spur engineering and construction
 18. Purchase Order #D071111 by and between El Segundo Energy Center LLC and Granite Construction Company, dated May 14, 2010, relating to roadways and access modifications
 19. Purchase Order #M071411 by and between El Segundo Energy Center LLC and Granite Construction Company, dated November 23, 2010, relating to tank farm area grading
 20. Purchase Order #M052311 by and between El Segundo Energy Center LLC and RSC EQUIPMENT RENTAL, dated January 14, 2011, relating to temporary lighting in tank farm area
 21. Purchase Order #M090211 by and between El Segundo Energy Center LLC and Granite Construction Company, dated September 1, 2011, relating to south tank farm area civil and mechanical work
 22. Purchase Order #M1220103 by and between El Segundo Energy Center LLC and KM Industrial Inc., dated May 11, 2010, relating to storm water cleanup
 23. Purchase Order #O120910 by and between El Segundo Energy Center LLC and Peerless Pump Company, dated December 9, 2010, relating to relocation of fire water pumps
 24. Purchase Order #P0726101 by and between El Segundo Energy Center LLC and Tarsco Inc., dated June 10, 2010, relating to relocation of fire water tank
 25. Purchase Order #O060411 by and between El Segundo Energy Center LLC and Wesco, dated April 8, 2011, relating to fire water service water projects
 26. Purchase Order #M061611 by and between El Segundo Energy Center LLC and AECOM Inc., dated May 23, 2011, relating to landscaping and irrigation
 27. Purchase Order #M082911 by and between El Segundo Energy Center LLC and AECOM Technical Services Inc., dated July 23, 2008, relating to landscaping and irrigation
 28. Purchase Order #M0404111 by and between El Segundo Energy Center LLC and Caltrol Inc., dated July 20, 2010, relating to water system
 29. Purchase Order #M042111 by and between El Segundo Energy Center LLC and Performance Mechanical Inc., dated September 20, 2010, relating to water system
 30. Purchase Order #M080211 by and between El Segundo Energy Center LLC and Motion Industries Inc., dated July 22, 2010, relating to water system
 31. Purchase Order #M080411 by and between El Segundo Energy Center LLC and Gexpro, dated May 23, 2011, relating to water system
 32. Purchase Order #M081011 by and between El Segundo Energy Center LLC and FLW Inc., dated August 15, 2011, relating to water system
 33. Purchase Order #M121410 by and between El Segundo Energy Center LLC and FLW Inc., dated April 8, 2011, relating to water system
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34. Purchase Order #O082311, by and between El Segundo Energy Center LLC and Performance Mechanical Inc., dated July 23, 2008, relating to water system
 35. Purchase Order #M0222111 by and between El Segundo Energy Center LLC and Performance Mechanical Inc., dated June 28, 2010, relating to water system
 36. Purchase Order #O053111 by and between El Segundo Energy Center LLC and Rosemount Inc., dated January 26, 2011, relating to water system
 37. Purchase Order #O060811 by and between El Segundo Energy Center LLC and Caltrol Inc., dated February 22, 2011, relating to water system
 38. Purchase Order #O060911 by and between El Segundo Energy Center LLC and Yokogawa Corporation of America, dated June 9, 2011, relating to water system
 39. Purchase Order #O061311 by and between El Segundo Energy Center LLC and Jensen Precast, dated April 21, 2011, relating to water system
 40. Purchase Order #O062411 by and between El Segundo Energy Center LLC and Jensen Precast, dated August 17, 2011, relating to water system
 41. Purchase Order #M0127111 by and between El Segundo Energy Center LLC and Tarsco Inc., dated June 28, 2010, relating to water system
 42. Purchase Order #M0214111 by and between El Segundo Energy Center LLC and Performance Mechanical Inc., dated June 28, 2010, relating to water system
 43. Purchase Order #M041811 by and between El Segundo Energy Center LLC and Yokogawa Corporation of America, dated September 15, 2010, relating to water system
 44. Purchase Order #M042111 by and between El Segundo Energy Center LLC and Performance Mechanical Inc., dated September 20, 2010, relating to water system
 45. Purchase Order #M0511111 by and between El Segundo Energy Center LLC and Jensen Precast, dated May 11, 2011, relating to water system
 46. Purchase Order #M061711 by and between El Segundo Energy Center LLC and Morrow-Meadows Corporation, dated June 24, 2011, relating to water system
 47. Purchase Order #M1213101 by and between El Segundo Energy Center LLC and Performance Mechanical Inc., dated April 8, 2011, relating to water system
 48. Purchase Order #M121410 by and between El Segundo Energy Center LLC and FLW Inc., dated April 8, 2011, relating to water system
 49. Purchase Order #M090711 by and between El Segundo Energy Center LLC and Morrow-Meadows Corporation, dated September 7, 2011, relating to water system
 50. Purchase Order #M091311 by and between El Segundo Energy Center LLC and Applied Engineering Concepts Inc., dated September 13, 2011, relating to water system
 51. Purchase Order #O062511 by and between El Segundo Energy Center LLC and Performance Mechanical Inc., dated August 23, 2011, relating to water system
 52. Purchase Order #O051611 by and between El Segundo Energy Center LLC and Malcolm Drilling Company Inc., dated December 29, 2010, relating to shoring support
 53. Purchase Order #O090211 by and between El Segundo Energy Center LLC and Baker Corp., dated September 6, 2011, relating to dewatering treatment system
 54. Purchase Order #M111910 by and between El Segundo Energy Center LLC and
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BARNHART, dated September 27, 2010, relating to heavy haul studies

55. Purchase Order #0061411 by and between El Segundo Energy Center LLC and Jensen Precast, dated December 29, 2010, relating to sewer line

56. Purchase Order #0010411 by and between El Segundo Energy Center LLC and Power Engineers Inc., dated September 9, 2010, relating to engineering services

57. Purchase Order #0042511 by and between El Segundo Energy Center LLC and Ninyo & Moore Inc., dated December 8, 2010, relating to engineering services

58. Purchase Order #00501111 by and between El Segundo Energy Center LLC and Eichleay Engineers Inc. of Southern California, dated December 29, 2010, relating to engineering services

59. Purchase Order #0112410 by and between El Segundo Energy Center LLC and Psomas, dated September 27, 2010, relating to engineering services

60. Purchase Order #C80531185 by and between El Segundo Energy Center LLC and RBF Consulting, dated October 15, 2010, relating to environmental compliance accounting change

61. Purchase Order #M082411 by and between El Segundo Energy Center LLC and Office Team, dated July 23, 2008, relating to administrative agent to the Chief Building Officer

62. Purchase Order #M032811 by and between El Segundo Energy Center LLC and Modular Space Corporation, dated July 9, 2010, relating to construction and project management

63. Purchase Order #M040711 by and between El Segundo Energy Center LLC and C.C. Layne & Sons Inc., dated April 7, 2011, relating to construction and project management

64. Purchase Order #M040811 by and between El Segundo Energy Center LLC and Performance Mechanical Inc., dated July 22, 2010, relating to construction and project management

65. Purchase Order #M0408111 by and between El Segundo Energy Center LLC and Pacific Industrial Electric, dated August 20, 2010, relating to construction and project management

66. Purchase Order #M042611 by and between El Segundo Energy Center LLC and Staples Business Advantage, dated December 8, 2010, relating to construction and project management

67. Purchase Order #M060711 by and between El Segundo Energy Center LLC and Modular Space Corporation, dated February 14, 2011, relating to construction and project management

68. Purchase Order #M0727112 by and between El Segundo Energy Center LLC and Building Electronic Controls Inc., dated July 27, 2011, relating to construction and project management

69. Purchase Order #M072811 by and between El Segundo Energy Center LLC and South Coast Copy Systems Inc., dated June 1, 2011, relating to construction and project management

70. Purchase Order #M0924101 by and between El Segundo Energy Center LLC and Cintas Corporation Location 426, dated October 5, 2010, relating to construction and project management

71. Purchase Order #M100510 by and between El Segundo Energy Center LLC and

Modular Space Corporation, dated September 7, 2011, relating to construction and project management

72. Purchase Order #M101510 by and between El Segundo Energy Center LLC and A-1 Coast Rentals, dated May 20, 2010, relating to construction and project management

73. Purchase Order #M111010 by and between El Segundo Energy Center LLC and Arrowhead Spring Water Div of Nestle, dated August 22, 2011, relating to construction and project management

74. Purchase Order #O043011 by and between El Segundo Energy Center LLC and Performance Mechanical Inc., dated December 13, 2010, relating to construction and project management

75. Purchase Order #O050111 by and between El Segundo Energy Center LLC and C.C. Layne & Sons Inc., dated December 15, 2010, relating to construction and project management

76. Purchase Order #P0714103 by and between El Segundo Energy Center LLC and A-1 Coast Rentals, dated May 14, 2010, relating to construction and project management

77. Purchase Order #O091511 by and between El Segundo Energy Center LLC and KPMG LLP, dated September 16, 2011, relating to construction and project management

78. Purchase Order #M091511 by and between El Segundo Energy Center LLC and Performance Mechanical Inc., dated September 16, 2011, relating to construction and project management

79. Purchase Order #O080911 by and between El Segundo Energy Center LLC and Presidio Networked Solutions, dated August 9, 2011, relating to construction and project management

80. Purchase Order #O081011 by and between El Segundo Energy Center LLC and Datatech Electronics Corp., dated August 10, 2011, relating to construction and project management

81. Purchase Order #O081111 by and between El Segundo Energy Center LLC and Network Hardware Resale, dated August 11, 2011, relating to construction and project management

82. Purchase Order #M081811 by and between El Segundo Energy Center LLC and PA Consulting Group Inc., dated September 7, 2011, relating to consultant for energy market expert services

83. Purchase Order #C80631196A by and between El Segundo Energy Center LLC and Noble Consultants Inc., dated May 14, 2010, relating to coastal monitoring 2011-2013

84. Purchase Order #M111710 by and between El Segundo Energy Center LLC and AECOM Inc., dated May 7, 2010, relating to environmental support

85. Purchase Order #M090111 by and between El Segundo Energy Center LLC and AECOM Technical Services Inc., dated September 1, 2011, relating to environmental support

86. Purchase Order #P0513106 by and between El Segundo Energy Center LLC and John Minch & Associates Inc., dated August 31, 2011, relating to environmental support

- 87.** Purchase Order #82913 by and between El Segundo Energy Center LLC and Sierra Research Inc., dated November 17, 2010, relating to environmental support
- 88.** Purchase Order #C80631196A by and between El Segundo Energy Center LLC and Noble Consultants Inc., dated May 14, 2010, relating to shoreline monitoring 2008-2011

AMENDMENT NO. 2

This AMENDMENT (this "Amendment") dated as of February 29, 2012 is by and between NRG West Holdings LLC, as Borrower and Credit Agricole Corporate and Investment Bank, as Administrative Agent. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings ascribed thereto in Appendix A to the Credit Agreement.

W I T N E S S E T H:

WHEREAS, the Borrower, the Administrative Agent and the Lenders are parties to that certain Credit Agreement dated as of August 23, 2011, as amended by Amendment No. 1 dated as of October 7, 2011 (the "Credit Agreement");

WHEREAS, the Borrower has requested that the Requisite Financing Parties approve this amendment of the Credit Agreement on the terms and subject to the conditions herein specified; and

WHEREAS, the Requisite Financing Parties have consented to this amendment of the Credit Agreement on the terms and subject to the conditions herein specified and directed the Administrative Agent to therefore execute and deliver this Amendment in accordance with Section 11.10 of the Credit Agreement;

NOW THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby established and confirmed, the parties hereto hereby agree as follows:

1. Amendments to the Credit Agreement.

(a) The Parties hereby agree that Appendix J of the Credit Agreement is hereby amended, with effect as of the date hereof, as follows:

- (i) by deleting "May 2, 2012" opposite the caption "Scheduled Delivery Date for ACHE Air Cooler Fan Assembly for Unit 1" and replacing it with "May 28, 2012"; and
- (ii) by deleting "May 31, 2012" opposite the caption "Scheduled Delivery Date for ACHE Air Cooler Fan Assembly for Unit 2" and replacing it with "June 25, 2012".

(b) The Parties hereby agree that the Credit Agreement is hereby amended, with effect as of its original date of execution, by deleting Appendix F to the Credit Agreement in its entirety and replacing it with the new Appendix Fas set forth in Schedule I hereto.

2. No Waivers; Etc. Except as expressly provided in this Amendment, (i) all of the terms and conditions of the Financing Documents remain in full force and effect and none of such terms and conditions are, or shall be construed as, otherwise amended or modified and

(ii) neither the Administrative Agent nor any Financing Party waives any Default or Event of Default, or any right or remedy available to the Administrative Agent or any Financing Party under the Financing Documents, whether any such defaults, rights or remedies presently exist or arise in the future. Notwithstanding anything contained herein, the amendments contained in this Amendment (i) are limited as specified, (ii) are effective only with respect to the transactions described in this Amendment for the specific instance and the specific purpose for which it is given, (iii) shall not be effective for any other purpose or transaction and (iv) do not constitute an amendment or basis for a subsequent consent or waiver of any of the provisions of the Financing Documents.

3. Representations and Warranties. The Borrower hereby represents and warrants that each of the representations and warranties set forth in the Credit Agreement are true and correct on and as of the date hereof as they relate to the execution and delivery of this Amendment and are otherwise true and correct on the date hereof in all material respects after giving effect thereto.

4. Full Force and Effect; Ratification. This Amendment shall be construed in connection with and as part of the Credit Agreement, and except as modified and expressly amended by this Amendment, all terms, conditions and covenants contained in the Credit Agreement are hereby ratified and shall remain in full force and effect, enforceable in accordance with their respective terms.

5. References to the Credit Agreement. Any and all notices, requests, certificates and other instruments executed and delivered after the Effective Date may refer to any Financing Document without making specific reference to this Amendment but nevertheless all such references shall include this Amendment unless the context otherwise requires.

6. Financing Document. Each of the parties hereto acknowledges and agrees that this Amendment shall be deemed a "Financing Document" for all purposes under the Credit Agreement.

7. Governing Law. THIS AMENDMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK EXCLUDING CHOICE-OF LAW PRINCIPLES OF THE LAW OF SUCH STATE THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF A JURISDICTION OTHER THAN SUCH STATE.

[Remainder of Page Intentionally Left Blank]

JN WITNESS WHEREOF the parties have caused this Amendment to be executed as of the day and year first above written.

NRG WEST HOLDINGS LLC,
as Borrower

By: /s/ Scott Valentino

Name: Scott Valentino
Title: President

By: ___

Name:
Title:

CREDIT AGRICOLE CORPORATE AND INVESTMENT BANK,
as Administrative Agent

By: /s/ Edward Chu
Name: Edward Chu

Title: Vice President

By: /s/ Arnaud Schaller

Name: Arnaud Schaller
Title: Vice President

**SCHEDULE 1
COMMITMENTS**

(attached)

COMMITMENTS

Lender and/or Issuing Bank	Tranche A Construction Loan Commitment	Tranche B Construction Loan Commitment	Revolving Commitment	TALC Percentage	DSR Commitment
Credit Agricole Corporate and Investment Bank	4.37500000%	16.66666667%	0.00000000%	23.33333333%	8.33333333%
Mizuho Corporate Bank, Ltd.	1.66666667%	16.66666667%	0.00000000%	0.00000000%	16.666667%
The Royal Bank of Scotland plc	2.08333333%	16.66666667%	0.00000000%	27.77777778%	0.00000000%
ING Capital LLC	1.87500000%	16.66666667%	0.00000000%	27.77777778%	12.50000000%
Union Bank, N.A.	8.33333333%	16.66666667%	0.00000000%	0.00000000%	0.00000000%
Siemens Financial Services, Inc.	9.58333333%	0.00000000%	0.00000000%	0.00000000%	0.00000000%
CoBank, ACS	6.87500000%	0.00000000%	0.00000000%	0.00000000%	0.00000000%
DnB Nor Bank ASA	6.87500000%	0.00000000%	0.00000000%	0.00000000%	0.00000000%
Landesbank Hessen ThOringen Girozentrale, New York Branch	6.87500000%	0.00000000%	0.00000000%	0.00000000%	0.00000000%
Societe Generale	5.83333333%	8.33333333%	0.00000000%	0.00000000%	0.00000000%
Lloyds TSB Bank plc	6.87500000%	0.00000000%	0.00000000%	0.00000000%	0.00000000%
Sumitomo Mitsui Banking Corporation	6.87500000%	0.00000000%	0.00000000%	0.00000000%	0.00000000%
Sovereign Bank	6.87500000%	0.00000000%	0.00000000%	0.00000000%	0.00000000%
The Bank of Nova Scotia	0.00000000%	0.00000000%	100.00000000%	21.11111111%	0.00000000%
CIT Capital USA Inc.	2.08333333%	4.16666667%	0.00000000%	0.00000000%	0.00000000%
CIT Bank	2.08333333%	4.16666667%	0.00000000%	0.00000000%	0.00000000%
Associated Bank, N.A.	5.20833333%	0.00000000%	0.00000000%	0.00000000%	0.00000000%
Credit Industrial et Commercial	5.20833333%	0.00000000%	0.00000000%	0.00000000%	0.00000000%
Landesbank Baden-Wuerttemberg, New York Branch	5.20833333%	0.00000000%	0.00000000%	0.00000000%	0.00000000%
Total	100.00000000%	100.00000000%	100.00000000%	100.00000000%	100.00000000%

AMENDED AND RESTATED

CREDIT AGREEMENT

Originally Dated as of October 8, 2010

As amended by the First Amendment, dated as of July 17, 2014

And Amended and Restated as of July 17, 2014

among

NRG MARSH LANDING LLC,

The LENDERS Party Hereto,

THE ROYAL BANK OF SCOTLAND PLC,
as Administrative Agent,

and

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Collateral Agent and Depositary Bank

\$684,287,856

MUFG UNION BANK, N.A.,

as Bookrunner, Coordinating Lead Arranger and Syndication Agent

COBANK, ACB, ING CAPITAL LLC, LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE, NEW YORK BRANCH, METROPOLITAN LIFE
INSURANCE COMPANY,
as Joint Lead Arrangers

and

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK,
as Documentation Agent

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CREDIT AGREEMENT (this "Agreement"), dated as of October 8, 2010, and as amended by the First Amendment, dated as of July 17, 2014, among NRG MARSH LANDING LLC (f/k/a Mirant Marsh Landing, LLC) (the "Borrower"), a limited liability company organized under the laws of Delaware, the LENDERS party hereto, THE ROYAL BANK OF SCOTLAND PLC, as the Administrative Agent and DEUTSCHE BANK TRUST COMPANY AMERICAS, as the Collateral Agent and Depository Bank.

Pursuant to the Credit Agreement, dated as of October 8, 2010, among the Borrower, the Lenders party thereto, the Administrative Agent, the Collateral Agent and the Depository Bank (the "Existing Credit Agreement"), the Borrower financed the development and construction of an approximately 760 MW natural gas-fired turbine generator located near Antioch, California, and in connection therewith requested that the Lenders (as hereinafter defined) extend credit to the Borrower in an aggregate principal or face amount (as applicable) not exceeding \$684,287,856 at any one time outstanding.

Pursuant to the First Amendment to Credit Agreement and Collateral Agency and Intercreditor Agreement, dated as of July 17, 2014, among the Borrower, the Lenders party thereto, the Administrative Agent, the Collateral Agent and the Depository Bank (the "First Amendment"), the Borrower has requested, and the Lenders are prepared to extend, the Incremental Term Loans and to have this Agreement amend, restate and replace the Existing Credit Agreement upon the Funding and Repricing Date, and, accordingly, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"ABR", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans constituting such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"Acceptable Bank" means (a) each Lead Arranger and (b) any United States commercial bank(s) or financial institution(s) or a United States branch or subsidiary of a foreign commercial bank(s) or financial institution(s) having, or guaranteed or confirmed by an entity having, a long-term unsecured senior debt rating of at least two of the following: A2 or better by Moody's, A or better by S&P or A or better by Fitch.

"Acceptable Letter of Credit" means an irrevocable letter of credit issued by an Acceptable Bank in favor of the Collateral Agent (for the benefit of the Secured Parties) that has a stated maturity date that is not earlier than 12 months after the date of issuance of such letter of credit, and which letter of credit and all related documentation are satisfactory to the Administrative Agent, acting reasonably. Any such letter of credit must be drawable if, (i) it is not renewed or replaced, at least 15 days prior to its stated maturity date or (ii) a Negative Credit Event occurs with respect to the issuer and a replacement letter of credit has not been obtained

from an Acceptable Bank within 30 days after the downgrade giving rise to such Negative Credit Event. For the avoidance of doubt and without limiting the provisions of Sections 6.03 and 6.04, the Borrower acknowledges and agrees that, except in the case of a letter of credit provided in connection with a Replacement Letter of Credit Facility, it shall not be the account party in respect of any such letter of credit, and that except in the case of any Letter of Credit or any letter of credit issued under any Replacement Letter of Credit Facility, any such letter of credit shall not otherwise constitute Indebtedness of the Borrower or be secured by a Lien on any of the property of the Borrower.

"Accounts" means, collectively, the Construction Account, the Revenue Account, the Operating Account, the Debt Service Reserve Account, the Interest Payment Account, the Principal Payment Account, the Insurance/Condemnation Proceeds Account, the Distribution Account, the Prepayment Account, the Major Maintenance Account and any sub-account of any of the foregoing or any other account opened by the Depository Bank pursuant to the Collateral Agency Agreement.

"Additional Equity Contributions" means Permitted Subordinated Debt held by an Affiliate of the Borrower and contributions to equity (in cash or in kind) of the Borrower made directly or indirectly by the Parent, other than pursuant to the Equity Contribution Agreement.

"Additional Project Document" means any contract or agreement relating to the Project entered into by the Borrower subsequent to the Closing Date that Borrower reasonably expects to have obligations in excess of \$5,000,000 in the aggregate with respect to any one contract.

"Adjusted LIBO Rate" means, for any Interest Period for any Eurodollar Borrowing, an interest rate per annum (rounded upwards, if necessary, to the next 1/100th of one percent) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate for such Interest Period.

"Administrative Agent" means The Royal Bank of Scotland plc, in its capacity as administrative agent for the Lenders hereunder, and any successor thereto pursuant to Article VIII.

"Administrative Questionnaire" means a questionnaire, in a form supplied by the Administrative Agent, completed by a Lender.

"Administrative Services Agreement" means the Administrative Services Agreement dated April 2, 2009, between the Borrower and Mirant Services, LLC.

"Affiliate" means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified, and when used with respect to the Borrower, shall also mean the Immediate Parent, the Parent and each Person that is an Affiliate of the Parent.

"Agents" means, collectively, the Administrative Agent and the Collateral Agent.

“Agreement” has the meaning ascribed to such term in the introductory paragraph hereto.

“Alternate Base Rate” means, for any day, a rate per annum (rounded upwards, if necessary, to the nearest 1/100 of 1%) equal to the greatest of (a) the Prime Rate in effect on such day, (b) the sum of (i) the Federal Funds Effective Rate in effect for such day plus (ii) 0.50% and (c) one-month LIBO Rate.

“Ancillary Documents” means, with respect to each Additional Project Document: (a) each security agreement or instrument, if any, necessary to grant to the Collateral Agent a perfected Lien in such Additional Project Document with the priority contemplated by the Security Documents, (b) a Consent to Assignment from each Project Party under such Additional Project Document (other than the Borrower) and any other Person guaranteeing or otherwise supporting such Project Party’s obligations under such Additional Project Document, (c) a certificate of an Authorized Officer of the Borrower with respect to authorization of the Borrower to execute, deliver and perform such Additional Project Document, (d) a certificate of an Authorized Officer of the Borrower to the effect that all Governmental Approvals then necessary for the execution, delivery and performance by the Borrower of such Additional Project Document have been duly obtained, were validly issued and are in full force and effect and (e) any customary legal opinions reasonably requested by the Administrative Agent to be provided in accordance therewith.

“Anti-Terrorism Laws” means any of the following (a) the Anti-Terrorism Order, (b) the Terrorism Sanctions Regulations (Title 31 Part 595 of the US Code of Federal Regulations), (c) the Terrorism List Governments Sanctions Regulations (Title 31 Part 596 of the US Code of Federal Regulations), (d) the Foreign Terrorist Organizations Sanctions Regulations (Title 31 Part 597 of the US Code of Federal Regulations), (e) the Patriot Act, (f) all other present and future legal requirements of any Governmental Authority addressing, relating to, or attempting to eliminate, terrorist acts and acts of war, and (g) any regulations promulgated pursuant thereto or pursuant to any legal requirements of any Governmental Authority governing terrorist acts and acts of war.

“Anti-Terrorism Order” means Section 1 of Executive Order 13224 of September 24, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (Title 12, Part 595 of the US Code of Federal Regulations).

“Applicable Accounting Requirements” means generally accepted accounting principles, as in effect from time to time in the United States, or, at the election of the Borrower, the International Financial Reporting Standards promulgated from time to time by the International Accounting Standards Board.

“Applicable Law” means any constitution, statute, law, rule, regulation, ordinance, judgment, order, decree, Governmental Approval, or any published directive, guideline, decision, policy, requirement, or any other restriction by any Governmental Authority that has the force of law, as in effect from time to time, and in each case as amended.

“Applicable Margin” means, with respect to any ABR Loan or Eurodollar Loan, the applicable rate per annum determined pursuant to the interest grid set forth below:

Period	Tranche A Term Loans and Letter of Credit Loans (as applicable)		Tranche B Term Loans	
	Eurodollar	ABR	Eurodollar	ABR
Closing Date 10/7/2013	2.50%	1.50%	2.75%	1.75%
10/8/2013 – Funding and Repricing Date	2.75%	1.75%	3.00%	2.00%
Funding and Repricing Date – 12/31/2017	1.75%	0.75%	1.875%	0.875%
1/1/18 – 12/31/2020	2.00%	1.00%	2.125%	1.125%
1/1/2021 – Tranche B Maturity Date	2.25%	1.25%	2.375%	1.375%

“Applicable Percentage” means with respect to any Lender and in respect of any Class, the percentage of the total Commitments of such Class represented by such Lender’s Commitment of such Class. If any Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the applicable Commitments, giving effect to any assignments.

“Approved Affiliate Contracts” has the meaning assigned to such term in Section 6.11.

“Approved Fund” means, with respect to any Lender, any fund that invests in commercial loans and is managed by such Lender, an Affiliate of such Lender or an Affiliate of an entity that manages such Lender.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

“Assignment of Proceeds” means that Assignment of Proceeds of Standby Letter of Credit and Request for Issuer’s Consent to be executed by the issuer of the Construction Contract Letter of Credit.

“Authorized Officer” means, with respect to any Person, any executive officer or Financial Officer of such Person or any member or manager of such Person responsible for the administration of the obligations of such Person in respect of this Agreement and any other Transaction Document.

“Base Case Projections” means the financial model forecasting the revenues and expenditures of the Project for time periods, and based upon assumptions and methodology, agreed upon by the Borrower and Lead Arrangers on or prior to the Closing Date.

“Base Equity Contribution Amount” has the meaning assigned to such term in the Equity Contribution Agreement.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” has the meaning ascribed to such term in the introductory paragraph hereto.

“Borrower PSA” means that certain purchase and sale agreement between Mirant Delta, LLC and the Borrower with respect to the conveyance of the Project Site to the Borrower, which purchase and sale agreement includes an assignment of the rights of Mirant Delta, LLC in the PG&E Indemnity in respect of the Project Site.

“Borrowing” means (a) all ABR Loans of the same Class made, converted or continued on the same date or (b) all Eurodollar Loans of the same Class which have the same Interest Period.

“Borrowing Request” means a request by the Borrower for a Borrowing of Term Loans in accordance with Section 2.01.

“Business Day” means any day (a) that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed, and (b) if such day relates to a borrowing of, a payment or prepayment of principal of or interest on, a continuation or conversion of or into, or the Interest Period for, a Eurodollar Borrowing, or to a notice by the Borrower with respect to any such borrowing, payment, prepayment, continuation, conversion, or Interest Period, that is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

“CAISO” means the California Independent System Operator Corporation, or any successor entity performing similar functions.

“Capital Securities” means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated, whether voting or non-voting) representing the equity ownership of such Person.

“Carbon Dioxide Cost” has the meaning given to such term under the PPA.

“Carbon Dioxide Cost Bridge Indebtedness” means Indebtedness of the Borrower (a) the proceeds of which are used solely to pay for or otherwise to finance Carbon Dioxide Cost reimbursable by the Power Purchaser to the Borrower under the PPA pending reimbursement of such Carbon Dioxide Cost by the Power Purchaser, (b) that is payable to the Parent or any Subsidiary of the Parent, (c) that is mandatorily prepayable with the proceeds of any reimbursement of the Borrower by the Power Purchaser for such Carbon Dioxide Cost, (d) that,

unless paid with the proceeds of reimbursement by the Power Purchaser, so long as the Permitted Bridge Prepayment Conditions have been satisfied, is subordinated to the Indebtedness of the Borrower under the Senior Debt on terms consistent with Exhibit P, and (e) the interest and fees in respect of which do not exceed the higher of (x) the weighted average of the interest and fees payable hereunder and (y) the weighted average of the interest and fees certified by the Borrower as being payable by the Parent under the Parent’s principal revolving credit facilities.

“Cash Flow Available for Debt Service” means for any period, with reference to the Borrower’s financial statements, (a) income from continuing operations before income taxes (with adjustment to reflect the cash flows from the PPA, in the event that the Borrower accounts for the PPA on a levelized basis rather than on an accrual basis); plus (b) depreciation and amortization; plus (c) Interest Expense; plus (d) reimbursement under the Large Generator Interconnection Agreement (including interest) minus (e) Major Maintenance Contribution Amounts transferred to the Major Maintenance Account. “Cash Flow Available for Debt Service” shall not include the effect of (i) gains or losses on sales or disposition of assets; (ii) non-recurring items; (iii) non-cash expenses; (iv) non-cash gains or losses, including as a result of agreements being marked to market, but shall include cash payments and receipts from and in respect of settlement of such agreements; or (v) costs or expenses funded from the Major Maintenance Account.

“Change in Law” means (a) the adoption of any law, rule or regulation after the Closing Date, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the Closing Date or (c) compliance by any Lender or any Issuing Lender (or, for purposes of Section 2.13(b), by any lending office of such Lender or by the Lender’s or such Issuing Lender’s holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the Closing Date; provided, however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all rules, guidelines or directives thereunder or issued in connection therewith and (ii) all rules, guidelines or directives promulgated by the Bank for International Settlements in Basel, Switzerland, the Basel Committee on Banking Supervision (or any successor or similar authority) (referred to as Basel III) or the United States financial regulatory authorities, in each case within this subsection (b)(ii) pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means that, any person or group (within the meaning of Rule 13(d) of the Exchange Act and the rules of the Securities and Exchange Commission thereunder) (a “Proposed Acquiror”), other than the Parent, any Affiliate of the Parent or any Person that acquires control of the Parent or all or substantially all the assets of the Parent, shall have directly or indirectly, other than by operation of the Security Documents, acquired (i) ownership of more than 50% on a fully diluted basis of the aggregate voting power represented by the issued and outstanding voting equity interests of the Borrower or (ii) control of the Borrower, unless, following the Conversion Date only, such Proposed Acquiror is a Qualified Owner.

“Change Order” means any change order, variation or payment of any claim or similar provision arising pursuant to the Construction Contract which has the effect of increasing the price or extending the time for performance thereunder.

“Class”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans constituting such Borrowing, are Tranche A Term Loans, Tranche B Term Loans, DSR Letter of Credit Loans or PPA Letter of Credit Loans; when used in reference to any Commitment, refers

to whether such Commitment is a Tranche A Term Loan Commitment, Tranche B Term Loan Commitment, DSR Letter of Credit Commitment or PPA Letter of Credit Commitment; when used in reference to any Letter of Credit, refers to whether such Letter of Credit is a DSR Letter of Credit or PPA Letter of Credit; and when used in reference to any Letter of Credit Exposure, refers to whether such Letter of Credit Exposure is a DSR Letter of Credit Exposure or PPA Letter of Credit Exposure.

“Closing Date” means October 8, 2010.

“Code” means the Internal Revenue Code of 1986, and the regulations thereunder, in each case as amended, reformed or otherwise modified from time to time.

“Collateral” means any and all Property encumbered by or intended to be encumbered by a lien granted under any Security Document and all rights, property and other assets added thereto by way of retention and otherwise.

“Collateral Agency Agreement” means the Collateral Agency and Intercreditor Agreement dated as of October 8, 2010, among the Borrower, the Agents and the other Secured Parties from time to time party thereto.

“Collateral Agent” means Deutsche Bank Trust Company Americas, in its capacity as collateral agent for the Secured Parties under the Security Documents, and any successor thereto pursuant to Article IX of the Collateral Agency Agreement.

“Commitment” means a Term Loan Commitment, DSR Letter of Credit Commitment or PPA Letter of Credit Commitment (as the context requires).

“Condemnation” means any taking, seizure, confiscation, requisition, exercise of rights of eminent domain, public improvement, inverse condemnation, condemnation or similar action of or proceeding by any Governmental Authority relating to the Project unless such taking, seizure, confiscation, requisition, exercise of rights of eminent domain, public improvement, inverse condemnation, condemnation or similar action or proceeding is diligently contested in good faith by the Borrower and during the period of such contest, the enforcement of any contested item is effectively stayed.

“Condemnation Proceeds” has the meaning assigned to such term in the Collateral Agency Agreement.

“Consents to Assignment” means each Consent to Assignment executed by a Project Party and the Borrower and required to be delivered on the Closing Date and each Consent to Assignment substantially in the form of Exhibit O entered into by the Borrower with

a Project Party pursuant to Sections 5.15 and 6.10(d) and in connection with any Material Project Document entered into following the Closing Date.

“Construction Account” has the meaning assigned to such term in the Collateral Agency Agreement.

“Construction Budget” means a construction budget consistent in all material respects with the Project Documents.

“Construction Contract” means the Lump Sum Turnkey Agreement for Engineering, Procurement and Construction, dated as of May 6, 2010, between the Borrower and the Contractor, together with all schedules, exhibits and other appendices thereto, as amended, modified and supplemented from time to time.

“Construction Contract Letter of Credit” means that certain letter of credit provided by Contractor to Borrower pursuant to the Construction Contract.

“Construction Drawdown Certificate” means a certificate substantially in the form of Exhibit I and appropriately completed and delivered by the Borrower.

“Construction Report” means a report in substantially the form of Exhibit F.

“Construction Schedule” means a construction schedule consistent in all material respects with the Project Documents.

“Contingent Equity Contribution” has the meaning assigned to such term in the Equity Contribution Agreement.

“Contingent Equity LC” has the meaning given to such term in the Equity Contribution Agreement.

“Contra Costa County” means Contra Costa County located in California.

“Contractor” means Kiewit Power Constructors Co.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Conversion Date” has the meaning assigned to such term in Section 4.05.

“Debt Service” means, for any period, the sum computed without duplication, of the following: (a) all scheduled amounts payable by the Borrower in respect of principal of Senior Debt during such period (other than any mandatory prepayment of such Senior Debt), plus (b) all amounts payable by the Borrower in respect of Interest Expense for such period.

“Debt Service Coverage Ratio” or “DSCR” means, for any period, the ratio of (a) Cash Flow Available for Debt Service for such period to (b) Debt Service for such period.

“Debt Service Reserve Account” has the meaning assigned to such term in the Collateral Agency Agreement.

“Debt Service Reserve Required Amount” means, with respect to any Quarterly Date, the amount then-projected by the Borrower (such amount and supporting calculations to be provided, in writing, by the Borrower to the Administrative Agent at least five Business Days prior to such Quarterly Date) that is approximately equal to the amount of Debt Service scheduled to be due during the six-month period commencing on the day after such Quarterly Date; provided, however, that the Debt Service Reserve Required Amount shall not exceed \$50,450,000 at any time, except as required to accommodate any Replacement Letter of Credit Facility.

“Deed of Trust” means the Deed of Trust, Assignment of Leases, Security Agreement and Fixture Filing from the Borrower in favor of the trustee thereunder for the benefit of the Collateral Agent.

“Default” means any Event of Default or any event or condition that, with the giving of notice, lapse of time or upon declaration or determination being made (or any combination thereof) would constitute an Event of Default.

“Defaulting Lender” means any Lender with respect to which a Lender Default is in effect.

“Delay Damages Bridge Indebtedness” means Indebtedness of the Borrower (a) the proceeds of which are used solely to pay Delay Damages (as defined in the PPA) under the PPA or to reimburse the Parent or any Subsidiary of the Parent for Indebtedness of such Person the proceeds of which were used to pay Delay Damages, (b) that is payable to the Parent or any Subsidiary of the Parent, (c) that is mandatorily prepayable with the proceeds of any Substantial Completion Delay Liquidated Damages received by the Borrower under the Construction Contract, whether paid directly to the Borrower by the Contractor or through a letter of credit, a guaranty or other form of credit support provided by or on behalf of the Contractor, (d) that, unless paid with the proceeds of any Substantial Completion Delay Liquidated Damages, so long as the Permitted Bridge Prepayment Conditions have been satisfied, is subordinated to the Indebtedness of the Borrower under the Senior Debt on terms consistent with Exhibit P, and (e) the interest and fees in respect of which do not exceed the higher of (x) the weighted average of the interest and fees payable hereunder and (y) the weighted average of the interest and fees certified by the Borrower as being payable by the Parent under the Parent’s principal revolving credit facilities.

“Deposit Accounts” means a “deposit account” as that term is defined in Section 9-102(a) of the UCC.

“Depository Bank” means Deutsche Bank Trust Company Americas, as depository bank under the Collateral Agency Agreement, and any successor thereto pursuant to Article IX of the Collateral Agency Agreement.

“Development” means development, acquisition, ownership, financing, leasing, occupation, construction, equipping, testing, alteration, reconstruction, repair, operation, maintenance and use of the Project.

“Disbursement Date” has the meaning assigned to such term in Section 2.03(g).

“Distribution Account” has the meaning assigned to such term in the Collateral Agency Agreement.

“Dollars” or “\$” refers to the lawful currency of the United States of America.

“DSR Issuing Lender” means each of ING Capital LLC, and any other Lender designated as a DSR Issuing Lender pursuant to Section 2.03(k), in each case in its capacity as an issuer of DSR Letters of Credit hereunder, and its successors in such capacity, which in each case shall be an Acceptable Bank.

“DSR Letter of Credit” means any letter of credit issued by any DSR Issuing Lender to the Collateral Agent, as beneficiary, pursuant to Section 2.03 and in a form reasonably satisfactory to the Administrative Agent.

“DSR Letter of Credit Availability Period” means the period from and including the Letter of Credit Availability Date to but excluding the earlier of the Letter of Credit Expiry Date and the date of the termination of the DSR Letter of Credit Commitments pursuant to the terms of this Agreement.

“DSR Letter of Credit Commitment” means, with respect to each DSR Letter of Credit Lender, the commitment, if any, of such Lender to acquire participations in a DSR Letter of Credit, expressed as an amount representing the maximum aggregate amount that such Lender agrees to make available as its DSR Letter of Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.07 or 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each DSR Letter of Credit Lender’s DSR Letter of Credit Commitment is set forth on Schedule I, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its DSR Letter of Credit Commitment, as applicable. The initial aggregate amount of all the DSR Letter of Credit Lenders’ DSR Letter of Credit Commitments is \$49,790,000. Each DSR Letter of Credit Lender’s DSR Letter of Credit Commitment shall be deemed to be used for purposes of Section 2.10(a) at the time of each issuance or increase in the face amount of such DSR Letter of Credit pursuant to Section 2.03 by an amount equal to the increase in such Lender’s DSR Letter of Credit Exposure at such time.

“DSR Letter of Credit Disbursement” means a payment made by any DSR Issuing Lender pursuant to a DSR Letter of Credit.

“DSR Letter of Credit Exposure” means, with respect to any Lender at any time, its Applicable Percentage at such time of the sum of (a) the aggregate undrawn amount of any DSR Letter of Credit at such time plus (b) the aggregate amount of all DSR Letter of Credit Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time.

“DSR Letter of Credit Lender” means a Lender with a DSR Letter of Credit Commitment or, if the DSR Letter of Credit Commitments have

terminated or expired, a Lender with any outstanding DSR Letter of Credit Loans or DSR Letter of Credit Exposure.

“DSR Letter of Credit Loan” means a Loan made by the DSR Letter of Credit Lenders in respect of a DSR Letter of Credit Disbursement pursuant to Section 2.03(h).

“Easement Agreement” means the Easement Agreement to be entered into between the Borrower and Mirant Delta, LLC.

“Emergency Expenses” means any Operating and Maintenance Expenses in respect of the Project (other than Project Costs or expenditures paid out of Insurance Proceeds, Condemnation Proceeds or the proceeds of Permitted Bridge Indebtedness) that are required as a result of an event threatened or occurring at the location of the Project that poses imminent or actual risk of serious personal injury, physical damage or threat to the environment.

“Environmental Claim” means, with respect to any Person, any notice, claim, administrative, regulatory, or judicial action, suit, judgment, demand, or other communication (whether written or oral) with respect to or arising in connection with the Project Assets, by any other Person alleging or asserting such Person’s liability under any Environmental Law, including for investigatory costs, costs of response, removal, remediation or cleanup, governmental response costs, attorneys’ fees, damages to the environment, natural resources, or other property of such Person, personal injuries, fines, third-party claims or penalties arising out of, based on or resulting from (a) the presence, use or release into the environment of any Hazardous Substances, whether or not owned by such Person or (b) any fact, circumstance, condition, or occurrence forming the basis of any violation, or alleged violation, of any Environmental Laws applicable to the Project.

“Environmental Law” means any and all Applicable Laws applicable to the Project or the Borrower relating to pollution, human health, safety, natural resources, or the environment or the use or release into the environment of any materials, including the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. Sections 9601 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. Sections 6901 *et seq.*), the Clean Air Act (42 U.S.C. Sections 7401 *et seq.*), the Clean Water Act (33 U.S.C. Section 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801 *et seq.*), and the Toxic Substances Control Act (15 U.S.C. Sections 2601 *et seq.*), and the regulations promulgated pursuant to any of the foregoing and similar state and local statutes, all as may be amended from time to time.

“Equity Contribution Agreement” means the Equity Contribution Agreement, dated as of October 8, 2010, among the Borrower, the Parent and the Collateral Agent.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the

Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans constituting such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Abandonment” means (a) a written public announcement by the Borrower of a decision to abandon or indefinitely defer the construction or completion or operation the Project for any reason or (b) the total suspension for more than 90 consecutive days or abandonment of the Development; provided that any suspension or delays in construction, completion or operation of the Project caused by a force majeure event shall not constitute an “Event of Abandonment” so long as the Borrower is diligently attempting to restart the construction, operation or completion of the Project, as the case may be.

“Event of Damage” means any event of damage, destruction, or casualty (other than an Event of Taking) relating to all or any part of the Project or the other Project Assets.

“Event of Default” has the meaning assigned to such term in Section 7.01.

“Event of Taking” means the occurrence of any of the following events carried out by any Governmental Authority: (a) any Condemnation, nationalization, seizure, compulsory acquisition, or expropriation of all or any portion of (i) the Project Assets, (ii) the business operations of the Borrower, or (iii) the equity interests in the Borrower, (b) any intervention in, or assumption of custody or control of, all or any portion of (i) the Project Assets, (ii) the business operations of the Borrower, or (iii) the equity interests in the Borrower, (c) any action for the dissolution or disestablishment of the Borrower, or (d) any action that prevents the Borrower from delivering, installing, constructing, commissioning, testing, operating or maintaining the Project, the other Project Assets, or its business operations or any substantial part thereof.

“EWG” means “exempt wholesale generator” as defined in Section 1262(6) of PUHCA and the implementing rules of FERC.

“Excluded Taxes” means, with respect to any Agent, any Lender, any Issuing Lender or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income, franchise capital, or similar taxes imposed on (or measured by) its net income by the United States of America (or any subdivision thereof or therein), or by the jurisdiction under the laws of which such recipient is organized or in which its principal office (or other fixed place of business) is located or, in the case of any Lender or any Issuing Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the jurisdictions listed in clause (a) of this definition, (c) any Taxes imposed as a result of the failure of any Agent, any Lender, any Issuing Lender or any such other recipient to furnish any form, documentation or information required by Section 2.15(e), (d) any U.S. Federal withholding Taxes imposed by Sections 1471 – 1474 of the Code, and (e) any withholding tax that would have been imposed on amounts payable to such recipient under the laws and treaties in effect when such recipient becomes a party to this Agreement (or, in the case of a Lender,

designates a new lending office) except to the extent that such recipient (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding tax pursuant to Section 2.15.

“Existing Credit Agreement” has the meaning given to such term in the Recitals.

“FATCA” means Sections 1471 through 1474 of the Code and any current or future regulations or official interpretations thereof.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Fee Letters” means, collectively, the (a) Fee Letter dated September 14, 2010 between the Lead Arrangers and the Borrower, (b) the Collateral Agency Fee Letter dated September 9, 2010 between the Collateral Agent and the Borrower and (c) any Fee Letter dated the Funding and Repricing Date between the Borrower and any Lender signatory to the First Amendment.

“FERC” means the Federal Energy Regulatory Commission, and any successor entity performing similar functions.

“Final Completion” has the meaning given to such term in the Construction Contract.

“Financial Officer” means, for any Person, the chief financial officer, principal accounting officer, treasurer, assistant treasurer, controller, assistant controller or similar accounting or financial principal of such Person.

“Financing Documents” means this Agreement, the First Amendment, each Note, the Security Documents, the Equity Contribution Agreement, the Fee Letters, the Letter of Credit Documents and the Permitted Swap Agreements.

“First Amendment” has the meaning given to such term in the Recitals.

“First Amendment Effective Date” has the meaning given to such term in the First Amendment.

“Fiscal Year” means with respect to any Person, the fiscal year of such Person.

“Fitch” means Fitch Ratings Ltd., or any successor to the rating agency business thereof.

“Forced Outage” has the meaning set forth in the PPA.

“FPA” means the Federal Power Act, as amended, and all implementing rules of FERC.

“Funding and Repricing Date” has the meaning given to such term in the First Amendment.

“Gas Contracts” means the Gas Interconnection and Supply Agreement, Special Facilities Agreement and Gas Services Agreement.

“Gas Interconnection and Supply Agreement” means the Gas Interconnection and Supply Agreement to be entered into between the Borrower and PG&E.

“Gas Services Agreement” means the Gas Services Agreement to be entered into between the Borrower and PG&E.

“Governmental Approval” means any authorization, approval, consent, waiver, exception, license, filing, registration, ruling, permit, tariff, certification, exemption, franchise, concession or other action or requirement by or with any Governmental Authority.

“Governmental Authority” means any federal, state, regional, or local governmental department, commission, board, bureau, authority, agency, court, instrumentality or judicial or regulatory body or entity, in any such case, exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

“Hazardous Substances” means any hazardous substances, pollutants, contaminants, wastes, or materials (including petroleum (including crude oil or any fraction thereof), petroleum wastes, radioactive material, hazardous wastes, toxic substances, or asbestos or any materials containing asbestos) designated, regulated or defined under or with respect to which any requirement or liability may be imposed pursuant to any Environmental Law.

“Hedging Agreement” means any agreement (other than this Agreement and the Power Purchase Agreement) in respect of any interest rate swap, forward rate transaction, commodity swap, commodity option, interest rate option interest or commodity cap, interest or commodity collar transaction, currency swap agreement, currency future or option contract or other similar agreements.

“Immediate Parent” means NRG Marsh Landing Holdings LLC.

“Incremental Term Loan” refers to Incremental Tranche A Term Loans and/or Incremental Tranche B Term Loans (as the context requires).

“Incremental Term Loan Lender” means each Incremental Tranche A Term Loan Lender and each Incremental Tranche B Term Loan Lender (as the context requires).

“Incremental Tranche A Term Loan” refers to a Loan made by the Lenders pursuant to Section 2.01(a)(iii).

“Incremental Tranche A Term Loan Commitment” means, with respect to each Incremental Tranche A Term Loan Lender, the commitment of such Lender to make an Incremental Tranche A Term Loan in the amount set forth opposite such Lender’s name on Schedule I of the First Amendment under the caption “*Incremental Tranche A Term Loan Commitment*”.

“Incremental Tranche A Term Loan Lender” means a Lender with an Incremental Tranche A Term Loan Commitment.

“Incremental Tranche B Term Loan” refers to a Loan made by the Lenders pursuant to Section 2.01(a)(iv).

“Incremental Tranche B Term Loan Commitment” means, with respect to each Incremental Tranche B Term Loan Lender, the commitment of such Lender to make an Incremental Tranche B Term Loan in the amount set forth opposite such Lender’s name on Schedule I of the First Amendment under the caption “*Incremental Tranche B Term Loan Commitment*”.

“Incremental Tranche B Term Loan Lender” means a Lender with an Incremental Tranche B Term Loan Commitment.

“Indebtedness” means, as to any Person at any time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with Applicable Accounting Requirements: (a) all obligations of such Person for or in respect of monies borrowed or raised, whether or not for cash by whatever means (including acceptances, deposits, discounting, letters of credit, factoring, and any other form of financing which is recognized in accordance with Applicable Accounting Requirements in such Person’s financial statements as being in the nature of a borrowing); (b) all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments; (c) all obligations of such Person representing the balance deferred and unpaid of the purchase price of any property or services due more than six months after such property is acquired or such services are completed; (d) all obligations of such Person that are or should be reflected on such Person’s balance sheet as capital lease obligations; (e) net obligations of such Person under any Hedging Agreement; (f) all obligations of such Person to purchase, redeem, retire, defease, or otherwise make any payment in respect of any equity interests in such Person or any other Person or any warrants, rights, or options to acquire such equity interests, valued, in the case of redeemable preferred interests, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; (g) reimbursement obligations (contingent or otherwise) pursuant to any performance bonds; (h) whether or not so included as liabilities in accordance with Applicable Accounting Requirements, Indebtedness of others described in clauses (a) through (g) above secured by (or for which the holder thereof has an existing right, contingent or otherwise, to be secured by) a Lien on the property of such Person, whether or not the respective Indebtedness so secured has been assumed by such Person; and (i) all guarantees of such Person in respect of any of the foregoing. The amount of any net obligation under any Hedging Agreement of any Person on any date shall be deemed to be the net termination value thereof as of such date for which such Person would be liable thereunder.

“Indemnified Party” has the meaning assigned to such term in Section 9.03(b).

“Indemnified Taxes” means Taxes other than Excluded Taxes and Other Taxes.

“Independent Engineer” means R.W. Beck or any successor consultant appointed by the Administrative Agent, and, so long as no Event of Default has occurred and is continuing, reasonably acceptable to the Borrower.

“Information Memorandum” means the Information Memorandum delivered to the Lenders by the Lead Arrangers, regarding the Borrower and the Project dated as of October 8, 2010.

“Initial Delivery Date” has the meaning given to such term in the Power Purchase Agreement.

“Initial Extension of Credit Date” means the date on which the initial Loans hereunder were made.

“Insurance Advisor” means Moore-McNeil, LLC, or another nationally recognized insurance adviser selected by the Administrative Agent, and, so long as no Event of Default has occurred and is continuing, reasonably acceptable to the Borrower.

“Insurance/Condemnation Proceeds Account” has the meaning assigned to such term in the Collateral Agency Agreement.

“Insurance/Condemnation Proceeds Bridge Indebtedness” means Indebtedness of the Borrower (a) the proceeds of which are used solely to repair, restore or enhance the Project in accordance with the terms of the Transaction Documents pending receipt by the Borrower of Condemnation Proceeds or Insurance Proceeds, as the case may be, (b) that is payable to the Parent or any Subsidiary of the Parent, (c) that is mandatorily prepayable with the proceeds of such Condemnation Proceeds or Insurance Proceeds, (d) that, unless paid with the proceeds of such Condemnation Proceeds or Insurance Proceeds so long as the Permitted Bridge Prepayment Conditions have been satisfied, is subordinated to the Indebtedness of the Borrower under the Senior Debt on terms consistent with Exhibit P, and (e) the interest and fees in respect of which do not exceed the higher of (x) the weighted average of the interest and fees payable hereunder and (y) the weighted average of the interest and fees certified by the Borrower as being payable by the Parent under the Parent’s principal revolving credit facilities.

“Insurance Proceeds” means all amounts and proceeds (including instruments) in respect of the proceeds of any property, builders’ risk and marine cargo insurance policies, excluding in each case delayed start-up and business interruption coverage.

“Insurance Program” means the insurance program described in Appendix A of this Agreement.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.06(a).

“Interest Expense” means, for any period, the sum, computed without duplication, of the following: (a) all interest in respect of Senior Debt accrued or capitalized during such period, including Letter of Credit Commitment Fees, Letter of Credit Fees and similar fees payable with respect to any Replacement Letter of Credit Facility, whether or not paid during such period, plus (b) the net amounts payable (or receivable) under the Permitted Swap Agreements (other than termination or unwind payments thereunder) accrued during such period whether or not paid or received during such period).

“Interest Payment Account” has the meaning assigned to such term in the Collateral Agency Agreement.

“Interest Payment Date” means (a) with respect to any ABR Loan, each Quarterly Date and the Maturity Date for such ABR Loan, and (b) with respect to any Eurodollar Loan, the last day of each Interest Period therefor and, in the case of any Interest Period of more than three months’ duration, each Quarterly Date during such Interest Period.

“Interest Period” means, for any Eurodollar Loan or Borrowing, the period commencing on the date of such Loan or Borrowing and ending on the next following Monthly Date, the second following Monthly Date, the third following Monthly Date or the sixth following Monthly Date, as specified in the applicable Borrowing Request or Interest Election Request at the election of the Borrower; provided that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day, (ii) any Interest Period which would otherwise end after the Maturity Date shall end on the Maturity Date and (iii) each Interest Period shall have a duration of at least five Business Days. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period. For purposes hereof, the date of a Loan initially shall be the date on which such Loan is made and thereafter shall be the effective date of the most recent conversion or continuation of such Loan, and the date of a Borrowing comprising Loans that have been converted or continued shall be the effective date of the most recent conversion or continuation of such Loans.

“Investment” means, relative to any Person,

(a) any loan, advance or extension of credit made by such Person to any other Person, including the purchase by such Person of any bonds, notes, debentures or other debt securities of any other Person; and

(b) any Capital Securities acquired by such Person in any other Person.

The amount of any Investment shall be the original principal or capital amount thereof less all returns of principal or equity thereon and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the fair market value of such property at the time of such Investment.

“Issuing Lender” means each DSR Issuing Lender and each PPA Issuing Lender.

“Large Generator Interconnection Agreement” or “LGI” means the Large Generator Interconnection Agreement to be entered into by the Borrower, the Power Purchaser and CAISO.

“Lead Arrangers” means RBS, RBC and WestLB.

“Lender Default” means (a) the refusal or failure by any Lender to make available its portion of any Borrowing, (b) the refusal or failure by any Letter of Credit Lender to fund its portion of any unreimbursed payment under Section 2.03(e) and (c) a Lender having notified in writing the Administrative Agent and the Borrower that it does not intend to comply with its obligations under Section 2.05, in each case except to the extent that such refusal, failure or notification is in connection with or related to a good faith dispute with the Borrower or an Affiliate of the Borrower with respect to the Financing Documents.

“Lenders” means the Persons listed on Schedule I and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption.

“Letter of Credit” means each DSR Letter of Credit and/or PPA Letter of Credit issued pursuant to this Agreement (as the context requires).

“Letter of Credit Availability Date” means the date upon which all conditions to the Conversion Date, except the posting of letters of credit required to achieve the Conversion Date, have been satisfied.

“Letter of Credit Commitment” means the DSR Letter of Credit Commitment and/or the PPA Letter of Credit Commitment (as the context requires).

“Letter of Credit Commitment Fee” has the meaning given to such term in Section 2.10(b).

“Letter of Credit Disbursement” means a DSR Letter of Credit Disbursement and/or PPA Letter of Credit Disbursement (as the context requires).

“Letter of Credit Documents” means, with respect to any Letter of Credit, collectively, any application therefor and any other agreements, instruments or other documents (whether general in application or applicable only to such Letter of Credit) governing or providing for the rights and obligations of the parties concerned or at risk with respect to such Letter of Credit as of the Closing Date.

“Letter of Credit Expiry Date” means December 31, 2017, as extended from time to time pursuant to Section 2.03(d).

“Letter of Credit Exposure” means, with respect to any Letter of Credit Lender at any time, its DSR Letter of Credit Exposure or PPA Letter of Credit Exposure at such time.

“Letter of Credit Fees” means, collectively, the fees set forth in Section 2.10(b).

“Letter of Credit Lender” means a DSR Letter of Credit Lender or PPA Letter of Credit Lender (as the context requires).

“Letter of Credit Loans” means, a DSR Letter of Credit Loan and/or a PPA Letter of Credit Loan (as the context requires).

“Letter of Credit Maturity Date” means, in respect of a Letter of Credit, the earliest of (i) three years following any Letter of Credit Disbursement in respect of such Letter of Credit, (ii) two years following the Letter of Credit Expiry Date and (iii) the Tranche B Maturity Date.

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Reuters Page LIBOR01 (or on any successor or substitute page or service providing quotations of interest rates applicable to dollar deposits in the London interbank market comparable to those currently provided on such page, as determined by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period.

“Lien” means, with respect to any property of any Person, any mortgage, lien, pledge, charge, lease, easement, servitude, security interest or encumbrance of any kind in respect of such property of such Person. A Person shall be deemed to own subject to a Lien any property that it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement (other than an operating lease) relating to such property.

“Loan Party” or “Loan Parties” means the Borrower and the Immediate Parent.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement.

“Major Maintenance Account” has the meaning assigned to such term in the Collateral Agency Agreement.

“Major Maintenance Contribution Amounts” has the meaning assigned to such term in the Collateral Agency Agreement.

“Material Adverse Effect” means an act, event or condition that has a material adverse effect on one or more of the following: (a) the ability of the Borrower to perform its material Obligations in accordance with their respective terms, (b) the enforceability, legality, validity or binding nature of any Financing Document or the rights or remedies of the Secured Parties thereunder, or (c) the business, condition (financial or otherwise), operations or a material portion of the property of the Borrower.

“Material Project Documents” means: (a) the Construction Contract, (b) the PPA, (c) the LGIA, (d) the Gas Contracts, and (e) the Approved Affiliate Contracts, and any replacement of any of the foregoing.

“Material Project Parties” means each party (other than the Borrower) to a Material Project Document and each guarantor or provider of security or credit support in respect thereof.

“Maturity Date” means the Tranche A Maturity Date, the Tranche B Maturity Date and the Letter of Credit Maturity Date (as the context requires).

“MBR Authority” means authorization by FERC pursuant to Section 205 of the FPA to sell electric energy, capacity and specified ancillary services at market-based rates, acceptance by FERC of applicable tariffs under Section 205 of the FPA, and receipt of regulatory waivers and blanket authorizations as are customarily granted by FERC to persons with market-based rate authority, including blanket authorization to issue securities and assume liabilities under Section 204 of the FPA.

“Minor Loss” means any Event of Damage or Event of Taking the restoration of which is reasonably estimated by the Borrower to cost less than \$5,000,000.

“Mirant Marsh Landing Holdings” means Mirant Marsh Landing Holdings, LLC.

“Monthly Date” means the last Business Day of each calendar month, the first of which shall be the first such day after the Closing Date.

“Moody’s” means Moody’s Investors Service, Inc., or any successor to the rating agency business thereof.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Negative Credit Event” has the meaning given to such term in the Equity Contribution Agreement.

“Net Available Amount” means:

(i) in the case of any Project Document Claim, the aggregate amount received by the Borrower in respect of such Project Document Claim net of reasonable costs and expenses incurred by the Borrower in connection with the collection of such amount; and

(ii) in the case of any Termination Payment, the aggregate amount received by the Borrower in respect of such Termination Payment, net of reasonable costs and expenses incurred by the Borrower in connection with the collection of such amount.

“Non-Consenting Lender” has the meaning assigned to such term in Section 2.17(b)(ii).

“Non-Defaulting Lender” means, at any time, any Lender that is not a Defaulting Lender.

“Non-Recourse Parties” has the meaning assigned to such term in Section 9.12.

“Note” has the meaning assigned to such term in Section 2.08(d).

“Notice of Issuance” means a request by the Borrower for an issuance of Letters of Credit in accordance with Section 2.03.

“Obligations” means all obligations and liabilities of any Loan Party arising under or in connection with a Financing Document, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter arising, in respect of: (i) the principal of and interest on all Loans, (ii) all amounts payable under any Permitted Swap Agreement, (iii) fees payable under any Financing Document, (iv) all other amounts payable by a Loan Party to any Agent, any Issuing Lender or any Lender pursuant any Financing Document, including any premium, reimbursements, damages, expenses, fees, costs, charges, disbursements, indemnities, and other liabilities (including all fees, charges, expenses and disbursements of counsel to any Agent, any Issuing Lender or any Lender) due and payable to any Agent, any Issuing Lender or any Lender and including interest that would accrue on any of the foregoing during the pendency of any bankruptcy or related proceeding with respect to a Loan Party and (v) the performance and observance of all of the covenants and agreements made by the Loan Party for the benefit of the Secured Parties under and in connection with any Financing Document.

“OFAC List” means any blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list, or other list of Persons with whom United States Persons may not conduct business, including any list published and maintained by the Office of Foreign Assets Control of the United States Department of Treasury, the United States Department of Commerce, or the United States Department of State.

“Operating Account” has the meaning assigned to such term in the Collateral Agency Agreement.

“Operating Agreement” means, with respect to (a) the Borrower, the Amended and Restated Limited Liability Company Agreement of NRG Marsh Landing LLC, dated as of May 24, 2013 and executed by its sole member NRG Marsh Landing Holdings LLC and (b) the Immediate Parent, the Amended and Restated Limited Liability Company Agreement of NRG Marsh Landing Holdings LLC dated as of July 22, 2013 and executed by its sole member NRG Yield Operating LLC.

“Operating and Maintenance Expenses” means, for any period, the sum, computed without duplication, of the following: (a) general and administrative expenses of the Borrower *plus* (b) expenses for operating the Project and maintaining it in good repair and operating condition payable during such period, including capital expenditures, *plus* (c) insurance costs under the Insurance Program payable during such period *plus* (d) applicable sales and excise taxes (if any) payable or reimbursable by the Borrower during such period *plus* (e) property taxes payable by the Borrower during such period *plus* (f) any other direct taxes (if any) payable by the Borrower during such period *plus* (g) costs and fees attendant to the obtaining and maintaining in effect the Governmental Approvals payable during such period *plus* (h) legal, accounting and other professional fees attendant to any of the foregoing items payable during such period *plus* (i) any fees and expenses of the Secured Parties during such period not included in Debt Service *plus* (j) all other cash expenses payable by the Borrower in the ordinary

course of business, but excluding amounts intended to satisfy the Borrower’s collateral posting requirements under the PPA.

“Operating Budget” means a budget covering a Fiscal Year of the Borrower (or in the case of the initial Operating Budget, covering the period from the Conversion Date to the end of the Borrower’s fiscal year) detailed by month, prepared by the Borrower and submitted in accordance with Section 5.20, covering (a) Operating and Maintenance Expenses and Debt Service expected to be incurred by the Borrower and (b) Project Revenues expected to be received by the Borrower in each case during the relevant fiscal year of the Borrower to which such budget applies.

“Original Term Loan Commitments” means the commitments of the Term Loan Lenders to make Term Loans hereunder prior to the Funding and Repricing Date.

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Financing Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Financing Document. For the avoidance of doubt, “Other Taxes” shall not include any Excluded Taxes.

“Outside Delivery Date” means December 31, 2013.

“Parent” means NRG Energy, Inc.

“Part A Approvals” has the meaning assigned to such term in Section 3.05(a).

“Part B Approvals” has the meaning assigned to such term in Section 3.05(b).

“Participant” has the meaning assigned to such term in Section 9.04(f).

“Participant Register” has the meaning assigned to such term in Section 9.04(f).

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001.

“Permitted Borrower Bank Account” has the meaning assigned to such term in the Collateral Agency Agreement.

“Permitted Bridge Indebtedness” means Insurance/Condemnation Proceeds Bridge Indebtedness, Carbon Dioxide Cost Bridge Indebtedness, Delay Damages Bridge Indebtedness and Permitted Swap Collateral Bridge Indebtedness.

“Permitted Bridge Prepayment Conditions” means the delivery by the Borrower of a certificate certifying that (i) no Default or Event of Default has occurred and is continuing, (ii) the relevant amounts received by the Borrower are required to be applied to the prepayment of Permitted Bridge Indebtedness pursuant to the terms thereof (and setting out in reasonable detail such amounts) and (iii) the proceeds of the relevant Permitted Bridge Indebtedness were

applied (A) in the case of Insurance/Condemnation Proceeds Bridge Indebtedness, in accordance with the principles set forth in Section 5.19, (B) in the case of Carbon Dioxide Cost Bridge Indebtedness, in the manner required by the PPA to cover Carbon Dioxide Costs, (C) in the case of Delay Damages Bridge Indebtedness, for the payment of Delay Damages (as defined in the PPA) and (D) in the case of Permitted Swap Collateral Bridge Indebtedness, for the posting of collateral by the Borrower as required under any Permitted Swap Agreement, and, in the case of (B) and (C), the Independent Engineer has provided its

concurrence with such certifications.

“Permitted Construction Account Distribution Amount” has the meaning given to such term in the Collateral Agency Agreement.

2 “Permitted Encumbrances” means, collectively, the following:

(a) (i) Liens, pledges or deposits under worker’s compensation, unemployment insurance or other social security legislation (other than ERISA), or (ii) Liens in favor of carriers, warehousemen, mechanics, materialmen and repairmen, in each case, arising in the ordinary course of business or incidental to the Development or any restoration;

(b) easements, rights-of-way, licenses, restrictions (including zoning restrictions), minor imperfections in title and other similar encumbrances incurred in the ordinary course of business and encumbrances, easements, rights-of-way, licenses, restrictions on the use of property or minor imperfections in title that (i) do not interfere with the Development and (ii) that individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect;

(c) Liens created pursuant to this Agreement and the Security Documents;

(d) Liens created in connection with Indebtedness permitted under clause (b) of the definition of Permitted Indebtedness; provided that such Liens attach only to the equipment or other property purchased or leased using such Indebtedness and the cost of such equipment or other property has not been funded as part of any Loan Commitment disbursed hereunder;

(e) Liens created in connection with Indebtedness that is Senior Debt described in clause (b) or (c) of the definition thereof; provided, that the secured party in respect of such Lien executes such instruments necessary to become a party to the Collateral Agency Agreement;

(f) Liens that are exceptions to the Title Policy as of the date of issuance of such Title Policy;

(g) pledges or deposits to secure the performance of bids, trade contracts (other than for borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(h) judgment Liens in existence for less than 60 days after the entry thereof or with respect to which execution has been stayed or the payment of which is covered in full (subject to a customary deductible) by adequate reserves, bonds or other security reasonably acceptable to the Administrative Agent or by insurance maintained with responsible insurance companies and that do not otherwise result in an Event of Default under Section 7.01(i);

(i) Liens imposed by any Governmental Authority for taxes, assessments or other governmental charges or levies not at the time delinquent or being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with Applicable Accounting Requirements shall have been set aside;

(j) Liens that are contractual, common law or statutory rights of set-off (i) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness or (ii) relating to purchase orders and other agreements entered into with customers of the Borrower in the ordinary course of business;

(k) statutory Liens of depository or collecting banks on items in collection and any accompanying documents or the proceeds thereof;
and

(l) extensions, renewals and replacements of any of the foregoing Liens to the extent and for so long as the Indebtedness or other obligations secured thereby remain outstanding.

3 “Permitted Indebtedness” means, collectively,

(a) Senior Debt;

(b) Indebtedness for the deferred purchase price of property or services, including trade accounts payable or purchase-money obligations, or capital lease obligations, in either case, incurred in the ordinary course of business and incurred in connection with the Development; provided that (i) Indebtedness for the deferred purchase price of property or services is not more than 60 days past due and (ii) such Indebtedness does not at any time exceed \$10,000,000 in the aggregate;

(c) Permitted Subordinated Debt;

(d) trade or other similar indebtedness incurred in the ordinary course of business (but not for borrowed money) and (i) not more than 90 days past due, or (ii) being contested in good faith and by appropriate proceedings;

(e) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business or other cash management services in the ordinary course of business; and

(f) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, surety bonds, financial assurances and completion guarantees and similar obligations in each case provided in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business.

“Permitted Investments” means: (a) marketable direct obligations of the United States of America; (b) marketable obligations directly and fully guaranteed as to interest and principal by the United States of America; (c) demand deposits with the Collateral Agent and any Issuing Lender, and time deposits, certificates of deposit and banker’s acceptances issued by an Acceptable Bank; (d) commercial paper or tax-exempt obligations given one of the

three highest ratings by S&P and Moody's; (e) obligations of the Collateral Agent or any Issuing Lender meeting the requirements of clause (c) above or any other bank meeting the requirements of clause (c) above, in respect of the repurchase of obligations of the type as described in clauses (a) and (b) above, provided that such repurchase obligations shall be fully secured by obligations of the type described in said clauses (a) and (b) above, and the possession of such obligations shall be transferred to, and segregated from other obligations owned by the Collateral Agent or any Issuing Lender, or such other bank; (f) a money market fund or a qualified investment fund (including any such fund for which the Collateral Agent or any Issuing Lender or any Affiliate thereof acts as an advisor or a manager) given one of the two highest long-term ratings available from S&P and Moody's; (g) Eurodollar certificates of deposit issued by the Collateral Agent or any Issuing Lender meeting the requirements of clause (c) above or any other bank meeting the requirements of clause (c) above; and (h) Permitted Swap Agreements. In no event shall any cash be invested in any obligation, certificate of deposit, acceptance, commercial paper or instrument which by its terms matures more than 90 days after the date of investment, unless the Collateral Agent or any Issuing Lender or a bank meeting the requirements of clause (c) above shall have agreed to repurchase such obligation, certificate of deposit, acceptance, commercial paper or instrument at its purchase price plus earned interest within no more than 90 days after its purchase hereunder. With respect to any rating requirement set forth above, if the relevant issuer is rated by either S&P or Moody's, but not both, then only the rating of such rating agency shall be utilized for the purpose of this definition.

"Permitted Subordinated Debt" means (a) Indebtedness of the Borrower the rights of the holders of which with respect to payment and enforcement are subordinated to the rights of the Agents and the Lenders under the Financing Documents pursuant to a subordination agreement containing terms substantially in the form of Exhibit P and (b) Permitted Bridge Indebtedness.

"Permitted Swap Agreement" means any interest rate protection agreement (including any swap, cap or collar agreement or similar arrangement) between the Borrower and a Permitted Swap Counterparty entered into in accordance with the terms of Section 5.17.

"Permitted Swap Collateral Bridge Indebtedness" means Indebtedness of the Borrower incurred prior to the Initial Extension of Credit Date (a) the proceeds of which are used solely to finance the posting of collateral by the Borrower as required under any Permitted Swap Agreement, (b) that is payable to the Parent or any Subsidiary of the Parent, (c) that is mandatorily prepayable with the proceeds of any such collateral returned to the Borrower pursuant to the terms of such Permitted Swap Agreement, (d) that, unless paid with the proceeds

of any such collateral returned to the Borrower pursuant to the terms of such Permitted Swap Agreement so long as the Permitted Bridge Prepayment Conditions have been satisfied, is subordinated to the Indebtedness of the Borrower under the Senior Debt on terms consistent with Exhibit P, and (e) the interest and fees in respect of which do not exceed the higher of (x) the weighted average of the interest and fees payable hereunder and (y) the weighted average of the interest and fees certified by the Borrower as being payable by the Parent under the Parent's principal revolving credit facilities.

"Permitted Swap Counterparty" means (a) each Lender as of the Closing Date, (b) any United States commercial bank(s) or financial institution(s) or a United States branch of a foreign commercial bank(s) or financial institution(s) having a long-term unsecured senior debt rating of at least A3 or better by Moody's, A- or better by S&P and A- or better by Fitch; provided that any such rating shall not be based solely on such bank's or financial institution's foreign currency rating at such time, or (c) any bank acceptable to the Borrower and the Required Lenders.

"Person" means any natural person, corporation, business trust, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"PG&E" means Pacific Gas and Electric Company, or any successor entity performing similar functions.

"PG&E Indemnity" has the meaning given to such term in Section 5.03(b).

"Pledge Agreement" means the Pledge Agreement among the Immediate Parent, the Administrative Agent and the Collateral Agent.

"Plan" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and is maintained or contributed to or required to be contributed to by the Borrower or any ERISA Affiliate or to which the borrower or any ERISA Affiliate has any liability.

"Power Purchaser" means PG&E.

"PPA" or "Power Purchase Agreement" means the Power Purchase and Sale Agreement between PG&E and the Borrower, dated as of September 2, 2009, together with all schedules, exhibits and other appendices thereto, as amended, modified and supplemented from time to time, and any replacement thereof pursuant to Section 7.01(f), (g) or (o).

"PPA Issuing Lender" means The Royal Bank of Scotland plc and any other Lender designated as a PPA Issuing Lender pursuant to Section 2.03(k), in each case in its capacity as an issuer of PPA Letters of Credit hereunder, and its successors in such capacity which in each case shall be an Acceptable Bank.

"PPA Letter of Credit" means any letter of credit issued by any PPA Issuing Lender to the Power Purchaser, as beneficiary, pursuant to the Power Purchase Agreement and substantially in the form required pursuant to the PPA.

"PPA Letter of Credit Availability Period" means the period from and including the Letter of Credit Availability Date to but excluding the earlier of the Letter of Credit Expiry Date and the date of the termination of the PPA Letter of Credit Commitments pursuant to the terms of this Agreement.

"PPA Letter of Credit Commitment" means, with respect to each PPA Letter of Credit Lender, the commitment, if any, of such Lender to acquire participations in a PPA Letter of Credit, expressed as an amount representing the maximum aggregate amount that such Lender agrees to make available as its PPA Letter of Credit Exposure hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.07 or 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each PPA Letter of Credit Lender's PPA Letter of Credit Commitment is set forth on Schedule I, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its PPA Letter of Credit Commitment, as applicable. The initial aggregate amount of all the PPA Letter of Credit Lenders' PPA Letter of Credit Commitments is \$100,150,000. Each PPA Letter of Credit Lender's PPA Letter of Credit Commitment shall be deemed to be used for purposes of Section 2.10(a) at the time of each issuance or increase in the face amount of such PPA Letter of Credit pursuant to Section 2.03 by an amount equal to the increase in such Lender's PPA Letter of Credit Exposure at such time.

“PPA Letter of Credit Disbursement” means a payment made by any PPA Issuing Lender pursuant to a PPA Letter of Credit.

“PPA Letter of Credit Exposure” means, with respect to any Lender at any time, its Applicable Percentage at such time of the sum of (a) the aggregate undrawn amount of any PPA Letter of Credit at such time plus (b) the aggregate amount of all PPA Letter of Credit Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time.

“PPA Letter of Credit Lender” means a Lender with a PPA Letter of Credit Commitment or, if the PPA Letter of Credit Commitments have terminated or expired, a Lender with any outstanding PPA Letter of Credit Loans or PPA Letter of Credit Exposure.

“PPA Letter of Credit Loan” means a Loan made by the PPA Letter of Credit Lenders in respect of a PPA Letter of Credit Disbursement pursuant to Section 2.03(h).

“Prepayment Account” has the meaning assigned to such term in the Collateral Agency Agreement.

“Prime Rate” means the rate of interest most recently published in the Money Rates section of The Wall Street Journal from time to time as the Prime Rate in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by

the Federal Reserve Board (as determined by the Administrative Agent). Any change in such prime rate shall take effect at the opening of business on the day specified in the public announcement of such change.

“Principal Payment Account” has the meaning assigned to such term in the Collateral Agency Agreement.

“Project” means the approximately 760 MW natural gas-fired turbine generator facility to be located near Antioch, California.

“Project Assets” means all Property of the Borrower including the Project, the Project Site, the Part A Approvals, the Part B Approvals and the Project Documents.

“Project Costs” means all costs, fees, taxes and expenses incurred or payable by the Borrower in connection with the development, construction, financing and completion of the Project as contemplated by (and consistent with) the Construction Budget, the Construction Schedule and the Project Documents, including, without limitation, the design, construction, testing, start-up and financing of the Project, Operating and Maintenance Expenses arising prior to the Conversion Date, Debt Service arising prior to the Conversion Date and other finance costs incurred and payable by the Borrower in connection with the Project on or prior to the Conversion Date.

“Project Document Claim” means any payment under the Construction Contract in respect of liquidated damages for performance or performance guarantees.

“Project Documents” means, the Material Project Documents to which the Borrower is a party and each other contract or agreement (including Additional Project Documents) entered into by the Borrower in the ordinary course of its business including, without limitation, contracts or agreements for legal, accounting, engineering, long term services, environmental consulting or other professional services in connection with the Development in accordance with the Transaction Documents.

“Project Party” means each Person (other than the Borrower, any Agent or any Lender) from time to time party to any Project Document.

“Project Revenues” means, for any period, all cash revenues (without duplication) received by the Borrower during such period from: (a) the sale of goods and services during such period; (b) all interest earned with respect to such period on Permitted Investments held in the Accounts; (c) the proceeds of any delay in start-up or business interruption insurance and other payments received for interruption of operations or damage to the Project during such period (other than the proceeds of any Insurance/Condemnation Proceeds Bridge Indebtedness and Insurance Proceeds or Condemnation Proceeds arising from an Event of Damage or an Event of Taking, respectively); (d) the proceeds of any other Permitted Bridge Indebtedness and any Additional Equity Contributions; (e) net amounts received under any Permitted Swap Agreement; (f) payments for reimbursements of Carbon Dioxide Cost and interest thereon under the Large Generator Interconnection Agreement; (g) all funds remaining in the Construction Account after the Conversion Date; and (h) all other income or revenue, however earned or received, by the Borrower during such period including, without limitation, any tax refunds or liquidated damages (other than performance liquidated damages payable under the Construction Contract).

“Project Site” means the site upon which the Project, including any fixtures or civil works constructed in connection therewith, will be installed together with any other easements, licenses and other real property rights and interests of the Borrower required for the installation and operation of the Project.

“Property” means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

“Prudent Industry Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the independent gas-fired power generation industry in the United States during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, sound engineering practices, reliability, safety and expedition. For the avoidance of doubt, “Prudent Industry Practices” is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable principles, methods and acts generally accepted in the United States, having due regard for, among other things, the requirements or guidance of Governmental Authorities, applicable laws, applicable interconnection operating guidelines and rules, transmission provider rules and the requirements of insurers.

“PSA” means the Purchase and Sale Agreement between PG&E and Southern Energy Delta, LLC dated as of November 24, 1998, as amended from time to time.

“PUHCA” means the Public Utility Holding Company Act of 2005, as may be amended from time to time, and all implementing rules of FERC.

“Qualified Owner” means any Person (including any Person Controlled by such Person) that (a) is a past or present owner of one or more electric generating facilities that are of 500 MWs or more (a “Comparable Project”), (b) has substantial experience as an operator of a Comparable Project, or (c) has contracted for the operation of the Project by a Person meeting the requirements of clause (b) above.

“Quarterly Dates” means the last Business Day of March, June, September and December of each year, the first of which shall be the first such day after the Closing Date.

“RBC” means RBC Capital Markets.

“RBS” means RBS Securities Inc.

“Register” has the meaning assigned to such term in Section 9.04(c).

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Replacement Letter of Credit Facility” means any credit facility entered into by the Borrower providing for the issuance of a letter of credit to replace, in whole or in part, any Letter of Credit; provided that (a) the Indebtedness under any such credit facility, together with the Letter of Credit Commitment in effect from time to time shall not exceed \$150,600,000, (b) the Collateral Agency Agreement is entered into by or on behalf of the creditors under such credit facility, (c) the maturity date of such credit facility is no earlier than the Tranche B Maturity Date and (d) after giving effect to such Replacement Letter of Credit Facility the Debt Service Reserve Required Amount shall be satisfied.

“Required Lenders” means, at any time, Lenders having outstanding Loans, Letter of Credit Exposures and unused Commitments representing more than 50% of the sum of the total outstanding Loans, Letter of Credit Exposures and unused Commitments at such time. The “Required Lenders” of a particular Class of Loans means Lenders having outstanding Loans, Letter of Credit Exposures and unused Commitments of such Class representing more than 50% of the total outstanding Loans, Letter of Credit Exposures and unused Commitments of such Class at such time. The Loans, Letter of Credit Exposures and unused Commitments of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Restricted Payment” means

(a) all distributions by the Borrower (in cash, property or obligations) on, or other payments or distributions on the account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by the Borrower of, any portion of any membership interest in the Borrower, and

(b) all payments (in cash, property or obligations) of principal of, interest on and other amounts with respect to, or other payments on account of, or the setting apart of money for a sinking or other analogous fund for, or the purchase, redemption, retirement or other acquisition by the Borrower of, any Indebtedness owed to the Parent or any Affiliate of the Parent. For the avoidance of doubt, “Restricted Payments” does not include payments by the Borrower to any Affiliate of the Borrower pursuant to any Approved Affiliate Contract.

“Revenue Account” has the meaning assigned to such term in the Collateral Agency Agreement.

“S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc., or any successor to the rating agency business thereof.

“Secured Parties” has the meaning given to such term in the Collateral Agency Agreement.

“Securities Account” means a “securities account” as that term is defined in Section 8-501 of the UCC.

“Security Agreement” means the Security Agreement dated as of October 8, 2010, between the Borrower and the Collateral Agent.

“Security Documents” means the Deed of Trust, the Security Agreement, the Pledge Agreement, the Collateral Agency Agreement, any blocked account agreement in respect of the Operating Account with any local bank, the Consents to Assignment from the Material Project Parties and any other security agreement or instrument to be executed pursuant hereto or any Security Document.

“Senior Debt” means, collectively (a) obligations under this Agreement, (b) obligations under any Permitted Swap Agreement, and (c) Indebtedness under any Replacement Letter of Credit Facility.

“Services Agreement” means the Services Agreement dated as of October 8, 2010, between the Borrower and Mirant Energy Trading, LLC.

“Shared Facilities Agreement” means that Shared Facilities and Services Agreement to be entered into between Borrower and Mirant Delta, LLC.

“Special Facilities Agreement” means the Special Facilities Agreement to be entered into between PG&E and the Borrower.

“Statutory Reserve Rate” means, for any Interest Period for any Eurodollar Borrowing, a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the arithmetic mean, taken over each day in such Interest Period, of the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject for eurocurrency funding (referred to as “Eurodollar liabilities” in Regulation D of the Board as of the Closing Date). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and

as of the effective date of any change in any reserve percentage.

“Subject Party” means (a) the Loan Parties, (b) the Power Purchaser and (c) prior to the end of the Term Loan Availability Period, the Contractor.

“Subsidiary” means for any Person, any corporation, limited liability company, partnership, or other entity of which at least a majority of the equity interests having by the terms thereof ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions of such corporation, limited liability company, partnership, or other entity (irrespective of whether or not at the time the equity interests of any other class or classes of such corporation, limited liability company, partnership, or other entity shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned or controlled by such Person or one or more Subsidiaries of such Person.

“Substantial Completion” has the meaning given to such term in the Construction Contract.

“Substantial Completion Delay Liquidated Damages” has the meaning given to such term in the Construction Contract.

“Survey” means a survey of the Project Site, dated no earlier than 90 days prior to the issuance of the Title Policy in form, scope and substance sufficient to cause the standard general survey exceptions to be deleted from the Title Policy and otherwise reasonably satisfactory to the Title Company and the Administrative Agent, and certified to the Title Company and the Administrative Agent by a form of certification reasonably acceptable to Administrative Agent.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings with respect to the Loans now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority and all interest, penalties or similar liabilities with respect thereto.

“Term Loan” refers to Tranche A Term Loans and/or Tranche B Term Loans (as the context requires).

“Term Loan Availability Period” means the period from and including the Initial Extension of Credit Date to (and including) the earliest of (a) the Conversion Date, (b) the Outside Delivery Date and (c) the date of the termination of the Term Loan Commitments pursuant to the terms of this Agreement.

“Term Loan Commitment” mean, with respect to each Term Loan Lender, such Term Loan Lender’s Tranche A Term Loan Commitment and/or Tranche B Term Loan Commitment (as the context requires).

“Term Loan Lender” means each Tranche A Term Loan Lender and each Tranche B Term Loan Lender (as the context requires).

“Term Loan Principal Payment Date” means each Quarterly Date set forth on Schedule 2.08.

“Termination Date” means the date on which (a) the Commitments have expired or been terminated, (b) the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated and all Letter of Credit Disbursements shall have been reimbursed and (c) all obligations to any Secured Party with respect to any Permitted Swap Agreement shall have terminated or expired.

“Termination Payment” shall have the meaning assigned to such term in the Power Purchase Agreement.

“Title Company” means Fidelity National Title Insurance Company.

“Title Policy” means the American Land Title Association 2006 Form extended coverage mortgagee’s policy of title insurance or such other form as is reasonably acceptable to the Administrative Agent or a binding marked commitment to issue such policy dated the date of recording of the Deed of Trust, issued by the Title Company, in the amount of \$345,839,245

showing fee or easement title, as applicable, to the Project Site vested in Borrower insuring the validity and priority of the Lien in favor of the Collateral Agent for the benefit of the Secured Parties created by the Deed of Trust, subject only to Permitted Encumbrances and other exceptions approved by the Required Lenders, and containing such endorsements and affirmative assurances as the Administrative Agent shall require and which are reasonably obtainable at a commercially reasonable cost from the Title Company in the State of California.

“Total Loss” means a total Condemnation, loss, destruction or damage affecting all or substantially all of the Project or Project Assets.

“Tranche A Maturity Date” means December 31, 2017.

“Tranche A Term Loan Commitment” means, with respect to each Tranche A Term Loan Lender, the commitment, if any, of such Tranche A Term Loan Lender to make Tranche A Term Loans hereunder, expressed as an amount representing the maximum aggregate principal amount of the Tranche A Term Loans to be made by such Tranche A Term Loan Lender hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.07 or 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Tranche A Term Loan Lender pursuant to Section 9.04. The initial amount of each Tranche A Term Loan Lender’s Tranche A Term Loan Commitment is set forth on Schedule I, or in the Assignment and Assumption pursuant to which such Tranche A Term Loan Lender shall have assumed its Tranche A Term Loan Commitment, as applicable. The aggregate amount of all the Tranche A Term Loan Lender Tranche A Term Loan Commitments is \$165,824,106.

“Tranche A Term Loan Lender” means a Lender with a Tranche A Term Loan Commitment or an outstanding Tranche A Term Loan.

“Tranche A Term Loans” refers to a Loan made by the Lenders pursuant to Sections 2.01(a)(i) and 2.01(a)(iii).

“Tranche B Maturity Date” means the earlier of (i) the last day of the first fiscal quarter following the 10th anniversary of the Conversion Date and (ii) December 31, 2023.

“Tranche B Term Loan Commitment” means, with respect to each Tranche B Term Loan Lender, the commitment, if any, of such Tranche B Term Loan Lender to make Tranche B Term Loans hereunder, expressed as an amount representing the maximum aggregate principal amount of the Tranche B Term Loans to be made by such Tranche B Term Loan Lender hereunder, as such commitment may be (a) reduced from time to time pursuant to Section 2.07 or 2.09 and (b) reduced or increased from time to time pursuant to assignments by or to such Tranche B Term Loan Lender pursuant to Section 9.04. The initial amount of each Tranche B Term Loan Lender’s Tranche B Term Loan Commitment is set forth on Schedule I, or in the Assignment and Assumption pursuant to which such Tranche B Term Loan Lender shall have assumed its Tranche B Term Loan Commitment, as applicable. The aggregate amount of all the Tranche B Term Loan Lender Tranche B Term Loan Commitments is \$368,523,750.

“Tranche B Term Loan Lender” means a Lender with a Tranche B Term Loan Commitment or an outstanding Tranche B Term Loan.

“Tranche B Term Loans” refers to a Loan made by the Lenders pursuant to Sections 2.01(a)(ii) and 2.01(a)(iv).

“Transaction Document” means each of the Financing Documents and the Project Documents.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans constituting such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

“UCC” means the Uniform Commercial Code as in effect from time to time in the applicable jurisdiction.

“United States” means the United States of America.

“Unreallocated Portion” has the meaning given to such term in Section 2.18(d)(ii).

“Water Rights Agreement” means the Assignment of Water Rights Agreement to be entered into between Borrower and Mirant Delta, LLC.

“WestLB” means WestLB AG, New York Branch.

SECTION 1.02. Terms Generally. Except as otherwise expressly provided, the following rules of interpretation shall apply to this Agreement and the other Financing Documents:

- (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;
- (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;
- (c) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”;
- (d) the word “will” shall be construed to have the same meaning and effect as the word “shall”;
- (e) unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or therein) and shall include any appendices, schedules, exhibits, clarification letters, side letters and disclosure letters executed in connection therewith;
- (f) any reference herein to any Person shall be construed to include such Person’s successors and assigns to the extent permitted under the Financing Documents and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities;
- (g) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;
- (h) all references herein to Articles, Sections, Appendices, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Appendices, Exhibits and Schedules to, this Agreement; and
- (i) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.03. Accounting Terms. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with Applicable Accounting Requirements; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change in the Applicable Accounting Requirements occurring after the Closing Date or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in the Applicable Accounting Requirements or in the application thereof, then such provision shall be interpreted on the basis of the Applicable Accounting Requirements as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

ARTICLE II

THE CREDITS

SECTION 2.01. Term Loan Facility.

- (j) Tranche A Term Loans and Tranche B Term Loans.
 - (i) Subject to the terms and conditions set forth herein, and prior to the Funding and Repricing Date, each then applicable Tranche A Term Loan Lender made one or more Tranche A Term Loans in Dollars to the Borrower from time to time during the Term Loan

Availability Period, but not more than twice in any month, and not to exceed fourteen (14) Borrowings of Tranche A Term Loans in any twelve (12) month period, in an aggregate principal amount that did not result in such Tranche A Term Loan Lender's Tranche A Term Loans exceeding its then applicable Tranche A Term Loan Commitment.

(ii) Subject to the terms and conditions set forth herein, and prior to the Funding and Repricing Date, each then applicable Tranche B Term Loan Lender made one or more Tranche B Term Loans in Dollars to the Borrower from time to time during the Term Loan Availability Period, but not more than twice in any month, and except for any Borrowing requested to pay amounts pursuant to Section 2.13(c), not to exceed fourteen (14) Borrowings of Tranche B Term Loans in any twelve (12) month period, in an aggregate principal amount that did not result in such Tranche B Term Loan Lender's Tranche B Term Loans exceeding its then applicable Tranche B Term Loan Commitment.

(iii) Subject to the terms and conditions set forth herein and in the First Amendment, each Incremental Tranche A Term Loan Lender severally agrees to make a single Tranche A Term Loan (an "Incremental Tranche A Term Loan") to the Borrower on the Funding and Repricing Date in a principal amount not to exceed such Incremental Tranche A Term Loan Lender's Incremental Tranche A Term Loan Commitment at such time and \$10,824,106 in the aggregate for all Incremental Tranche A Term Loans.

(iv) Subject to the terms and conditions set forth herein and in the First Amendment, each Incremental Tranche B Term Loan Lender severally agrees to make a single Tranche B Term Loan (an "Incremental Tranche B Term Loan") to the Borrower on the Funding and Repricing Date in a principal amount not to exceed such Incremental Tranche B Term Loan Lender's Incremental Tranche B Term Loan Commitment at such time and \$23,523,750 in the aggregate for all Incremental Tranche B Term Loans.

(v) Amounts prepaid or repaid in respect of Term Loans may not be reborrowed.

(k) Notice of Term Loan Borrowing. To request a Borrowing of Term Loans, the Borrower shall deliver an irrevocable written Borrowing Request in the form of Exhibit C-1 signed by the Borrower to the Administrative Agent (i) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., New York City time, three Business Days before the date of the proposed Borrowing, or (ii) in the case of an ABR Borrowing, not later than 11:00 a.m., New York City time, on the date of the proposed Borrowing. Each such irrevocable written Borrowing Request by the Borrower shall specify the following information:

(i) the aggregate amount of the Borrowing of Term Loans requested by the Borrower (which shall, for the avoidance of doubt, comprise a pro rata Borrowing of Tranche A Term Loans and Tranche B Term Loans) according to the amount of each Term Loan Lender's respective Term Loan Commitment of such Class of Term Loans;

(ii) the date of such Borrowing of Term Loans, which shall be a Business Day;

(iii) whether such Borrowing of Term Loans is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) in the case of a Eurodollar Borrowing, the Interest Period therefor, which shall be a period contemplated by the definition of the term "Interest Period".

(l) Notice by the Administrative Agent to the Lenders. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Term Loan Lender of the details thereof and of the amount of such Lender's Term Loans to be made as part of the requested Borrowing.

(m) Failure to Elect. If no election as to the Type of a Borrowing of Term Loans is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the requested Borrowing shall be made as a Eurodollar Borrowing with an Interest Period ending on the next following Monthly Date occurring at least five Business Days thereafter.

SECTION 2.02. [Reserved].

SECTION 2.03. Letters of Credit.

(a) Letters of Credit. Subject to the terms and conditions set forth herein, the Borrower may request:

(i) any DSR Issuing Lender to issue a DSR Letter of Credit at any time and from time to time during the DSR Letter of Credit Availability Period; and

(ii) any PPA Issuing Lender to issue a PPA Letter of Credit at any time and from time to time during the PPA Letter of Credit Availability Period.

Any Letter of Credit issued hereunder shall constitute a utilization of the Commitments of the applicable Class in the amount of the face amount of such Letter of Credit.

(b) Notice of Issuance, Amendment, Renewal or Extension. To request the issuance of a Letter of Credit of any Class (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Lender) to an Issuing Lender of such Class selected by it and the Administrative Agent (within two Business Days of the requested date of issuance, amendment, renewal or extension) a Notice of Issuance in the form of Exhibit C-2 requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended in accordance with this Section, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day and shall comply with this Section), the date on which such Letter of Credit is to expire (which shall comply with clause (d) of this Section), the amount of such Letter of Credit and such other information as shall be reasonably necessary to prepare, amend, renew or extend such Letter of Credit. Each Letter of Credit shall provide for the automatic extension of the expiry date thereof, and such Issuing Lender shall give such notice if requested to do so by the Administrative Agent in a notice given not more than 60 days, but not less than 45 days, prior to the current expiry date of such Letter of Credit; provided that, unless all of the Lenders of the applicable Class agree, if any Letter of Credit is outstanding on the last day of the DSR Letter of Credit Availability Period or the

PPA Letter of Credit Availability Period, as applicable, the applicable Issuing Lender shall thereafter give such notice in accordance with the terms of such Letter of Credit. If requested by the applicable Issuing Lender, the Borrower also shall submit a letter of credit application on such Issuing Lender's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, any Issuing Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(c) Limitations on Amounts. A Letter of Credit of any Class shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each such Letter of Credit, the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension the total Letter of Credit Exposures and Letter of Credit Loans of the applicable Class shall not exceed the total Commitments of such Class.

(d) Expiration Date; Request for Extension of DSR Letter of Credit Availability Period and/or PPA Letter of Credit Availability Period. Each DSR Letter of Credit and PPA Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date twelve months after the date of the issuance of such DSR Letter of Credit or PPA Letter of Credit, as the case may be (or, in the case of any renewal or extension thereof, twelve months after the then-current expiration date of such DSR Letter of Credit or PPA Letter of Credit, as the case may be) and (ii) 5 Business Days prior to the Letter of Credit Expiry Date. Each Issuing Lender shall have the option, but not the obligation, to extend then-current DSR Letter of Credit Availability Period and/or PPA Letter of Credit Availability Period for one-year periods (to a date no later than the Tranche B Maturity Date) commencing on the second anniversary of the Conversion Date, upon the written request of the Borrower to extend the then-applicable Letter of Credit Expiry Date. In the case of an extension of a PPA Letter of Credit, to the extent that the applicable PPA Issuing Lender does not respond to any such request for extension from the Borrower within 30 days, the extension of the applicable Letter of Credit Expiry Date relating to such PPA Letter of Credit shall be deemed to have been accepted by such PPA Issuing Lender. In the case of an extension of a DSR Letter of Credit, to the extent that the applicable DSR Issuing Lender does not approve any such request for extension from the Borrower within 30 days, the applicable Letter of Credit Expiry Date relating to such DSR Letter of Credit shall not be extended.

(e) Participations. By the issuance of any Letter of Credit of any Class (or an amendment to any Letter of Credit increasing the amount thereof) by any Issuing Lender, and without any further action on the part of such Issuing Lender or the Letter of Credit Lenders, such Issuing Lender hereby grants to each applicable Letter of Credit Lender, and each such Letter of Credit Lender hereby acquires from such Issuing Lender, a participation in such Letter of Credit equal to such Letter of Credit Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Letter of Credit Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of Commitments.

In consideration and in furtherance of the foregoing, each Letter of Credit Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for account of the applicable Issuing Lender, such Letter of Credit Lender's Applicable Percentage of each Letter of Credit Disbursement made by such Issuing Lender on the Business Day following the Disbursement Date in respect of such Letter of Credit Disbursement. Such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each such payment shall be made in the same manner as provided in Section 2.05 with respect to Loans made by such Letter of Credit Lender (and Section 2.05 shall apply, *mutatis mutandis*, to the payment obligations of the Letter of Credit Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Lender the amounts so received by it from the applicable Letter of Credit Lenders.

(f) Reimbursement Obligations Absolute. If any Issuing Lender shall make any Letter of Credit Disbursement in respect of any applicable Letter of Credit, the Borrower shall be absolutely, unconditionally and irrevocably obligated to reimburse such Letter of Credit Disbursement in accordance with this Agreement, which obligation shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of such Letter of Credit, or any term or provision therein, (ii) any draft or other document presented under such Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by such Issuing Lender under such Letter of Credit against presentation of a draft or other document that does not comply strictly with the terms of such Letter of Credit and (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.03(f), constitute a legal or equitable discharge of the obligations of the Borrower hereunder, provided that, in each case, payment by such Issuing Lender shall not have constituted gross negligence or willful misconduct on the part of such Issuing Lender as proven in a non-appealable judgment by a court of competent jurisdiction.

Neither the Administrative Agent, the Lenders nor any Issuing Lender, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit by any applicable Issuing Lender or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable Issuing Lender; provided that, after paying in full its obligation to reimburse Letter of Credit Disbursements as provided in this Section, the foregoing shall not be construed to excuse any Issuing Lender from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Lender's gross negligence or willful misconduct as proven in a non-appealable judgment by a court of competent jurisdiction when determining whether

drafts and other documents presented under a Letter of Credit comply with the terms thereof. In furtherance of the foregoing, the parties hereto expressly agree that, in the absence of gross negligence or willful misconduct as proven in a non-appealable judgment by a court of competent jurisdiction on the part of an Issuing Lender:

(i) such Issuing Lender may accept documents that appear on their face to be in substantial compliance with the terms of an applicable Letter of Credit without responsibility for further investigation, regardless of any notice or information to the contrary, and may make payment upon presentation of documents that appear on their face to be in substantial compliance with the terms of such Letter of Credit;

(ii) such Issuing Lender shall have the right, in its sole discretion, to decline to accept such documents and to make such payment if such documents are not in strict compliance with the terms of such Letter of Credit; and

(iii) this sentence shall establish the standard of care to be exercised by an Issuing Lender when determining whether drafts and other documents presented under an applicable Letter of Credit comply with the terms thereof (and the parties hereto hereby waive, to the extent permitted by applicable law, any standard of care inconsistent with the foregoing).

(g) Disbursement Procedures. An Issuing Lender for any applicable Letter of Credit shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for an applicable Letter of Credit Disbursement under such Letter of Credit. Such Issuing Lender shall promptly after such examination notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for such Letter of Credit Disbursement and whether such Issuing Lender has made or will make such Letter of Credit Disbursement thereunder and the date (the “Disbursement Date”) such Letter of Credit Disbursement shall be (or was) made; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse (without duplication) such Issuing Lender and the Letter of Credit Lenders with respect to any such Letter of Credit Disbursement.

(h) Letter of Credit Disbursement and Borrowing. If any Issuing Lender for any Letter of Credit of any Class shall make any Letter of Credit Disbursement, the Administrative Agent shall promptly notify each applicable Letter of Credit Lender of the applicable Disbursement Date, the amount of such Letter of Credit Disbursement, and the amount of such Letter of Credit Lender’s Applicable Percentage thereof. In such event, the Borrower shall be deemed to have requested a Borrowing of Letter of Credit Loans, as of the applicable Disbursement Date, in an amount equal to such Letter of Credit Disbursement (without regard, in each case, to the conditions set forth in Section 4.01 or 4.03) and, without limitation of the obligations of the Letter of Credit Lenders pursuant to Section 2.03(e), such Letter of Credit Disbursement shall become a Letter of Credit Loan hereunder as of the applicable Disbursement Date, shall be repaid pursuant to Section 2.08(a)(iii) and shall be deemed to be a Borrowing hereunder on such day and bear interest in accordance with Section 2.11 from the applicable Disbursement Date. Each such Loan shall initially be made as an ABR Borrowing. Interest accrued pursuant to this paragraph and Section 2.11 shall be

for account of the applicable Issuing Lender, except that interest accrued on and after the date of payment by any applicable Letter of Credit Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Lender shall be for account of such Lender to the extent of such payment. Amounts prepaid or repaid in respect of Letter of Credit Loans may be reborrowed.

(i) Replacement of an Issuing Lender. Any Issuing Lender may be replaced at any time by written agreement between the Borrower and the Administrative Agent. The Administrative Agent shall notify the Lenders of any such replacement of any Issuing Lender. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for account of the replaced Issuing Lender pursuant to Section 2.10(b). From and after the effective date of any such replacement, (i) the successor Issuing Lender shall have all the rights and obligations of the replaced Issuing Lender under this Agreement with respect to Letters of Credit to be issued by it thereafter and (ii) references herein to the term “Issuing Lender” shall be deemed to refer to such successor or to any previous Issuing Lender, or to such successor and all previous Issuing Lenders, as the context shall require. After the replacement of an Issuing Lender hereunder, the replaced Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If (i) the maturity of the Loans has been accelerated upon the occurrence of an Event of Default or (ii) an Event of Default shall occur and be continuing and the Borrower receives notice from the Administrative Agent that the Required Lenders of any Class of Letters of Credit demand the deposit of cash collateral pursuant to this paragraph, the Borrower shall immediately deposit into an account established and maintained on the books and records of the Collateral Agent, which account shall be a “securities account” (within the meaning of Section 8-501 of the UCC as in effect in the State of New York), in the name of the Collateral Agent and for the benefit of the Lenders of the applicable Class, an amount in cash equal to the aggregate amount of all Letter of Credit Exposure of such Class as of such date (or any applicable amount required by Section 2.09) plus any accrued and unpaid interest thereon provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (f) or (g) of Section 7.01. Any deposit made pursuant to this Section 2.03(j) shall be held by the Collateral Agent as collateral for the Letter of Credit Exposure of the applicable Class under this Agreement and shall in the case of a Letter of Credit Disbursement in respect of any Letter of Credit of such Class be applied to the payment of the Borrower’s obligations in respect of the Loans arising as a result of such Letter of Credit Disbursement; provided that any failure or inability of the Collateral Agent or Administrative Agent for any reason to apply such amounts shall not in any manner relieve any Lender of its obligations under Section 2.03(e) or Section 2.03(h). For this purpose the Borrower hereby grants a security interest to the Collateral Agent for the benefit of the Issuing Lenders and the Letter of Credit Lenders in such collateral account and any financial assets (as defined in the UCC) or other property held therein.

(k) Additional Issuing Lenders. From time to time, the Borrower may by notice to the Administrative Agent designate other Lenders (in addition to the “Issuing

Lenders” named in the relevant definitions thereof) that agree (in their sole discretion) to act in such capacity and are reasonably satisfactory to the Administrative Agent as Issuing Lenders (which, for the avoidance of doubt, shall be an Acceptable Bank). Such designation shall be set forth in a written agreement among the Borrower, the Administrative Agent and such additional Issuing Lenders. The Administrative Agent shall notify the Lenders of any such designation. From and after the effective date of any such designation, (i) each additional Issuing Lender shall have all the rights and obligations of an Issuing Lender under this Agreement and (ii) references herein to the term “Issuing Lender” shall be deemed to refer to such additional Issuing Lender.

SECTION 2.04. Loans and Borrowings.

(a) Obligations of Lenders. Each Loan shall be made as part of a Borrowing consisting of Loans of the same Class and Type made by the Lenders ratably in accordance with their respective Commitments of the applicable Class (and, upon payment by any Letter of Credit Lender of its obligation to acquire a participation under Section 2.03(e) in any Borrowing of a Loan pursuant to Section 2.03(h), such Letter of Credit Lender shall be deemed to be the direct holder of such Loan without any further actions). The failure of any Lender to make any Loan required to be made by it (or to make any payment under Section 2.03(e)) shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender’s failure to make Loans (or to make any payment under Section 2.03(e)) as required.

(b) Type of Loans. Subject to Section 2.12 and Section 2.03(h), each Borrowing shall be constituted entirely of ABR Loans or of Eurodollar Loans as the Borrower may request in accordance herewith. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make or hold such Loan at such Lender’s applicable lending office; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) Minimum Amounts; Limitation on Number of Borrowings. Each Borrowing shall be in an aggregate amount of \$1,000,000 or a larger multiple of \$500,000, provided that any Borrowing pursuant to Section 2.03(h) shall be in the amount of the related Letter of Credit Disbursement. Borrowings of more than one Class may be outstanding at the same time; provided that all Borrowings of any Class shall be of the same Type and there shall not at any time be more than a total of ten Eurodollar Borrowings outstanding.

SECTION 2.05. Funding of Borrowings.

(a) Funding by Lenders. Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, for deposit into (i) in the case of Term Loans (excluding the Incremental Term Loans), the Construction Account, (ii) in the event Letter of Credit Loans are made to

finance the reimbursement of Letter of Credit Disbursements pursuant to Section 2.03(h), by promptly remitting such amounts to the relevant Issuing Lenders, in each case in accordance with the Collateral Agency Agreement and (iii) in the case of the Incremental Term Loans, the Distribution Account.

(b) Presumption by the Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand (without duplication) such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the Federal Funds Effective Rate or (ii) in the case of the Borrower, the interest rate applicable to ABR Loans of the same Class as the applicable Borrowing. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing.

SECTION 2.06. Interest Elections.

(a) Elections by the Borrower. Except as otherwise expressly provided herein, the Loans constituting each Borrowing initially shall be of the Type specified in the applicable Borrowing Request (or, in the case of a Borrowing under Section 2.03(h), as an ABR Borrowing) and, in the case of a Eurodollar Borrowing, shall have the Interest Period specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a Borrowing of a different Type or to continue such Borrowing as a Borrowing of the same Type and, in the case of a Eurodollar Borrowing, may elect the Interest Period therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) Notice of Elections. To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.01 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or teletype to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Content of Interest Election Requests. Each telephonic and written Interest Election Request shall specify the following information:

(iv) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified in clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(v) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(vi) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(vii) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period therefor after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

(d) Notice by the Administrative Agent to the Lenders. Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) Failure to Elect; Events of Default. If the Borrower fails to deliver a timely and complete Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period therefor (or if any Interest Election Request made by the Borrower requests a Eurodollar Borrowing but does not specify an Interest Period therefor), then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be continued as a Eurodollar Borrowing with the same Interest Period. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period therefor.

SECTION 2.07. Termination and Reduction of the Commitments.

(a) Scheduled Termination. Unless previously terminated, (i) the Original Term Loan Commitments shall terminate on the last day of the Term Loan Availability Period, (ii) the DSR Letter of Credit Commitments shall terminate on the last day of the DSR Letter of Credit Availability Period, (iii) the PPA Letter of Credit Commitments shall terminate on the last day of the PPA Letter of Credit Availability Period and (iv) the Incremental Term Loan Commitments shall terminate on the Funding and Repricing Date upon the making of the Incremental Term Loans.

(b) Voluntary Termination or Reduction. The Borrower may at any time terminate, or from time to time reduce, the Commitments of any Class; provided that:

(viii) each partial reduction of the Commitments of any Class pursuant to this Section shall be in an amount that is at least \$1,000,000;

(ix) the Borrower shall not voluntarily terminate or reduce the DSR Letter of Credit Commitments if, (A) after giving effect to any concurrent prepayment of the DSR Letter of Credit Loans in accordance with Section 2.09, the total DSR Letter of Credit Exposures and DSR Letter of Credit Loans would exceed the total DSR Letter of Credit Commitments and (B) the Borrower has not demonstrated to the reasonable satisfaction of the Administrative Agent that (x) the reduced portion of the DSR Letter of Credit Commitments is not reasonably likely to be required to satisfy the Debt Service Reserve Required Amount or the Borrower otherwise has sufficient funds to fund the Debt Service Reserve Required Amount and (y) no Default or Event of Default would occur as a result of such termination or reduction;

(x) the Borrower shall not voluntarily terminate or reduce the PPA Letter of Credit Commitments if, (A) after giving effect to any concurrent prepayment of the PPA Letter of Credit Loans in accordance with Section 2.09, the total PPA Letter of Credit Exposures and PPA Letter of Credit Loans would exceed the total PPA Letter of Credit Commitments and (B) the Borrower has not demonstrated to the reasonable satisfaction of the Administrative Agent that (x) the reduced portion of the PPA Letter of Credit Commitments is not reasonably likely to be required under the Power Purchase Agreement, or the Borrower otherwise has sufficient funds to fund the amounts required under the PPA and (y) no Default or Event of Default would occur as a result of such termination or reduction;

(xi) the Borrower shall not voluntarily terminate or reduce the Term Loan Commitments if, after giving effect thereto, the Borrower has not demonstrated to the reasonable satisfaction of the Administrative Agent (in consultation with the Independent Engineer) that (x) the funds under the cancelled Term Loan Commitments are not necessary to achieve the Conversion Date by the Outside Delivery Date and (y) no Default or Event of Default would occur as a result of such termination or reduction; and

(xii) notwithstanding the other provisions of this Section 2.07, the Borrower shall be permitted to voluntarily terminate or reduce the DSR Letter of Credit Commitments and the PPA Letter of Credit Commitments to the extent that replacement letters of credit meeting the requirements of the Debt Service Reserve Required Amount and Power Purchase Agreement (as applicable) are available to be issued under a Replacement Letter of Credit Facility.

(c) Notice of Voluntary Termination or Reduction. The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments of any Class under paragraph (b) of this Section 2.07 at least three Business Days prior to the effective date

of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable.

(d) Effect of Termination or Reduction. Any termination or reduction of the Commitments of any Class shall be permanent. Each reduction of the Commitments of any Class shall be made ratably among the Lenders in accordance with their respective Commitments of such Class.

SECTION 2.08. Repayment of Loans; Evidence of Debt.

(a) Repayment.

(xiii) Tranche A Term Loans. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of the Tranche A Term Loan Lenders the outstanding principal amount of the Tranche A Term Loans on each applicable Term Loan Principal Payment Date set forth on Schedule 2.08 in the aggregate principal amount relating to Tranche A Term Loans and set forth opposite such Term Loan Principal Payment Date (subject to adjustment pursuant to paragraph (b) of this Section).

(xiv) Tranche B Term Loans. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of the Tranche B Term Loan Lenders the outstanding principal amount of the Tranche B Term Loans on each applicable Term Loan Principal Payment Date set forth on Schedule 2.08 in the aggregate principal amount relating to Tranche B Term Loans and set forth opposite such Term Loan Principal Payment Date (subject to adjustment pursuant to paragraph (b) of this Section).

(xv) Letter of Credit Loans. The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of the Letter of Credit Lenders the outstanding principal amount of the Letter of Credit Loans on the Letter of Credit Maturity Date applicable thereto.

(b) Adjustment to Amortization Schedule. If the initial aggregate amount of the Term Loan Commitments exceeds the aggregate principal amount of Term Loans that are outstanding on the Conversion Date, then the scheduled repayments of Term Loans to be made pursuant to this Section shall be reduced ratably by an aggregate amount equal to such excess. To the extent not previously paid, all Term Loans shall be due and payable on the respective Maturity Dates thereof.

(c) Manner of Payment. Prior to any repayment or prepayment of any Borrowings of any Class hereunder, the Borrower shall select the Borrowing or Borrowings of the applicable Class to be paid and shall notify the Administrative Agent by telephone (confirmed promptly by teletype or other electronic transmission) of such selection not later than 2:00 p.m., New York City time, (i) in the case of an ABR Borrowing, one Business Day before the scheduled date of such payment and (ii) in the case of a Eurodollar Borrowing, three Business Days before the scheduled date of such payment; provided that each payment

of Borrowings of any Class shall be applied to pay any outstanding ABR Borrowings of such Class before any other Borrowings of such Class. If the Borrower fails to make a timely selection of the Borrowing or Borrowings to be repaid or prepaid, such payment shall be applied, first, to pay any outstanding ABR Borrowings of the applicable Class and, second, to other Borrowings of such Class in the order of the remaining duration of their respective Interest Periods (the Borrowing with the shortest remaining Interest Period to be repaid first). Each repayment of a Borrowing shall be applied ratably to the Loans included in such Borrowing.

(d) Evidence of Debt.

(v) Each Lender may maintain in accordance with its usual practice an account or accounts evidencing the Indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder. In the case of a Lender that does not request, pursuant to clause (ii) below, execution and delivery of a Note evidencing the Loans made by such Lender to the Borrower, such account or accounts shall, to the extent not inconsistent with the notations made by the Administrative Agent in the Register, be conclusive and binding on the Borrower absent manifest error; provided, however, that the failure of any Lender to maintain such account or accounts or any error in any such account shall not limit or otherwise affect any obligations of the Borrower.

(vi) The Borrower agrees that, upon the request to the Administrative Agent by any Lender, the Borrower will execute and deliver to such Lender, as applicable, a promissory note (a "Note") substantially in the form of Exhibit B payable to such Lender in an amount equal to such Lender's Loans evidencing the Loans made by such Lender. The Borrower hereby irrevocably authorizes each Lender to make (or cause to be made) appropriate notations on the grid attached to such Lender's Notes (or on any continuation of such grid), which notations, if made, shall evidence, inter alia, the date of, the outstanding principal amount of, and the interest rate and Interest Period applicable to the Loans evidenced thereby. Such notations shall, to the extent not inconsistent with the notations made by the Administrative Agent in the Register, be conclusive and binding on the Borrower absent manifest error; provided, however, that the failure of any Lender to make any such notations or any error in any such notations shall not limit or otherwise affect any obligations of the Borrower. A Note and the obligation evidenced thereby may be assigned or otherwise transferred in whole or in part only in accordance with Section 9.04(b).

SECTION 2.09. Prepayment of Loans.

(a) Optional Prepayments. The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, without premium or penalty (other than any amounts payable under Section 2.14), subject to the requirements of this Section. Each partial prepayment of any Borrowing under this Section 2.09(a) shall be in an aggregate amount at least equal to \$1,000,000 and an integral multiple of \$500,000 in excess thereof (or such lesser amount as may be necessary to prepay the aggregate principal

amount then outstanding with respect to such Borrowing). Prepayments pursuant to this Section 2.09(a) shall be applied (i) first to prepay any outstanding Letter of Credit Loans and (ii) second, to prepay pro rata against each Class of Term Loans and, within such Class of Loans, at the option and direction of the Borrower, either in inverse order of maturity or pro rata to the remaining installments thereof.

(b) Mandatory Prepayments.

(vi) The Borrower shall apply on each Monthly Date, ratably to the mandatory prepayment of the Letter of Credit Loans, if any, together with accrued interest thereon and any amount required by Section 2.14 (if applicable), the amount required to be applied to the prepayment of Letter of Credit Loans pursuant to Section 3.03(b)(iv) of the Collateral Agency Agreement.

(vii) With respect to any Event of Damage or Event of Taking, the Borrower shall prepay the Loans then outstanding in accordance with and to the extent required by Section 5.19.

(viii) On the Monthly Date immediately following the receipt by the Borrower (or the Collateral Agent on behalf of the Borrower) of the proceeds of any Project Document Claim, the Borrower shall prepay the Loans then outstanding in an aggregate amount equal to 100% of the Net Available Amount of such Project Document Claim; provided, however, that the Borrower shall not be required to so apply the proceeds of any Project Document Claim to the extent that the Borrower provides the Administrative Agent a certificate confirming that, when taking into account the non-prepayment of such Project Document Claim, it will satisfy a 12-month projected Debt Service Coverage Ratio of at least 1.40X and setting out its calculations thereof.

(ix) Promptly following the receipt by the Borrower (or the Collateral Agent on behalf of the Borrower) of the proceeds of any Termination Payment, the Borrower shall prepay the Loans then outstanding in an aggregate amount equal to 100% of the Net Available Amount of such Termination Payment.

(x) Promptly following the occurrence of any total Condemnation of all or materially all of the Project Assets, the Borrower shall prepay all the Loans then outstanding.

(xi) Prepayments pursuant to this Section 2.09(b) shall be applied as follows:

first, to prepay any outstanding Letter of Credit Loans, and

second, to ratably prepay any outstanding Term Loans.

provided that each prepayment of Borrowings of any Class shall be applied to prepay any outstanding ABR Borrowings of such Class before any other Borrowings of such Class.

Each such prepayment of the Term Loans of any Class shall be applied pro rata against each Class of Term Loans and, within such Class of Term Loans, in the inverse order of maturity.

(c) Notices, Etc. The Borrower shall notify the Administrative Agent by telephone (confirmed promptly by telecopy or other electronic transmission) of any prepayment hereunder, not later than 2:00 p.m., New York City time, with respect to Loans bearing interest at the Adjusted LIBO Rate, three Business Days, and with respect to Loans bearing interest at the Alternate Base Rate one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the relevant Lenders of the contents thereof. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.11 and any amount required by Section 2.14 and shall be applied in the manner specified in Section 2.08(c).

(d) Permitted Swap Agreements. Any prepayment of Term Loans made pursuant to this Section 2.09 shall be made simultaneously with (i) the early termination of Permitted Swap Agreements to the extent that the aggregate notional amount under all such Permitted Swap Agreements would exceed the aggregate principal amount of the Term Loans outstanding after giving effect to such prepayment and (ii) payment by the Borrower of any amount payable by the Borrower under any such Permitted Swap Agreement as a result of such early termination, in each case in the manner set forth in Section 3.03(b)(v) of the Collateral Agency Agreement.

SECTION 2.10. Fees.

(a) Commitment Fee. The Borrower agrees to pay to the Administrative Agent for account of each Lender having Term Loan Commitments, a commitment fee, which shall accrue at a rate per annum equal to 0.75% on the average daily unused amount of each such Commitment of such Lender during the period from and including the Closing Date to but excluding the date each such Commitment terminates. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). For purposes of computing commitment fees with respect to the Commitments of any Class, a Lender's Commitment of such Class shall be deemed to be used to the extent of such Lender's outstanding Loans and such Lender's Letter of Credit Exposure, without duplication, (excluding any portion thereof attributable to unreimbursed Letter of Credit Disbursements) of such Class.

(b) Letter of Credit Fees. The Borrower agrees to pay (i) to the Administrative Agent for account of each Letter of Credit Lender a participation fee with respect to its participations in Letters of Credit which shall accrue at a rate per annum equal to the Applicable Margin applicable to interest on Tranche A Eurodollar Loans, on the average daily amount of such Letter of Credit Lender's Letter of Credit Exposure (excluding any portion thereof attributable to unreimbursed Letter of Credit Disbursements) during the period from and including the Closing Date to but excluding the later of the date on which such

Letter of Credit Lender's Letter of Credit Commitment terminates and the date on which such Letter of Credit Lender ceases to have any Letter of Credit Exposure, (ii) to each Issuing Lender a letter of credit commitment fee ("Letter of Credit Commitment Fee") which shall accrue at a rate per annum equal to 0.75% on the average daily unused amount of such Letter of Credit Lender's Letter of Credit Commitment during the period from and including the Closing Date to but excluding the date each such Letter of Credit Commitment terminates, (iii) to each DSR Issuing Lender, an amendment fee of \$300.00 for each amendment to a DSR Letter of Credit issued by such DSR Issuing Lender and (iv) such other fees in such amounts and payable as such times as may be separately agreed with the Borrower (including, for the avoidance of doubt, any fronting fees to the extent that an Issuing Lender fronts for Letter of Credit Lenders other than itself); provided that any such fees accruing after the date on which the applicable Class of Letter of Credit Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Lender pursuant to this paragraph shall be payable within 10 days after demand.

(c) Lender and Agent Fees. The Borrower agrees to pay to the Administrative Agent, for its own account, and to the Collateral Agent and each Lender the fees payable in the amounts and at the times separately agreed upon in the Fee Letters.

(d) Payment of Fees. Accrued commitment fees, participation fees and Letter of Credit Commitment Fees shall be due and payable on each Quarterly Date, commencing on the first such date to occur after the Closing Date. All fees payable hereunder shall be paid on the dates due, in Dollars and immediately available funds, to the Administrative Agent (or to the applicable Issuing Lender, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders entitled thereto. All participation fees and Letter of Credit Commitment Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day). Fees paid shall not be refundable under any circumstances absent manifest error.

SECTION 2.11. Interest.

(a) ABR Loans. The Loans constituting each ABR Borrowing shall bear interest at a rate per annum equal to the Alternate Base Rate plus the Applicable Margin.

(b) Eurodollar Loans. The Loans constituting each Eurodollar Borrowing shall bear interest for the applicable Interest Period at a rate per annum equal to the Adjusted LIBO Rate for such Interest Period for such Borrowing plus the Applicable Margin.

(c) Default Interest. Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration, by mandatory prepayment or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to 2.00% plus the rate that would otherwise be applicable to such amount pursuant to this Agreement or, if no other rate is so specified herein, the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(d) Payment of Interest. Accrued interest on each Loan of any Class shall be payable in arrears on each Interest Payment Date for such Loan; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of a Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) Computation. All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The computation of interest shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.12. Alternate Rate of Interest. If prior to the commencement of the Interest Period for any Eurodollar Borrowing:

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate for such Interest Period; or

(b) if such Borrowing is of a particular Class of Loans, the Administrative Agent is advised by the Required Lenders of such Class that the Adjusted LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their respective Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or the continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and such Borrowing (unless prepaid) shall be continued as, or converted to, an ABR Borrowing on the last day of the Interest Period applicable thereto, and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

SECTION 2.13. Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement (except any such reserve requirement reflected in the Adjusted LIBO Rate) against assets of, deposits with or for account of, or credit extended by, any Lender or any Issuing Lender; or

(ii) impose on any Lender or any Issuing Lender any other condition not otherwise contemplated hereunder affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein (except, in each case, for capital requirements addressed in Section 2.13(b) and Taxes addressed in Section 2.15);

and the result of any of the foregoing shall be to increase the cost to such Lenders of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) to the Borrower or to increase the cost to such Lender or such Issuing Lender of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or such Issuing Lender hereunder (whether of principal, interest or otherwise) (except, in each case, for capital requirements addressed in Section 2.13(b) and Taxes addressed in Section 2.15), then the Borrower will pay to such Lender or such Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Lender, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or any Issuing Lender reasonably determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Lender's capital or on the capital of such Lender's or such Issuing Lender's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Lender, to a level below that which such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Lender's policies and the policies of such Lender's or such Issuing Lender's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or such Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Lender or such Lender's or such Issuing Lender's holding company for any such reduction suffered.

(c) Certificates from Lenders. A certificate of a Lender or an Issuing Lender setting forth the amount or amounts necessary to compensate such Lender or such Issuing Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Lender, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests. Promptly after any Lender or any Issuing Lender has determined that it will make a request for increased compensation pursuant to this Section, such Lender or Issuing Lender shall notify the Borrower thereof. Failure or delay on the part of any Lender or any Issuing Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such Issuing Lender's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or an Issuing Lender pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or such Issuing Lender, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Lender's intention to claim compensation therefor;

provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.14. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period therefor (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of an Interest Period therefor, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto or (d) the assignment as a result of a request by the Borrower pursuant to Section 2.17(b) of any Eurodollar Loan other than on the last day of an Interest Period therefor, then, in any such event, the Borrower shall compensate each Lender for the loss, cost and expense attributable to such event. The loss to any Lender attributable to any such event shall be deemed to be the amount reasonably determined by such Lender to be equal to the excess, if any, of (i) the amount of interest that such Lender would pay for a deposit equal to the principal amount of such Loan for the period from the date of such payment, conversion, failure or assignment to the last day of the then current Interest Period for such Loan (or, in the case of a failure to borrow, convert or continue a Eurodollar Loan, the duration of the Interest Period that would have resulted from such borrowing, conversion or continuation) if the interest rate payable on such deposit were equal to the Adjusted LIBO Rate for such Interest Period, over (ii) the amount of interest that such Lender would earn on such principal amount for such period if such Lender were to invest such principal amount for such period at the interest rate that would be bid by such Lender (or an affiliate of such Lender) for deposits in Dollars from other banks in the eurocurrency market at the commencement of such period. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.15. Taxes.

(a) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower hereunder or under any other Financing Document shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the Borrower shall be required by law to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Collateral Agent, Lender or Issuing Lender (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make or shall cause to be made such deductions and (iii) the Borrower shall pay or shall cause to be paid the full amount deducted

to the relevant Governmental Authority in accordance with applicable law.

(b) Payment of Other Taxes. In addition, the Borrower shall pay or cause to be paid any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification. The Borrower shall indemnify or cause to be indemnified the Administrative Agent, the Collateral Agent, each Lender and each Issuing Lender, within 30 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section but without duplication of any amounts indemnified under Section 2.15(a)) paid by the Administrative Agent, the Collateral Agent, such Lender or such Issuing Lender, as the case may be, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The amount of such payment or liability and the denomination thereof as set forth in reasonable detail in a certificate delivered to the Borrower by the Collateral Agent, a Lender or an Issuing Lender, or by the Administrative Agent on its own behalf or on behalf of the Collateral Agent, a Lender or an Issuing Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes or Other Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver or cause to be delivered to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment satisfactory to the Administrative Agent, acting reasonably.

(e) Forms. Any Lender and each Issuing Lender that is entitled to an exemption from or reduction of withholding tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by the Borrower, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate (including IRS Form W-8BEN, W-8ECI or W-9 (or, in each case, any successor form and, in each case, attached to an IRS Form W-8IMY if required) and, in the case of a person claiming an exemption under the "portfolio interest exemption," a statement certifying (i) that it is not a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of the Borrower, (ii) that it is not a controlled foreign corporation related to the Borrower (within the meaning of Section 864(d)(4) of the Code), and (iii) that it is not a "bank" as such term is used in Section 881(c)(3)(A) of the Code).

If a payment made to a Lender under this Agreement would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and Administrative Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or Administrative Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or Administrative Agent as may be necessary for the Borrower or Administrative Agent to comply with its obligations under FATCA, to determine that such Lender has complied with such Lender's

obligations under FATCA or to determine the amount to deduct and withhold from such payment.

(f) If the Borrower determines that a reasonable basis exists for contesting a Tax, the Administrative Agent, the Collateral Agent, any Lender and any Issuing Lender, as the case may be, shall cooperate with the Borrower in challenging such Tax at the Borrower's expense; provided, however, that none of the Administrative Agent, the Collateral Agent, or any Lender shall be required to take any action hereunder which, in the discretion, exercised in good faith, of the Administrative Agent, the Collateral Agent, such Lender or such Issuing Lender, as the case may be, would cause the Administrative Agent, the Collateral Agent, such Lender or such Issuing Lender, as the case may be, or its applicable lending office to suffer an economic, legal or regulatory disadvantage it reasonably considers to be material.

(g) If the Administrative Agent, the Collateral Agent, any Lender or any Issuing Lender receives a refund of any Indemnified Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.15, it shall pay over such refund to the Borrower, net of all of its out-of-pocket expenses (including Taxes with respect to such refund) and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Borrower, upon the request of the Administrative Agent, the Collateral Agent, any Lender or any Issuing Lender, as the case may be, agrees to repay as soon as reasonably practicable the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, the Collateral Agent, any Lender or any Issuing Lender, as the case may be, in the event the Administrative Agent, the Collateral Agent, any Lender or any Issuing Lender, as the case may be, is required to repay such refund to such Governmental Authority.

SECTION 2.16. Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Payments by the Borrower. Unless otherwise specified, the Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of Letter of Credit Disbursements, or under Section 2.13, 2.14 or 2.15, or otherwise) or under any other Financing Document (except to the extent otherwise provided therein) prior to 2:00 p.m., New York city time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 600 Washington Blvd, Stamford, CT 06901 (payment instructions: The Royal Bank of Scotland PLC, CT; ABA/Routing No.: 026009580; SWIFT: ABNAUS33; Account Name: The Royal Bank of Scotland plc CT branch lending; Account No.: 486028642701; Reference: NRG Marsh Landing) except as otherwise expressly provided in the relevant Financing Document and except payments to be made directly to any Issuing Lender as expressly provided herein and payments pursuant to Sections 2.13, 2.14, 2.15 and 9.03, which shall be made directly to the Persons entitled thereto, in each case subject to the terms of the Collateral Agency Agreement. The Administrative Agent shall distribute any such payments received by it for account of any

other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All amounts owing under this Agreement or under any other Financing Document are payable in Dollars.

(b) Application of Insufficient Payments. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed Letter of Credit Disbursements, interest and fees then due hereunder, such funds shall be applied, in each case pro rata among the relevant Lenders according to the amounts of their respective Commitments, (i) first, to pay interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, to pay principal and unreimbursed Letter of Credit Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed Letter of Credit Disbursements then due to such parties.

(c) Pro Rata Treatment. Except to the extent otherwise provided herein: (i) each Borrowing of a particular Class shall be made from the relevant Lenders, each payment of a commitment fee under Section 2.10 in respect of Commitments of a particular Class shall be made for account of the relevant Lenders, and each termination or reduction of the amount of the Commitments of a particular Class under Section 2.07 shall be applied to the respective Commitments of such Class of the relevant Lenders, pro rata among the relevant Lenders according to the amounts of their respective Commitments of such Class; (ii) each Borrowing of any Class shall be allocated pro rata among the relevant Lenders according to the amounts of their respective Commitments of such Class (in the case of the making of Loans) or their respective Loans of such Class that are to be included in such Borrowing (in the case of conversions and continuations of Loans); (iii) each payment or prepayment of principal of Loans by the Borrower shall be made for account of the relevant Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans of such Class held by them; and (iv) each payment of interest on Loans by the Borrower shall be made for account of the relevant Lenders pro rata in accordance with the amounts of interest on such Loans then due and payable to the respective Lenders.

(d) Sharing of Payments by Lenders. If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in Letter of Credit Disbursements resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in Letter of Credit Disbursements and accrued interest thereon then due than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in Letter of Credit Disbursements of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders pro rata in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in Letter of Credit Disbursements; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the

provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Letter of Credit Disbursements to any assignee or participant, other than to the Borrower or any Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(e) Presumptions of Payment. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for account of the Lenders or any Issuing Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or such Issuing Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or each applicable Issuing Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such Issuing Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(f) Certain Deductions by the Administrative Agent. If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.03(e), 2.05(b), 2.16(e) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.17. Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.13, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for account of any Lender pursuant to Section 2.15, then such Lender shall (i) file any certificate or document reasonably requested in writing by the Borrower and/or (ii) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (x) would eliminate or reduce amounts payable pursuant to Section 2.13 or 2.15, as the case may be, in the future and (y) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material respect. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. (%4) If any Lender requests compensation under Section 2.13, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for account of any Lender pursuant to Section 2.15, or if any Lender is a Defaulting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations (including, without limitation, any participation under any letters of credit issued pursuant to Section 2.03) under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (x) the Borrower shall have received the prior written consent of the Administrative Agent and, to the extent such assignee is assuming any Letter of Credit Commitment, the Issuing Lenders of each applicable Class, which consent, in each case, shall not unreasonably be withheld, (y) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Letter of Credit Disbursements, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (z) in the case of any such assignment resulting from a claim for compensation under Section 2.13 or payments required to be made pursuant to Section 2.15, such assignment will result in the elimination or a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Nothing in this Section shall be deemed to prejudice any rights that the Borrower may have against any Lender that is a Defaulting Lender.

(i) If any Lender (such Lender, a “Non-Consenting Lender”) has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.02 requires the consent of all of the Lenders affected and with respect to which the Required Lenders shall have granted their consent, then the Borrower shall have the right to replace such Non-Consenting Lender (unless such Non-Consenting Lender grants such consent) by requiring such Non-Consenting Lender to assign its Loans and Commitments (in accordance with and subject to the restrictions contained in Section 9.04) to one or more assignees reasonably acceptable to the Administrative Agent (and, to the extent such assignee is assuming any Letter of Credit Commitment, the Issuing Lenders of each applicable Class); provided that (x) any such Non-Consenting Lender must be replaced with a Lender that grants the applicable consent, (y) all obligations of the Borrower owing to such Non-Consenting Lender being replaced shall be paid in full to such Non-Consenting Lender concurrently with such assignment and (z) the replacement Lender shall purchase the foregoing by paying to such Non-Consenting Lender a price equal to the principal amount thereof plus accrued and unpaid interest and fees thereon. In connection with any such assignment, the Borrower, the Administrative Agent, such Non-Consenting Lender and the replacement Lender shall otherwise comply with Section 9.04.

(iii) Any Lender that has been replaced as a Lender pursuant to clause (b)(i) or (b)(ii) of this Section 2.17(b), and that is a party to a Permitted Swap Agreement shall use commercially reasonable efforts to promptly novate, assign and delegate,

without recourse, all its interests, rights and obligations under such Permitted Swap Agreement to which it is party to the assignee replacing it as a Lender hereunder pursuant to this Section 2.17(b) or to another Lender or Affiliate thereof, which, in each case, shall be a Permitted Swap Counterparty.

SECTION 2.18. Defaulting Lenders. Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

- (a) fees shall cease to accrue on the unused portion of the Commitment of such Defaulting Lender pursuant to Section 2.10(a);
- (b) the Loans, Letter of Credit Exposures and unused Commitments of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 9.02);
- (c) if any Letter of Credit Exposure exists at the time a Letter of Credit Lender becomes a Defaulting Lender:
 - (i) no Issuing Lender with respect to each Class of Commitment held by such Defaulting Lender shall be required to issue, amend or increase any Letter of Credit of such Class, unless any Letter of Credit Exposure that would result therefrom is fully covered or eliminated by any combination of the following (A) such Defaulting Lender’s Letter of Credit Exposure shall be reallocated, as to any outstanding and future Letters of Credit, as applicable, to the Non-Defaulting Lenders as provided in Section 2.18(d)(i) and (B) the Borrower shall within five Business Days following notice by the Administrative Agent cash collateralize only to the extent the Defaulting Lender is not the Issuing Lender for such Letter of Credit, such Defaulting Lender’s Letter of Credit Exposure in accordance with the procedures set forth in Section 2.03(j) in an amount at least equal to the aggregate amount of the Unreallocated Portion of the obligations (contingent or otherwise) of such Defaulting Lender in respect of such Letter of Credit, in which case the obligations of the Non-Defaulting Lenders in respect of such Letter of Credit will, subject to subclause (A) below, be on a pro rata basis in accordance with the Letter of Credit Commitments of the Non-Defaulting Lenders, and the pro rata payment provisions of Section 2.16 shall be deemed adjusted to reflect this provision; provided, that (A) the sum of each Non-Defaulting Lender’s total Letter of Credit Exposure may not in any event exceed the Letter of Credit Commitments of such Non-Defaulting Lender, and (B) neither any such reallocation nor any payment by a Non-Defaulting Lender pursuant thereto nor any such cash collateralization or reduction will constitute a waiver or release of any claim the Borrower, the Administrative Agent, the Issuing Lender, or any other Lender may have against such Defaulting Lender, or cause such Defaulting Lender to be a Non-Defaulting Lender; and
 - (ii) the Borrower shall not be required to pay any participation fees to such Defaulting Lender pursuant to Section 2.10(b) with respect to such Defaulting Lender’s Letter of Credit Exposure during the period such Defaulting Lender’s Letter of Credit Exposure is cash collateralized pursuant to clause (i) above; and
 - (iii) if any Defaulting Lender’s Letter of Credit Exposure is not cash collateralized or reallocated pursuant to clause (i) above, then, without prejudice to any rights or remedies of the Issuing Lenders hereunder, all participation fees payable pursuant to Section 2.10(b) with respect to such Defaulting Lender’s Letter of Credit Exposure shall be payable to the relevant Issuing Lender until such Letter of Credit Exposure is cash collateralized or reallocated.
- (d) if a Letter of Credit Lender becomes, and during the period it remains, a Defaulting Lender, the following provisions shall apply with respect to the reallocation of any outstanding Letter of Credit Exposure of such Defaulting Lender pursuant to Section 2.18(c)(i):
 - (i) the Letter of Credit Exposure of each such Defaulting Lender shall be reallocated (effective on the day such Lender becomes a Defaulting Lender) among the Non-Defaulting Lenders pro rata in accordance with their respective Letter of Credit Commitments; provided, that (A) the sum of each Non-Defaulting Lender’s total Letter of Credit Exposure may not in any event exceed the Letter of Credit Commitments of such Non-Defaulting Lender, and (B) neither any such reallocation nor any payment by a Non-Defaulting Lender pursuant thereto nor any such cash collateralization or reduction will constitute a waiver or release of any claim the Borrower, the Administrative Agent, the Issuing Lender, or any other Lender may have against such Defaulting Lender, or cause such Defaulting Lender to be a Non-Defaulting Lender; and
 - (ii) to the extent that any portion (the “Unreallocated Portion”) of the Defaulting Lender’s Letter of Credit Exposure cannot be so reallocated, the Borrower will, not later than five Business Days after notice by the Administrative Agent, cash collateralize only to the extent the Defaulting Lender is not the Issuing Lender for such Letter of Credit such Defaulting Lender’s Letter of Credit Exposure in accordance with the procedures set forth in Section 2.03(j), in an amount at least equal to the aggregate amount of the Unreallocated Portion of such Letter of Credit Exposure.

ARTICLE III

REPRESENTATIONS AND WARRANTIES

The Borrower makes the representations and warranties contained in this Article III to each Agent, the Issuing Lenders and the Lenders. Each such representation and warranty shall be deemed made as of the date hereof, on the Closing Date, the Funding and Repricing Date, the date of any Borrowing (excluding any Borrowing resulting from a Letter of

Credit Disbursement pursuant to Section 2.03(h)), and the date of each issuance of a Letter of Credit (except for the representations set forth in Sections 3.07 and 3.11, which shall be made only upon any issuance of a Letter of Credit as a condition to the Conversion Date, and not upon any issuance or amendment of a Letter of Credit after the Conversion Date).

SECTION 3.01. Due Organization, Power and Authority Etc. The Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of Delaware. The Borrower is duly qualified to do business and is in good standing in each jurisdiction in which such qualification is required by Applicable Law, except where the failure to so qualify would not reasonably be expected to have a Material Adverse Effect. The Borrower has all requisite power and authority and legal right (i) to own its properties and conduct its business substantially as contemplated by the Material Project Documents and Financing Documents to which it is a party and (ii) to execute, deliver, and perform its obligations under each Transaction Document to which it is a party and to consummate each of the transactions contemplated herein and therein.

SECTION 3.02. Authority and Enforceability. The execution, delivery, and performance of each Financing Document and each Material Project Document to which the Borrower is a party have been duly authorized by all necessary action on the part of the Borrower. Each Financing Document and each Material Project Document to which the Borrower is a party has been duly executed and delivered by the Borrower. Each Financing Document and each Material Project Document to which the Borrower is a party constitutes a legal, valid and binding obligation of the Borrower, enforceable in accordance with its respective terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium, and similar laws of general applicability relating to or affecting creditors' rights and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law)

SECTION 3.03. No Conflict. The execution, delivery and performance by the Borrower of each of the Financing Documents and Project Documents to which it is a party, and the performance of its obligations thereunder do not and will not (i) violate the articles of organization or other organizational documents of the Borrower, (ii) violate any provision of any Applicable Law, (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other material agreement, lease, or instrument to which the Borrower is a party or by which it or its properties may be bound or affected, including any other Transaction Document, or (iv) result in or require the creation or imposition of any Lien of any nature (other than any Permitted Encumbrance) upon or with respect to any of the properties now owned or hereafter acquired by such Loan Party except, in the case of (ii) and (iii), as would not reasonably be expected to have a Material Adverse Effect.

SECTION 3.04. Title. At all times on and after the Initial Extension of Credit, the Borrower has good and marketable fee or easement title, as applicable to the Project Site to build, construct and operate the Project in accordance with the Transaction Documents, in each case free and clear of all Liens other than any Permitted Encumbrances and enjoys peaceful and undisturbed possession of all Properties that are necessary for the Development (subject to the rights of others with respect to easement properties and Permitted Encumbrances).

SECTION 3.05. Approvals, Etc.

(f) Schedule 3.05 constitutes a complete and accurate list of all material Governmental Approvals required on the part of each Loan Party and the Parent for the Development and for each Loan Party's and the Parent's execution, delivery, and performance of the Transaction Documents to which it is a party. As of the Closing Date, the Governmental Approvals set forth in Part A of Schedule 3.05 (the "Part A Approvals") were duly obtained, in full force and effect, final and non-appealable and constituted all material Governmental Approvals that were required to be obtained as of the Closing Date for each Loan Party's and the Parent's execution, delivery, and performance of the Transaction Documents to which it is a party and for the Development.

(g) All material Governmental Approvals required on the part of each Loan Party and the Parent for the Development but not required to be obtained as of the Closing Date in light of the status of the Development at such time, including information as to the filing of applications and the status thereof, are set forth in Part B of Schedule 3.05 (the "Part B Approvals"). Although the issuer of any such Governmental Approval has the discretion to issue or withhold such Governmental Approval, to the knowledge of the Borrower, as of the Closing Date, there existed no impediment that could reasonably be expected to have prevented the Loan Parties and the Parent from obtaining in due course and prior to the time the same is required each Part B Approval required on its part.

SECTION 3.06. No Default or Event of Default, Event of Abandonment, Event of Damage, Event of Taking. No (i) Default or Event of Default, (ii) Event of Abandonment, or (iii) Event of Damage or Event of Taking has occurred and is continuing that, in the case of (iii) only, could reasonably be expected to have a Material Adverse Effect.

SECTION 3.07. Litigation, Etc. Except as set forth on Schedule 3.07, there are no actions, suits, proceedings, investigations or similar actions pending or, to the knowledge of the Borrower, threatened (in writing) against any Loan Party or any of the Project Assets, that has had or could reasonably be expected to have a Material Adverse Effect.

SECTION 3.08. Compliance with Laws and Obligations. The Borrower is in compliance with all Applicable Laws except to the extent that non-compliance with such Applicable Laws could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 3.09. Environmental Laws. Except as set forth on Schedule 3.09, (a) the Borrower is in compliance with all applicable Environmental Laws, including any Governmental Approvals required under any Environmental Laws, except for any non-compliance that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; (b) there are no pending or, to the knowledge of the Borrower, any past or threatened Environmental Claims against the Project Assets or the Borrower that could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and (c) to the knowledge of the Borrower, Hazardous Substances have not at any time been used or released at, on, under, or from the Project, or the Project Site other than in compliance at all times with all applicable Environmental Laws or in a manner that could not reasonably be

expected to give rise to liability under Environmental Laws, except to the extent that non-compliance with or liability under such Environmental Laws could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

SECTION 3.10. Project Documents. No event of force majeure under any Material Project Document has occurred and is continuing that

has resulted in the suspension by any Material Project Party of any obligation that could reasonably be expected to cause the Conversion Date not to occur prior to the Outside Delivery Date, and (ii) and no other event has occurred and is continuing under any Material Project Document that has resulted in the cancellation or termination by any Material Project Party of its performance, or the excuse of any Material Project Party from liability for any material non-performance, under any Material Project Document to which it is a party in accordance with the terms thereof, in each case, to the extent that the applicable Material Project Document has not been replaced in the manner and within the applicable time period specified in Section 7.01(o).

SECTION 3.11. Material Adverse Effect. No Material Adverse Effect has occurred and is continuing.

SECTION 3.12. Regulations T, U and X. The Borrower is not engaged principally or as one its important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying any "margin stock" (as defined in Regulation U of the Board of Governors (12 C.F.R. 221) or to extend credit to others for such purpose and no part of the proceeds of the Loans will be used, whether immediate, incidental or ultimate, for the purpose of (i) buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors (12 C.F.R. 221) or to extend credit to others for such purpose, or (ii) buying or carrying or trading in any security under such circumstances as to involve the Borrower in a violation of Regulation X of the Board of Governors (12 C.F.R. 224) or to involve any broker or dealer in a violation of Regulation T of the Board of Governors (12 C.F.R. 220).

SECTION 3.13. Information.

(a) All written information concerning the Loan Parties and the Project provided by or on behalf of the Borrower and described on Schedule 3.13 (including as set forth in the Information Memorandum (other than the Base Case Projections, any report of the Independent Engineer, the Insurance Advisor or other statements, estimates, projections or other expressions or views as to future circumstances), as updated and supplemented as of the Closing Date and taken as a whole, was complete and correct in all material respects as of the Closing Date and, as of the Closing Date, did not contain any untrue statement of a material fact or omit to state any material fact necessary to make such information not misleading in light of the circumstances under which furnished.

(b) The Base Case Projections were prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time furnished to the Agents and the Lenders, it being understood that such Base Case Projections are not to be viewed as facts and are subject to uncertainties and contingencies, many of which are beyond the control of

the Borrower, that no assurance can be given that the Base Case Projections will be realized, that actual results may differ and such differences may be material.

SECTION 3.14. Pari Passu. The Borrower's obligations under this Agreement rank and will rank at least *pari passu* in priority of payment and in all other respects with all other present or future unsecured and secured Indebtedness of the Borrower, except for Permitted Indebtedness secured by Permitted Encumbrances.

SECTION 3.15. Investment Company Status. The Borrower is not an "investment company" or company "controlled" by an "investment company" within the meaning of the Investment Company Act of 1940 or an "investment advisor" within the meaning of the Investment Company Act of 1940.

SECTION 3.16. Foreign Assets Control Regulations, Etc.

(c) The use of the proceeds of the Loan by the Borrower will not violate the Trading with the Enemy Act, or any of the foreign assets control regulations of the United States Treasury Department (Title 31, Subtitle B, Chapter V of the US Code of Federal Regulations, as amended) or any enabling legislation or executive order relating thereto; and

(d) Neither the Borrower nor, to the Borrower's knowledge, any Affiliate of the Borrower (i) is a Person or entity described by or designated in any OFAC List or in the Anti-Terrorism Order, (ii) has engaged in dealings or transactions or is engaging in dealings or transactions with any such Persons or entities described by or designated in any OFAC List or in the Anti-Terrorism Order, or (iii) is in violation of the Anti-Terrorism Laws.

SECTION 3.17. Security Documents. The Security Documents to which either Loan Party is a party that have been delivered on or prior to the date this representation is made are effective to create, as security for the Obligations, valid, enforceable, and, upon the filing of documents and instruments as set forth in the final sentence of this Section 3.17, perfected Liens in the Collateral, in favor of the Collateral Agent for the benefit of the Secured Parties, subject to no other Liens other than Permitted Encumbrances. The descriptions of the Collateral set forth in each Security Document are true, complete, and correct in all material respects and are adequate for the purpose of creating, attaching and perfecting the Liens in the Collateral granted or purported to be granted in favor of the Collateral Agent for the benefit of the Secured Parties under the Security Documents. All filings, registrations, recordings, notices, and other actions that are required by the Collateral Agent on or prior to the date this representation is made (including delivery to the Collateral Agent of the certificates, if any, evidencing the equity interests in the Borrower or otherwise giving the Collateral Agent control or possession of the Collateral) have been made or taken so that the security interest created by each Security Document is a perfected Lien on and security interest in all right, title and interest of the Borrower in the Collateral purported to be covered thereby.

SECTION 3.18. ERISA.

(a) Except as would not individually or in the aggregate result in a Material Adverse Effect, (i) each Plan (if any) is in compliance with the applicable provisions of ERISA and the Code and the regulations and published interpretations thereunder, (ii) no "reportable

event" (within the meaning of Section 4043(c) of ERISA) has occurred or is reasonably likely to occur, (iii) no event, transaction or condition has occurred that has resulted in the imposition of any Lien under the Code or ERISA on any of the assets of the Borrower with respect to a Plan and (iv) for each Plan that is subject to the funding requirements of Section 412 of the Code, no failure to satisfy the "minimum funding standard" (within the meaning of Section 412 of the Code) whether or not waived, has occurred or is reasonably likely to occur.

(b) Neither the Borrower or any ERISA Affiliate has incurred withdrawal liabilities or is subject to contingent withdrawal liability under Section 4201 or 4204 of ERISA in respect of Multiemployer Plans, except as would not individually or in the aggregate have a Material Adverse

Effect.

SECTION 3.19. Labor Matters. No strike, lockout or other labor dispute in connection with the Project or the Borrower exists or, to the actual knowledge of the Borrower, is threatened, that could reasonably be expected to have a Material Adverse Effect.

SECTION 3.20. Single-Purpose Entity. The Borrower has not conducted, and is not conducting, any business other than the Development and the performance of its obligations under the Financing Documents and the Project Documents to which it is a party and, in each case, activities related thereto.

SECTION 3.21. Members and Membership Interests.

(a) The only member of the Borrower is the Immediate Parent. The Collateral includes all of the equity interests in the Borrower.

(b) All of the membership interests in the Borrower have been duly authorized and validly issued in accordance with its Operating Agreement and any other constitutive documents and are fully paid and non-assessable. The Borrower does not have outstanding any securities convertible into or exchangeable for any of its membership interests in or any rights to subscribe for or to purchase, or any warrants or options for the purchase of, or any agreements providing for the issuance (contingent or otherwise) of, or any calls, commitments or claims of any character relating to any such membership interests (except as expressly provided for herein or in the Security Documents).

SECTION 3.22. Deposit Accounts and Securities Accounts. Other than accounts permitted to exist under the Collateral Agency Agreement or as otherwise permitted under the Financing Documents, the Borrower has no Deposit Accounts or Securities Accounts.

ARTICLE IV

CONDITIONS

SECTION 4.01. Conditions Precedent to the Closing Date and Initial Extension of Credit. Each condition precedent to the Closing Date and the obligations of the Lenders to make the initial Loans were satisfied (or waived in accordance with Section 9.02) on the Closing Date in accordance with the Existing Credit Agreement.

SECTION 4.02. Conditions Precedent to the Funding and Repricing Date. The obligation of each Incremental Term Loan Lender to make an Incremental Term Loan on the Funding and Repricing Date is subject to the satisfaction or waiver (in accordance with Section 9.02) of each condition precedent set forth in Section 6 of the First Amendment.

SECTION 4.03. Conditions Precedent to All Borrowings of Loans (other than on the Funding and Repricing Date). The obligation of each Lender to make any Loan pursuant to a Borrowing hereunder (excluding any Borrowing (i) resulting from a Letter of Credit Disbursement pursuant to Section 2.03(h) or (ii) on the Funding and Repricing Date, which shall be governed by the conditions precedent set forth in Section 6 of the First Amendment), is additionally subject to the receipt by the Administrative Agent of each of the following documents, and the satisfaction of the conditions precedent set forth below, each of which shall be satisfactory to the Administrative Agent (excluding any Borrowing resulting from a Letter of Credit Disbursement pursuant to Section 2.03(h)), in form and substance (unless waived in accordance with Section 9.02):

(a) Borrowing Request. Delivery of a Borrowing Request to the Administrative Agent in accordance with Article II.

(b) Representations and Warranties: No Default or Event of Default. (i) The representations and warranties of each Loan Party set forth in each Financing Document and intended to be brought down on such Borrowing pursuant to Article III shall be true and correct in all material respects on and as of the date of such Borrowing (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date), both immediately prior to the proposed Borrowing and after giving effect to such Borrowing and to the intended use thereof as if made on and as of such date (or, if stated to have been made solely as of an earlier date, as of such earlier date), and (ii) no Default or Event of Default has occurred and is continuing on such date or will result from such Borrowing.

(c) Construction Drawdown Certificate; Construction Report; Independent Engineer Certificate. Delivery of a Construction Drawdown Certificate dated not less than five Business Days prior to the date of the proposed Borrowing in the form of Exhibit I, certified by an Authorized Officer of the Borrower with required attachments thereto, including a Construction Report and description of Project Costs incurred to date, together with a certificate of the Independent Engineer in the form of Exhibit J dated the date of the related Construction Drawdown Certificate.

(d) Lien Waivers; Title Policy Endorsements. Consistent with the provisions of the Construction Contract in respect of (i) and (ii) below, (i) copies of lien waivers executed by the Contractor in respect of all work completed as of the date of its current invoice (other than work in progress), in each case, in accordance with the requirements of the Construction Contract, (ii) evidence that the Contractor has received lien waivers in respect of all work completed as of the date of its current invoice (other than work in progress) from all of its major subcontractors, in each case, in accordance with the requirements of the Construction Contract, and (iii) an ALTA Form 122 down-date endorsement to the Title Policy and other such endorsements to the Title Policy

relating to the continued priority of the Deed of Trust with respect to mechanics liens and other matters as reasonably requested by the Administrative Agent.

SECTION 4.04. Conditions Precedent to Issuance of each Letter of Credit. The obligations of the Issuing Lenders to issue the Letters of Credit hereunder are subject to the receipt by the Administrative Agent (except as set forth otherwise below) of each of the following documents, and the satisfaction of the conditions precedent set forth below, each of which shall be satisfactory to the Administrative Agent and the Issuing Lender in form and substance (unless waived in accordance with Section 9.02):

(h) Notice of Issuance. Delivery of a Notice of Issuance to the Administrative Agent in accordance with Article II.

(i) Conversion Date. All conditions precedent to the Conversion Date (except the posting of any letters of credit) shall have occurred.

(j) Representations and Warranties: No Default or Event of Default. (i) The representations and warranties of each Loan Party set forth in

each Financing Document and intended to be brought down on such issuance pursuant to Article III shall be true and correct in all material respects on and as of the date of such issuance (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date), both immediately prior to the proposed issuance and after giving effect to such issuance and to the intended use thereof as if made on and as of such date (or, if stated to have been made solely as of an earlier date, as of such earlier date), and (ii) no Default or Event of Default has occurred and is continuing on such date or will result from such issuance.

SECTION 4.05. Conversion Date. The “Conversion Date” means the date on which each of the following conditions shall have been satisfied or waived by the Administrative Agent; provided, that, if the Independent Engineer certification delivered as part of Section 4.05(a) or (b) has material qualifications, waiver shall be by the Required Lenders:

(e) Physical Facilities Certificate. The Administrative Agent shall have received a certificate of the Borrower (together with a certificate of the Independent Engineer and all other attachments contemplated thereby), substantially in the form of Exhibit K.

(f) Performance Certificate. The Administrative Agent shall have received a certificate of the Borrower (together with a certificate of the Independent Engineer and all other attachments contemplated thereby), substantially in the form of Exhibit L.

(g) Legal Matters Certificate. The Administrative Agent shall have received a certificate of the Borrower substantially in the form of Exhibit M.

(h) Accounts. The Debt Service Reserve Account shall be funded (either with cash or through a DSR Letter of Credit, an Acceptable Letter of Credit or a combination thereof) in an amount at least equal to the Debt Service Reserve Required Amount, in each case in accordance with the Collateral Agency Agreement.

ARTICLE V

AFFIRMATIVE COVENANTS

The Borrower covenants and agrees with the Lenders, each Issuing Lender and the Agents that until the Termination Date:

SECTION 5.01. Corporate Separateness; Etc.

(a) The Borrower shall (i) preserve and maintain (A) its legal existence as a limited liability company in good standing under the laws of the State of Delaware and (B) except where failure to do so could not reasonably be expected to have a Material Adverse Effect, its qualifications to do business and its good standing in each jurisdiction in which the character of properties owned by it or in which the transaction of its business as conducted or proposed to be conducted makes such qualification necessary and (ii) preserve and maintain all of its licenses, rights, privileges and franchises necessary for the Development, except in the case of this clause (ii) where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

(b) The Borrower shall (i) comply with all organizational formalities necessary to maintain its separate and distinct existence; (ii) conduct its business solely in its own name; (iii) maintain its assets, funds and transactions, including its bank accounts, separate from those of its Affiliates; and (iv) maintain full and complete financial statements separate from those of its Affiliates in accordance with Applicable Accounting Requirements.

SECTION 5.02. Conduct of Business. The Borrower shall use commercially reasonable efforts to (i) cause the Project to be constructed and completed substantially in accordance with the Construction Contract and the other relevant Material Project Documents, Applicable Law and Prudent Industry Practice and (ii) achieve the Conversion Date by the Outside Delivery Date.

SECTION 5.03. Compliance with Laws and Obligations.

(k) The Borrower shall comply with, and ensure that the Project is operated in compliance with, all Applicable Laws, including but not limited to all Environmental Laws and reporting and other requirements under applicable CAISO rules applicable to it, except to the extent where the failure to do so by the Borrower or the Project, could not reasonably be expected to result in a Material Adverse Effect.

(l) The Borrower shall (i) enforce against each Project Party each material covenant or obligation under each Project Document to which it is a party in accordance with the terms thereof and (ii) enforce the terms of the environmental remediation obligations set forth in Section 5.8 and Article 6 of the PSA (the “PG&E Indemnity”), except, in the case of each of clauses (i) and (ii), as could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.04. Governmental Approvals.

(i) The Borrower shall obtain and maintain in full force and effect all material Governmental Approvals, including, without limitation, all Governmental Approvals set forth in Schedule 3.05 of this Agreement, necessary for the construction, operating and maintenance of the Project for the relevant stage of Development, except, where the failure to maintain such Governmental Approvals could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(j) The Borrower shall (i) obtain its status as an EWG or another equivalently effective exemption from the “books and records” requirements of PUHCA (to the extent that such requirements of PUHCA remain in effect) and its MBR Authority, to the extent required by Applicable Law to perform its obligations and to charge and collect amounts payable under the PPA, in each case, no later than the Initial Delivery Date, or earlier as may be required by Applicable Law, and (ii) maintain its status as an EWG, or obtain and subsequently maintain another equivalently effective exemption from the “books and records” requirements of PUHCA (to the extent that such requirements of PUHCA remain in effect), and its MBR Authority, to the

extent required by Applicable Law to perform its obligations and to charge and collect amounts payable under the PPA.

SECTION 5.05. Maintenance of Title. At all times from and after the acquisition by the Borrower of the Project Site, the Borrower shall maintain good and marketable title to the Project Site and shall obtain, as and when required, pursuant to the Project Documents, and thereafter maintain at all times interests in the other Project Assets sufficient to operate the Project in accordance with the Project Documents and Prudent Industry Practices, and in each case, free and clear of liens other than Permitted Encumbrances. The Borrower shall not, prior to the filing of the Deed of Trust, permit any activity to be undertaken on or with respect to the Project which could give rise to a mechanics', materialmen's or other statutory lien on the Project Site or any portion thereof, including without limitation any lien arising under or described in Title 15 of the California Civil Code (Section 3083 et seq.).

SECTION 5.06. Maintenance of Property; Insurance.

(e) The Borrower shall operate, preserve, maintain and keep, or cause to be operated, maintained, preserved and kept, its Properties in good repair, working order and condition substantially in accordance with the Project Documents and Prudent Industry Practices (except in respect of any Event of Damage or Event of Taking, following which the Borrower is, to the extent permitted or required by the Financing Documents, attempting to restore, or has restored, the affected Project Asset).

(f) The Borrower shall obtain and maintain (or cause to be obtained and maintained) the insurance required to be maintained pursuant to Appendix A.

SECTION 5.07. Keeping of Books. The Borrower shall maintain an accounting and control system, management information system and books of account and other records, which together adequately reflect truly and fairly the financial condition of the Borrower and the results of its operations (including the progress of the Project) in accordance with the Applicable Accounting Requirements, to the extent applicable.

SECTION 5.08. Access to Records; Inspection Rights.

(f) The Borrower shall permit (i) representatives and advisors of the Independent Engineer and the Administrative Agent to visit and inspect, in the presence of representatives of the Borrower, if requested by the Borrower, the Properties of the Borrower and, in the case of the Independent Engineer only, any performance tests and (ii) officers and designated representatives of the Administrative Agent to examine and make copies of the books, records and documents of the Borrower and to discuss the affairs, finances and accounts of the Borrower with the Borrower's principal officers and independent accountants (subject to reasonable requirements of safety and confidentiality, including requirements imposed by Applicable Law or by contract) with the participation of the Borrower, in each case, with reasonable advance notice to the Borrower and during normal business hours of the Borrower.

(g) The reasonable and documented costs and expenses of each such visit by the Independent Engineer and the Administrative Agent permitted hereby shall be borne by the Borrower.

SECTION 5.09. Payment of Taxes, Etc. The Borrower shall pay and discharge all taxes (if any) imposed upon its income or profits or any of its Property prior to the date on which any penalties may attach, except those being disputed in good faith and against which the Borrower has established sufficient reserves.

SECTION 5.10. Information and Reporting Requirements. The Borrower shall furnish to the Administrative Agent:

(e) Financial Statements. (i) Within 120 days after the end of each Fiscal Year of the Borrower, the audited financial statements of the Borrower and the Parent as of the end of such Fiscal Year and stating in comparative form the audited figures as of the end of and for the previous Fiscal Year, if available, prepared in accordance with Applicable Accounting Requirements, accompanied by an opinion of an independent public accounting firm of national standing, which opinion shall state that such financial statements fairly present, in all material respects, the financial condition and results of operations of the Borrower and Parent as at the end of and for such Fiscal Year in accordance with Applicable Accounting Requirements, and (ii) within 60 days after the end of each of the first three fiscal quarters of the Borrower and the Parent, the unaudited financial statements of the Borrower and the Parent as of the end of such quarter, prepared in accordance with Applicable Accounting Requirements and stating in comparative form the figures for the corresponding period in the previous Fiscal Year, certified by a Financial Officer of the Borrower and the Parent as fairly stating, in all material respects, the financial condition of the Borrower and the Parent (subject to year-end adjustments) as at the end of such period; in the case of each of clauses (i) and (ii) above, together with, in the case of the Borrower (A) commencing with the second complete quarterly fiscal quarter of the Borrower following the Conversion Date, a

certificate of the Financial Officer of the Borrower setting forth the DSCR for the applicable period, and (B) a certificate of an Authorized Officer of the Borrower stating whether, to such Authorized Officer's knowledge, any Default or Event of Default has occurred and is continuing (and, if any such Default or Event of Default shall have occurred and is continuing, a statement setting forth the nature thereof and the steps being taken by the Borrower to remedy the same); provided, however, that the obligations relating to the Parent's financial statements under this paragraph shall apply only until the Conversion Date.

(f) Operating and Construction Reports. (i) At all times after the Initial Delivery Date, as soon as available but in any event within 60 days after the end of each fiscal quarter, quarterly operating reports substantially in the form attached as Exhibit H and (ii) except to the extent that the Borrower has delivered a Construction Report within the previous 45 days pursuant to Section 4.03(c), within 15 Business Days following the end of each calendar quarter until the Conversion Date, a Construction Report prepared by Borrower and certified by the Borrower to be true and complete, on the progress of the Project and achievement of milestones as compared to the Construction Schedule and Construction Budget, including: (i) in the event of any material deviation from the Construction Schedule and the Construction Budget, the reason for such deviation and such other information reasonably requested by the Administrative Agent or the Independent Engineer in connection therewith; (ii) the status of any Governmental Approval by any Governmental Authority necessary for the Development which has not already been obtained, including the dates of applications submitted or to be submitted and the anticipated dates of actions by applicable Governmental Authorities with respect to such Governmental Approval; and (iii) an estimated date on which the Conversion Date shall be achieved.

(g) Other. Upon the Administrative Agent's reasonable request, such other data, certificates, reports, statements documents and further information regarding the business, assets, liabilities, financial condition, results of operation or business of the Borrower, in each case prepared by the Borrower in the ordinary course in connection with the Project.

Financial statements with respect to the Parent under Section 5.10(a) shall be required to be delivered only until the Conversion Date, and the applicable financial information for the Parent shall be delivered in the form and to the extent publicly filed. Upon receipt by the Administrative Agent of financial statements required to be delivered pursuant to Section 5.10(a) or (b), the Administrative Agent shall notify the Lenders thereof and such financial statements shall be provided to any Lender if such Lender requests a copy of such financial statements (which request may be in the form of a standing request).

SECTION 5.11. Notices. The Borrower shall provide to the Administrative Agent and Independent Engineer, as applicable:

(a) As soon as practicable and, in any event, within 10 Business Days after the Borrower obtains actual knowledge of any of the following, written notice of: (i) the occurrence of any Default or Event of Default and describing any action being taken or

proposed to be taken with respect thereto, (ii) the occurrence of any Event of Damage or Event of Taking with respect to the Project in excess of \$5,000,000 in value or any series of such events or circumstances during any 12-month period in excess of \$5,000,000 in value in the aggregate, (iii) any litigation or similar proceeding (including any Environmental Claim) affecting the Project, the Borrower or the Immediate Parent (A) in which the amount involved is in excess of \$5,000,000 or (B) if non-monetary relief (including any alleged violation of or non-compliance with any Environmental Laws or any environmental Governmental Approval or any liability under any Environmental Laws) has resulted in or could reasonably be expected to have a Material Adverse Effect, (iv) any material dispute, litigation, investigation or proceeding (including any such proceeding that is expected to result in the rescission, termination, suspension or modification of any Part A Approval or Part B Approval), that may exist at any time between any Governmental Authority and either the Borrower or the Immediate Parent to the extent such dispute, litigation, investigation or proceeding involves the Project, (v) the occurrence of any force majeure event under any Project Document that could reasonably be expected to have a Material Adverse Effect, or (vi) the occurrence of any Forced Outage lasting for a period of more than 168 continuous hours;

(b) Promptly after (i) delivery to a Material Project Party pursuant to a Material Project Document, copies of all notices and other documents relating to any material dispute, demand for liquidated damages, failure by such Project Party to perform any of its material covenants or obligations under such Material Project Document, termination of such Material Project Document or a force majeure event under such Material Project Document that could reasonably be expected to cause the Conversion Date not to occur by the Outside Delivery Date, and (ii) such documents become available, copies of all amendments of any Material Project Document (if not otherwise provided to the Administrative Agent under this Agreement) and all notices and other documents delivered to the Borrower by any Material Project Party relating to any material dispute, demand for liquidated damages, failure by the Borrower to perform any of its material covenants or obligations under any Material Project Document, termination of such Material Project Document or a force majeure event under such Material Project Document that could reasonably be expected to cause the Conversion Date not to occur by the Outside Delivery Date;

(c) No later than 60 days after the end of each fiscal quarter, copies, certified by the Borrower to be true, complete and correct of each Part B Approval received by the Borrower during such fiscal quarter;

(d) Promptly after issuance thereof, notice of issuance of each notice to proceed under the Construction Contract (and copies thereof), and promptly upon receipt thereof, copies of the "punch list" under the Construction Contract and any final "as built" drawings;

(e) Promptly upon the occurrence thereof, notice of the "Effective Date" under the PPA and the Initial Delivery Date; and

(f) No later than 5 Business Days prior to the expected occurrence thereof, notice of the expected date of Substantial Completion and each material performance test to be performed under the PPA and Construction Contract (and, following the performance thereof, the results of such tests).

SECTION 5.12. Use of Proceeds.

(a) The Borrower used the proceeds of the Term Loans prior to the Funding and Repricing Date solely to pay, or to reimburse the payment of, Project Costs.

(b) The Borrower shall use the proceeds of the Letter of Credit Loans solely to reimburse the applicable Issuing Lender as contemplated by Section 2.03.

(c) The Borrower shall use the proceeds of the Incremental Term Loans solely to fund a one-time Restricted Payment and may use such proceeds to pay fees, expenses and costs incurred in connection with the First Amendment.

SECTION 5.13. Security. The Borrower shall from time to time and shall take or cause to be taken all action reasonably required to preserve and maintain the security interests (and the priority of such security interests) in the Collateral granted under the Security Documents. The Borrower shall execute, file and record or cause to be executed, filed and recorded any and all further instruments (including financing statements, continuation statements and similar statements with respect to any Security Document) as reasonably requested by the Administrative Agent for such purpose, including the payment of all associated fees and other charges in connection therewith. The Borrower shall discharge any Lien (other than Permitted Encumbrances) on the Collateral to which it has an interest. The Borrower shall, within five Business Days of the Closing Date, deliver to the Collateral Agent the Assignment of Proceeds.

SECTION 5.14. Further Assurances. The Borrower shall execute, acknowledge where appropriate, and deliver, and cause to be executed, acknowledged where appropriate, and delivered, from time to time promptly at the reasonable request of any Agent all such instruments and documents as are necessary or appropriate to (i) cure any ambiguity or to correct or supplement any provision contained therein which is or appears to be inconsistent with any other provisions contained in such Financing Document or in any other Financing Document (including without limitation any administrative errors or omissions) and (ii) correct any typographical or other similar errors that do not modify the intended rights and obligations of the parties thereto.

SECTION 5.15. Gas Contracts and Approved Affiliate Contracts The Borrower shall enter into the Gas Interconnection and Supply Agreement, the Special Facilities Agreement and the Gas Services Agreement, in each case, no later than the time reasonably expected to be required in order to permit the Conversion Date to occur no later than the Outside Delivery Date and shall, in connection therewith, take commercially reasonable efforts to cause the counterparty thereto to execute a Consent to Assignment. The Borrower shall cause the counterparties to the Shared Facilities Agreement, Easement Agreement and Water Rights Agreement to execute a Consent to Assignment concurrently with or promptly following the execution of each such Material Project Document.

SECTION 5.16. Auditors. The Borrower shall appoint and maintain an independent certified accountant of recognized national standing, or otherwise reasonably acceptable to the Administrative Agent, to audit financial statements.

SECTION 5.17. Permitted Swap Agreements. No later than 30 Business Days after the Closing Date, the Borrower shall enter into, and at all times thereafter maintain in full force and effect, one or more Permitted Swap Agreements mitigating interest rate risks as to a notional principal amount at least equal to 75% but no more than 100% of the anticipated aggregate principal amount of the Term Loans projected to be outstanding on the Conversion Date. Such Permitted Swap Agreements shall be documented pursuant to customary International Swaps and Derivatives Association (ISDA) agreements, and shall be otherwise satisfactory in form and substance to the Administrative Agent, acting reasonably. The obligations of the Borrower to each counterparty to a Permitted Swap Agreement under such Permitted Swap Agreement shall be secured *pari passu* with the Loans pursuant to the Security Documents.

SECTION 5.18. Accounts. The Borrower shall cause all Project Revenues received by the Borrower to be deposited into the Revenue Account in accordance with the Collateral Agency Agreement.

SECTION 5.19. Insurance Proceeds and Condemnation Proceeds. All Insurance Proceeds and Condemnation Proceeds shall be applied as provided in this Section 5.19 and in accordance with the Collateral Agency Agreement.

(a) The Borrower shall deposit into the Insurance/Condemnation Proceeds Account all Insurance Proceeds received following an Event of Damage and all Condemnation Proceeds received following an Event of Taking.

(b) If the Insurance Proceeds or Condemnation Proceeds result from a loss that is not a Total Loss, to the extent that the Permitted Bridge Prepayment Conditions have been satisfied, such Insurance Proceeds and Condemnation Proceeds shall be deposited first, pursuant to Section 3.02(f) of the Collateral Agency Agreement, in the Principal Payment Account in amounts required to prepay the principal of and accrued interest on any applicable Insurance/Condemnation Proceeds Bridge Indebtedness, and any balance, if arising from a Minor Loss, shall be deposited into (i) the Construction Account if such proceeds are received on or prior to the Conversion Date and shall be applied by the Borrower in accordance with Section 3.02(a) of the Collateral Agency Agreement, or (ii) the Revenue Account in accordance with Section 3.02(e) of the Collateral Agency Agreement if such proceeds are received after the Conversion Date and shall be applied by the Borrower to restore or repair the Project, or, if (in the case of Condemnation Proceeds) the failure to restore or repair the Project would not reasonably be expected to have a Material Adverse Effect, for any purposes at the discretion of the Borrower otherwise consistent with Section 3.03(b) of the Collateral Agency Agreement.

(c) If the Insurance Proceeds or Condemnation Proceeds result from a loss that is not a Minor Loss or a Total Loss and are not applied pursuant to Section 5.19(b) above, such proceeds shall be retained within the Insurance/Condemnation Proceeds

Account and used to restore or repair the Project if the Borrower certifies in form and substance reasonably satisfactory to the Administrative Agent (in consultation with the Independent Engineer) that no Event of Default (other than as a result of an Event of Taking or Event of Damage for which such proceeds have or will be paid) has occurred and is continuing or will occur as a result of such restoration or repair and that funds are available to meet the Borrower's obligations under the Financing Documents while the Project is being restored or repaired. If any such proceeds remain in the Insurance/Condemnation Proceeds Account 18 months after the receipt thereof and are not reasonably expected to be applied within 6 months to satisfy contractual commitments entered into in connection with the restoration or repair of the Project, such remaining proceeds shall be used to prepay the principal amount of Loans pursuant to Section 2.09(b); provided, however, that no such prepayment shall be required if such remaining proceeds are in the amount of \$5,000,000 or less. Any proceeds remaining in the Insurance/Condemnation Proceeds Account following the application of funds required above shall be deposited into (i) the Construction Account at any time on or prior to the Conversion Date or (ii) the Revenue Account at any time after the Conversion Date, in each case to be applied as set forth in the Collateral Agency Agreement.

(d) If the Insurance Proceeds or Condemnation Proceeds result from a Total Loss, such Insurance Proceeds shall be used to prepay the principal amount of Loans pursuant to Section 2.09(b).

SECTION 5.19. Operating Budget.

(a) The Borrower shall, no later than 45 days after the Conversion Date and no later than 45 days before the commencement of each calendar year thereafter, submit a proposed annual Operating Budget with respect to such calendar year (or, in the case of the first Operating Budget in respect of the remaining portion of the calendar year) for the prior review and approval by the Administrative Agent (in consultation with the Independent Engineer), such approval not to be unreasonably withheld or delayed. In the event that, pursuant to the immediately preceding sentence, the Operating Budget is not approved by the Administrative Agent in consultation with the Independent Engineer (which approval shall not be unreasonably withheld or delayed) prior to commencement of the applicable calendar year or the Borrower has not submitted a proposed annual Operating Budget in accordance with the terms and conditions herein, the Project may continue to operate in accordance with the Operating Budget for the immediately preceding calendar year, as increased by 10% of the total Operating and Maintenance Expenses therein for so long as the annual Operating Budget for the operating year in question is not so approved by the Administrative Agent. Copies of each final Operating Budget adopted shall be furnished to the Independent Engineer and the Administrative Agent promptly upon its adoption.

(b) Operating and Maintenance Expenses shall be made substantially in accordance with the Operating and Maintenance Expenses set forth in such Operating Budget. During any fiscal year in which an Operating Budget is in effect, the Borrower may, without the consent of the Administrative Agent, (i) pay Emergency Expenses or (ii) in addition to Emergency Expenses, expend any amount or incur any obligations for Operating and Maintenance Expenses during any calendar year in excess of the amount provided therefor in

such Operating Budget so long as such expenditure or obligation (1) does not exceed by more than 10% the total amount of Operating and Maintenance Expenses set forth in such Operating Budget that are not recoverable by the Borrower from payments by the Power Purchaser under the Power Purchase Agreement or (2) is in respect of real property taxes, unbudgeted amounts required to be paid to comply with Applicable Law or insurance premiums.

(c) The Borrower may from time to time adopt an amended Operating Budget for the remainder of any calendar year to which the amended Operating Budget applies, and such amended Operating Budget shall be effective as the Operating Budget for the remainder of such calendar year (i) upon the consent of the Administrative Agent to such amendment (in consultation with the Independent Engineer) or (ii) upon adoption of any amendment to the Operating Budget that implements any changes described in Section 5.20(a).

SECTION 5.21. Updated Surveys and Title Policies.

(a) The Borrower shall promptly, and in any event no later than 90 days following Final Completion, deliver to the Administrative Agent a survey of the Project Site certified to the Borrower, the Title Company and the Administrative Agent, updated, with respect to all relevant requirements and information required for the initial Survey, to a date within 90 days after Final Completion.

(b) The Borrower shall promptly, and in any event no later than 90 days after Final Completion, cause the Title Company to deliver to the Administrative Agent an endorsement of the Title Policy deleting: (i) any exception in connection with pending disbursements; (ii) any exception with respect to recorded or unrecorded mechanics' and materialmen's liens; and (iii) any standard general survey exception.

ARTICLE VI

NEGATIVE COVENANTS

The Borrower covenants and agrees with the Lenders, each Issuing Lender and the Agents that until the Termination Date:

SECTION 6.01. Fundamental Changes. The Borrower shall not (i) materially amend, modify in any respect or terminate, or agree to or permit any such material amendment, modification or termination of the Borrower's articles of incorporation, certificate of formation, by-laws, operating agreement and/or limited liability company agreement except to the extent otherwise permitted by this Section 6.01, (ii) change its legal form, provided that the Borrower may convert its form to another Delaware entity if (A) the Immediate Parent shall grant a Lien to the Collateral Agent in the ownership interests in the Borrower pursuant to the Pledge Agreement or another pledge agreement having substantially similar terms and (B) such change of legal form would not result in a Default or Event of Default or a default under any Material Project Document that would reasonably be expected to have a Material Adverse Effect, (iii) enter into any transaction of merger or consolidation, (iv) change the nature of its business,

(v) liquidate, windup or dissolve itself or (vi) acquire all or any substantial part of the assets or any class of stock of (or other equity interest in) any other Person.

SECTION 6.02. Subsidiaries. The Borrower shall not create, acquire or permit to exist any Subsidiaries.

SECTION 6.03. Indebtedness: Guarantees. The Borrower shall not create, incur, assume or permit to exist or otherwise be or become liable with respect to any Indebtedness or any guarantees, other than Permitted Indebtedness and any guarantee that is Permitted Indebtedness or that is made pursuant to the Project Documents.

SECTION 6.04. Liens, Etc. The Borrower shall not create, incur, assume or permit to exist any Lien upon or with respect to any of its properties, assets or revenues except for Permitted Encumbrances, and shall not consent to the Immediate Parent creating, incurring assuming or suffering to exist any Liens upon or with respect to the Pledged Collateral, except for Permitted Encumbrances.

SECTION 6.05. Investments, Advances, Loans. The Borrower shall not make or instruct the Collateral Agent to make any Investments other than in the Project Assets and Permitted Investments.

SECTION 6.06. Business Activities. The Borrower shall not engage at any time in any business other than the Development and any activities incidental thereto.

SECTION 6.07. Restricted Payments. The Borrower shall not make any Restricted Payment, except (a) payments in respect of Permitted Bridge Indebtedness to the extent that the Permitted Bridge Prepayment Conditions have been satisfied, (b) payments from the Distribution Account; (c) payments comprising a Permitted Construction Account Distribution Amount, in each case as set forth in the Collateral Agency Agreement and to the extent that the following conditions have been satisfied (as certified by the Borrower) and (d) the Restricted Payment on the Funding and Repricing Date using the proceeds of the Incremental Term Loans:

(i) no Default or Event of Default exists or would exist as a result of such Restricted Payment;

(ii) the proposed date of the Restricted Payment is on, or no later than 60 Business Days after, a scheduled principal repayment date, in the case of payments from the Distribution Account;

(iii) for distributions from the Distribution Account only, the Borrower provides the Administrative Agent a certificate confirming that it has satisfied a DSCR for the previous twelve month period (or in the first year following the Conversion Date, the period since the Conversion Date) of at least 1.20X and setting out its calculations thereof; and

(iv) in the case of the distribution of any Permitted Construction Account Distribution Amount, the Borrower provides the Administrative Agent a

certificate confirming that it will satisfy a 12-month projected DSCR of at least 1.20X and setting out its calculations thereof and attaching updated Base Case Projections satisfactory to the Administrative Agent taking into account the results of performance tests in connection with the achievement of the Initial Delivery Date.

SECTION 6.08. Asset Dispositions. The Borrower shall not convey, sell, lease, transfer or otherwise dispose of, in one transaction or a series of transactions, all or any part of the Project Assets in excess of \$10,000,000 per year in the aggregate. Notwithstanding the foregoing, the Borrower shall be entitled to convey, sell, lease, transfer or otherwise dispose of (i) sales of capacity, energy and related services in accordance with the Project Documents and in the ordinary course of business; (ii) assets no longer used or useful in its business in the ordinary course of the Borrower's business; (iii) Permitted Investments; and (iv) Restricted Payments permitted pursuant to Section 6.07 and payments in respect of Indebtedness expressly permitted to be made under the Financing Documents.

SECTION 6.09. Accounting Changes. The Borrower shall not change its Fiscal Year or make any other significant change in accounting treatment and reporting practices except as required or permitted by Applicable Accounting Requirements or Applicable Law.

SECTION 6.10. Change Orders; Amendments to Project Documents. The Borrower shall not:

(a) without the prior written consent of the Required Lenders (in consultation with the Independent Engineer) enter into any Change Order; provided, that, the Borrower may, without the consent of the Required Lenders, enter into any Change Order, if the Borrower certifies to the Administrative Agent that:

(i) any related changes to the amounts payable under the Construction Contract (A) will be funded with Additional Equity Contributions, Permitted Subordinated Debt, insurance proceeds, liquidated damages or condemnation proceeds, in each case to the extent actually received by Borrower or funded through the proceeds of Permitted Bridge Indebtedness and permitted to be so applied pursuant to the Financing Documents or (B) will have a value below \$10,000,000 individually or \$30,000,000 in the aggregate, and

(ii) after giving effect to such Change Order, the Conversion Date is reasonably expected to occur on or prior to the Outside Delivery Date.

To the extent the Borrower enters into any such Change Order or agrees to any such payment, the Construction Budget and the Construction Schedule shall be revised to reflect the terms of such Change Order or payment;

(b) materially amend, modify or supplement in any respect or terminate, or agree to or permit any such amendment, modification, supplement or termination of, or grant any waiver of material and timely performance of, or agree to the assignment of the rights or obligations of any Project Party to, any Material Project Document except:

(i) in the case of any amendment to or modification of the Construction Contract, such amendment or modification is adopted in compliance with the requirements described in Section 6.10(a);

(ii) any amendment, modification or waiver permitted pursuant to the provisions described in Section 6.10(e); or

(iii) (x) in the case of the PPA or the Construction Contract (except to the extent covered by (i) above), the Large Generator Interconnection Agreement or the Gas Contracts, the Required Lenders shall have provided their consent (not to be unreasonably withheld or delayed), (y) in the case of the Large Generator Interconnection Agreement or any Gas Contract, as may be required by Applicable Law, or (z) in the case of each other Material Project Document, the Borrower certifies to the Administrative Agent and the Lenders that such amendment, modification, waiver, termination or assignment, could not reasonably be expected to have a Material Adverse Effect;

(c) except pursuant to the Security Documents or the assignment of the Gas Services Agreement to PG&E pursuant to the terms of the PPA, assign any of its rights or obligations under any Material Project Document;

(d) enter into any Additional Project Document without (i) the prior approval of the Administrative Agent (not to be unreasonably withheld or delayed) in consultation with the Independent Engineer and (ii) delivery of such Ancillary Documents relating to such Additional Project Document as the Administrative Agent may reasonably request; provided, that, except in the case of any replacement PPA or replacement Construction Contract pursuant to Section 7.01(o), the Borrower shall be required to use only commercially reasonable efforts to obtain a consent and agreement from each Project Party under such Additional Project Document and any other Person guaranteeing or otherwise supporting such Project Party's obligations under such Additional Project Document; and

(e) permit any Project Party to a Material Project Document, to substitute, diminish or otherwise replace any performance security, letter of credit or guarantee supporting such Project Party's obligations thereunder (except if such permission could not reasonably be expected to have a Material Adverse Effect), except to the extent that such counterparty is permitted to do so without the consent of the Borrower under the express terms of such Material Project Document.

Promptly after the execution and delivery of any of the following, the Borrower shall furnish the Administrative Agent with certified copies of, as applicable, (i) all material amendments, modifications or supplements of any Project Document and (ii) all Additional Project Documents.

SECTION 6.11. Transactions with Affiliates. The Borrower shall not directly or indirectly enter into any transaction with or for the benefit of an Affiliate (including guarantees and assumptions of obligations of an Affiliate), except (i) any tax sharing agreements

with Affiliates disclosed prior to the Closing Date, (ii) upon terms disclosed to the Administrative Agent and no less favorable to the Borrower than would be obtained in a comparable transaction with a Person that is not an Affiliate or (iii) the Borrower PSA, the Easement Agreement, the Shared Facilities Agreement, the Water Rights Agreement, the Services Agreement and the Administrative Services Agreement (the "Approved Affiliate Contracts").

SECTION 6.12. Accounts. The Borrower shall not, maintain any bank accounts other than (a) the Accounts and the Permitted Borrower Bank Account and (b) until December 8, 2010 only, Account No. 4426939162 at Bank of America, N.A., to the extent that such account has no greater than \$200,000 on deposit or credited to it at any time.

SECTION 6.13. Acceptance. The Borrower shall not approve the results of any performance test under the Construction Contract or issue any certificate acknowledging, or otherwise declare the occurrence of, Substantial Completion or Final Completion of the Project or the Initial Delivery Date without the confirmation of the Independent Engineer that the Project has met or exceeded the respective criteria required thereof.

SECTION 6.14. Hedging Agreements. The Borrower shall not enter into any Hedging Agreements except Permitted Swap Agreements.

ARTICLE VII

EVENTS OF DEFAULT

SECTION 7.01. Events of Default. Each of the following events shall constitute an “Event of Default”:

(a) Borrower Payments. The Borrower shall fail to pay when due: (i) any principal of any Loan or reimbursement obligation in respect of any Letter of Credit Disbursement when and as the same shall become due and payable, whether at the due date thereof or, in the case of payments of principal due at a date fixed for prepayment thereof, at a date fixed for prepayment thereof, or otherwise; or (ii) (A) any interest on any Loan or any fee payable under this Agreement or under any other Financing Document when and as the same shall become due and payable, and such failure shall continue unremedied for a period of 3 Business Days or (B) any other amount (other than an amount referred to in clause (i) or (ii)(A) of this Section 7.01(a)) payable under this Agreement or under any other Financing Document when and as the same shall become due and payable, and such failure shall continue unremedied for a period of 3 Business Days; or

(b) Contingent Equity Contribution. The Parent shall fail to pay when due any Contingent Equity Contribution pursuant to the Equity Contribution Agreement (whether directly or through a drawing on the Contingent Equity LC) and such failure shall continue unremedied for a period of 3 Business Days after the date on which payment of a corresponding amount was due under the Equity Contribution Agreement; or

(c) Misrepresentation. Any representation or warranty made by either Loan Party or the Parent in this Agreement or any other Financing Document, or in any certificate furnished to any Secured Party by or on behalf of either Loan Party or the Parent in accordance with the terms hereof and thereof, shall prove to have been false or misleading in any material respect as of the time made, confirmed or furnished; provided that such misrepresentation or such false statement shall not constitute an Event of Default if such condition or circumstance is (i) subject to cure and (ii) the facts or conditions giving rise to such misstatement are cured in such a manner as to eliminate such misstatement within 30 days after the Administrative Agent giving written notice thereof to such Loan Party or the Parent; or

(d) Covenants. (i) The Borrower shall fail to observe or perform any covenant or agreement contained in (A) clause (a) of Section 5.01 or (B) Article VI or (ii) any Loan Party or the Parent shall fail to observe or perform any other covenant or agreement under the Financing Documents, and in each case such failure shall continue unremedied for a period of 30 days after the earlier of (i) written notice thereof from the Administrative Agent or any Lender and (ii) either Loan Party or the Parent having knowledge thereof; provided, that, if such failure is not capable of remedy within such 30-day period, such 30-day period shall be extended to a total period of 60 days so long as (x) such Default is subject to cure, and (y) the Loan Party or the Parent, as applicable, is diligently pursuing a cure; or

(e) Indebtedness. (i) Either Loan Party defaults in any payment when due of principal of, or interest on, or premium or make-whole amount in respect of, any Indebtedness of such Loan Party (other than Indebtedness under the Financing Documents) that is outstanding in the aggregate principal amount (or notional principal amount) in excess of \$10,000,000 and such default continues beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness was evidenced or created, or (ii) either Loan Party defaults in the observance or performance of any other agreement or condition relating to any such Indebtedness in the amounts set forth in clause (i) or contained in any instrument or agreement evidencing, securing or relating to such Indebtedness, beyond the period of grace, if any provided therein, or any other event occurs or condition exists, the effect of which default or other event or condition described in this clause (ii) is to cause such Indebtedness to become due (whether by redemption, purchase, offer to purchase, or otherwise) prior to its stated maturity or to realize upon any collateral given as security therefor; or

(f) Involuntary Proceeding. There shall be commenced against any Subject Party in a court of competent jurisdiction (i) any case or other proceeding of a nature referred to in clause (g) of this Section 7.01 that (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains unstayed, undismissed or undischarged for a period of 90 days, or (ii) any case or other proceeding seeking issuance of a warrant of attachment, execution, distraint or similar process against all or, any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, or stayed within 90 days from the entry; provided that, no Event of Default shall occur as a result of such circumstance in respect of the Power Purchaser or the Contractor to the extent that the Borrower shall have

entered into a replacement Material Project Document with an alternative Material Project Party on the terms and within the applicable time period set forth in Section 7.01(o); or

(g) Voluntary Proceeding. Any Subject Party shall (i) commence any case or other proceeding or file any petition (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, receivership or similar law, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts or substantial part of its assets or (B) seeking or applying for or consenting to the appointment of a receiver, trustee, custodian, sequestrator, conservator or other similar official for it or for all or any substantial part of its assets, shall make a general assignment for the benefit of its creditors, (ii) take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in (including any failure to contest), any of the acts set forth in clause (i) above or clause (f) of this Section 7.01, (iii) make an assignment for the benefit of creditors or take any other similar action for the protection or

benefit of creditors or (iv) take any corporate or partnership action for the purpose of effecting any of the foregoing; provided that, no Event of Default shall occur as a result of such circumstance in respect of the Power Purchaser or the Contractor to the extent that the Borrower shall have entered into a replacement Material Project Document with an alternative Material Project Party on the terms and within the applicable time period set forth in Section 7.01(o); or

(h) Inability to Pay Debts when Due. Any Subject Party shall generally not, or shall be unable to, or shall admit in writing its inability to, pay its debts as they become due; provided that, no Event of Default shall occur as a result of such circumstance in respect of the Power Purchaser or the Contractor to the extent that the Borrower shall have entered into a replacement Material Project Document with an alternative Material Project Party on the terms and within the applicable time period set forth in Section 7.01(o); or

(i) Judgments. Any final non-appealable judgment or order for (i) (A) the payment of money in excess of \$10,000,000 in the aggregate shall be rendered against either Loan Party or (B) providing non-monetary relief that has had or could reasonably be expected to have a Material Adverse Effect, and (ii) such judgment or judgments have not been discharged, bonded, dismissed or stayed within 60 days of the date of entry of any such judgment; or

(j) Liens. Any Security Document (i) ceases to be in full force and effect, except in accordance with its terms, or ceases to be effective to grant a first priority perfected Lien in favor of the Collateral Agent subject to Permitted Encumbrances on the Collateral described therein (other than an immaterial portion thereof), other than in accordance with the terms of such Security Document or as a result of actions or failure to act by the Collateral Agent, the Administrative Agent or any Lender; or

(k) ERISA. If (i) any Plan shall fail to satisfy the minimum funding standards of ERISA or the Code for any plan year or part thereof or a waiver of such standards or extension of any amortization period is sought or granted under Section 412 of the Code, (ii) any Plan is terminated, (iii) a trustee has been appointed to administer or terminate any Plan, (iv) the aggregate "amount of unfunded benefit liability" (within the meaning of Section 4001(a)(18) of ERISA) under all Plans, determined in accordance with Title IV of ERISA, shall exceed \$10,000,000, (v) a Lien under the Code or ERISA is imposed on the assets of the Borrower on account of any Plan, (vi) a "reportable event" (within the meaning of Section 4043(c) of ERISA occurs, or (vii) the Borrower incurs any liability in connection with a withdrawal from, or the insolvency or reorganization of, a Multiemployer Plan, and any such event or events described in clauses (i) through (vii) above, either individually or together with any other such event or events, would result in a Material Adverse Effect; or

(l) Change of Control. Any Change of Control shall occur; or

(m) Conversion Date. The Conversion Date shall not have occurred on or prior to the Outside Delivery Date; or

(n) Financing Documents. Any Financing Document or any material provision of any Financing Document (i) is declared in a final non-appealable judgment by a court of competent jurisdiction to be illegal or unenforceable, (ii) ceases to be valid and binding or in full force and effect or is materially impaired (in each case, except in connection with its expiration in accordance with its terms in the ordinary course (and not related to any default thereunder)) or (iii) is terminated or repudiated in writing by any party other than a Lender or an Agent; or

(o) Material Project Documents. (i) any Material Project Document shall at any time for any reason cease to be valid and binding or in full force and effect or shall be materially impaired (in each case, except in connection with its expiration for reasons other than any default thereunder) or (ii) the Borrower or any Material Project Party shall default in any material respect in the performance or observance of any covenant or agreement contained in any Material Project Document to which it is a party, and such default has continued beyond any applicable grace period specified therein; provided, that, if the default under clause (ii) above is by a Material Project Party, it shall not give rise to an Event of Default if (1) within (A) 30 days for the PPA, (B) 90 days for the Construction Contract and (C) 120 days for each other Material Project Document, of such default, the Borrower replaces such Material Project Document with a replacement agreement (x) substantially identical to or (y) in form and substance reasonably satisfactory to the Required Lenders, with a party of comparable or better standing in the applicable industry, and the Borrower causes such replacement agreement to become subject to the Lien granted in favor of the Secured Parties under the Security Documents and, if applicable, delivers or causes to be delivered all Ancillary Documents requested by the Administrative Agent with respect to such replacement contract and (2) during the applicable periods mentioned above with respect to the PPA, Construction Contract and each other Material Project Documents, there is no material impairment in the value of the Collateral or the Liens created therein in favor of the Collateral Agent for the benefit

of the Secured Parties (other than as a result of the default under such Material Project Document).

SECTION 7.02. Remedies. Upon the occurrence and during the continuance of any Event of Default (other than an Event of Default with respect to the Borrower described in clause (f) or (g) of Section 7.01), and at any time thereafter during the continuance of such Event of Default, the Administrative Agent shall, at the request of the Required Lenders, take any or all of the following actions, at the same or different times: (i) terminate the Term Loan Commitments, and thereupon the Term Loan Commitments shall terminate immediately; and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, and the Borrower shall deposit cash collateral in respect of all or any portion of the Letter of Credit Exposure of each Class pursuant to Section 2.03(j), in each case, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (f) or (g) of Section 7.01, the Term Loan Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower, shall automatically become due and payable, and cash collateral pursuant to Section 2.03(j) shall automatically become due and payable, in each case, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and during the continuance of any Event of Default, in addition to the exercise of remedies set forth in clauses (i) and (ii) above, each Secured Party shall be, subject to the terms of the Collateral Agency Agreement, entitled to exercise the rights and remedies available to such Secured Party under and in accordance with the provisions of the other Financing Documents to which it is a party or any applicable law.

ARTICLE VIII

THE AGENTS

SECTION 8.01. Appointment. Each of the Lenders and each of the Issuing Lenders hereby irrevocably appoints the Collateral Agent and

the Depository Bank (in accordance with the terms of the Collateral Agency Agreement), and each of the Lenders and each of the Issuing Lenders hereby irrevocably appoints the Administrative Agent, to act on its behalf as its agent hereunder and under the other Financing Documents and authorizes each Agent in such capacity, to take such actions on its behalf and to exercise such powers as are delegated to it by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

SECTION 8.02. Other Business. The Administrative Agent shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not Administrative Agent, and such Person and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with either Loan Party or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

SECTION 8.03. Duties and Obligations. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Financing Documents. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Financing Documents that the Administrative Agent is required to exercise in writing by the Required Lenders, and (c) except as expressly set forth herein and in the other Financing Documents, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to either Loan Party or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders or in the absence of its own gross negligence or willful misconduct as proven in a non-appealable judgment by a court of competent jurisdiction. The Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default unless and until written notice thereof is given to the Administrative Agent by either Loan Party or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Financing Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Financing Document or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein or therein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 8.04. Reliance. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Loan Parties), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05. Sub-Agents. The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

SECTION 8.06. Resignation. The Administrative Agent may resign at any time by notifying the Lenders, the Issuing Lenders and the Borrower. Upon any such resignation, the Required Lenders shall have the right, with the consent of the Borrower (such consent not to be unreasonably withheld), to appoint a successor. If no successor shall have been so appointed by the Required Lenders and approved by the Borrower and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may, on behalf of the Lenders and the Issuing Lenders, appoint a successor Administrative Agent, which shall be a Lender with an office in the United States, an Affiliate of a Lender or a financial institution with an office in the United States having a combined capital and surplus that is not less than \$500,000,000, provided that if the Administrative Agent is resigning, the retiring Administrative Agent's resignation shall nevertheless become effective upon such 30 days' notice and the Lenders shall assume and perform all of the duties of the Administrative Agent hereunder until such time, if any, as the Required Lenders appoint a successor agent as provided for above. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent.

SECTION 8.07. Lender Acknowledgments. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Financing Document or any related agreement or any document furnished hereunder or thereunder.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Notices. Except as otherwise expressly provided herein or in any Financing Document, all notices and other communications provided for hereunder or thereunder shall be (i) in writing (including facsimile) and (ii) sent by facsimile or overnight courier (if for inland

delivery) or international courier (if for overseas delivery) to a party hereto at its address and contact number specified in below, or at such other address and contact number as is designated by such party in a written notice to the other parties hereto:

(e) Borrower: NRG Marsh Landing LLC
211 Carnegie Center
Princeton, NJ 08540
Attn: G. Gary Garcia
Tel: 609-524-5366
Fax: 609-524-4640
Email: gary.garcia@nrgenergy.com

with a copy to:

NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540
Attn: General Counsel
Tel: 609-524-4598
Fax: 609-524-4589
Email: david.hill@nrgenergy.com

(f) Administrative Agent: The Royal Bank of Scotland plc, as Administrative Agent
600 Washington Boulevard
Stamford, CT 06901
Attn: Simon Mockford, Managing Director, TPM, Power & Infrastructure Finance
Tel: 203-897-3719
Fax: 203-873-3365
Email: simon.mockford@rbs.com

with a copy to:

The Royal Bank of Scotland plc,
as Administrative Agent
600 Washington Boulevard
Stamford, CT 06901
Attn: Yolette Salnave
Tel: 203-897-7652
Fax: 203-873-5300
Email: yolette.salnave@rbs.com

(g) If to any Issuing Lender, as notified by such Issuing Lender to the Administrative Agent and the Loan Parties.

(h) If to a Lender, to it at its address (or facsimile number) set forth in its Administrative Questionnaire.

(i) Collateral Agent and Depositary Bank:

Deutsche Bank Trust Company Americas
60 Wall Street
MS: NY 60-1623
New York, NY 10005
Attn: Project Finance Account Manager / NRG Marsh Landing
Fax: 732-578-4636
Email: li.jiang@db.com

All notices and communications shall be effective when received by the addressee thereof during business hours on a business day in such Person's location as indicated by such Person's address in paragraphs (a) to (e) above, or at such other address as is designated by such Person in a written notice to the other parties hereto.

SECTION 9.02. Waivers; Amendments.

(a) No Deemed Waivers; Remedies Cumulative. No failure or delay on the part of any Agent, Issuing Lender or Lender in exercising any right, power or privilege hereunder or under any other Financing Document and no course of dealing between the Loan Parties, or any of its Affiliates, on the one hand, and any Agent, Issuing Lender and Lender on the other hand, shall impair any such right, power or privilege or operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Financing Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Financing Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which any party thereto would otherwise have. No notice to or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Agent, Issuing Lender or Lender to any other or further action in any circumstances without notice or demand.

(b) Amendments. Neither this Agreement nor any other Financing Document (other than (x) any Security Document, each of which may only be waived, amended or modified in accordance with the Collateral Agency Agreement and (y) any Permitted Swap Agreement, each of which may only be waived, amended or modified in accordance with its terms) nor any provision hereof or thereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative

Agent with the consent of the Required Lenders; provided that no such agreement shall (i) increase any Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or Letter of Credit Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan under Section 2.08(a) or in respect of the Loans arising as a result of a Letter of Credit Disbursement, or of any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment under Section 2.07(a), without the written consent of each Lender affected thereby, (iv) change Section 2.16(c) or 2.16(d) without the consent of each Lender affected

thereby, (v) change any of the provisions of this Section or the percentage in the definition of the term "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (vi) with respect to the Interest Period for any Eurodollar Loan, amend, waive or modify the requirement that such Loan be one, two, three or six months in duration without consent of each Lender affected thereby, (vii) alter the obligations of the Borrower to make mandatory prepayments of the Loans without the consent of each Lender affected thereby or (viii) release all or substantially all of the Collateral or release any Loan Party or the Parent from its obligations under the Financing Documents without the written consent of each Lender (except to the extent specifically provided therefor in the Financing Documents); and provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of any Agent or any Issuing Lender hereunder without the prior written consent of the such Agent or such Issuing Lender, as the case may be. Notwithstanding anything herein to the contrary, the Loan Parties and the Agents may (but shall not be obligated to) amend or supplement any Financing Document (other than any Permitted Swap Agreements) without the consent of any Lender or any Issuing Lender (1) to cure any ambiguity, defect or inconsistency which is not material, (2) to make any change that would provide any additional rights or benefits to the Lenders, (3) to make, complete or confirm any grant of Collateral permitted or required by any of the Security Documents, including to secure any Permitted Indebtedness that can be secured by a Permitted Encumbrance on the Collateral, or any release of any Collateral that is otherwise permitted under the terms of the Credit Agreement and the Security Documents, (4) to revise any schedule to reflect any change in notice information, (5) to revise the account numbers for each of the Accounts as may be necessary to reflect the replacement of the Collateral Agent or as may be required by internal procedures of the Collateral Agent or (6) to revise the name of the Collateral Agent on any UCC financing statement or other Security Document as may be necessary to reflect the replacement of the Collateral Agent. Where any Financing Document expressly provides that an Agent may waive, amend or modify such Financing Document or a provision thereof, or consent to any act or action of the Borrower, the Administrative Agent or such other Agent may do so without the further consent of the Lenders and any such waiver, amendment, modification, or consent that is set forth in a writing signed by the Administrative Agent or such other Agent, as applicable, shall be binding on the Agents and the Lenders.

Each Lender shall be bound by any waiver, amendment, or modification authorized in accordance with this Section 9.02 regardless of whether its Note shall have been marked to make reference thereto, and any waiver, amendment, or modification authorized in accordance with this Section 9.02 shall bind any Person subsequently acquiring a Note from such Lender, whether or not such note shall have been so marked. Any agreement or agreements that the Administrative Agent executes and delivers to waive, amend, or modify any Financing Document in accordance with this Section 9.02 shall be binding on the Lenders and each of the Agents without the further consent of the Lenders or the other Agents.

SECTION 9.03. Expenses; Indemnity; etc.

(e) Costs and Expenses. The Borrower agrees to pay or reimburse each of the Agents, the Lead Arrangers, the Issuing Lenders and the Lenders for: (a) all reasonable

and documented out-of-pocket costs and expenses of the Agents and Lead Arrangers including the reasonable fees and expenses of Milbank, Tweed, Hadley & McCloy LLP, special New York counsel to the Lenders (or such other counsel that the Agents may select from time to time) and experts (including the Independent Engineer and the Insurance Advisor) engaged by the Agents or the Lenders from time to time which have been approved by the Borrower, in each case subject to limits to be agreed, in connection with (A) the negotiation, preparation, execution and delivery of this Agreement and the other Financing Documents and Project Documents and the extension of credit under this Agreement (whether or not the transaction contemplated hereby and thereby shall be consummated), (B) any amendment, modification or waiver of any of the terms of this Agreement or any other Financing Documents or Project Documents and (C) the syndication of Commitments or Loans prior to the Closing Date and the Funding and Repricing Date, (b) all out-of-pocket expenses incurred by any Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder, (c) all reasonable costs and expenses of the Lenders (including payment of the fees provided for herein) and the Agents (including counsels' fees and expenses and reasonable experts' fees and expenses, but limited to one counsel and one financial advisor to the Lenders) in connection with (i) any Default or Event of Default and any enforcement or collection proceedings resulting from such Default or Event of Default or in connection with the negotiation of any restructuring or "work-out" (whether or not consummated) of the obligations of the Borrower under this Agreement or the obligations of any Loan Party, Parent or Project Party under any other Financing Document or Project Document and (ii) the enforcement of this Section 9.03, (d) all costs, expenses, taxes, assessments and other charges incurred in connection with any filing, registration, recording or perfection of any security interest contemplated by any Security Document or any other document referred to therein and (e) all costs, expenses and other charges in respect of title insurance procured with respect to the Liens created pursuant to the Deed of Trust.

(f) Indemnification by the Borrower. The Borrower agrees to indemnify and hold harmless each Agent, each Issuing Lender and each Lender and their affiliates and their respective directors, officers, employees, administrative agents and controlling persons (each, an "Indemnified Party") from and against any and all losses, claims, damages and liabilities, joint or several, to which such Indemnified Party may become subject under any Applicable Law and related to or arising out of or in connection with the Transaction Documents or the transaction contemplated thereby and will reimburse any Indemnified Party for all expenses (including reasonable and documented counsel fees and expenses) as they are incurred in connection therewith. The Borrower shall not be liable under the foregoing indemnification provision to an Indemnified Party to the extent that (i) any loss, claim, damage, liability or expense is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's bad faith, gross negligence or willful misconduct, (ii) the Borrower's obligation to reimburse any such Indemnified Person is otherwise limited by the terms of the Financing Documents or (iii) successful claims are brought by any Loan Party or the Parent against any Lender or Agent arising from a Lender or Agent breach of its obligations under the Financing Documents. The Borrower agrees that (A) it waives any claim it may have against any Indemnified Party for breach of fiduciary duty arising under the Transaction Documents or alleged breach of fiduciary duty arising under the Transaction Documents and (B) no Indemnified Party shall have any liability (whether direct or indirect) to the Borrower in

respect of a fiduciary duty claim arising under the Transaction Documents or to any person asserting a fiduciary duty claim on behalf of the Borrower or any equity holders, employees or creditors, in each case, arising under the Transaction Documents. To the extent permitted by applicable law, no party shall assert, and each party hereby waives, any claim against the other party (including any Indemnified Party), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, any Loan or Letter of Credit or the use of the proceeds thereof.

(c) Indemnification by Lenders. To the extent that the Borrower fails to pay any amount required to be paid by it to any Agent or any Issuing Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to such Agent or such Issuing Lender, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against such Agent or such Issuing Lender in its capacity as such.

(d) Settlements; Appearances in Actions. The Borrower agrees that, without each Indemnified Party's prior written consent, it will not settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding in respect of which indemnification could be sought by or on behalf of such Indemnified Party under this Section (whether or not any Indemnified Party is an actual or potential party to such claim, action or proceeding), unless such settlement, compromise or consent includes an unconditional release of such Indemnified Party from all liability arising out of such claim, action or proceeding. In the event that an Indemnified Party is requested or required to appear as a witness in any action brought by or on behalf of or against the Borrower or any Affiliate thereof in which such Indemnified Party is not named as a defendant, the Borrower agrees to reimburse such Indemnified Party for all reasonable expenses incurred by it in connection with such Indemnified Party's appearing and preparing to appear as such a witness, including, without limitation, the reasonable and documented fees and disbursements of its legal counsel. In the case of any claim brought against an Indemnified Party for which the Borrower may be responsible under this Section 9.03, the Agents, Issuing Lenders and Lenders agree to execute such instruments and documents and cooperate as reasonably requested by the Borrower in connection with the Borrower's defense, settlement or compromise of such claim, action or proceeding.

SECTION 9.04. Successors and Assigns.

(a) Assignments Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that (i) the Borrower shall not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender and the Administrative Agent (and any attempted assignment or transfer by the Borrower without such consent shall be null and void), (ii) no assignments shall be made to a Defaulting Lender, and (iii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section 9.04. Nothing in this Agreement, expressed or implied, shall

be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Lenders and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may assign to one or more Persons all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitments and the Loans at the time owing to it) with the prior written consent of the Administrative Agent (which consent shall not be unreasonably withheld); provided that

(i) except in the case of an assignment to a Lender or an Affiliate or Approved Fund of a Lender (provided that the assigning Lender shall remain responsible for the performance of all obligations of such Approved Fund under the Financing Documents), the Borrower and, in the case of an assignment of all or a portion of any Letter of Credit Exposure of any Class, each Issuing Lender with respect to such Class in addition to the Borrower must give its prior written consent to such assignment (which consents shall not be unreasonably withheld);

(ii) except in the case of an assignment to a Lender or an Affiliate (or Approved Fund) of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment(s) or Loans of any Class, the amount of the Commitment(s) and Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$5,000,000 unless each of the Borrower and the Administrative Agent otherwise consent,

(iii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement, provided that this clause shall not be construed to prohibit the assignment of a proportionate part of the assigning Lender's rights and obligations in respect of one Class of Commitments or Loans;

(iv) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500; and

(v) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire and any tax documentation required hereunder;

provided further that any consent of the Borrower otherwise required under this paragraph shall not be required if any Event of Default has occurred and is continuing. Upon acceptance and recording pursuant to paragraph (d) of this Section 9.04, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to

the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.13, 2.14, 2.15 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (f) of this Section.

(c) Maintenance of Register by the Administrative Agent. The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices in the United States a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amount of the Loans and Letter of Credit Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Lenders and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower, and any Lender or Issuing Lender, as to its Commitment only, at any reasonable time and from time to time upon reasonable prior notice.

(d) Effectiveness of Assignments. Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(e) Limitations on Rights of Assignees. An assignee Lender shall not be entitled to receive any greater payment under Section 2.13, 2.14 or 2.15 than the assigning Lender would have been entitled to receive with respect to the interest assigned to such assignee, unless the Borrower's prior written consent has been obtained therefor. An assignee Lender shall not be entitled to the benefits of Section 2.15 to the extent such assignee fails to comply with Section 2.15(e).

(f) Participations. Any Lender may, without the consent of, but upon notice to the Borrower, the Administrative Agent or any Issuing Lender, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement and the other Financing Documents (including all or a portion of its Commitments and the Loans owing to it); provided that (i) such Lender's obligations under this Agreement and the other Financing Documents shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, each Issuing Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection

with such Lender's rights and obligations under this Agreement and the other Financing Documents. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and the other Financing Documents and to approve any amendment, modification or waiver of any provision of this Agreement or any other Financing Document; provided further that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (g) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.13, 2.14 and 2.15 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. Each Lender that grants a participation shall maintain a register on which it enters the name and address of each participant and the principal and interest amount of each participant's interest in the Loans held by it (the "Participant Register"). The entries in the Participant Register shall be conclusive, absent manifest error. The Participant Register shall be available for inspection by the Borrower and any Issuing Lender, at any reasonable time and from time to time upon reasonable prior notice to the applicable Lender.

(g) Limitations on Rights of Participants. A Participant shall not be entitled to receive any greater payment under Section 2.13, 2.14 or 2.15 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that is not a "United States person" within the meaning of Section 7701(a)(30) of the Code shall not be entitled to the benefits of Section 2.15 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.15(e) as though it were a Lender.

(h) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any such pledge or assignment to a Federal Reserve Bank (whether in the United States or any other jurisdiction), and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(i) No Assignments to or Affiliates. Anything in this Section to the contrary notwithstanding, no Lender may assign or participate any interest in any Loan or Letter of Credit Exposure held by it hereunder to either Loan Party or any Affiliate of either Loan Party without the prior written consent of each other Lender.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Lender or any Lender may have had notice or knowledge of any Default or Event of

Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Sections 2.13, 2.14, 2.15, 9.03, 9.14 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the First Amendment, the Fee Letters and any confidentiality agreements that have been separately entered into among any of the parties hereto (including their respective affiliates) constitute the entire contract between and among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page to this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and any of its Affiliates is

hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held, and any other indebtedness at any time owing, by such Lender or any such Affiliate to or for the credit or the account of either Loan Party against any of and all the obligations of such Loan Party now or hereafter existing under this Agreement held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement and although such obligations may be unmatured. The rights of each Lender or any such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09. Governing Law; Jurisdiction; Etc.

(a) Governing Law. This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Submission to Jurisdiction. Any legal action or proceeding with respect to this Agreement or any other Financing Document shall, except as provided in clause (d) below, be brought in the courts of the State of New York in the County of New York or of the United States for the Southern District of New York and, by execution and delivery of this Agreement, each party hereto hereby irrevocably accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. Each party hereto agrees that a judgment, after exhaustion of all available appeals, in any such action or proceeding shall be conclusive and binding upon it, and may be enforced in any other jurisdiction, including by a suit upon such judgment, a certified copy of which shall be conclusive evidence of the judgment.

(i) Waiver of Venue. Each party hereto hereby irrevocably waives any objection that it may now have or hereafter have to the laying of the venue of any suit, action or proceeding arising out of or relating to this Agreement or any other Financing Document brought in the Supreme Court of the State of New York, County of New York or in the United States District Court for the Southern District of New York, and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

(j) Rights of the Secured Parties. Nothing in this Section 9.09 shall limit the right of the Secured Parties to refer any claim against the Borrower to any court of competent jurisdiction outside of the State of New York, nor shall the taking of proceedings by any Secured Party before the courts in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction whether concurrently or not.

(k) WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY FINANCING DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY FINANCING DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY, AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

SECTION 9.10. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.11. Confidentiality. Each of the Agents, the Issuing Lenders and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and

agents, including accountants, legal counsel and other advisors with a need to know (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any applicable regulatory authority, by applicable laws or regulations or by any subpoena, oral question posed at any deposition, interrogatory or similar legal process, provided that the party from whom disclosure is being required shall give notice thereof to the Loan Parties as soon as practicable (unless restricted from doing so), (iii) to any other party to this Agreement, (iv) to the extent the disclosing party determines such disclosure to be necessary or appropriate to exercise any remedies hereunder or under any other Financing Document or in connection with any suit, action or proceeding relating to this Agreement or any other Financing Document or the enforcement of rights hereunder or thereunder, (v) subject to an agreement containing provisions substantially the same as those of this paragraph, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement, (vi) with the consent of the Loan Parties or (vii) to the extent such Information (A) becomes publicly available other than as a result of a breach of this paragraph or (B) becomes available to the Administrative Agent, any Issuing Lender or any Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this paragraph, "Information" means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent, any Issuing Lender or any Lender on a nonconfidential basis prior to disclosure by the Borrower; provided that, in the case of information received from the Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 9.12. Non-Recourse. Anything herein or in any other Transaction Document to the contrary notwithstanding, the obligations of the Borrower under this Agreement and each other Transaction Document to which the Borrower is a party, and any certificate, notice, instrument or document delivered pursuant hereto or thereto, are obligations solely of the Borrower and do not constitute a debt or obligation of (and no recourse shall be made with respect to) the Parent or any of their respective Affiliates (other than the Loan Parties), or any shareholder, partner, member, officer, director or employee of the Parent or such Affiliates (collectively, the "Non-Recourse Parties"), except as hereinafter set forth in this Section or as expressly provided in any Transaction Document to which such Non-Recourse Party is a party. No action under or in connection with this Agreement or any other Financing Document to which the Borrower is a party shall be brought against any Non-Recourse Party, and no judgment for any deficiency upon the obligations hereunder or thereunder shall be obtainable by any Secured Party against any Non-Recourse Party. For the avoidance of doubt, it is expressly understood and agreed that nothing contained in this Section shall in any manner or way (i) restrict the remedies available to any Agent or Lender to realize upon the Collateral or under any Transaction Document, or constitute or be deemed to be a release of the obligations secured by (or impair the enforceability of) the Liens and security interests and possessory rights created by or arising from any Financing Document or (ii) release, or be deemed to release, any Non-Recourse Party from liability for its own fraudulent actions, gross negligence or willful

misconduct or from any of its obligations or liabilities under any Transaction Document to which such Non-Recourse Party is a party.

SECTION 9.13. No Third Party Beneficiaries. The agreement of the Lenders to make the Loans to the Borrower, on the terms and conditions set forth in this Agreement, is solely for the benefit of the Borrower, the Loan Parties, the Agents and the Lenders, and no other Person (including any Parent, contractor, subcontractor, supplier, workman, carrier, warehouseman or materialman furnishing labor, supplies, goods or services to or for the benefit of the Project) shall have any rights under this Agreement or under any other Financing Document or Project Document as against the Agent or any Lender or with respect to any extension of credit contemplated by this Agreement.

SECTION 9.14. Reinstatement. The obligations of the Borrower under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Borrower agrees that it will indemnify each Secured Party on demand for all reasonable costs and expenses (including fees of counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

SECTION 9.15. Patriot Act. Each Lender hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act.

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**FIRST AMENDMENT
TO CREDIT AGREEMENT AND COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT**

This FIRST AMENDMENT TO CREDIT AGREEMENT AND COLLATERAL AGENCY AND INTERCREDITOR AGREEMENT, dated as of July 17, 2014 (this “First Amendment”), is entered into by and among NRG MARSH LANDING LLC (f/k/a Mirant Marsh Landing, LLC), a Delaware limited liability company (the “Borrower”), THE ROYAL BANK OF SCOTLAND PLC as administrative agent for the Lenders (in such capacity, together with its successors and permitted assigns in such capacity, the “Administrative Agent”), DEUTSCHE BANK TRUST COMPANY AMERICAS as collateral agent and depositary bank for the Secured Parties (in such capacities, together with its successors and permitted assigns in such capacity, the “Collateral Agent” and the “Depositary Bank”, respectively), and the Lenders party hereto, and is made with reference to the Existing Credit Agreement referred to below. Capitalized terms used herein without definition shall have the same meanings herein as set forth in the Amended and Restated Credit Agreement or the Collateral Agency Agreement (each as defined below).

RECITALS

WHEREAS, reference is made to the Credit Agreement, dated as of October 8, 2010, among the Borrower, the Lenders from time to time party thereto, the Administrative Agent, the Collateral Agent and the Depositary Bank (the “Existing Credit Agreement”);

WHEREAS, reference is made to the Collateral Agency and Intercreditor Agreement, dated as of October 8, 2010, among the Borrower, the Administrative Agent, the Collateral Agent and the Depositary Bank (the “Collateral Agency Agreement”);

WHEREAS, in accordance with Section 9.02 (*Waivers; Amendments*) of the Existing Credit Agreement, the Borrower has requested (i) the disbursement of additional Tranche A Term Loans in an aggregate principal amount of \$10,824,106 (such amount, the “Incremental Tranche A Amount”; the additional advances thereunder, the “Incremental Tranche A Term Loans”) and (ii) the disbursement of additional Tranche B Term Loans in an aggregate principal amount of \$23,523,750 (such amount, the “Incremental Tranche B Amount”; the additional advances thereunder, the “Incremental Tranche B Term Loans”), the proceeds of which Incremental Tranche A Term Loans and Incremental Tranche B Term Loans to be made on the Funding and Repricing Date (as defined below), shall be used to fund a one-time payment to the Parent and to pay related fees, costs and expenses;

WHEREAS, each Lender under the Existing Credit Agreement, each Incremental Tranche A Term Loan Lender (as defined below) and each Incremental Tranche B Term Loan Lender (as defined below) that executes and delivers a counterpart signature page to this First Amendment will thereby agree to the terms of this First Amendment;

WHEREAS, each Person that agrees to make an Incremental Tranche A Term Loan (collectively, the “Incremental Tranche A Term Loan Lenders”) will make an Incremental Tranche A Term Loan to the Borrower on the Funding and Repricing Date in a principal amount

*First
Amendment*

not to exceed its Incremental Tranche A Term Loan Commitment (as defined below) and each Person that agrees to make an Incremental Tranche B Term Loan (collectively, the “Incremental Tranche B Term Loan Lenders”) will make an Incremental Tranche B Term Loan to the Borrower on the Funding and Repricing Date in a principal amount not to exceed its Incremental Tranche B Term Loan Commitment (as defined below);

WHEREAS, the Incremental Tranche A Term Loan Lenders are severally willing to make Incremental Tranche A Term Loans and the Incremental Tranche B Term Loan Lenders are severally willing to make Incremental Tranche B Term Loans, subject to the terms and conditions set forth in this First Amendment;

WHEREAS, the Incremental Tranche A Term Loan Lenders, the Incremental Tranche B Term Loan Lenders, the other Lenders signing this First Amendment, the Agents and the Depository Bank are willing to agree to this First Amendment on the terms set forth herein; and

WHEREAS, pursuant to this First Amendment, Borrower has requested to, and the Incremental Term Loan Lenders, and the other Lenders party hereto have agreed to, effectively amend, restate, supersede and replace in its entirety the Existing Credit Agreement upon the Funding and Repricing Date, a conformed copy of the Existing Credit Agreement, amended to reflect all of the specific modifications, amendments and supplements expected by the Borrower to be necessary in connection with the matters described above and certain other amendments requested by the Borrower attached hereto as Exhibit A (including this First Amendment, the “Amended and Restated Credit Agreement”).

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

Section 1. **Certain Defined Terms.** (a) As used in this First Amendment (including the preamble and the recitals), the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“Administrative Agent” has the meaning assigned to such term in the preamble.

“Amended and Restated Credit Agreement” has the meaning assigned to such term in the recitals.

“Bookrunner” means MUFG Union Bank, N.A.

“Borrower” has the meaning assigned to such term in the preamble.

“Collateral Agent” has the meaning assigned to such term in the preamble.

“Depository Bank” has the meaning assigned to such term in the preamble.

“Existing Credit Agreement” has the meaning assigned to such term in the recitals.

“First Amendment” has the meaning assigned to such term in the preamble.

“First Amendment Effective Date” has the meaning assigned to such term in Section 5.

“Funding and Repricing Date” has the meaning assigned to such term in Section 6.

“Incremental Term Loan” refers to Incremental Tranche A Term Loans and/or Incremental Tranche B Term Loans (as the context requires).

“Incremental Term Loan Commitment” means, with respect to each Incremental Term Loan Lender, such Incremental Term Loan Lender’s Incremental Tranche A Term Loan Commitment and/or Incremental Tranche B Term Loan Commitment (as the context requires).

“Incremental Term Loan Lenders” means each Incremental Tranche A Term Loan Lender and each Incremental Tranche B Term Loan Lender (as the context requires).

“Incremental Tranche A Amount” has the meaning assigned to such term in the recitals.

“Incremental Tranche A Term Loan Commitment” means, with respect to each Incremental Tranche A Term Loan Lender, the amount set forth opposite such Incremental Tranche A Term Loan Lender’s name on Schedule I under the caption “*Incremental Tranche A Term Loan Commitment*”.

“Incremental Tranche A Term Loan Lenders” has the meaning assigned to such term in the recitals.

“Incremental Tranche A Term Loans” has the meaning assigned to such term in the recitals.

“Incremental Tranche B Amount” has the meaning assigned to such term in the recitals.

“Incremental Tranche B Term Loan Commitment” means, with respect to each Incremental Tranche B Term Loan Lender, the amount set forth opposite such Incremental Tranche B Term Loan Lender’s name on Schedule I under the caption “*Incremental Tranche B Term Loan Commitment*”.

“Incremental Tranche B Term Loan Lenders” has the meaning assigned to such term in the recitals.

“Incremental Tranche B Term Loans” has the meaning assigned to such term in the recitals.

(b) All references herein to Sections and Exhibits shall be construed to refer to Sections of, and Exhibits to, this First Amendment, unless otherwise indicated. As used herein, the word “*including*” shall be deemed to mean “*including without limitation.*”

Section 2. Amendment of Existing Credit Agreement and Other Financing Documents. Effective on and after the Funding and Repricing Date, the parties hereto agree that the Existing Credit Agreement (and, to the extent provided in Exhibit A, any exhibits and schedules thereto) shall be amended, restated, superseded and replaced in its entirety by the

Amended and Restated Credit Agreement as set forth in Exhibit A.

Section 3. Incremental Term Loans.

(a) Subject to the terms and conditions set forth herein, (i) each Incremental Tranche A Term Loan Lender agrees to make an Incremental Tranche A Term Loan on the Funding and Repricing Date to the Borrower in a principal amount equal to such Incremental Tranche A Term Loan Lender's Incremental Tranche A Term Loan Commitment, for a total of \$10,824,106 in the aggregate for all Incremental Tranche A Term Loans and (ii) each Incremental Tranche B Term Loan Lender agrees to make an Incremental Tranche B Term Loan on the Funding and Repricing Date to the Borrower in a principal amount equal to such Incremental Tranche B Term Loan Lender's Incremental Tranche B Term Loan Commitment for a total of \$23,523,750 in the aggregate for all Incremental Tranche B Term Loans.

(b) For purposes hereof, a Person may become a party to the Existing Credit Agreement as amended hereby as a Term Loan Lender or an Incremental Term Loan Lender as of the Funding and Repricing Date by executing and delivering to the Administrative Agent, on or prior to the Funding and Repricing Date, a counterpart signature page to this First Amendment in its capacity as an Incremental Term Loan Lender. The Borrower shall give notice to the Administrative Agent of the proposed Funding and Repricing Date not later than three Business Days (or such shorter period of time as may be requested by the Borrower and agreed to by the Administrative Agent) prior thereto, and the Administrative Agent shall notify each Incremental Term Loan Lender thereof.

(c) Each Incremental Term Loan Lender will make its Incremental Term Loan on the Funding and Repricing Date by making available to the Administrative Agent, in accordance with the Amended and Restated Credit Agreement, an amount equal to its Incremental Term Loan Commitment. The Incremental Term Loan Commitments of each Incremental Term Loan Lender are several and no such Incremental Term Loan Lender will be responsible for any other such Incremental Term Loan Lender's failure to make its Incremental Term Loan. The Incremental Term Loans may from time to time be ABR Loans or Eurodollar Loans, as determined by the Borrower and notified to the Administrative Agent in accordance with the Amended and Restated Credit Agreement.

(d) The obligation of each Incremental Term Loan Lender to make Incremental Term Loans on the Funding and Repricing Date is subject to the satisfaction of the conditions set forth in Section 6.

(e) On and after the Funding and Repricing Date, and in each case on the terms set forth in the Amended and Restated Credit Agreement, each reference in the Financing Documents to: (i) "Tranche A Term Loans" shall be deemed to include the Incremental Tranche A Term Loans contemplated hereby, (ii) "Tranche B Term Loans" shall be deemed to include the Incremental Tranche B Term Loans contemplated hereby, (iii) "Term Loans" shall be deemed to include the Incremental Term Loans contemplated hereby, (iv) "Tranche A Term Loan Lenders" shall be deemed to include the Incremental Tranche A Term Loan Lenders, (v) "Tranche B Term Loan Lenders" shall be deemed to include the Incremental Tranche B Term Loan Lenders, (vi) "Term Loan Lenders" shall be deemed to include the Incremental Term Loan Lenders, (vii)

“Tranche A Term Loan Commitments” shall be deemed to include the Incremental Tranche A Term Loan Commitments, (viii) “Tranche B Term Loan Commitments” shall be deemed to include the Incremental Tranche B Term Loan Commitments, (ix) “Term Loan Commitments” shall be deemed to include the Incremental Term Loan Commitments, except in each case as the context may otherwise require.

(f) For the avoidance of doubt, the provisions of the Existing Credit Agreement with respect to indemnification, reimbursement of costs and expenses, increased costs and break funding payments shall continue in full force and effect with respect to, and for the benefit of, each Tranche A Term Loan Lender in respect of such Tranche A Term Loan Lender’s Tranche A Term Loans and each Tranche B Term Loan Lender in respect of such Tranche B Term Loan Lender’s Tranche B Term Loans.

(g) The Incremental Tranche A Term Loans will have the same terms as the existing Tranche A Terms Loans outstanding on the Funding and Repricing Date and the Incremental Tranche B Term Loans will have the same terms as the existing Tranche B Terms Loans outstanding on the Funding and Repricing Date. All Tranche A Term Loans (for the avoidance of doubt, including the Incremental Tranche A Term Loans) shall constitute a single class and together shall be the Tranche A Term Loans for all purposes under, and subject to the provisions of, the Financing Documents and all Tranche B Term Loans (for the avoidance of doubt, including the Incremental Tranche B Term Loans) shall constitute a single class and together shall be the Tranche B Term Loans for all purposes under, and subject to the provisions of, the Financing Documents.

Section 4. Amendments.

(a) Amendments to Existing Credit Agreement.

(i) The definition of “Applicable Margin” in the Existing Credit Agreement shall be deleted in its entirety and replaced with the following:

“Applicable Margin” means, with respect to any ABR Loan or Eurodollar Loan, the applicable rate per annum determined pursuant to the interest grid set forth below:

Period	Tranche A Term Loans and Letter of Credit Loans (as applicable)		Tranche B Term Loans	
	Eurodollar	ABR	Eurodollar	ABR
Closing Date 10/7/2013	2.50%	1.50%	2.75%	1.75%
10/8/2013 – Funding and Repricing Date	2.75%	1.75%	3.00%	2.00%
Funding and Repricing Date – 12/31/2017	1.75%	0.75%	1.875%	0.875%
1/1/18 – 12/31/2020	2.00%	1.00%	2.125%	1.125%

1/1/2021 – Tranche B Maturity Date	2.25%	1.25%	2.375%	1.375%
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(ii) Schedule 2.08 (Term Loan Amortization Schedule) of the Existing Credit Agreement is hereby amended by deleting it in its entirety and replacing it with a new Schedule 2.08 in the form of Exhibit C attached hereto.

(iii) Schedule I (Commitments) of the Existing Credit Agreement is hereby amended by deleting it in its entirety and replacing it with a new Schedule I in the form of Exhibit D attached hereto.

(b) Amendments to the Collateral Agency Agreement.

(i) Section 3.02(h) of the Collateral Agency Agreement shall be deleted in its entirety and replaced with the following:

“Distribution Account. On or following the Conversion Date, the Borrower shall deposit, or cause to be deposited, in the Distribution Account: (i) all amounts transferred from the Revenue Account pursuant to Section 3.03(b)(ix) and (ii) all amounts transferred from the Construction Account to pay the Permitted Construction Account Distribution Amount pursuant to Section 3.03(a)(ii). On the Funding and Repricing Date, the Borrower shall cause the proceeds of the Incremental Term Loans to be deposited in the Distribution Account.”

(ii) Section 3.03(h) of the Collateral Agency Agreement shall be amended to include a new paragraph (iii) as follows:

“(iii) On the Funding and Repricing Date, notwithstanding Section 6.07 of the Credit Agreement, the proceeds of the Incremental Term Loans on deposit in the Distribution Account shall be applied as directed by the Borrower, including for purposes of making a Restricted Payment.”

Section 5. First Amendment Effective Date. Subject to Section 6, this First Amendment shall become binding and effective upon the date (such date, the “First Amendment Effective Date”) on which the Administrative Agent shall have received (a) a counterpart signature page of this First Amendment duly executed by the Borrower, (b) a counterpart signature page of this First Amendment duly executed by each Lender under the Existing Credit Agreement, (c) a counterpart signature page of this First Amendment duly executed by each Incremental Term Loan Lender, (d) a counterpart signature page of this First Amendment duly executed by the Collateral Agent and (e) a counterpart signature page of this First Amendment duly executed by the Depositary Bank.

Section 6. Conditions Precedent. The amendments contained in Section 2 and Section 4 and the obligations of each Incremental Term Loan Lender contained in Section 3 shall become effective only upon the occurrence of the First Amendment Effective Date and the

receipt by the Administrative Agent of each of the following documents and satisfaction of the conditions precedent set forth below, each of which, unless otherwise specified below, shall be satisfactory to the Administrative Agent and each Lender in form and substance (unless waived in accordance with Section 9.02 (*Waivers; Amendments*) of the Existing Credit Agreement) (the date of such satisfaction or waiver of the following conditions and the advancement of the funds contemplated therein being referred to herein as the "Funding and Repricing Date"):

(a) The following documents, each certified as indicated below:

(i) a copy of the certificate of incorporation, certificate of formation, charter or other organizational documents, together with any amendments thereto, of the Borrower certified by the Secretary of State of its jurisdiction of organization and a certificate as to the good standing of and payment of franchise taxes by the Borrower, dated as of a recent date;

(ii) a certificate issued by the Secretary of State of the State of California certifying that Borrower is in good standing and is authorized to transact business in such state; and

(iii) a certificate of an Authorized Officer of the Borrower, dated as of the Funding and Repricing Date, certifying:

(A) that attached to such certificate is a true and complete copy of its by-laws, limited liability company agreement, operating agreement or other governing document of such Person, as applicable as in effect on the date of such certification;

(B) attached to such certificate is a true and complete copy of resolutions duly adopted by the board of directors, member(s), partner(s) or other authorized governing body of such Person, authorizing the execution, delivery and performance of this First Amendment and that such resolutions have not been modified, rescinded or amended and are in full force and effect;

(C) that the certificate of incorporation, certificate of formation, charter or other organizational documents (as the case may be) of such Person has not been amended since the date of the certification furnished pursuant to clause (i) above; and

(D) as to the incumbency and specimen signature of each officer, member or director (as applicable) of such Person executing this First Amendment.

(b) Copies of the latest available (i) annual audited financial statements of the Borrower and (ii) quarterly unaudited financial statements of the Borrower, in each case, accompanied by a certificate from an Authorized Officer of the Borrower certifying that such financial statements were prepared in accordance with Applicable Accounting Requirements

consistently applied and reflect fairly the financial condition of the Borrower as at the date of such statements.

(c) A favorable opinion of Ballard Spahr LLP, special New York and Delaware counsel to the Borrower.

(d) A report of the Independent Engineer in form and substance satisfactory to the Bookrunner and the Administrative Agent.

(e) Results of a recent search of all effective UCC financing statements and fixture filings and all judgment and tax lien filings which have been made with respect to any personal or mixed property of the Borrower and the Immediate Parent, together with copies of all such filings disclosed by such search, and UCC termination statements for filing in all applicable jurisdictions as may be necessary to terminate any effective UCC financing statements or fixture filings disclosed in such search (other than any such financing statements or fixture filings in respect of Permitted Encumbrances).

(f) The representations and warranties of the Borrower set forth in each Financing Document shall be true and correct in all material respects on and as of the Funding and Repricing Date (or, if any such representation or warranty is expressly stated to have been made as of a specific date, as of such specific date), both immediately prior to the disbursement of the Incremental Term Loans and after giving effect to the disbursement of the Incremental Term Loans and to the intended use thereof as if made on and as of such date (or, if stated to have been made solely as of an earlier date, as of such earlier date).

(g) No Default or Event of Default has occurred and is continuing on the Funding and Repricing Date or will result from the disbursement of the Incremental Term Loans.

(h) Each Lender shall have received at least five Business Days prior to the date hereof all documentation and other written information requested by such Lender and required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Patriot Act.

(i) The Borrower shall have (i) confirmed that it has paid or has arranged for payment of all fees and expenses of any Lender, Bookrunner and the Agents, then due and payable by the Borrower pursuant to the Financing Documents and (ii) provided evidence that all filing, recordation, subscription and inscription fees and all recording and other similar fees and all recording, stamp and other taxes and other expenses related to such filings, registrations and recordings necessary for the consummation of the transactions contemplated by this First Amendment have been paid in full by or on behalf of the Borrower.

(j) The revised Base Case Projections together with a certificate of an Authorized Officer of the Borrower stating that such revised Base Case Projections were based upon consolidated Debt Service Coverage Ratios equal to 1.40 : 1.00 in each period.

(k) A modification endorsement to the Title Policy, after delivery by the Borrower to the Title Company of all deliverables, title premiums and expenses, all filing, recording

and similar fees and any other items required by the Title Company to issue such modification endorsement. The modification endorsement shall show that since the effective date of the Title Policy there has been no change in the status of the title to the Project Site and no additional exceptions (including survey exceptions) (other than (A) matters constituting Permitted Encumbrances or (B) matters otherwise approved by Administrative Agent), together with evidence of payment of all title insurance premiums and expenses, all filing, recording and similar fees and any other items required by the Title Company to issue the modification endorsement.

- (l) An amendment to the Deed of Trust, in the form of Exhibit B attached hereto, executed by the Borrower and the Collateral Agent.

Section 7. Lender Consents. Each undersigned Lender under the Existing Credit Agreement hereby consents to the transactions contemplated by this First Amendment and the Amended and Restated Credit Agreement (including (a) the incurrence of the additional Indebtedness contemplated hereby and (b) the use of proceeds of such additional Indebtedness as contemplated herein and in the Amended and Restated Credit Agreement). Each Lender signatory hereto, collectively representing the Required Secured Parties, consents to the amendments to the Collateral Agency Agreement contained herein.

Section 8. Representations and Warranties. The Borrower makes the representations and warranties contained in this Section 8 to the Agents, the Depository Bank and the Lenders. Each such representation and warranty shall be deemed made as of the Funding and Repricing Date:

- (a) The Borrower has all requisite power and authority and legal right to execute, deliver, and perform its obligations under this First Amendment.
- (b) The execution, delivery, and performance of this First Amendment has been duly authorized by all necessary action on the part of the Borrower.
- (c) The execution, delivery and performance by the Borrower of this First Amendment, and the performance of its obligations hereunder do not and will not (i) violate the articles of organization or other organizational documents of the Borrower, (ii) violate any provision of any Applicable Law, (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other material agreement, lease, or instrument to which the Borrower is a party or by which it or its properties may be bound or affected, including any other Transaction Document, or (iv) result in or require the creation or imposition of any Lien of any nature (other than any Permitted Encumbrance) upon or with respect to any of the properties now owned or hereafter acquired by the Borrower except, in the case of (ii) and (iii), as would not reasonably be expected to have a Material Adverse Effect.
- (d) No material approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority is required in connection with the execution, delivery or performance by the Borrower of this First Amendment, except for (i) those approvals, consents, exemptions,

authorizations or other actions, notices or filings, which have been obtained and are in full force and effect and (ii) those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(e) This First Amendment has been duly executed and delivered by the Borrower and is the legally valid and binding obligation of the Borrower enforceable against the Borrower in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability.

Section 9. Reaffirmation of Guarantees and Security Interests. The Borrower hereby consents to the terms and conditions of this First Amendment, including the borrowings of the Incremental Term Loans as contemplated herein. In addition, the Borrower hereby (a) affirms and confirms its guarantees, pledges, grants and other undertakings under the Existing Credit Agreement (as amended by this First Amendment), the Amended and Restated Credit Agreement as of the Funding and Repricing Date, and the other Financing Documents to which it is a party, (b) agrees that (i) each Financing Document to which it is a party shall continue to be in full force and effect and (ii) all guarantees, pledges, grants and other undertakings thereunder shall continue to be in full force and effect (as amended by First Amendment) and shall accrue to the benefit of the Secured Parties, and (c) acknowledges that from and after the Funding and Repricing Date, all Incremental Tranche A Term Loans shall be deemed to be "Tranche A Term Loans" and Obligations and all Incremental Tranche B Term Loans shall be deemed to be "Tranche B Term Loans" and Obligations.

Section 10. Effect on Existing Credit Agreement and Collateral Agency Agreement.

(a) Except as specifically amended by this First Amendment, the Existing Credit Agreement and Collateral Agency Agreement shall remain in full force and effect and each is hereby ratified and confirmed, provided, however, that as of the Funding and Repricing Date, the Existing Credit Agreement as amended shall be further amended, restated, superseded and replaced in its entirety by the Amended and Restated Credit Agreement. In the event of any conflict between the terms of this First Amendment and the Amended and Restated Credit Agreement, the terms of the Amended and Restated Credit Agreement shall control.

(b) The execution, delivery and performance of this First Amendment shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of any Lender under any Financing Document.

(c) From and after the Funding and Repricing Date, each reference in the Existing Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of like import referring to the Existing Credit Agreement, and each reference in the other Financing Documents to the "Credit Agreement," the "Credit Agreement," "thereunder," "thereof" or words of like import referring to the Existing Credit Agreement shall mean and be a reference to the Amended and Restated Credit Agreement.

(d) From and after the Funding and Repricing Date, each reference in the Collateral Agency Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of like import referring to the Collateral Agency Agreement, and each reference in the other Financing

Documents to the "Collateral Agency Agreement," "thereunder," "thereof" or words of like import referring to the Collateral Agency Agreement shall mean and be a reference to the Collateral Agency Agreement as amended by this First Amendment.

(e) This First Amendment shall be deemed to be a Financing Document as defined in the Existing Credit Agreement.

Section 11. Ratification. From and after the Funding and Repricing Date, this First Amendment and the Amended and Restated Credit Agreement and each amendment, waiver or other modification to the Financing Documents set forth or contemplated herein and therein shall be deemed to be effective pursuant to Section 9.02 (*Waivers; Amendments*) of the Existing Credit Agreement and Section 10.03 (*Amendments*) of the Collateral Agency Agreement.

Section 12. Miscellaneous.

(a) Except as provided for herein and in the Amended and Restated Credit Agreement, nothing herein shall be deemed to entitle the Borrower to a further consent to, or a further waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Existing Credit Agreement, the Collateral Agency Agreement or any other Financing Document in similar or different circumstances.

(b) Section and Subsection headings in this First Amendment are included herein for convenience of reference only and shall not constitute a part of this First Amendment for any other purpose or be given any substantive effect.

(c) **THIS FIRST AMENDMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.**

(d) This First Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed signature page of this First Amendment by facsimile or email shall be effective as delivery of a manually executed counterpart to this First Amendment.

(e) All notices and other communications provided for hereunder or under the Amended and Restated Credit Agreement shall be as indicated in Section 9.01 of the Amended and Restated Credit Agreement.

(f) The Administrative Agent hereby instructs the Collateral Agent and the Depository Bank to execute this First Amendment and the amendment to the Deed of Trust, in the form of Exhibit B attached hereto.

(g) This First Amendment shall terminate on August 31, 2014, unless the Funding and Repricing Date shall have occurred on or prior to such date.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be duly executed and delivered by their respective officers thereunto duly authorized, as of the date first written above.

NRG MARSH LANDING LLC
as Borrower

By: /s/ G Gary Garcia _____ G. Gary Garcia
Name: Title: Treasurer

THE ROYAL BANK OF SCOTLAND PLC,
not in its individual capacity but solely as Administrative Agent

By: /s/ Samira Siskind _____

Name: Samira Siskind
Title: Director

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Collateral Agent

By: /s/Li Jiang _____ Title: Assistant Vice President
Name: Li Jiang

By: /s/ Deirdra N. Ross _____
Name: Deirdra N. Ross
Title: Vice President

DEUTSCHE BANK TRUST COMPANY AMERICAS,
as Depositary Bank

By: /s/ Li Jiang _____ Li Jiang
Name: Title: Assistant Vice President

By: /s/ Deirdra N. Ross _____
Name: Deirdra N. Ross
Title: Vice President

CIC CRÉDIT INDUSTRIEL ET COMMERCIAL,
as an Incremental Tranche A Term Loan Lender, an Incremental Tranche B Term Loan
Lender and a Term Loan Lender

By: ___/s/ Annick Kellerhals _____

Name: Annick Kellerhals

Title:

By: ___/s/ Mark D. Palin _____ Name: Mark D. Palin

Title: Vice President

CRÉDIT AGRICOLE CORPORATE AND INVESTMENT BANK,
as an Incremental Tranche A Term Loan Lender, an Incremental Tranche B Term Loan
Lender and a Term Loan Lender

By: /s/ Frederi Petit Frederi Petit
Name: Title: Vice President

By: /s/ Evan S. Levy
Name: Evan S. Levy
Title: Managing Director

LANDESBANK HESSEN-THÜRINGEN GIROZENTRALE, NEW YORK
BRANCH,
as an Incremental Tranche A Term Loan Lender, an Incremental Tranche B Term Loan
Lender and a Term Loan Lender

By: /s/ Michael D.
Novack _____
Name:

Michael D. Novack
Title: Senior President Corp Fin Div Structured
Finance

By: /s/ Erica Egan _____

Name: Erica Egan
Title: Senor Vice President; Corporate Finance Division

ING CAPITAL LLC,
as an Incremental Tranche A Term Loan Lender, an Incremental Tranche B Term Loan
Lender and a Lender

By: /s/ Sven Wellock Sven Wellock
Name: Title: Director

By: /s/ Stephen E Fischer
Name: Stephen E. Fischer
Title: Managing Director

SUMITOMO MITSUI TRUST BANK LTD., NEW YORK BRANCH,
as an Incremental Tranche A Term Loan Lender, an Incremental Tranche B Term Loan
Lender and a Term Loan Lender

By: /s/ Albert C. Tew II _____ Albert C. Tew II
Name: Title: Vice President

COBANK, ACB,
as an Incremental Tranche A Term Loan Lender, an Incremental Tranche B Term Loan
Lender and a Term Loan Lender

By: /s/ Lori A. Kepner _____
Name: Lori A. Kepner
Title: Vice President

INTESA SANPAOLO S.P.A, NEW YORK BRANCH,
as a Term Loan Lender

By: ___/s/ Alessandro Vitale _____ Alessandro Vitale
Name: Title: First Vice President

By: ___/s/ Eli Davis _____
Name: Eli Davis
Title: Vice President

METROPOLITAN LIFE INSURANCE COMPANY,
as a Term Loan Lender

By: /s/ Nancy Doyle _____ Nancy Doyle
Name: Title: Director

By: _____
Name:
Title:

PORTIGON AG, NEW YORK BRANCH,
as a Term Loan Lender

By: /s/ Duncan Robertson Duncan Robertson
Name: Title: Executive Director

By: /s/ Lan Zhuo
Name: Lan Zhuo
Title: Director

ROYAL BANK OF CANADA,
as a Letter of Credit Lender

By: /s/ DS McMurtry _____ Title: Authorized Signatory
Name: David Scott McMurtry

SIEMENS FINANCIAL SERVICES, INC.,
as a Term Loan Lender

By: /s/ Patrick N. Riley _____ Patrick N. Riley
Name: Title: Vice President

By: /s/ Guy Cirincione _____
Name: /s/ Guy Cirincione
Title: SVP General Manager Siemens Financial Services

SCHEDULE I
COMMITMENTS

Lender	Incremental Tranche A Term Loan Commitment	Incremental Tranche B Term Loan Commitment
CIC Crédit Industriel et Commercial	\$2,000,000.00	
CoBank, ACB		\$2,545,956.00
Crédit Agricole Corporate and Investment Bank	\$2,000,000.00	\$6,000,000.00
Landesbank Hessen-Thüringen Girozentrale, New York Branch	\$2,000,000.00	\$6,000,000.00
ING Capital LLC	\$2,000,000.00	\$6,000,000.00
Sumitomo Mitsui Trust Bank Ltd., New York Branch	\$2,000,000.00	\$1,000,000.00
MUFG Union Bank, N.A.	\$824,106.00	\$1,977,794.00

EXHIBIT A

AMENDED AND RESTATED CREDIT AGREEMENT

[SEPARATELY PROVIDED]

EXHIBIT B

FORM OF DEED OF TRUST AMENDMENT

(SEE ATTACHED)

EXHIBIT C

SCHEDULE 2.08
TO
CREDIT AGREEMENT

(SEE ATTACHED)

Term Loan Amortization Schedule

Term Loan Principal Payment Date	Principal Payment An Tranche A Tranche B	
9/30/13	11,964,593	2,673,7
12/31/13	12,028,289	500,00
3/31/14	6,410,761	1,200,0
6/30/14	120,463	650,00
9/30/14	17,548,315	4,450,0
12/31/14	10,149,696	2,645,0
3/31/15	4,663,490	2,587,5
6/30/15	1,403,791	1,200,0
9/30/15	18,525,804	4,200,0
12/31/15	10,998,579	2,645,0
3/31/16	5,375,543	2,616,2
6/30/16	633,944	1,800,0
9/30/16	19,120,740	3,400,0
12/31/16	11,983,705	2,645,0
3/31/17	6,205,533	2,587,5
6/30/17	1,301,445	2,200,0
9/30/17	20,799,057	3,100,0
12/31/17	6,590,358	8,925,0
3/31/18	-	9,324,2
6/30/18	-	4,329,8
9/30/18	-	25,043,2
12/31/18	-	16,328,6
3/31/19	-	9,352,7
6/30/19	-	5,066,3
9/30/19	-	25,831,1
12/31/19	-	17,119,7
3/31/20	-	10,535,0
6/30/20	-	5,637,8
9/30/20	-	26,059,0
12/31/20	-	17,443,0
3/31/21	-	11,051,1
6/30/21	-	6,313,1
9/30/21	-	26,829,5
12/31/21	-	18,236,2
3/31/22	-	11,789,5
6/30/22	-	7,012,6
9/30/22	-	27,614,8
12/31/22	-	19,012,9
3/31/23	-	12,755,4
6/30/23	-	5,812,1
9/30/23	-	-
12/31/23	-	-

EXHIBIT D**SCHEDULE I
TO
CREDIT AGREEMENT****Commitments**

Name of Lender	Term Loan Commitment (\$) Tranche A	Term Loan Commitment (\$) Tranche B	PPA Letter of Credit Commitment (\$)	DSR Letter of Credit Commitment (\$)
The Royal Bank of Scotland plc	--	--	\$50,075,000	--
Royal Bank of Canada	--	--	\$50,075,000	--
Landesbank Hessen-Thüringen Girozentrale, New York Branch	\$16,377,043.60	\$40,231,571.12	--	--
ING Capital LLC	\$5,537,604.91	\$15,662,125.02	--	\$49,790,000.00
MUFG Union Bank, N.A.	\$2,777,871.59	\$44,758,596.00	--	--
Portigon AG, New York Branch	\$16,869,154.18	\$28,645,881.07	--	--
Crédit Agricole Corporate and Investment Bank	\$9,690,945.85	\$11,344,103.96	--	--
Siemens Financial Services, Inc.	\$17,404,906.47	\$53,367,609.87	--	--
CoBank, ACB	\$22,172,754.88	\$77,823,614.99	--	--
Intesa Sanpaolo S.p.A., New York Branch	\$9,958,071.52	--	--	--
CIC Crédit Industriel et Commercial	\$11,419,648.45	\$13,077,216.74	--	--
Sumitomo Mitsui Trust Bank Ltd., New York Branch	\$6,979,035.76	\$14,599,050.00	--	--
Metropolitan Life Insurance Company	\$16,112,962.79	\$63,990,231.23	--	--
TOTAL	\$135,300,000	\$363,500,000	\$100,150,000	\$49,790,000

CERTIFICATION

I, David W. Crane, certify that:

1. I have reviewed this quarterly report on Form 10-Q of NRG Yield, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ DAVID W. CRANE

David W. Crane
Chief Executive Officer
(Principal Executive Officer)

Date: August 7, 2014

CERTIFICATION

I, Kirkland B. Andrews, certify that:

1. I have reviewed this quarterly report on Form 10-Q of NRG Yield, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ KIRKLAND B. ANDREWS

Kirkland B. Andrews
Chief Financial Officer
(Principal Financial Officer)

Date: August 7, 2014

CERTIFICATION

I, Ronald B. Stark, certify that:

1. I have reviewed this quarterly report on Form 10-Q of NRG Yield, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ RONALD B. STARK

Ronald B. Stark
Chief Accounting Officer
(Principal Accounting Officer)

Date: August 7, 2014

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of NRG Yield, Inc. on Form 10-Q for the quarter ended June 30, 2014, as filed with the Securities and Exchange Commission on the date hereof (the "Form 10-Q"), each of the undersigned officers of the Company certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to such officer's knowledge:

- (1) The Form 10-Q fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of the Company as of the dates and for the periods expressed in the Form 10-Q.

Date: August 7, 2014

/s/ DAVID W. CRANE

David W. Crane

*Chief Executive Officer
(Principal Executive Officer)*

/s/ KIRKLAND B. ANDREWS

Kirkland B. Andrews

*Chief Financial Officer
(Principal Financial Officer)*

/s/ RONALD B. STARK

Ronald B. Stark

*Chief Accounting Officer
(Principal Accounting Officer)*

The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of this Form 10-Q or as a separate disclosure document.

A signed original of this written statement required by Section 906, or other document authenticating, acknowledging or otherwise adopting the signature that appears in typed form within the electronic version of this written statement required by Section 906, has been provided to NRG Yield, Inc. and will be retained by NRG Yield, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

