POWER PURCHASE AGREEMENT

BETWEEN

FOXTAIL FLATS SOLAR, LLC

AND

INCORPORATED COUNTY OF LOS ALAMOS, NEW MEXICO

This **POWER PURCHASE AGREEMENT** ("Agreement") is made and entered into as of [_____], 2024 (the "Effective Date") by and between the Incorporated County of Los Alamos, New Mexico, a political subdivision and home-rule county organized and existing under the laws of the State of New Mexico ("Buyer") and Foxtail Flats Solar, LLC, a Delaware limited liability company ("Seller"). Buyer and Seller are referred to herein individually as a "Party" and collectively the "Parties".

WHEREAS, Seller plans to permit, construct, install, own, operate and maintain solar energy facilities described in Appendix A and wishes to sell to Buyer the Contract Products (as defined below) thereby produced; and

WHEREAS, Buyer wishes to purchase the Contract Products;

NOW, THEREFORE, in accordance with the foregoing and in consideration of the mutual promises and agreements set forth herein, Buyer agrees to purchase from Seller, and Seller agrees to sell to Buyer, the Contract Products in accordance with the following provisions:

ARTICLE 1.
DEFINITIONS

Any term that is capitalized herein but not defined below or defined elsewhere in this Agreement shall be defined in accordance with the definitions contained in applicable CAISO or WECC rules, or a successor set of market rules taking effect within the term of this Agreement.

1.01 "Affected Party" has the meaning set forth in Article 10.

1.02 "Affiliate" means, with respect to any Person, any entity controlled, directly or indirectly, by such Person, any entity that controls, directly or indirectly, such Person or any entity directly or indirectly under common control with such Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management, operations, or policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

1.03 "Agreement" has the meaning set forth in the Preamble to this Agreement.

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1.04 "Applicable Law" means, with respect to either Party, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Party or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

1.05 "Assignment" has the meaning set forth in Section 14.1.

1.06 "Bankrupt" means that a Party or other entity (as applicable): (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (b) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (d) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within ninety (90) days thereafter; (e) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (f) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (g) causes or is subject to any event with respect to it, which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (g) inclusive; or (h) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

1.07 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday, a holiday recognized by the State of New Mexico, or a holiday as defined by the North American Reliability Corporation.

1.08 "Buyer" has the meaning set forth in the Preamble to this Agreement.

1.09 "Buyer Indemnitees" has the meaning set forth in Section 13.1.

1.10 "Buyer Termination Payment" has the meaning set forth in Section 11.2.

1.11 "CAISO" means the California Independent System Operator.

1.12 "Capacity Attributes" means any defined right, benefit, characteristic, certificate, tag, credit or attribute, whether general in nature or specific as to the location or any other attribute of the Project, existing as of the Effective Date, that is intended to value the capacity of the Project to generate Energy.

1.13 "Code" means the Internal Revenue Code of 1986, as the same may be amended from time to time.

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1.14 "Commercial Operation" means that the Project has been connected to the Interconnecting Utility's electrical system at the Site, notification of final interconnection authorization has been obtained from the Interconnecting Utility, and the Project has commenced regular, daily operation supplying Energy to Buyer, in each case with no less than ninety-five percent (95%) of the expected nameplate capacity of one hundred seventy (170) megawatts (alternating current). Seller may declare Commercial Operation with respect to phases of the Project less than the full nameplate capacity in accordance with Section 2.5(d).

1.15 "Commercial Operation Date" means the date on which Seller determines that Commercial Operation of the Project is achieved, as confirmed by Seller to Buyer in a certificate.

1.16 "Commercially Reasonable Efforts" means a level of effort which in the exercise of prudent judgment in the light of facts or circumstances known, or which should reasonably be known, at the time a decision is made, can be expected by a reasonable person to accomplish the desired result in a manner consistent with Prudent Utility Practice and which takes the performing Party's interests into consideration.

1.17 "Contract Price" means $37.88 per megawatt hour of Energy.

1.18 "Contract Products" means the Energy, which shall be Unit Contingent, together with all Environmental Attributes and the Renewable Energy Certificates associated with such Energy, and the Capacity Attributes Associated with such Energy, in each case to be purchased by Buyer. Contract Products shall *not* include any Tax Attributes, ancillary services, ancillary products, reactive power and reactive power capability, or other products of any kind produced by or attributable to the Project or any revenues, credits or benefits arising therefrom, whether now or in the future, which shall be retained by and solely for Seller's account.

1.19 "Contract Year" shall mean a period of twelve consecutive calendar months, with the first Contract Year to commence on the first day of the month following the Commercial Operation Date, and each subsequent Contract Year to commence on the anniversary of the first day of the month following the Commercial Operation Date.

1.20 "Control" shall mean the possession, directly or indirectly, of the authority to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, as a manager, director, officer or general partner of such Person, or otherwise.

1.21 "Credit Rating" means the rating assigned to a Person by Moody's, S&P, or Fitch for such Person's long term unsecured debt not supported by third-party credit enhancement (other than by repayment of its debt) or, if such Person does not issue long term debt, then the rating then assigned to such Person as a long-term issuer rating by Moody's, S&P or Fitch.

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1.22 "Daily Delay Damages" has the meaning set forth in Section 2.5(e).

1.23 "Deemed Delivered Energy" has the meaning set forth in Section 5.2.

1.24 "Defaulting Party" has the meaning set forth in Section 11.1.

1.25 "Delivery Point" has the meaning set forth in Section 5.1.

1.26 "Development Security" has the meaning set forth in Section 17.1(a).

1.27 "Due Date" has the meaning set forth in Section 7.2.

1.28 "Early Termination Date" has the meaning set forth in Section 11.2.

1.29 "Effective Date" has the meaning set forth in the first paragraph of this Agreement.

1.30 "Emergency" means any occurrence of events (including any event or requirement imposed on Seller by a Governmental Authority) that compromises or, in the judgment of a reasonable person consistent with Prudent Utility Practice may compromise, the lawful and/or safe operation of the Project, or threatens the health and safety of Persons or material damage to property.

1.31 "Energy" means the actual and verifiable amount of net energy generated by the Project as metered in whole kilowatt hours (kWh) and delivered in accordance with this Agreement to the Delivery Point or the Solar Charging Point, as applicable, in any given period of time.

1.32 "Energy Storage Agreement" means that certain Energy Storage Agreement, dated as of the date hereof, by and between Buyer and Energy Storage Project Company relating to the Energy Storage System, including the Appendices attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.

1.33 "Energy Storage Project Company" means Foxtail Flats Storage, LLC, a Delaware limited liability company.

1.34 "Energy Storage System" means the "Project" as defined in the Energy Storage Agreement. For the avoidance of doubt, the Energy Storage System is being developed concurrently and jointly with the Project and Buyer acknowledges and agrees that the Energy Storage System may share certain equipment, buildings, and facilities, including transformers, interconnection facilities, improvements and other tangible assets, contract rights, easements, rights of way and other interests or rights in real estate, with the Project.

1.35 "Enforcement Action" has the meaning set forth in Section 14.3(b)(iv).

1.36 "Enforcement Conditions" shall mean the following conditions: (a) a Qualified Assignee is owner of the Project immediately following the Enforcement Action;

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(b) the same Qualified Assignee identified in the foregoing subsection (a) assumes each of this Agreement; (c) all defaults continuing at the time of the Enforcement Action under this Agreement which are capable of being cured shall be cured by the Qualified Assignee identified in the foregoing subsection (a); and (d) the Qualified Assignee identified in the foregoing subsection (a) agrees in writing to be bound by all of the terms and conditions of this Agreement after the date of such assignment.

1.37 "Environmental Attributes" means those attributes that are aspects, claims, characteristics or benefits associated with the generation of a quantity of Energy by the Project at any time during the Term of this Agreement, other than the electric energy produced, and that are capable of being measured. An Environmental Attribute may include, but is not limited to, one or more of the following identified with a particular megawatt hour of generation: the Project's use of a particular renewable energy source, avoided NOx, SOx, CO_2, greenhouse gas emissions or avoided water use (but not water rights or other rights or credits obtained pursuant to requirements of Applicable Law in order to site and develop the Project itself). Environmental Attributes may or may not be included in the definition or valuation of Renewable Energy Certificates by various certification authorities for use in meeting requirements of renewable portfolio standards under their jurisdiction. Environmental Attributes do not include any Tax Attributes, which shall be retained by and solely for Seller's account.

1.38 "Excused Delay" means (a) any Force Majeure, (b) any delay by the Interconnecting Utility or any other party (other than Seller) under the Interconnection Agreement or any delay in completion of any network upgrades, transmission facilities or other equipment or arrangements required for the interconnection of the Project, (c) any delay not caused by Seller in obtaining final, non-appealable Ute Mountain Ute Lease Approvals on or before December 31, 2024 in a form reasonably satisfactory to Seller, or (d) any breach by Buyer of this Agreement.

1.39 "FERC" has the meaning set forth in Section 3.9.

1.40 "Financing Party" means any and all Persons or successors in interest thereof or agents thereof (a) lending money, extending credit or providing loan guarantees (whether directly to Seller or to an Affiliate of Seller) as follows: (i) for the construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; (b) participating (directly or indirectly) as a tax equity investor or tax credit purchaser in the Project; or (c) any lessor under a lease finance arrangement relating to the Project.

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1.41 "Fitch" means Fitch Ratings, Ltd.

1.42 "Forced Outage" means (i) any material malfunction in the operation of the Project or other event or circumstance due to which the output of the Project is de-rated or the Project is not generating or (ii) any material curtailment of or interruption in the delivery of Energy to the Delivery Point or the Solar Charging Point by the Interconnecting Utility, CAISO, WECC or any other Governmental Authority, but shall not include any event or circumstance caused by or otherwise attributable to Seller or any outage due to Planned Maintenance.

1.43 "Force Majeure" means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that prohibits or prevents such Party from performing its obligations under this Agreement. Subject to the foregoing, Force Majeure shall include: delay or failure to act by Interconnecting Utility, CAISO, WECC, or any Governmental Authority, provided such action has been timely requested and pursued with reasonable diligence; an act of god or act of nature; civil unrest or disturbance; military or guerilla action; sabotage; economic sanction or embargo; strikes; labor disputes; labor or material shortage; lock-outs; slow-downs; work stoppages; action or restraint by court order or other action by a Governmental Authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action); epidemic, pandemic or quarantine (including the COVID-19 pandemic); riot; insurrection; war (declared or undeclared); explosion; fire; flood; hurricane; earthquake; volcanic eruption; storm; lightning; tsunami; wind; drought; flood; act of the public enemy; terrorism; national emergency or an Emergency hereunder; or any failure to act on the part of any Governmental Authority (including delay in obtaining any required Governmental Approval). Under no circumstances shall Force Majeure include (a) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (b) any obligations which can be satisfied by payment of money, (c) any occurrence or event caused by the negligence or malfeasance of the Party claiming the Force Majeure, (d) Seller's ability to sell the Contract Products at a price greater than that set out in this Agreement, or (e) Buyer's ability to procure the Contract Products at a price lower than that set out in this Agreement.

1.44 "Governmental Approval" means any approval, consent, permit, certificate, resolution, concession, license, or authorization issued by or on behalf of any applicable Governmental Authority with jurisdiction over a Party.

1.45 "Governmental Authority" means any international, foreign, federal, state, regional, county, town, city, or municipal government, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government; provided that, for purposes of this Agreement, Buyer will be deemed not included in such definition when acting as Buyer pursuant to this Agreement or any related agreement between the Parties.

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1.46 "Grossed-Up PTC" means the positive value of (i) the PTC as adjusted to account for the PTC inflation adjustment factor most recently published by notice in the Federal Register that Seller is entitled to claim with respect to the sale of electricity produced by the Project at such time, plus (ii) the after-tax "gross up" amount that would be required to take into account the federal, state and local income tax to Seller or its direct or indirect owners on the amount set forth in clause (i) hereof if such amount were taxable to Seller or its direct or indirect owners. The Grossed-Up PTC utilized for any given invoice will be determined in accordance with the previous sentence on the last Day of the month covered by such invoice. For purposes of this Agreement, "PTC" means the production tax credits under Sections 45 or 45Y of the Code, or any successor Code section.

1.47 "Guaranteed Commercial Operation Date" means December 31, 2026, as such date may be extended pursuant to Section 2.5(c).

1.48 "Guaranty" means a Guaranty substantially in the form of Appendix B issued by D. E. Shaw Renewable Investments, L.L.C., a Qualified Guarantor or another entity acceptable to Buyer.

1.49 "Informal Dispute Resolution" has the meaning set forth in Section 18.1.

1.50 "Interconnecting Utility" shall mean the utility providing interconnection service for the Project to the distribution system or transmission system of that utility.

1.51 "Interconnection Agreement" means the interconnection agreement among Seller, Interconnecting Utility and any other applicable parties thereto regarding the interconnection of the Project to the electric transmission or distribution system of Interconnecting Utility.

1.52 "Interest Rate" has the meaning set forth in Section 7.2.

1.53 "Investment Grade Credit Rating" means a Credit Rating meeting at least two (2) of the following: (a) BBB- or higher by Fitch; (b) BBB- or higher by S&P; or (c) Baa3 or higher by Moody's.

1.54 "Liabilities" means any and all liabilities, losses, fines, obligations, penalties, costs or other expenses of any kind or nature, including reasonable attorneys', experts' and accountants' fees, court costs and other costs of any proceeding, incurred by a Party, whether arising from claims, demands, causes of action, litigation, lawsuits, proceedings, investigations, judgments, settlements or from any similar type of occurrence whether actual, threatened or filed and regardless of whether groundless, false or fraudulent.

1.55 "Letter of Credit" means one or more irrevocable, transferable standby letters of credit, substantially in the form of Appendix C, issued by a Qualified Institution, and otherwise being in a form reasonably acceptable to the Buyer. Costs of a Letter of Credit shall be borne by Seller.

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1.56 "Letter of Credit Default" has the meaning set forth in Section 17.4.

1.57 "Measurement Period" has the meaning set forth in Section 5.2.

1.58 "Milestone" has the meaning set forth in Section 2.5.

1.59 "Milestone Date" has the meaning set forth in Section 2.5.

1.60 "Monthly Contract Products Charge" has the meaning set forth in Section 4.1(b).

1.61 "Moody's" shall mean Moody's Investors Service, Inc., and any successor thereto.

1.62 "Nameplate Capacity" means the nameplate capacity of the Project in megawatts (alternating current), measured at the Delivery Point.

1.63 "NERC" means the North American Electric Reliability Corporation.

1.64 "Net Energy Delivery Guaranty" has the meaning set forth in Section 5.2.

1.65 "Net Energy Delivery Quantity" has the meaning set forth in Section 5.2.

1.66 "Net Energy Delivery Shortfall" has the meaning set forth in Section 5.2(b).

1.67 "Non-Defaulting Party" has the meaning set forth in Section 11.2.

1.68 "Operating Security" has the meaning set forth in Section 17.1(a).

1.69 "Outside Commercial Operation Date" means May 1, 2027, as such date may be extended pursuant to Section 2.5(c).

1.70 "Party" or "Parties" has the meaning set forth in the Preamble to this Agreement.

1.71 "Person" means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, Governmental Authority, or other entity.

1.72 "Planned Maintenance" means maintenance of the Project that is planned in advance by Seller.

1.73 "Project" means the Seller's solar photovoltaic generating unit(s) with a total expected nameplate capacity of 170 megawatts (alternating current) as measured at the Delivery Point, all as described in further detail in Appendix A and as all or part of the same may be repaired, supplemented, repowered, or otherwise modified from time to time by Seller.

1.74 "Prudent Utility Practice" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the electric power generation industry, CAISO, WECC and/or NERC) for similar

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facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

1.75 "Qualified Assignee" must be (a) a Person that (i) has experience that is comparable or superior to that of the initial named Seller in owning or operating photovoltaic solar systems comparable to the Project, and (ii) through itself or its Affiliate (pursuant to a guaranty or other form of credit enhancement reasonably acceptable to Buyer), has financial capability that is comparable or superior to that of the initial named Seller; or (b) a Person that meets the conditions set forth in the foregoing subsection (a)(ii) and retains for the provision of operation and maintenance services a party that meets the criteria set forth in the foregoing subsection (a)(i).

1.76 "Qualified Guarantor" means an entity with an Investment Grade Credit Rating.

1.77 "Qualified Institution" means a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a Credit Rating of at least A- from S&P and A3 from Moody's, having $10,000,000,000 in assets.

1.78 "Renewable Energy Certificates" or "RECs" means the electronic certificates which relate to each megawatt hour of generation delivered from the Project to the Delivery Point or the Solar Charging Point, as applicable, at any time during the Term of this Agreement, that are produced, documented or classified by WREGIS according to their ability to meet renewable portfolio standards requirements in the State of New Mexico.

1.79 "S&P" shall mean Standard & Poor's Financial Services LLC and any successor thereto.

1.80 "Seller" has the meaning set forth in the Preamble to this Agreement.

1.81 "Seller Indemnitees" has the meaning set forth in Section 13.2.

1.82 "Seller Termination Payment" has the meaning set forth in Section 11.2.

1.83 "Seller's Credit Support" means the Development Security and the Operating Security.

1.84 "Site" shall mean the premises upon which the Project is to be located, as more fully described in Appendix A and as may be updated by Seller from time to time upon notice to Buyer.

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1.85 "Solar Charging Point" means the electric system point(s) specified in Appendix A at which the Project delivers Energy to the Energy Storage System for purposes of charging the Energy Storage System in accordance with the terms of the Energy Storage Agreement.

1.86 "Tax Attributes" means the investment tax credits (including any grants or payments in lieu thereof), production tax credits ((including any grants or payments in lieu thereof), depreciation, and any tax deductions or other benefits under the Code or applicable federal, state, or local law available as a result of the investment in, ownership of and/or operation of the Project or the output generated or produced by the Project (including tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).

1.87 "Term" has the meaning set forth in Section 2.1.

1.88 "Termination Payment" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

1.89 "Unit Contingent" means that the Energy to be delivered by Seller to Buyer will be supplied only from the Project and only to the extent that the Project is in operation.

1.90 "Ute Mountain Ute Lease" means the lease agreement the Seller expects to enter into with the Ute Mountain Ute Tribe.

1.91 "Ute Mountain Ute Lease Approvals" has the meaning set forth in Section 16.11.

1.92 "WECC" means the Western Electricity Coordinating Council.

1.93 "WREGIS" means the Western Renewable Energy Generation Information System.

ARTICLE 2.
TERM

2.1. Term; Conditions Precedent. The term of this Agreement shall commence on the Effective Date and shall remain in effect until December 31 of the year in which the twentieth (20th) anniversary of the Commercial Operation Date occurs, or such earlier date provided herein ("Term").

2.2. Commencement of Term. Subject to Seller's rights under Section 4.1(a), Seller shall commence selling the Contract Products, and Buyer shall commence purchasing the Contract Products, beginning on the Commercial Operation Date, and Seller shall continue selling the Contract Products, and Buyer shall continue purchasing the Contract Products, as provided herein, through the earlier of (a) the expiration of the Term or (b) the occurrence of an Early Termination Date.

2.3. Termination Prior to COD. In the event of termination for Seller's Event of Default occurring prior to the Commercial Operation Date, Seller shall, promptly following such

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termination, pay to Buyer, as Seller's sole liability and Buyer's sole remedy for such termination, a termination payment in an amount equal to the Development Security; provided that such obligation of Seller to make such termination payment shall be discharged by Buyer drawing on or otherwise realizing upon the Development Security in accordance with Article 17 hereof, but only to the extent that the Development Security has actually been provided to Buyer as required hereunder.

2.4. Survival. The applicable provisions of this Agreement shall continue in effect after termination or expiration of the Term of Agreement for any reason to the extent necessary to provide for accountings, final billing, billing adjustments, resolution of any billing dispute, or resolution of any court or administrative proceeding and payments. Notwithstanding anything in this Agreement to the contrary, expiration or termination of the Agreement for any reason shall not relieve either Party of any right or obligation accrued or accruing hereunder prior to such expiration or termination, and no expiration or termination of this Agreement shall affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any expiration or termination.

2.5. Milestone Schedule; Daily Delay Damages. Appendix D sets out a schedule of certain milestones for the Project through the Commercial Operation Date (each such milestone, a "Milestone") and dates associated with each Milestone (each such date, a "Milestone Date"), including the Guaranteed Commercial Operation Date and Outside Commercial Operation Date. Seller shall use Commercially Reasonable Efforts to achieve each Milestone on or before the Milestone Date specified therefor and Seller guarantees that Commercial Operation will be achieved on or before the Outside Commercial Operation Date, as the same may be extended pursuant to Section 2.5(c).

(a) Within fifteen days after the close of each quarter from the first quarter following the Effective Date until the Commercial Operation Date, Seller shall provide Buyer a quarterly progress report. The quarterly progress reports shall describe Seller's development and construction progress and indicate whether Seller has met or is on target to meet the Milestones.

(b) If Seller fails to achieve any Milestone on or before the applicable Milestone Date, Seller shall promptly notify Buyer of such failure and provide an estimated date by which the Milestone will be achieved.

(c) Each Milestone (and each subsequent Milestone, including the Guaranteed Commercial Operation Date and Outside Commercial Operation Date) shall be extended to the extent an Excused Delay occurs, subject in the case of an Excused Delay set forth in clause (a), (b) or (c) of the definition thereof to a maximum extension of three hundred sixty-five (365) days. Promptly following the occurrence of any Excused Delay and Seller's knowledge thereof, Seller shall give notice thereof to Buyer and be entitled to an extension to each Milestone Date as set forth in this paragraph. To the extent an Excused Delay set forth in clause (a), (b) or (c) of the definition thereof occurs and lasts for more than three hundred sixty-five (365) days, either Party shall be entitled to terminate this Agreement and Buyer shall return any Development Security to Seller promptly following such termination; provided that if such termination occurs after the date the Ute Mountain

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Ute Lease Approvals are obtained, Seller shall not be entitled to a return of its Development Security.

(d) Seller may from time to time commence delivery of Energy on a sustained basis from part of the Project with an aggregate capacity of at least 5 megawatts (alternating current) (an "Early Project Block"), and Buyer shall pay the Monthly Contract Products Charge for any Contract Products delivered from such Early Project Block. In no event will Seller deliver Energy from Early Project Blocks for more than one hundred eighty (180) days prior to the Commercial Operation Date.

(e) If the Project fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date (as extended pursuant to Section 2.5(c)), Seller shall pay Buyer liquidated damages in the amount of One Hundred Dollars ($100) per megawatt (alternating current) of Nameplate Capacity per day ("Daily Delay Damages") of the Project which has not yet achieved commercial operations, for each day between the Guaranteed Commercial Operation Date and the actual Commercial Operation Date or the Outside Commercial Operation Date, whichever is earlier.

(f) The Parties agree that (i) the damages that Buyer would incur due to Seller's failure to timely achieve Commercial Operation by the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and it is impractical or unreasonably difficult to assess actual damages in those circumstances, (ii) the Daily Delay Damages are a fair and reasonable calculation of such damages for Seller's failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date and (iii) Seller shall not in any event be liable for Daily Delay Damages in the aggregate exceeding the amount of the Development Security.

ARTICLE 3.
TRANSACTION TYPE, CONSTRUCTION, OPERATION AND MAINTENANCE

3.1. Transaction Type. This Agreement is for the purchase and sale of the Contract Products. The Seller shall sell the Contract Products pursuant to the terms of this Agreement, and the Buyer shall pay for the Contract Products pursuant to the terms of this Agreement.

3.2. Unit Contingent. The Parties understand and agree that this is a Unit Contingent agreement.

3.3. Construction of the Project. Except as otherwise set forth herein, Seller will at its own cost furnish all design, materials, supplies, tools, equipment, labor and other services and obtain all permits, licenses and other approvals required by Applicable Laws necessary for the development and construction of the Project.

3.4. Operation of the Project. Except as otherwise set forth herein, Seller, at its sole cost and expense, shall use Prudent Utility Practice to provide operation, repair, monitoring and maintenance services to the Project in accordance with Applicable Laws during the Term. In accordance with the definition of "Project", Seller is permitted to repair, supplement, repower, or otherwise modify all or part of the Project from time to time.

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3.5. Forced Outage. Seller shall notify Buyer as soon as practically possible, but in no event later than twenty-four (24) hours following its discovery, of a Forced Outage. Seller shall use Prudent Utility Practice to fully resolve any Forced Outage as quickly as practicable. The Seller will notify the Buyer as soon as practicable when the Project returns to service, but in no event later than twenty-four (24) hours following the Project's return to service.

3.6. Emergency. Seller shall notify Buyer as soon as practically possible upon the discovery of an Emergency condition pertaining to the Project. Upon notification of an Emergency condition, then Seller shall promptly dispatch appropriate personnel to address such Emergency as quickly as possible in accordance with Prudent Utility Practice.

3.7. Title to Project. Seller or Financing Party shall be the legal and beneficial owner of the Project at all times and the Project shall be the personal property of the Seller or its Financing Party, as applicable.

3.8. Governmental Approvals. Seller shall obtain and maintain Governmental Approvals in compliance with all Applicable Laws and in accordance with this Agreement and Prudent Utility Practice.

3.9. Regulatory Status. Seller shall obtain and maintain such authorizations, certificates and approvals as may be required from the Federal Energy Regulatory Commission ("FERC") as may be required for Seller to make wholesale electricity sales to Buyer at the rates and on the terms set forth under this Agreement, which Seller acknowledges is a market-based rate. Buyer represents that it is purchasing the Contract Products at wholesale.

3.10. CAISO Resource Registration. At Buyer's sole discretion and sole expense, Seller shall assist Buyer in any reasonable manner to register the Project as a participating resource in the CAISO service territory. All required metering will be provided by Seller to the CAISO and Buyer for the purposes of such registration.

ARTICLE 4.
PURCHASE AND SALE OF CONTRACT PRODUCTS

4.1. Purchase and Sale.

(a) During the period in which Seller is testing and/or commissioning the Project, which such period will not exceed one hundred eighty (180) days, Buyer will pay Seller each month an amount equal to the number of megawatt hours of Energy delivered to the Delivery Point or the Solar Charging Point, as applicable, multiplied by the Contract Price.

(b) Beginning on the Commercial Operation Date and for the duration of the Term, Buyer will pay Seller each month an amount equal to the number of megawatt hours of Energy delivered to the Delivery Point or the Solar Charging Point, as applicable, multiplied by the Contract Price ("Monthly Contract Products Charge").

(c) At no time shall Buyer be responsible for line losses of Energy from the Project to the Delivery Point or the Solar Charging Point.

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(d) Subject to the last sentence of this Section 4.1(d), the obligation of Buyer to make the payments required by this Agreement shall be payable solely from the revenues and other legally available funds of Buyer's electric utility system as defined in Section 504 of the Los Alamos County Charter, and in no event shall Buyer be obligated or required to levy or collect ad valorem property taxes or assessments or other taxes to meet its payment obligations under this Agreement. In connection with its approval of the Agreement and on an ongoing basis during the Term, Buyer shall budget annually from electric utility system revenue for payment of its obligations under this Agreement as required under Sections 506 and 509 of the Los Alamos County Charter and Chapter 40 of the Los Alamos County Code.

4.2. Scheduling and Delivery. During the Term, Buyer shall schedule deliveries of Energy hereunder within the defined operational limitations of the Project and in accordance with this Agreement, the Interconnection Agreement and all applicable CAISO and WECC rules, including the requirements below:

(a) Buyer shall schedule or market Energy from the Project output at its sole discretion during the Term. Such scheduling by Buyer shall be in the real-time market, based on the five (5) minute interval data from the Project's metering system.

(b) Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall schedule or arrange for scheduling services with the Interconnecting Utility. Costs, expenses, penalties or other charges assessed by CAISO, WECC, the Interconnecting Utility or any other Person in connection with the scheduling, offering or bidding and delivery of the Project shall be the sole responsibility of Buyer, including for the avoidance of doubt any amounts associated with negative pricing of the Project's output which are incurred.

(c) Notwithstanding anything to the contrary herein, Buyer shall have no right to curtail deliveries of Energy from the Project for any reason. To the extent there is any curtailment of Energy for any reason, including as a result of Buyer's scheduling of the Project, Buyer's failure to schedule the Project or Buyer's failure to dispatch the Project when it is available, the Parties agree that such curtailed Energy shall first be dispatched to the Solar Charging Point for charging the Energy Storage System, with Seller to receive payment for such Energy at the Contract Price, and second, to the extent that such curtailed Energy is not dispatched to the Solar Charging Point for charging the Energy Storage System, then Seller shall be compensated for any such curtailed Energy at the Contract Price plus the Grossed-Up PTC.

(d) Without limiting the generality of this Section 4.2, Buyer shall at all times during the Term be solely responsible for any obligations and liabilities associated with the scheduling of the Project imposed by CAISO, WECC and the Interconnecting Utility or under CAISO or WECC rules with respect to the Project, including all charges, penalties, financial assurance obligations, losses, transmission charges, ancillary service charges, line losses, congestion charges and other CAISO, WECC and applicable system costs or charges associated with distribution and transmission required for delivery of the Energy at the Delivery Point or the Solar Charging Point, as applicable, as well as the foregoing

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after the Delivery Point or the Solar Charging Point, as applicable; provided that Seller shall remain responsible for complying with NERC, CAISO and WECC rules associated with its ownership and operation of the Project up to the Delivery Point.

4.3. RECs. Seller shall transfer to Buyer all of the right, title and interest in and to the RECs associated with the Energy delivered to Buyer during the Term in accordance with the terms of this Section 4.3.

(a) Seller shall comply with all WREGIS rules relating to the creation and transfer of all RECs to be purchased by Buyer under this Agreement and all other WREGIS rules to the extent required for Buyer to achieve the full value of the RECs. In addition, at Buyer's request and sole cost and expense, Seller shall use Commercially Reasonable Efforts to register with and comply with the rules and requirements of Center for Resources Solutions (CRS) Listed facilities or such similar program that tracks, monetizes or otherwise creates or enhances value for RECs.

(b) The Parties intend for the transactions entered into hereunder to be physically settled, meaning that the RECs are intended to be delivered as set forth in this Section 4.3 to the account specified by Buyer.

(c) At the time of each delivery under Section 4.3, Seller represents and warrants to Buyer that (i) title to the RECs associated with the Energy generated by the Project is free and clear of any liens, taxes, claims, security interests or other encumbrances or title defects therein or thereto, (ii) Seller has the sole and exclusive legal right to sell such RECs, (iii) Seller has sold and transferred such RECs hereunder once and only once exclusively to Buyer, and (iv) Seller shall have made no representation, in writing or otherwise, that any third party has received, or has or obtained any right to, such RECs, that is inconsistent with the rights being acquired by Buyer hereunder.

4.4. Capacity. Seller transfers to Buyer, on the terms and conditions set forth herein, any right, title and interest that Seller may have in and to Capacity of the Project, if any, during the Term. Seller represents and warrants to Buyer, and covenants during the Term, that it will not sell or attempt to sell to any other Person any Capacity of the Project, or report to any Person that the Capacity of the Project belongs to anyone other than Buyer. At Buyer's request and cost, Seller shall use Commercially Reasonable Efforts to enter into such documents and instruments as may be reasonably required to effect recognition and transfer of any Capacity of the Project to Buyer. For the avoidance of doubt, Buyer shall be solely responsible and shall bear any costs and expenses associated with participating in any market for, or any other method or system for monetizing or recognizing, the Capacity of the Project, including any costs for seeking accreditation of the Capacity of the Project.

ARTICLE 5.
DELIVERY POINT; NET ENERGY DELIVERY GUARANTY

5.1. Delivery Point. The delivery point for the Contract Products shall be as set forth in Appendix A (the "Delivery Point") or at the Solar Charging Point, as dispatched by Buyer

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from time to time in accordance with the terms of this Agreement and the Energy Storage Agreement.

5.2. Net Energy Delivery Guaranty.

(a) During each Measurement Period, Seller shall deliver Energy to the Delivery Point or the Solar Charging Point, as applicable, in an amount equal to the Net Energy Delivery Guaranty for such Measurement Period; provided that Seller's obligation to deliver Energy for purposes of this Section 5.2 shall also be deemed satisfied by any Deemed Delivered Energy in each applicable Measurement Period.

(b) If the Net Energy Delivery Guaranty for any Measurement Period exceeds the sum of (i) Energy delivered to the Delivery Point or the Solar Charging Point, as applicable, and (ii) Deemed Delivered Energy during such Measurement Period, then the amount of such excess shall be the "Net Energy Delivery Shortfall". No later than ninety (90) days following each Measurement Period, Seller shall calculate the amount of Energy and Deemed Delivered Energy during such Measurement Period, and to the extent there is any Net Energy Delivery Shortfall, Seller shall pay to Buyer liquidated damages equal to the product of the Net Energy Delivery Shortfall for that Measurement Period, multiplied by the lesser of (A) the difference (if any) between (x) (i) the time weighted average of the Real-Time Energy Locational Marginal Price for Energy at the Delivery Point(s) for that Measurement Period plus (ii) the average mid-market value for the current year's vintage of Green-E® RECs for solar generation facilities, as reported by no fewer than two brokers, all of the foregoing as calculated by Seller, minus (y) the Contract Price; provided that if the difference calculated pursuant to the foregoing clauses (x) and (y) is negative, then the liquidated damages for such Measurement Period shall be $0; provided, further, that the amount set forth in clause (x)(ii) above shall be deemed to be $0 for a given quantity of RECs to the extent that Seller provides to Buyer replacement RECs in such quantity for such Measurement Period and (B) $10 per megawatt hour. Each Party agrees and acknowledges that (A) the damages that Buyer would incur due to the Project's failure to achieve the Net Energy Delivery Guaranty would be difficult or impossible to predict with certainty and (B) the liquidated damages contemplated by this provision are a fair and reasonable calculation of such damages. Buyer's rights to collect liquidated damages pursuant to this Section 5.2 shall be Buyer's sole and exclusive remedies for Seller's failure to achieve the Net Energy Delivery Guaranty in any Measurement Period. For the avoidance of doubt, payment of any liquidated damages by Seller as specified herein will be deemed a complete remedy for the Net Energy Delivery Shortfall for the Measurement Period for which payment is made.

For purposes of this Section 5.2, (a) "Measurement Period" shall mean each period during the Term of two consecutive Contract Years, (b) "Net Energy Delivery Guaranty" shall mean (i) for the first Measurement Period, eighty percent (80%) of the Net Energy Delivery Quantity and (ii) for each subsequent Measurement Period and for the rest of the Term, eighty-five (85%) of the Net Energy Delivery Quantity, (c) "Net Energy Delivery Quantity" shall mean the quantity of Energy for a given Contract Year as set forth in Appendix F and (d) "Deemed Delivered Energy" shall mean any Energy not delivered to, or accepted by Buyer, at the Delivery Point or the Solar Charging Point, as applicable, due to (i) an event of Force Majeure affecting Seller, Buyer, the

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Interconnecting Utility, CAISO or WECC, (ii) any Forced Outage, (iii) any default by Buyer hereunder or any other action or inaction of Buyer, (iv) the failure of any high-voltage transformer for the Project, (v) the disconnection of the Project from the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Interconnecting Utility, CAISO, WECC or any other Governmental Authority, (vi) any curtailment, reduction or re-dispatch of the Project, (vii) any failure of the Project to be fully integrated or synchronized with the electric transmission substation and transmission or distribution facilities owned, operated or maintained by Interconnecting Utility, CAISO, WECC or any other Governmental Authority or (viii) any action or inaction by Interconnecting Utility, CAISO, WECC or any other Governmental Authority.

ARTICLE 6.
METERING, COMPLIANCE COSTS AND STATION SERVICE

6.1. Seller shall be responsible for installing meters and other such metering equipment as is necessary to measure the Energy delivered under this Agreement. Such metering by Seller shall comply with Applicable Law and applicable CAISO and WECC rules. Seller shall arrange with the Interconnecting Utility to test the metering at regular intervals consistent with Prudent Utility Practice.

6.2. Any inspection or audit by Buyer of Seller's meters shall be at Buyer's sole expense and shall not interfere with operation of the Project.

6.3. Notwithstanding any other provision of this Agreement, to the extent a change in any Applicable Law occurs after the Effective Date (including any change in policy, rules, standards or regulations by CAISO, WECC, NERC, or FERC) which increases Seller's costs above the cost that could reasonably have been contemplated as of the Effective Date to take all actions (excluding any reasonably foreseeable decommissioning, environmental regulatory requirements, restoration or other costs under any permits or real estate agreements for the Project) ("Compliance Actions") to comply with Seller's obligations under this Agreement, the Parties agree that (a) the maximum amount of costs and expenses Seller shall be required to incur in each calendar year during the Term in order to overcome the effects of such change in Applicable Law on Seller's ability to fulfill its obligations under this Agreement ("Seller Compliance Costs") shall be capped at Thirty Thousand Dollars ($30,000) the ("Compliance Cost Cap"); provided that to the extent that the Compliance Cost Cap is not reached in a given year, then the unutilized portion of the Compliance Cost Cap for such calendar year only, subject to a cap of Thirty Thousand Dollars ($30,000), shall roll over to the subsequent calendar year only, and the Compliance Cost Cap shall not exceed Sixty Thousand Dollars ($60,000) in such subsequent calendar year. In the event that Seller anticipates the need to incur any Seller Compliance Costs in excess of the Compliance Cost Cap, Seller will notify Buyer of such anticipated Seller Compliance Costs, with supporting information that reasonably demonstrates the nature and level of such costs. Buyer will have sixty (60) Days from receipt of such notice to evaluate such notice, and will, by the end of such period, (i) agree to reimburse Seller for all such Seller Compliance Costs that Seller actually incurs in excess of the Compliance Cost Cap ("Agreed Compliance Costs"), (ii) agree and execute with Seller an amendment to this Agreement which reflects a mutually agreed increase to the Monthly Contract Products Charge for the remainder of the Term that would compensate Seller for all such excess Seller Compliance Costs, or (iii) waive Seller's obligation to take any and all

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such actions. If Buyer does not respond to a notice given by Seller under this Section 6.3 within sixty (60) Days after delivery, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Term. In the event Buyer agrees to reimburse Seller pursuant to clause (i) in the foregoing sentence, then Seller will take such actions for which Buyer has agreed to reimburse Seller the Agreed Compliance Costs, and Buyer will pay to Seller the Agreed Compliance Costs within ten (10) Business Days of receipt of invoice thereof issued by Seller. To the extent that Buyer has not paid Seller for any Agreed Compliance Costs, Seller will not be in default under this Agreement for failure to satisfy any obligation under this Agreement, Applicable Law or other requirement related to such change in Applicable Law.

6.4. Seller shall be responsible for obtaining retail electric service for the Project. Seller may obtain such service from a local provider or may use energy from the Project, the Energy Storage System, or from any other source for auxiliary loads, station uses and house loads, so long as such usage does not materially affect the Energy Storage System under the Energy Storage Agreement or subject Buyer in any material respect to additional regulation by CAISO or WECC.

ARTICLE 7.
BILLING AND PAYMENT

7.1. Calculation of Monthly Invoice. For each month or portion thereof following the Commercial Operation Date and thereafter during the Term, Buyer shall pay to Seller the Monthly Contract Products Charge plus any other amounts owed to Seller including due to curtailment or failure to dispatch. Pending the availability of actual data, computations by Seller of charges for the purposes of billings hereunder may be based upon reasonable estimates made by Seller. Any charges that are based upon estimates shall be trued-up as soon as practicable once actual data becomes available. Errors in arithmetic, computation, meter readings, estimating, or otherwise that affect the accuracy of a bill shall be promptly corrected in a subsequent corrected bill.

7.2. Presentation and Payment. Unless otherwise agreed to in writing by the Parties: (a) Seller shall submit an invoice to Buyer for the Monthly Contract Products Charge no later than twenty-five (25) days after the end of each calendar month during the Term; (b) the invoice shall identify each input on the bill which is based upon an estimate, in whole or in part; (c) invoices shall be delivered to Buyer by email, facsimile or by other means pursuant to Section 19.2; (d) all such invoices shall be due and payable in immediately available funds via wire transfer no later than fifteen (15) days after the date on which such invoice is delivered (such date, the "Due Date"); and (e) any amounts not paid by the Due Date shall be deemed delinquent and shall accrue interest from the Due Date to the date of payment at a per annum rate of interest equal to the sum of (x) the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" as the same may change from to time (or if not published on such day on the most recent preceding day on which published), or any other periodical that may be agreed upon in writing from time to time and (y) two (2) percentage points (such sum, the "Interest Rate").

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7.3. Challenge of Invoices. Unless otherwise agreed, in the event of a good faith dispute relating to the amounts set forth on any invoice, and provided that the undisputed portion of the invoice at issue is paid, then: (a) either Party may challenge, in writing, the accuracy of any original or adjusted invoice, provided that no adjustment for any invoice or payment will be made unless the challenge to the accuracy thereof was made prior to the lapse of twenty four (24) months from the receipt thereof; (b) if a Party does not challenge the accuracy of an original or adjusted invoice within such twenty four (24) month period, such invoice shall be binding upon that Party and shall not be subject to challenge.

7.4. Disputed Invoice. Within the limitation of Section 7.3, each invoice shall be subject to adjustment for true-up from estimated costs to actual costs, errors in arithmetic, computation or estimating, or adjustments related to settlement. Seller may make adjustments pursuant to the preceding sentence to any billing for a period of up to twenty-four (24) months from the date of rendering of such original billing in order to reflect differences in Seller's receipt of more current data. The Parties shall use good faith efforts to resolve any billing and payment disputes promptly. Unless otherwise agreed, in case of a dispute to any portion of any invoice, all invoiced amounts shall be paid in accordance with Section 7.2. Unless otherwise agreed, upon final determination of the invoice amount, any necessary adjustments in such invoice and the payments thereof shall be made in the invoice submitted in the month following such determination, with interest at the Interest Rate paid to the Buyer from the date of payment on amounts Buyer did not owe if the Buyer prevails in the dispute; provided, that, in no event shall a Party be required to pay interest on the amount of any underpayment of costs caused by adjustment for true-up from estimated costs to actual costs or Seller's error in arithmetic, computation or estimating. Buyer's payment of an invoice (whether or not under protest) shall not affect any legal or equitable rights a Party may have to challenge the invoice within the time limitations established in Section 7.3 above.

7.5. Monthly Payment Netting. Except for amounts that one Party may owe to the other under Articles 11 or 17, which amounts shall not be included in any netting calculation pursuant to this Section 7.5, if Seller and Buyer are each required to pay an amount in the same month to the other pursuant to this Agreement, such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. Each Party reserves all rights, setoffs, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) to which such Party has or may be entitled arising from or out of this Agreement.

ARTICLE 8.
TRANSFER OF TITLE OF ENERGY

Title to, and risk of loss related to, the Energy delivered hereunder shall transfer from Seller to Buyer at the Delivery Point or the Solar Charging Point, as applicable. Except as provided elsewhere in this Agreement, Seller shall be responsible and liable for any costs or charges imposed with respect to and shall bear the risk of loss and damage associated with the possession, ownership, transmission, transfer and delivery of the Energy up to the Delivery Point or the Solar Charging Point, as applicable, and Buyer shall be responsible and liable for any costs or charges imposed with respect to and shall bear the risk of loss and damage associated with the possession, ownership, transmission, transfer and delivery of the Energy at and after the Delivery Point or the

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Solar Charging Point, as applicable. Seller warrants and represents to Buyer that it will deliver the Energy free and clear of all liens, security interests, claims and encumbrances and of all interests of any Person arising prior to the Delivery Point.

ARTICLE 9.
TAXES

Seller shall pay or cause to be paid all taxes on or with respect to the Project and the sale of the Contract Products prior to the Delivery Point or the Solar Charging Point, as applicable. Buyer shall pay or cause to be paid all taxes on or with respect to the purchase of the Contract Products at and after the Delivery Point or the Solar Charging Point, as applicable. Payment of all other taxes which are enacted or become effective or are assessed with respect to the Contract Products after the Effective Date shall be governed by the terms of this Article 9. Nothing shall obligate or cause a Party to pay or be liable to pay any tax for which it is exempt under Applicable Law. Each Party shall use reasonable efforts to administer this Agreement and implement its provisions in accordance with Applicable Law and the intent of the Parties to minimize the imposition of taxes. Buyer agrees to furnish Seller with all applicable tax exemption certificates and documentation where exemption from applicable taxes is claimed.

ARTICLE 10.
FORCE MAJEURE

If Force Majeure prevents a Party from fulfilling any obligations under this Agreement, the Party whose performance is affected by Force Majeure ("Affected Party") shall promptly notify the other Party of the existence of such Force Majeure, but in no case more than thirty (30) days after the Affected Party becomes aware of the Force Majeure event. The Party whose performance is affected may give notice verbally or in writing, but, if given verbally orally, it shall be promptly confirmed in writing. The notification must specify in reasonable detail the circumstances of the Force Majeure, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance, and shall be updated or supplemented from time to time to keep the other Party advised of the effect and remedial measures being undertaken to overcome the Force Majeure. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure cannot be mitigated by the use of Prudent Utility Practices. The Affected Party will use Prudent Utility Practices to resume its performance as soon as possible. If a Party claims a Force Majeure for a period of three hundred sixty-five (365) consecutive days or longer, then for so long as such Force Majeure is continuing, the Party not claiming a Force Majeure may terminate this Agreement upon notice to the Affected Party, and neither Party shall have any liability to the other with respect to the period following the effective date of such termination; provided, however, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising hereunder before the effective date of such termination. No obligations of either Party that arose prior to a Force Majeure, or that arise after the cessation of a Force Majeure, shall be excused by such Force Majeure. During any period in which Buyer is the Affected Party, Seller shall be permitted to sell Contract Products to any other Person in its sole discretion.

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ARTICLE 11.
EVENTS OF DEFAULT

11.1. Events of Default. For purposes of this Agreement, each of the following shall constitute an event of default ("Event of Default") with respect to a Party that is subject to the Event of Default (the "Defaulting Party"):

(a) Failure by the Defaulting Party to make, when due, any payment required under this Agreement if such failure is not remedied within fifteen (15) Business Days after written notice of such failure is given by the other Party and provided the payment is not the subject of a good faith dispute as described in Section 7.4.

(b) The Defaulting Party becomes Bankrupt.

(c) Failure by the Defaulting Party to perform any material covenant or obligation set forth in this Agreement (other than the events that are otherwise specifically covered in this Section 11.1 as a separate Event of Default), such failure is not excused by Force Majeure and such failure continues uncured for more than thirty (30) days after written notice to such Party specifying the nature of such failure; provided, however, that such cure period of thirty (30) days shall be extended in the case of a failure that is not reasonably capable of cure within thirty (30) days so long as the Defaulting Party commences to cure such failure within such cure period of thirty (30) days and uses Commercially Reasonable Efforts to cure such Event of Default, provided, however, that such cure period shall not exceed an additional thirty (30) days.

(d) Any representation or warranty made by the Defaulting Party in this Agreement is not true and complete in any material respect when made and such failure has a material adverse effect on the other Party, unless the fact, circumstance or condition that is the subject of such representation or warranty is made true within sixty (60) calendar days after written notice to such Party specifying the nature of such misrepresentation.

(e) Actual fraud or willful misconduct by either Party in connection with this Agreement or the development or operation of the Project if such fraud or misconduct is not remedied within thirty (30) days after written notice of such fraud or misconduct is given by the other Party.

(f) Any Party consolidates or amalgamates with, or merges with or into, another entity and, at the time of such consolidation, amalgamation or merger, the resulting or surviving entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the Non-Defaulting Party.

(g) Failure by Seller to achieve the Commercial Operation Date by the Outside Commercial Operation Date (after any applicable extensions pursuant to Section 2.5(c)), in which case Buyer shall be the Non-Defaulting Party.

(h) Failure by Seller to provide or maintain Seller's Credit Support as required by Article 17 and such failure is not cured within ten (10) Business Days (or such other

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applicable period as set forth in Article 17) after written notice of such failure is given by Buyer, in which case Buyer shall be the Non-Defaulting Party.

(i) An assignment by either Party which is not permitted pursuant to the terms of Article 14.

11.2. Seller Termination Payment and Buyer Termination Payment.

(a) If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, then the other Party ("Non-Defaulting Party") shall have the right to: (i) establish an early termination date by designating a day, no earlier than the day such notice is effective and no later than thirty (30) calendar days after such notice is effective, as the "Early Termination Date" to liquidate and terminate this Agreement. If the Non-Defaulting Party establishes an Early Termination Date pursuant to this Article 11 and the Non-Defaulting Party is the Buyer, then Seller shall owe the Seller Termination Payment to Buyer. If the Non-Defaulting Party establishes an Early Termination Date pursuant to this Article 11 and the Non-Defaulting Party is the Seller, then Buyer shall owe the Buyer Termination Payment to Seller. Notwithstanding the foregoing, all payments due and owing for the Contract Products prior to the Early Termination Date shall be made.

(b) If Buyer is the Non-Defaulting Party and establishes an Early Termination Date in accordance with this Article 11, then Seller agrees that the "Seller Termination Payment" owed by Seller shall equal (i) the amount of the Development Security, if such Early Termination Date occurs prior to the Commercial Operation Date, or (ii) the amount of Buyer's actual direct damages over the unexpired portion of the Term calculated in a commercially reasonable manner as set forth in Appendix E, if such Early Termination Date occurs after the Commercial Operation Date. If Seller is the Non-Defaulting Party and establishes an Early Termination Date in accordance with this Article 11, then Buyer agrees that the "Buyer Termination Payment" owed by Buyer shall equal the amount calculated by Seller in a commercially reasonable manner in accordance with Appendix E. Notwithstanding the foregoing, all payments due and owing for the Contract Products prior to the Early Termination Date shall be made unless to the extent such amounts are setoff as set forth in this Article.

(c) During the occurrence and continuation of an Event of Default in which the Non-Defaulting Party establishes an Early Termination Date, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment. In no event shall a Termination Payment be due from the Non-Defaulting Party to the Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Defaulting Party within thirty (30) calendar days after such notice is effective.

(d) If the Defaulting Party disputes the calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, nevertheless pay the undisputed portion of the Termination Payment within five (5) Business Days after receipt of the Non-Defaulting Party's notice of such amount plus any unpaid amounts owing to the Non-Defaulting Party, and, within five (5) Business Days of receipt of such notice, provide to Non-Defaulting

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Party a detailed written explanation of the basis for any disputed amounts. The Non-Defaulting Party shall answer any questions, within two (2) Business Days of receiving such questions, from the Defaulting Party regarding the calculation of the Defaulting Party's Termination Payment. If the dispute is resolved in favor of the Non-Defaulting Party, the disputed amount shall be paid by the Defaulting Party within seven (7) Business Days of the non-appealable resolution of such dispute, with interest upon such amount, calculated at the Interest Rate from the date the Defaulting Party's termination Payment was paid to Non-Defaulting Party until the date upon which the refund is made.

ARTICLE 12.
LIMITATION OF LIABILITY

12.1 EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, AND SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE; PROVIDED, THAT, TO THE EXTENT THAT TAX ATTRIBUTES WITH RESPECT TO THE PROJECT ARE LOST, REFUNDED, UNAVAILABLE OR RECAPTURED AS A RESULT OF A DEFAULT BY BUYER, SUCH LOST, REFUNDED, UNAVAILABLE OR RECAPTURED TAX ATTRIBUTES SHALL BE DEEMED ACTUAL DIRECT DAMAGES RECOVERABLE BY SELLER FOR ALL PURPOSES HEREUNDER. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. EXCEPT AS PROVIDED IN SECTION 12.2, NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SELLER'S AGGREGATE LIABILITY UNDER OR ARISING OUT OF THIS AGREEMENT

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PRIOR TO THE COMMERCIAL OPERATION DATE IS LIMITED TO THE AMOUNT OF DEVELOPMENT SECURITY REQUIRED HEREUNDER.

12.2. Exceptions. The limitations of liability set out in this Article 12 do not apply to damages arising out of:

(a) Actual fraud or material intentional misrepresentation of any Party in connection with this Agreement or the development or operation of the Project.

(b) Indemnities set forth in Article 13 of this Agreement (including any indemnity related to an environmental matter).

12.3 Duty to Mitigate Damages. Each Party has a duty to mitigate damages and will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

ARTICLE 13.
INDEMNIFICATION

13.1 Seller's Indemnity. Seller shall, to the fullest extent permitted by law, defend, indemnify and hold harmless Buyer and its council members, officers, managers, agents, employees, and contractors ("Buyer Indemnitees") from, against and with respect to, any and all Liabilities arising out of or relating to any third-party claim or action against any Buyer Indemnitees arising out of any negligence or willful misconduct of Seller Indemnitees related to Seller's obligations under this Agreement. Notwithstanding anything to the contrary set forth above, Seller shall not be required to indemnify any Buyer Indemnitee for any loss to the extent caused by the act or omission of such Buyer Indemnitee.

13.2 Buyer's Indemnity. Buyer is a governmental entity whose tort liability is limited by the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1 through 41-4-27, and any liability or indemnity assumed by Los Alamos in this Agreement is limited by the provisions of the New Mexico Tort Claims Act.

13.3 Acknowledgment. As between the Parties and subject to Section 13.2, each Party acknowledges that it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent the injury or damage results from the actions or negligence of that Party or its agents, officers, managers, contractors or employees.

ARTICLE 14.
ASSIGNMENT

14.1. Seller Assignment. Except for the provisions in this Article 14, Seller shall not transfer or assign (collectively, an "Assignment") Seller's rights or obligations under this Agreement or any other interest therein, without the prior written consent of Buyer, not to be unreasonably withheld, conditioned or delayed. Notwithstanding the prior sentence and subject to Section 14.3, without Buyer's consent, Seller may make an Assignment to (i) an Affiliate of Seller, (ii) any Person who purchases all or substantially all of the assets of Seller, in the case of clause

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(ii) upon the assignee having (1) agreed in writing to be bound by this Agreement, and (2) delivered evidence reasonably satisfactory to Buyer that the assignee's creditworthiness or net worth is equal to or better than that of the Seller at the time of such assignment, and (3) complied with the obligations of Seller to provide Credit Support in accordance with this Agreement, or (iii) to one or more Financing Parties as collateral security in connection with any financing of the Project (including pursuant to a sale-leaseback or partnership flip transaction), except that no such Assignment to Financing Parties shall operate to release Seller from any of its obligations under this Agreement. A purchase of membership interests or other rights of ownership (in each case, directly or indirectly held) in Seller shall not be considered an "Assignment" hereunder requiring the consent of Buyer. Except for those Assignments for which Buyer's consent is not required, any assignment made by Seller without the prior written consent of Buyer shall not release Seller of its obligations hereunder.

14.2. Permitted Assignment by Buyer. Buyer shall have the right to assign this Agreement upon prior written consent, which shall not be unreasonably withheld, of the Seller, provided (i) the proposed assignee's creditworthiness is equal to or better than that of Buyer at the Effective Date and (ii) the proposed assignee agrees in writing to perform all of Buyer's obligations under the Agreement.

14.3. Financing Accommodations. Buyer acknowledges that Seller may enter into financing agreements in connection with the Project with Financing Parties and that Seller's obligations under such financing agreement may be secured by, among other collateral, a pledge or collateral assignment of this Agreement and/or a grant of a security interest and/or a transfer of an ownership interest in the Project. In order to facilitate Seller's ability to obtain financing for the Project, Buyer agrees as follows:

(a) Consent to Collateral Assignment. Buyer will cooperate reasonably with Seller and Financing Party to enter into a collateral assignment by Seller to the Financing Party of this Agreement; provided that such assignment shall not relieve Seller of its obligations hereunder.

(b) Financing Party's Default Rights. Buyer's consent to collateral assignment may contain the following provisions:

i. The Financing Party, as collateral assignee, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement.

ii. Buyer will not exercise any right to terminate or suspend this Agreement unless it shall have given each Financing Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within sixty (60) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Seller default reasonably cannot be cured by the Financing Party within such period and such party commences and continuously

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pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to be less than an additional sixty (60) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

iii. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Seller hereunder or cause to be cured any default of Seller hereunder in the time and manner provided by the terms of this Agreement. Unless the Financing Party has succeeded to Seller's interests under this Agreement, nothing herein requires the Financing Party to cure any default of Seller under this Agreement or to perform any act, duty or obligation of Seller under this Agreement, but Buyer may give it the option to do so within the terms and time periods required by this Agreement.

iv. Buyer may agree that if a Financing Party notifies Buyer in writing that an event of default under Seller's financing arrangement has occurred and is continuing and that the Financing Party has elected to take an enforcement action or otherwise exercise remedies with respect to the Project and/or the replacement of the Seller under this Agreement (an "Enforcement Action"), then, provided that the Enforcement Conditions are satisfied, (1) the Qualified Assignee that acquires the Project through such Enforcement Action shall be substituted for the then named Seller under this Agreement and (2) Buyer may recognize such Qualified Assignee as its counterparty under this Agreement and will continue to perform its obligations under this Agreement in favor of the Qualified Assignee.

v. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the Bankruptcy Code, at the request of Financing Party made within sixty (60) days of such termination or rejection, Buyer may enter into a new agreement with a Qualified Assignee having substantially the same terms and conditions as this Agreement solely on the condition that before or at the time of entering into such new agreement the Qualified Assignee cures all defaults then existing under this Agreement which are capable of being cured.

(c) Acknowledgement and Confirmation. Buyer shall from time to time upon Seller's reasonable request promptly enter into (i) a consent to collateral assignment substantially in the form attached hereto as Appendix G and (ii) an acknowledgement and confirmation in a form provided by the Financing Party that does not diminish Buyer's rights hereunder and that is reasonably acceptable to the Buyer, which such acknowledgement and consent shall not be unreasonably withheld, conditioned, or delayed. In the case of an acknowledgement and confirmation under clause (ii) above, it

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shall be limited to Buyer's acknowledgement of the collateral assignment by Seller to the Financing Party of this Agreement. Buyer shall also from time to time upon Seller's reasonable request provide an estoppel to one or more Financing Parties substantially in the form attached hereto as Appendix H.

(d) Amendments and Accommodations. At Seller's request, Buyer shall agree to amend this Agreement to include any provision that may reasonably be requested by an existing or proposed Financing Party or provide separate accommodations as may be reasonably requested by an existing or proposed Financing Party; provided, however, that the foregoing undertaking shall not obligate Buyer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Buyer, under this Agreement (except for providing such notices and additional cure periods to Financing Parties with respect to Seller Events of Default as an existing or proposed Financing Party may reasonably request).

14.4. Prohibited Assignments Void. Any purported assignment of this Agreement not in compliance with the provisions of this Article 14 shall be null and void.

ARTICLE 15.
CONFIDENTIALITY

The Parties consider certain terms of this Agreement to be sensitive commercial information. Accordingly, the Parties shall not disclose the terms of this Agreement to any third party unless and to the extent required to make such disclosure by action of a court or other government authority or applicable law, including the New Mexico Inspection of Public Records Act, NMSA 1978, § 14-2-1 et seq., stock exchange regulations, or by a governmental order. Each Party shall only disclose the terms of this Agreement and other confidential information received from the other Party to (i) those of its employees, directors, board members, officers, agents, advisors, consultants, authorized representatives, contractors, accountants, insurers, auditors, Affiliates and attorneys having a "need to know" in order to carry out their functions in connection with this Agreement and (ii) to prospective and actual lenders and investors in connection with the Project which agree to maintain the confidentiality of the information disclosed. The foregoing obligations of confidentiality shall not apply with respect to information that: (a) becomes generally available to the public other than as a result of an unauthorized disclosure by the receiving Party or its representatives, (b) was available to the receiving Party on a non-confidential basis prior to the disclosure to the receiving Party hereunder or (c) becomes available to the receiving Party from a source other than the disclosing Party or its representatives and such source was, to the disclosing Party's knowledge, entitled to make the disclosure to the receiving Party.

ARTICLE 16.
REPRESENTATIONS AND WARRANTIES

As a material inducement to entering into this Agreement, each Party (or the Party specified, as applicable), with respect to itself, represents and warrants to the other Party throughout the Term:

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16.1. Duly Organized and Validly Existing. With respect to Buyer, Buyer represents that it was formed and is operating in accordance with the laws of the state of New Mexico governing its formation and operations. With respect to the Seller, Seller represents it is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware and has the corporate power and authority to own or lease its properties and carry on its business as now conducted. Seller also represents it is duly registered with the New Mexico Secretary of State, in good standing and avails itself of the privileges and liabilities of the laws of the state of New Mexico and has corporate power and authority to own and operate the Project in New Mexico.

16.2. No Consents or Other Authorizations. It has or will obtain when required all regulatory authorizations necessary for it to legally perform its obligations under this Agreement (including with respect to Buyer its obligations under Section 4.1(d)) and no consents of any other Person and no act of any other Governmental Authority is required in connection with the execution, delivery and performance of this Agreement other than those which it has or will obtain. In addition, each Party represents and warrants, with respect to this Agreement, that all acts necessary to the valid execution, delivery and performance of this Agreement (including with respect to Buyer its obligations under Section 4.1(d)) have or will be taken and performed as required under all relevant federal, state and local laws, ordinances or other regulations with which such Party is obligated to comply.

16.3. Due Authorization; No Violation. The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action (including with respect to Buyer its obligations under Section 4.1(d)) and do not violate any of the terms or conditions in its governing documents or any contract to which it is a party or any law, rule, regulation, order, writ, judgment, decree or other legal or regulatory determination applicable to it.

16.4. Enforceability. This Agreement constitutes a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending.

16.5. No Bankruptcy. There are no bankruptcy, insolvency, reorganization, receivership or other comparable proceedings pending or being contemplated by it or to its knowledge threatened against it.

16.6. Statutes of Limitation. Buyer represents and warrants that the Term of the Agreement does not extend beyond any applicable limitation imposed by any relevant federal, state and local laws, ordinances or other regulations with which Buyer is obligated to comply or other relevant constitutional, organic or other governing documents and Applicable Law.

16.7. Due Diligence. Each Party is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party hereto in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of this Agreement.

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16.8. Operation in Accordance with Applicable Law. Seller represents and warrants that, as of the Commercial Operation Date, it owns, operates and maintains the Project in accordance with Applicable Law.

16.9. Contractual Liability. The Parties agree that this is a valid written contract for purposes of NMSA 1978, Section 37-1-23 (A), which states: "Governmental entities are granted immunity from actions based on contract, except actions based on a valid written contract."

16.10. Insurance Coverages. Seller shall obtain and maintain the following insurance coverages, at a minimum:

(a) Workers' Compensation Insurance that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

(b) Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations.

(c) Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit for bodily injury and property damage with respect to Seller's vehicles whether owned, hired, or non-owned.

(d) Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (a) (with respect to only Employer's Liability Insurance), (b) and (c) with a limit per occurrence of Twenty Million dollars ($20,000,000) written on a per project basis.

The amounts of insurance required in the foregoing paragraphs (a), (b), (c) and (d) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

(e) Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost, with limits, sublimits and coverage subject to commercial availability and in accordance with industry standards. For the avoidance of doubt, builders' risk insurance shall qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A reasonable deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with limits and coverage amounts similar to other facilities of similar construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering

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all objects customarily subject to such insurance, including boilers and engines, and with limits equal to an amount equal to their probable maximum loss.

16.11. Real Property Interests. Subject to the Ute Mountain Ute Lease Approvals, Seller represents and warrants that it has, or reasonably expects to have at the time required to perform its obligations hereunder, real property interests sufficient to construct, own and operate the Project for the Term. The Parties acknowledge that the Ute Mountain Ute Lease will be subject to approval by the Bureau of Indian Affairs and satisfactory review under the National Environmental Policy Act and National Historic Preservation Act (collectively, the "Ute Mountain Ute Lease Approvals").

ARTICLE 17.
CREDIT SUPPORT

17.1. Seller's Credit Support.

(a) Seller agrees to deliver to Buyer Seller's Credit Support to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Seller's Credit Support in the amount of One Hundred Thousand Dollars ($100,000) per megawatt (alternating current) ("Development Security") in the form of cash, a surety bond, a Guaranty or Letter of Credit within thirty (30) days following the Effective Date until Seller posts Operating Security after the Commercial Operation Date; and

(ii) Seller's Credit Support in the amount of Fifty Thousand Dollars ($50,000) per megawatt (alternating current) (as modified pursuant to this clause (ii), "Operating Security") in the form of cash, a surety bond, a Guaranty or Letter of Credit within thirty (30) days following the Commercial Operation Date, provided that Seller may elect to apply the Development Security (or a portion of the Development Security) toward the Operating Security, and such Operating Security continue until the fifth (5th) anniversary of the Commercial Operation Date, and thereafter shall be reduced as follows:

(a) After the fifth (5th) anniversary of the Commercial Operation Date, such Operating Security shall be reduced to Thirty-Seven Thousand, Five Hundred Dollars ($37,500) per megawatt (alternating current) until the tenth (10th) anniversary of the Commercial Operation Date;

(b) After the tenth (10th) anniversary of the Commercial Operation Date, such Operating Security shall be further reduced to Twenty-Five Thousand Dollars ($25,000) per megawatt (alternating current) until the fifteenth (15th) anniversary of the Commercial Operation Date;

(c) After the fifteenth (15th) anniversary of the Commercial Operation Date, such Operating Security shall be further reduced to Twelve Thousand, Five

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Hundred Dollars ($12,500) per megawatt (alternating current) until the end of the Term.

(b) Any amounts owed by Seller to Buyer under this Agreement (other than disputed amounts) and not satisfied within thirty (30) Days of becoming due and owing may be satisfied by Buyer drawing on Seller's Credit Support until such Seller's Credit Support has been exhausted. In addition, upon termination of this Agreement, Buyer shall have the right to draw upon Seller's Credit Support for any amounts owed to Buyer under this Agreement if not paid when due. In no event shall Seller be required to replenish any Development Security. Seller shall replenish Operating Security to the required amount within fifteen (15) days after any draw on such Operating Security by Buyer.

(c) Seller's obligation to maintain Seller's Credit Support shall terminate upon the occurrence of the following: (i) the expiration of the Term, or the Agreement has been terminated pursuant to Section 11.2; and (ii) all payment obligations of each Party arising under this Agreement, including any such obligations to pay the Termination Payment, indemnification payments or other damages, including any and all Daily Delay Damages, are paid in full. Upon the occurrence of the foregoing, Buyer shall promptly return to Seller the unused portion of Seller's Credit Support.

17.2. Buyer's Rights and Remedies. If at any time an Event of Default with respect to Seller has occurred and is continuing, then, unless Seller has paid in full all of its obligations hereunder that are then due, without limiting any other rights and remedies Buyer may have under this Agreement or otherwise at law or in equity, Buyer may exercise one or more of the following rights and remedies: (i) all rights and remedies available to a secured party under Applicable Law with respect to Seller's Credit Support held by Buyer, and (ii) the right to liquidate any Seller's Credit Support held by Buyer and to apply the proceeds of such liquidation to any amounts payable to Buyer with respect to Seller's obligations hereunder in such order as Buyer may elect. For the purpose of this Section 17.2, Buyer may draw on the undrawn portion of any Seller's Credit Support up to the amount of Seller's outstanding obligations hereunder. Seller shall remain liable for amounts due and owed to Buyer that remain unpaid after the application of Seller's Credit Support pursuant to this Section 17.2.

17.3. Buyer's Liens on Seller's Credit Support.

(a) To the extent permitted by Applicable Law, Seller shall from time to time as requested by Buyer execute, acknowledge, record, register, deliver and file all notices, statements, instruments, and other documents as may be reasonably required to render fully valid, perfected and enforceable liens on and security interest in Seller's Credit Support, including liens of Buyer on such Credit Support, which liens shall be of priority equal to that of any other Persons having one or more liens on such Credit Support.

(b) If Seller posts Credit Support in the form of cash, Seller shall be entitled to direct such cash be invested in any FDIC-insured account or treasury fund, and any interest on such posted cash shall be solely for Seller's account.

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17.4. Letter of Credit Default. For purposes hereof, it shall be a "Letter of Credit Default" with respect to the Letter of Credit issued by the Qualified Institution on behalf of the Seller, upon the occurrence of any of the following events: (i) the Qualified Institution shall fail to maintain a Credit Rating of at least A- by S&P and A3 by Moody's, (ii) the Qualified Institution shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the Qualified Institution shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of such Letter of Credit; (iv) such Letter of Credit shall fail or cease to be in full force and effect at any time during the Term of this Agreement; (v) any event analogous to an event specified in Section 11.1(b) of this Agreement shall occur with respect to the Qualified Institution; or (vi) the Seller or the Qualified Institution shall fail to cause the renewal or replacement of the Letter of Credit to be provided to Buyer at least thirty (30) days prior to the expiration of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to the Seller in accordance with the terms of this Agreement. If a Letter of Credit Default occurs, then the Seller shall have ten (10) Business Days to cure the event(s) causing the Letter of Credit Default.

ARTICLE 18.
DISPUTE RESOLUTION

18.1 Informal Dispute Resolution. Any disputes between the Parties under this Agreement shall be referred to the senior executives of the Buyer and Seller for resolution on an informal basis as promptly as practicable ("Informal Dispute Resolution"). In the event that the senior executives are unable to resolve the dispute within thirty (30) days after the matter was submitted to them, or such other period as the Parties may jointly agree upon, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving five (5) Business Days' written notice, declare the mediation process unsuccessful, and the Parties shall be able to pursue all available legal remedies. The Parties shall not be required to engage in Informal Dispute Resolution with respect to disputes concerning Section 11.1 or Article 13, and may immediately pursue all available legal remedies.

18.2 Tolling. During informal negotiations pursuant to Section 18.1, all applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 18.1 are pending and the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to the procedures set forth in Section 18.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

18.3 Deliveries and Undisputed Payments to Continue. Pending the final resolution of any Dispute, Seller shall continue to deliver Contract Products and perform its other duties and

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obligations under this Agreement, and Buyer shall continue to make undisputed payments in accordance with this Agreement.

ARTICLE 19.
GENERAL PROVISIONS

19.1. Waivers. Any waiver at any time by any Party of its rights with respect to the other Party or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any other prior or subsequent default or matter.

19.2. Notices. Any notice, demand, request, consent, approval, confirmation, communication, or statement which is required or permitted under this Agreement, shall be in writing, except as otherwise provided, and shall be given or delivered by Federal Express or comparable overnight delivery service, postage prepaid, addressed to the Party at the address set forth below. Notwithstanding the foregoing, bills, invoices, credit memos, reports and other communications in the ordinary performance of the respective duties and obligations of the parties hereunder, may be sent by e-mail, first class mail or any other method, whether herein specifically provided or as the parties may hereafter adopt. Changes in such address shall be made by notice similarly given.

Notices to Buyer shall be sent to:

The Incorporated County of Los Alamos
Utilities Manager
1000 Central Ave., Suite 130
Los Alamos, NM 87544
Phone: 505-662-8148
Email: DPU@lacnm.us

Notices to Seller shall be sent to:

Foxtail Flats Solar, LLC
575 Fifth Avenue, 35th Floor
New York, NY 10017
Attn: General Counsel
Phone: 212-478-0000
Email: DESRI-Notices@deshaw.com

Notices shall be deemed to have been received, and shall be effective, upon receipt. Notices of changes of address by either Party shall be made in writing no later than ten (10) calendar days prior to the effective date of such change; provided, however, that any failure to comply with this sentence shall not be deemed an Event of Default or other grounds for termination of the Agreement.

19.3. Governing Law and Waiver of Jury Trial. All disputes arising out of the performance or non-performance under this Agreement shall be construed in accordance with the laws of the State of New Mexico, notwithstanding any laws requiring the application of the laws

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of another state. The Parties agree that sole and exclusive venue for any action or litigation arising from or relating to this Agreement shall be federal court in the State of New Mexico or state court located in Bernalillo County, New Mexico. Each Party agrees to waive all rights to a trial by jury in the event of litigation to resolve any disputes hereunder.

19.4. Headings Not to Affect Meaning. The descriptive headings used for the various articles and sections herein have been inserted for convenience and reference only and shall in no way affect the meaning or interpretation, or modify or restrict any of the terms and provisions hereof.

19.5. No Consent to Violation of Law. Nothing contained herein shall be construed to constitute consent or acquiescence by either Party to any action of the other Party which violates the laws of the United States as those provisions may be amended, supplemented or superseded, or which violates any other law or regulation, or any order, judgment or decree of any court or governmental authority of competent jurisdiction.

19.6. No Dedication of Facilities. Any undertakings or commitments by one Party to the other Party under this Agreement shall not constitute the dedication of the Project or Buyer's system or any portion thereof to the public or to the other Party.

19.7. Relationship to the Parties. Nothing contained in this Agreement shall be construed to create an association, joint venture, partnership or any other type of entity or relationship between Seller and Buyer, or between either or both of them and any other Party.

19.8. Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto, and nothing therein will be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a Party hereto.

19.9. Entire Agreement. This Agreement and the attached appendices constitute the entire agreement between the Parties and extrinsic evidence shall not be used to vary or contradict the express terms hereof.

19.10. Records. The Parties shall keep (or as necessary cause to be kept by their respective agents) for a period of at least six (6) years such records as may be needed to afford a clear history of all deliveries of Energy pursuant to this Agreement. For any matters in dispute, the Parties shall keep the records related to such matters until the dispute is ended. In maintaining or causing to be maintained such records, the Parties shall effect such segregation and allocation as may be needed to properly bill delivery of Contract Products pursuant to this Agreement.

19.11. Amendment. This Agreement shall be amended or modified only by the mutual written agreement of both Seller and Buyer.

19.12. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

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19.13. Forward Contract. The Parties acknowledge and agree that this Agreement is a "forward contract" within the meaning of the Bankruptcy Code, and that the Parties are acting as "forward contract merchants" by entering into the Agreement.

19.14. Partial Invalidity. If any applicable Governmental Authority adopts, enacts, or otherwise imposes a new law, rule or regulation which makes any term of this Agreement invalid, illegal or void as being contrary to applicable law or public policy, then all other terms hereof shall remain in full force effect, and the Parties shall use Commercially Reasonable Efforts to amend the terms of this Agreement and to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under applicable law, (b) give effect to the intent of the Parties under this Agreement, and (c) preserve the balance of the economics and equities contemplated by this Agreement in all material respects.

19.15. Further Assurances. In furtherance of the terms and provisions hereof, the Parties agree to collaborate in good faith in order to achieve the performance by each other of their respective obligations hereunder, including by executing and delivering such documents and instruments as reasonably requested by either Party and providing such materials and information as reasonably requested by either Party. Without limiting the foregoing, Buyer agrees to provide (a) evidence with respect to Buyer's entry into this Agreement and approval thereof by its governing body, and (b) Buyer's annual budget and financial statements and (c) other materials with respect to Buyer as reasonably requested by Seller or any Financing Party from time to time.

19.16. Bankruptcy Code References. The payment of the Termination Payment constitutes a "margin payment", and the Termination Payment constitutes a "settlement payment" and/or a "transfer" under the Bankruptcy Code, and for purposes of determining the Termination Payment by the Non-Defaulting Party, the netting out from the Termination Payment of the Seller's Credit Support, as applicable, held by the Buyer under Article 11 herein shall constitute a "setoff or net out of termination values or payment amounts" under the Bankruptcy Code. "Bankruptcy Code" for purposes of this Agreement shall mean the U.S. Bankruptcy Code, 11 U.S.C. Sec. 101 *et. seq*., as such may be amended from time to time.

19.17. Rates Not Subject to Review. The rates for service specified herein shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the Parties. Neither Party shall petition FERC pursuant to the provisions of Sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other Person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes hereto proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group. Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527, 128 S. Ct. 2733 (2008).

19.18. Rules of Interpretation. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices" or "Exhibits" are to articles, sections,

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schedules, annexes, appendices or exhibits hereof; (c) all references to a particular entity or an electricity market price index include a reference to such entity's or index's successors; (d) "herein," "hereof" and "hereunder" refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) "including" means "including, without limitation" or "including, but not limited to"; (h) all references to a particular agreement, law, statute or regulation mean that agreement, law, statute or regulation as amended from time to time; (i) the word "or" is disjunctive and not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or"; and (j) the Parties shall act in a commercially reasonable manner and in accordance with the principles of good faith and fair dealing in the performance of this Agreement.

REMAINDER OF PAGE LEFT BLANK. SIGNATURES FOLLOW.

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Agreed to as of the date set forth above.

SELLER	**BUYER**
Foxtail Flats Solar, LLC	**Incorporated County of Los Alamos**
By: _____	By: _____
Name: Title:	Name: Title:

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APPENDIX A
DESCRIPTION OF PROJECT AND SITE

The Project is one or more photovoltaic generation facilities in New Mexico with an expected net nameplate capacity of approximately 170 megawatts (alternating current) as measured at the Delivery Point. This appendix will be updated by Seller upon notice to Buyer as site location and equipment are finalized, and may be further updated from time to time by Seller with respect to the description of the Project and all or part of the associated equipment constituting the Project; provided that the Solar Charging Point shall be confirmed no later than the date on which Seller issues full notice to proceed to its engineering, procurement and construction contractor.

Delivery Point: San Juan 345kV

Solar Charging Point: To be confirmed

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APPENDIX B
FORM OF GUARANTY

GUARANTY

This GUARANTY (this "Guaranty"), dated as of _____ __, 2024, is issued and delivered by D. E. Shaw Renewable Investments, L.L.C., a Delaware limited liability company (the "Guarantor"), for the benefit of the Incorporated County of Los Alamos, a Home Rule County organized under the Constitution and Laws of New Mexico (the "Beneficiary"), with reference to the following:

WHEREAS, the Beneficiary and Foxtail Flats Solar, LLC, a Delaware limited liability company (the "Obligor") entered into that certain Power Purchase Agreement, dated as of [_____], 2024 (the "Agreement"); and Guarantor delivers to the Beneficiary this Guaranty as an inducement to Beneficiary to enter into the Agreement.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the Guarantor hereby agrees as follows:

1. Guarantor absolutely, unconditionally and irrevocably guarantees, as an independent obligation of Guarantor, the full prompt and complete payment to the Beneficiary when due, but in no case more than ten (10) business days after Beneficiary makes a demand for payment of the obligations of Obligor under the Agreement (the "Guaranteed Obligations"), including:

(a) for the period beginning on the thirtieth (30^{th}) day following the Effective Date (as defined in the Agreement) until the earliest of the date that (i) the Guaranteed Obligations have been satisfied in full, (ii) Seller has posted alternative "Development Security" as defined in the Agreement, or (iii) Seller has posted the "Operating Security" as defined in the Agreement, all claims under the Agreement against an amount equal to the "Project Development Security Cap"); and

(b) for the period beginning on the Commercial Operation Date (as defined in the Agreement) and continuing until the Obligor's obligations and related liability to Beneficiary under the Agreement are indefeasibly paid in full, all claims under the Agreement against an amount equal to the Operating Security as described in ARTICLE 17(the "Operating Security Cap");

provided, that, upon a final, nonappealable adjudication by a court of competent jurisdiction that Guarantor is obligated to pay Guaranteed Obligations hereunder, the Guarantor shall pay Beneficiary, no more than ten (10) business days after Beneficiary makes a demand for payment therefor, for all reasonable and documented costs and expenses incurred by Beneficiary in enforcing its rights under this Guaranty, and payment of such reasonable and documented costs and expenses shall not be subject to either the "Project Development Cap" or the "Operating Security Cap".

2. This Guaranty is one of payment and not of collection and shall apply regardless of whether recovery of any Guaranteed Obligations may be or become barred by any statute of limitations, discharged, or uncollectible due to any change in law or regulation or in any bankruptcy, insolvency or other proceeding, or otherwise be unenforceable. All sums payable by Guarantor

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hereunder shall be made in immediately available funds without any setoff, deduction, counterclaim or withholding for taxes unless required by applicable law, in which case Guarantor shall pay, in addition to the payment to which Beneficiary is otherwise entitled, such additional amount as is necessary to ensure that the net amount actually received by Beneficiary (free and clear of any setoff, deduction, counterclaim or withholding for taxes) will equal the full amount which Beneficiary would have received had no such setoff, deduction, counterclaim or withholding been required. The Guarantor agrees that this Guaranty is an independent obligation of Guarantor, and that the Beneficiary may resort to the Guarantor for payment of any of the Guaranteed Obligations, whether or not the Beneficiary shall have resorted to any collateral security, or shall have proceeded against the Obligor with respect to any of the Guaranteed Obligations. If any payment of the Obligor in respect of the Guaranteed Obligations is rescinded or must otherwise be returned for any reason whatsoever, the Guarantor shall remain liable hereunder in respect to such Guaranteed Obligations as if such payment had not been made. No failure on the part of the Beneficiary to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Beneficiary of any right, remedy or power hereunder preclude any other future exercise of any right, remedy or power.

3. Beneficiary may at any time, without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder, assign this Guaranty in connection with an assignment permitted under the Agreement.

4. Guarantor expressly waives (a) protest; (b) notice of acceptance, dishonor, presentment and demand and all other notices whatsoever; (c) demand for payment of any of the Guaranteed Obligations; (d) any right to assert against Beneficiary any defense (legal or equitable), counter-claim, set-off, cross-claim or other claim that Guarantor may now or at any time hereafter have (i) against Obligor or (ii) acquired from any other party, not affiliated with Guarantor, to which Beneficiary may be liable; (e) any defense arising by reason of any claim or defense based upon an election of remedies by Beneficiary which in any manner impairs, affects, reduces, releases, destroys or extinguishes Guarantor's subrogation rights, rights to proceed against Obligor for reimbursement, or any other rights of the Guarantor to proceed against Obligor or against any other person, property or security; and (f) any and all other suretyship defenses. Beneficiary may at any time, whether before or after termination of this Guaranty, and from time to time without notice to or consent of Guarantor and without impairing or releasing the obligations of Guarantor hereunder: (1) modify, compromise, release, subordinate, substitute, exercise, alter, enforce or fail or refuse to exercise or enforce any claims, rights or remedies of any kind which Beneficiary may have, at any time against Obligor or Guarantor, endorser, or other party liable for the Guaranteed Obligations or any part or term thereof, or with respect to collateral or security of any kind Beneficiary may have, at any time, whether under the Agreement, any other agreement, or this Guaranty, or otherwise; (2) release, substitute, or surrender and to enforce, collect or liquidate or to fail or refuse to enforce, collect or liquidate, any collateral or security of any kind Beneficiary may have, at any time, whether under this Guaranty or otherwise; and (3) take and hold security for the payment and performance of the Guaranteed Obligations, and exchange, enforce, waive, and release or apply such security and direct the order or manner of sale thereof as Beneficiary in its discretion may determine. Guarantor hereby consents to each and all of the foregoing acts, events and/or occurrences.

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5. This Guaranty shall continue in full force and effect with respect to all Guaranteed Obligations arising prior to its termination. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment, or any part thereof, of any Guaranteed Obligation is rescinded or must otherwise be restored or returned due to bankruptcy or insolvency laws or otherwise. The failure of Beneficiary to enforce any of the provisions of this Guaranty at any time or for any period of time shall not be construed to be a waiver of any such provision or the right thereafter to enforce the same. Each and every right, remedy and power hereby granted to the Beneficiary or allowed to it by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised by the Beneficiary from time to time. The terms and provisions hereof may not be waived, altered, modified, or amended except in a writing executed by Guarantor and a duly authorized officer of Beneficiary.

6. Until all Guaranteed Obligations are indefeasibly and finally paid in full, Guarantor hereby waives all rights of subrogation, reimbursement, contribution, and indemnity from Obligor and any collateral held therefor, and Guarantor hereby subordinates all rights under any debts owing from Obligor to Guarantor, whether now existing or hereafter arising, to the prior payment of the Guaranteed Obligations. No payment in respect of any such subordinated debts shall be received by Guarantor. Upon any Obligation becoming due, Obligor or its assignee, trustee in bankruptcy, receiver, or any other person having custody or control over any or all of Obligor's property is authorized and directed to pay to Beneficiary the entire unpaid balance of the debt before making any payments to Guarantor, and for that purpose. Any amounts received by Guarantor in violation of the foregoing shall be received as trustee for the benefit of Beneficiary and shall forthwith be paid over to Beneficiary.

7. The Guarantor represents and warrants to Beneficiary that: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full limited liability company power to execute, deliver and perform this Guaranty; (b) the execution, delivery and performance of the Guaranty have been and remain duly authorized by all necessary limited liability company action and do not contravene any provision of law or the Guarantor's constitutional documents or any contractual restriction binding on the Guarantor or its assets; and (c) this Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against Guarantor in accordance with its terms, subject, as to enforcement, to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditor's rights and to general equity principles and public policy.

8. This Guaranty shall remain in full force and effect until the earlier of (i) such time as all the Guaranteed Obligations have been finally and indefeasibly discharged in full, and (ii) the end of the Term (as defined in the Agreement) (the "Expiration Date"); provided however, the Guarantor will remain liable hereunder for Guaranteed Obligations that were outstanding prior to the Expiration Date.

9. This guaranty is governed by the laws of the State of New Mexico. Guarantor and Beneficiary each hereby irrevocably (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the District Court of the State of New Mexico, (without prejudice to the right of any party to remove to the United States District Court for the District of New Mexico) for the purposes of any suit, action or other proceeding arising out of this

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Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Beneficiary, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

10. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. THIS PARAGRAPH WILL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

11. This Guaranty integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all oral negotiations and prior writings in respect to the subject matter hereof. Each provision hereof shall be severable from every other provision when determining its legal enforceability such that this Guaranty may be enforced to the maximum extent permitted under applicable law. There are no intended third party beneficiaries of this Guaranty.

12. Guarantor may not assign its rights nor delegate its obligations under this Guaranty in whole or part, without written consent of Beneficiary, and any purported assignment or delegation absent such consent is void.

13. Notices. Any communication, demand or notice to be given hereunder will be duly given when delivered in writing or sent by facsimile, and sent electronically by email, to the Guarantor or to the Beneficiary, as applicable, at its addresses as indicated below:

If to the Guarantor, at: D. E. Shaw Renewable Investments, L.L.C.
575 Fifth Avenue, 35th Floor
New York, NY 10017
Attn: General Counsel
Email: DESRI-Notices@deshaw.com

If to the Beneficiary, at:

Los Alamos County Utilities Manager

or such other address as the Guarantor or the Beneficiary shall from time to time specify. Notice shall be deemed given (a) when received, as evidenced by signed receipt, if sent by hand delivery, overnight courier or registered mail or (b) when received, as evidenced by transmission confirmation report, if sent by facsimile and received on or before 4 pm local time of recipient, or (c) the next business day, as evidenced by transmission confirmation report, if sent by facsimile and received after 4 pm local time of recipient.

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IN WITNESS WHEREOF, the Guarantor and the Beneficiary have executed this Guaranty as of the day and year first above written.

By: D. E. SHAW RENEWABLE INVESTMENTS, L.L.C.

Name:
Title:

Accepted and Agreed:

By: [_____]

Name:
Title:

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APPENDIX C
FORM OF LETTER OF CREDIT

IRREVOCABLE LETTER OF CREDIT NUMBER _____

Beneficiary:

Letter of Credit No. XXXX

Issuance Date: Month XX, 20__

Attention: Expiration Date: Month XX, 20__

Ladies and Gentlemen:

We hereby establish our Irrevocable Standby Letter of Credit No. XXXX in your favor for the account of (**name and address of applicant**), available for drawings for up to an aggregate amount of USD$[ ]. This Letter of Credit is available by payment upon your draft(s) drawn at sight on us, submitted at our office located at _____.

Funds under this Letter of Credit, in an amount not to exceed the amount stated above, will be made available to you in accordance with the terms and conditions herein against presentation at the above address of your sight draft drawn on us (as per Exhibit A) bearing the clause "Drawn under Irrevocable Letter of Credit No. XXXX, dated Month XX, 20__" and accompanied by one of the following documents:

(a) a dated certificate submitted on letterhead executed by a duly authorized officer of the Beneficiary reading as follows: "The amount of _____ (____) ("Draw Amount") is claimed under your Irrevocable Letter of Credit No. RAXXXX is due and payable because (i) payment is due to _____ ("Buyer") from Applicant (as defined in such Letter of Credit) pursuant to that certain Power Purchase Agreement made and entered into as of (**insert date**), by and between the Applicant and Buyer ("Power Purchase Agreement"); (ii) Applicant has not made such payment in accordance with the Power Purchase Agreement; and (iii) Buyer has made written demand upon Applicant for payment. Wherefore, demand is hereby made under your Irrevocable Letter of Credit No._____ for payment of the Draw Amount. Payment should be remitted to the Beneficiary by wire transfer to the following account _____."

OR

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(b) a dated certificate submitted on letterhead executed by a duly authorized officer of the Beneficiary reading as follows: "An Event of Default (as defined in the Power Purchase Agreement made and entered into as of _____, 20__ by and among, inter alia, the Applicant (as defined in the Letter of Credit referenced below) has occurred and is continuing with respect to the Applicant.

OR

(c) the Letter of Credit has not been renewed or replaced within thirty (30) days prior to the expiration of the Letter of Credit and ten (10) Business Days have passed after written notice from the Beneficiary without Applicant replacing such Letter of Credit with a letter of credit issued by a Qualified Institution (as defined in the Power Purchase Agreement.)

Wherefore, demand is hereby made under your Irrevocable Letter of Credit No. XXXX for payment of _____ ($____). Payment should be remitted to the Beneficiary by wire transfer to the following account _____."

We hereby agree with you that amounts drawn under this Letter of Credit will be honored in accordance with the terms and conditions stated herein provided the required documents are presented to us at the above address on or before the Letter of Credit Expiration Date stated above. The amount of each draft presented hereunder will automatically decrease the total amount of this Letter of Credit. Multiple and partial drawing are expressly permitted under this Letter of Credit.

We give our undertaking to the Beneficiary that sums drawn under and in compliance with the terms of this Letter of Credit will be duly honored by us on presentation of drawings in accordance with the terms of this Letter of Credit.

If cancellation of this Letter of Credit is required by the Beneficiary before the current expiration date, the Original of this Letter of Credit and any amendment(s), must be returned to us accompanied by a letter signed by the Beneficiary requesting its cancellation.

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L/C No. XXXX

This Letter of Credit sets forth in full the terms of our undertaking and such undertaking shall not be in any way be modified, amended or amplified by reference to any document, instrument or agreement referred to herein or in which this Letter of Credit is referred to or to which this Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.

Except to the extent otherwise expressly agreed to this Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) ICC Publication No. 600, to the extent not inconsistent therewith, the law of the State of New Mexico, including Article 5 of the New Mexico Uniform Commercial Code, as applicable, and engages us to the terms herein.

All communications to us with respect to this Letter of Credit must be addressed to our office located at _____.

Very truly yours,

_____

Authorized Signature

Authorized Signature

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Exhibit A to Appendix C

SIGHT DRAFT

Drawn under Irrevocable Letter of Credit No. XXX, dated Month XX, 20__

US$ (amount in figures) (Date)

At Sight, pay to the order of _____.

(amount in words)

TO: [insert address of issuer]

(Name of Beneficiary)

_____

Signature

_____

Printed Name

_____

Title

Drawn under Irrevocable Letter of Credit No. XXX, dated Month XX, 20__

WIRE TRANSFER INSTRUCTIONS

Bank: _____

Bank Address: _____

_____

ABA No. _____

Account Number _____

For Account of: _____

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(Name of Beneficiary)

By: _____ _____

Authorized Signature(s)

Title: _____

Address: _____

_____

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APPENDIX D
MILESTONES

Milestone	Date
Main Power Transformer Purchase Order Executed	[June 30, 2024]
PV Panel and Racking Purchase Orders Executed	[January 15, 2025]
Site Mobilization	[February 1, 2025]
Substation Mechanical Completion	[February 1, 2026]
Interconnection Upgrades Complete	[February 1, 2026]
Phase 1 Mechanical Completion (50%) of Project	[January 15, 2026]
Phase 1 COD (50%) of Project	[March 1, 2026]
Phase 2 Mechanical Completion (remaining 50%) of Project	[August 15, 2026]
Phase 2 COD (remaining 50%) of Project	[October 1, 2026]
Guaranteed Commercial Operation Date	[December 31, 2026]
Outside Commercial Operation Date	[May 1, 2027]

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APPENDIX E
TERMINATION PAYMENTS

BUYER TERMINATION PAYMENT

If the Seller is the Non-Defaulting Party and establishes an Early Termination Date pursuant to this Agreement, then the Buyer Termination Payment owed by Buyer shall equal the following:

The sum of (i) all amounts owed to Seller as of the Early Termination Date plus a lump sum equal to (a) the present value of the amount that would have been payable by Buyer to Seller if Seller had delivered Contract Products for the remainder of the Term, utilizing Seller's good faith estimate of the kilowatt-hours that would have been generated by the Project and delivered to the Delivery Point over the remainder of the Term ("Contract Value") less (b) the present value (discounted at the same rate) of any replacement contract ("Replacement Contract") for the purchase by a new buyer of Contract Products from the Project at the same Delivery Point over the remainder of the Term, less the costs and expenses, including but not limited to commissions, legal fees and application fees, incurred or to be incurred by Seller in connection with any such replacement contract and/or making the Project eligible and/or able to sell Contract Products to any other entity ("Replacement Contract Value"). Nothing herein shall require that Seller actually execute and deliver any such Replacement Contract prior to the payment by Buyer of the Buyer Termination Payment in accordance with this Appendix E. The Replacement Contract Value will be increased by any costs incurred by Seller in its attempt to procure a Replacement Contract for purposes of the calculation in this Appendix E. The Parties acknowledge and agree that any termination payment hereunder constitutes a reasonable approximation of harm or loss and is not a penalty or punitive in any respect.

Seller maintains the duty to mitigate damages to Buyer by using Commercially Reasonable Efforts to find a replacement buyer for the Contract Products (including, but not limited to, selling Energy and RECs into the market), and in all events any Buyer Termination Payment shall be reduced by the value of such sales of the Contract Products to a replacement or alternative buyer.

SELLER TERMINATION PAYMENT

If the Buyer is the Non-Defaulting Party and establishes an Early Termination Date pursuant to this Agreement, then the Seller Termination Payment owed by Seller shall equal the following:

An amount equal to the positive difference (if any) obtained by subtracting (i) the present value of the amount that would have been payable by Buyer to Seller if Seller had delivered Contract Products for the remainder of the Term, such amount to be reasonably estimated by Buyer taking into account facts and circumstances applicable to the Project, the Buyer, CAISO and WECC as of the Early Termination Date, from (ii) the present value (discounted at the same rate) of any replacement contract entered into by Buyer to obtain replacement Contract Products for the period commencing on the Early Termination Date and ending on the last day of the Term; provided that prior to the Commercial Operation Date, the Seller Termination Payment will be capped at the amount of the Development Security. Nothing herein shall require that Buyer actually execute any such replacement contract prior to the payment by Seller of the Seller Termination Payment

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in accordance with this Appendix E. Buyer maintains the duty to mitigate damages to Seller by using Commercially Reasonable Efforts to find a comparable power contract, and in all events any Seller Termination Payment shall be reduced by the value of such comparable power contract to Buyer. Buyer may also be entitled to its costs and expenses reasonably incurred in connection with any competitive bidding process such as the issuance of a request for proposals to procure replacement Contract Products for the remainder of the Term.

GENERAL

Each present value calculation shall be made using as a discount rate the yield on US Treasury Bills or Bonds, as the case may be, in effect on the day the calculation is made having a term that approximates the remaining term hereunder, as identified in Bloomberg Online or as published in The Wall Street Journal.

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APPENDIX F
NET ENERGY DELIVERY QUANTITY

This Appendix F has been prepared as of the Effective Date and will be updated by Seller on or prior to the Commercial Operation Date as the equipment for the Project is selected by the Seller in accordance with Appendix A and modified after the Commercial Operation Date from time to time by the Seller as permitted under the Agreement.

[*Seller to provide*.]

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APPENDIX G
FORM OF CONSENT

Consent and Agreement to Collateral Assignment

This CONSENT AND AGREEMENT (this "Consent"), dated as of [_____, 2024, is entered into by and among [_____], a [_____], formed under the laws of the State of [_____] (together with its successors and permitted assigns "Buyer"), [_____], as collateral agent for the Secured Parties referred to below (together with its successors, designees and assigns in its capacity, the "Collateral Agent"), and [_____], a Delaware limited liability company (together with its successors and permitted assigns, "Seller"). Unless otherwise defined, all capitalized terms have the meaning given in the Power Purchase Agreement (as hereinafter defined).

A. Seller intends to develop, construct, install, test, own, operate, use and maintain an approximately 170 MW_{AC} photovoltaic electric generating facility within [_____] (the "Facility").

B. Buyer and Seller have entered into that certain Power Purchase Agreement, dated as of [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the "Power Purchase Agreement").

C. In order to partially finance the development, construction, installation, testing, operation and use of the Facility, Seller and/or one or more of its Affiliates has entered into [financing arrangements to be described] ("Financing Agreement").

D. Pursuant to a [Security Agreement] between Seller and Lender, dated as of (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Security Agreement"), Seller has agreed, among other things, to assign, as collateral security for the obligations of Seller and/or one or more of its Affiliates under the Financing Agreement and related documents (collectively, the "Financing Documents"), all of its right, title and interest in, to and under the Power Purchase Agreement to Collateral Agent for the benefit of Collateral Agent and each other entityor person providing loans and/or other financial accommodations to, and for the benefit of, Seller and/or such Affiliates under the Financing Documents, all in accordance with the Power Purchase Agreement.

E. Seller represents to Buyer that it is a condition to the Collateral Agent's obligations under the Financing Agreements that Buyer and the other parties hereto execute this Consent.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

1. CONSENT TO ASSIGNMENT. Subject to the terms and conditions below, Buyer consents to an assignment of all of Seller's rights and obligations under the Power Purchase Agreement by Seller to the Collateral Agent as collateral pursuant to the Financing Documents, agrees that this Consent constitutes written notice of the collateral assignment of the Power Purchase Agreement and the consent to collateral assignment required under Section 14.3 of the

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Power Purchase Agreement and no further consent is required from Buyer under the Power Purchase Agreement.

2. LIMITATIONS ON ASSIGNMENT.

(a) The Collateral Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Seller under the Power Purchase Agreement, subject to applicable notice and cure periods provided in the Power Purchase Agreement and as set forth herein. Upon receipt of notice from the Collateral Agent, Buyer agrees to accept such exercise and cure by Collateral Agent if timely made by the Collateral Agent under the Power Purchase Agreement and this Consent. Buyer agrees to make directly to the following account or such other account as the Collateral Agent may direct Buyer in writing from time to time, all payments to be made by Buyer to Seller under the Power Purchase Agreement and Seller consents to any such action: [account information to be provided]. Buyer shall have no liability to Seller under the Power Purchase Agreement or this Consent for directing such payments to the Collateral Agent in accordance with this clause (a).

(b) Buyer will not, without the prior written consent of the Collateral Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the Power Purchase Agreement, or consent to or accept any cancellation, termination or suspension thereof by Seller, except as provided in the Power Purchase Agreement and in accordance with clause (c) hereof or (ii) assign or consent to Seller's assignment of the Power Purchase Agreement, except in accordance with this Consent or Section 14.3(a) of the Power Purchase Agreement.

(c)

(1) Buyer agrees to deliver duplicates or copies of all notices of default delivered by Buyer under or pursuant to the Power Purchase Agreement to the Collateral Agent in accordance with the notice provisions of this Consent. Buyer shall deliver any such notices concurrently with delivery of the notice to Seller under the Power Purchase Agreement.

(2) In the event of a default or breach by Seller in the performance of any of its obligations under the Power Purchase Agreement, or upon the occurrence or non-occurrence of any event or condition under the Power Purchase Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Buyer to terminate the Power Purchase Agreement or to suspend performance of its obligations thereunder (hereinafter, a "Default"), Buyer shall not terminate the Power Purchase Agreement or suspend performance of its obligations thereunder until it first gives written notice of such Default to the Collateral Agent and affords the Collateral Agent (i) if such Default is the failure to pay amounts to Buyer which are due and payable under the Power Purchase Agreement, a period of thirty (30) Days from the later to occur of (A) the expiration of the Seller's cure period under the Power Purchase Agreement, if any, or (B) receipt of such notice, in each such case, to cure such Default and (ii) with respect to any other Default, ninety (90) Days from the later to occur of (A) the expiration of the Seller's cure period under the Power Purchase Agreement, if any, and (B) receipt of such notice, in each such case, to cure such non-payment Default; provided that during the

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applicable cure period the Collateral Agent or Seller continues to perform each of Seller's other obligations under the Power Purchase Agreement).

(3) If (x) possession of the Facility is necessary to cure such Default or (y) if the Default can only be cured by the Seller and is not curable by the Collateral Agent, such as the insolvency, bankruptcy, general assignment for the benefit of the secured parties under the Financing Agreements, or appointment of a receiver, trustee, custodian or liquidator of the Seller or its properties, and, in each such case, the Collateral Agent or its successor(s), assignee(s) and/or designee(s) declares an "Event of Default" under the Financing Agreements and the Collateral Agent commences foreclosure proceedings or any other proceedings necessary to take possession of the Facility, the Collateral Agent or its successors(s), assignee(s) and/or designee(s) will be allowed a reasonable period to both commence (not to exceed sixty (60) Days) and complete (not to exceed one hundred eighty (180) Days) such proceedings, provided that, once commenced, the Collateral Agent, or its successor(s), assignee(s) and/or designee(s) shall pursue such proceedings with due dispatch and provided, further, that if the Default can only be cured by the Seller and is not curable by the Collateral Agent, such as the insolvency, bankruptcy, general assignment for the benefit of the secured parties under the Financing Agreements, or appointment of a receiver, trustee, custodian or liquidator of the Seller or its properties, the Collateral Agent shall be entitled to assume the rights and obligations of Seller under the Power Purchase Agreement and provided such assumption occurs, Buyer shall not be entitled to terminate the Power Purchase Agreement or suspend its performance thereunder as a result of such Default. If either the Collateral Agent or its successor(s), assignee(s) and/or designee(s) is prohibited by any court order or bankruptcy or insolvency proceedings of Seller from curing the Default or from commencing or prosecuting such proceedings, the foregoing time periods shall be extended by the period of such prohibition, provided that the Collateral Agent or its successor(s), assignee(s) and/or designee(s) is pursuing relief from such prohibition with due dispatch.

(4) Buyer shall recognize the Collateral Agent or its designee(s) or assignee(s) as the applicable party under the Power Purchase Agreement provided that such Collateral Agent or their designee(s) or assignee(s) assume the obligations of Seller under the Power Purchase Agreement, including, without limitation, satisfaction and compliance with all credit provisions of the Power Purchase Agreement and provided further that such Collateral Agent or their designee(s) or assignee(s) has a creditworthiness or total credit support at least equal to that of Seller as of the date hereof.

(d) In the event that the Power Purchase Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, and if, within sixty (60) Days after such rejection, the Collateral Agent shall so request, Buyer will execute and deliver to the Collateral Agent a new power purchase agreement, which shall be on the same terms and conditions as the original Power Purchase Agreement for the remaining term of the original Power Purchase Agreement before giving effect to such rejection, and which shall require the Collateral Agent to cure any defaults then existing under the original Power Purchase Agreement, except any performance defaults of Seller itself, which by their nature are not susceptible of being cured.

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(e) In the event the Collateral Agent or its designee(s)or assignee(s) elect(s) to perform Seller's obligations under the Power Purchase Agreement, succeed to Seller's interest under the Power Purchase Agreement, or enter into a new power purchase agreement as provided in Section 2(d) above, the recourse of Buyer against the Collateral Agent or its designee(s) and assignee(s) shall be limited to such party or parties' interests in the Facility, the credit support required under the Power Purchase Agreement, any currently existing guaranties made to the benefit of Buyer by Seller, Seller's Affiliates or Seller's insurers to the extent such guaranties have not been exhausted at the time of assignment and any remedies available to the new power purchase agreement if entered into between Buyer and the Collateral Agent or its designee(s) or assignee(s) as provided in Section 2(c) above.

(f) In the event the Collateral Agent or its designee(s) or assignee(s) succeed to Seller's interest under the Power Purchase Agreement, the Collateral Agent or its designee(s) or assignee(s) shall cure any then-existing payment and performance defaults under the Power Purchase Agreement, except any performance defaults of Seller itself, which by their nature are not susceptible of being cured. The Collateral Agent and its designee(s) or assignee(s) shall have the right to assign their interest in the Power Purchase Agreement to a person or entity to whom Seller's interest in the Facility is transferred, provided such transferee assumes the obligations of Seller under the Power Purchase Agreement and has a creditworthiness or total credit support at least equal to that of Seller as of the date hereof. Upon such assignment, the Collateral Agent and its designee(s) or assignee(s) (including their agents and employees) shall be released from any further liability thereunder accruing from and after the date of such assignment, to the extent of the interest assigned.

3. REPRESENTATIONS AND WARRANTIES. Buyer hereby represents and warrants that as of the date of this Consent:

(a) It (i) was formed and is operating in accordance with the laws of the jurisdiction governing its formation and operations and (ii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Power Purchase Agreement, and to carry out the terms hereof and thereof;

(b) the execution, delivery and performance of this Consent and the Power Purchase Agreement have been duly authorized by all necessary action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(c) this Consent and the Power Purchase Agreement are in full force and effect;

(d) this Consent and the Power Purchase Agreement have been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

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(e) there is no litigation, arbitration, investigation or other proceeding pending for which Buyer has received service of process or, to Buyer's actual knowledge, threatened against Buyer relating solely to this Consent, the Power Purchase Agreement and the transactions contemplated hereby and thereby;

(f) the execution, delivery and performance by it of this Consent, the Power Purchase Agreement, and performance of the obligations set forth herein and therein, do not result in any violation of, breach of or default under any term of any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material requirements of law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(g) neither Buyer nor, to Buyer's actual knowledge, Seller is in default of any of its obligations thereunder, and no disputes exist between Buyer and Seller thereunder; and

(h) to Buyer's actual knowledge, (i) no Force Majeure exists under the Power Purchase Agreement and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the Power Purchase Agreement.

4. NOTICES. All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile, (c) upon confirmation of receipt if sent by email and (d) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to Buyer:
[_____]

If to the Collateral Agent:
[_____]

If to Seller:

[_____]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving ten (10) days' written notice to the other parties in the manner set forth above.

5. ASSIGNMENT, TERMINATION, AMENDMENT. This Consent shall be binding upon and benefit the successors and assigns of the parties hereto and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the obligations under the Financing Agreements). Buyer agrees (a) to confirm such continuing obligation in writing upon the reasonable request of (and at the expense of) Seller, the Collateral Agent or any of their respective successors, transferees or assigns, and (b) to cause any successor-

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in-interest to Buyer with respect to its interest in the Power Purchase Agreement to assume, in writing in form and substance reasonably satisfactory to the Collateral Agent, the obligations of Buyer hereunder. Any purported assignment or transfer of the Power Purchase Agreement not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, or variation of any provisions of this Consent shall be effective unless made in writing and signed by the parties hereto; provided that all rights and obligations of Buyer, Collateral Agent and the Secured Parties hereunder shall terminate upon the Term Loan Funding Date with respect to the Project. No waiver of any provisions of this Consent shall be effective unless made in writing and signed by the party waiving any of its rights hereunder.

6. GOVERNING LAW. This Consent shall be governed by the laws of the State of New Mexico applicable to contracts made and to be performed in such State. THE FEDERAL COURTS SITUATED IN THE CITY OF NEW MEXICO IN THE STATE OF NEW MEXICO SHALL HAVE EXCLUSIVE JURISDICTION TO RESOLVE ANY DISPUTES WITH RESPECT TO THIS CONSENT AND AGREEMENT WITH BUYER, SELLER, AND THE COLLATERAL AGENT IRREVOCABLY CONSENTING TO THE JURISDICTION THEREOF FOR ANY ACTIONS, SUITS, OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS CONSENT.

7. COUNTERPARTS. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

8. SEVERABILITY. In case any provision of this Consent or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

9. ACKNOWLEDGMENTS BY SELLER. Seller, by its execution hereof, acknowledges and agrees that neither the execution of this Consent, the performance by Buyer of any of the obligations of Buyer hereunder, the exercise of any of the rights of Buyer hereunder, or the acceptance by Buyer of performance of the Power Purchase Agreement by any party other than Seller shall (a) release Seller from any obligation of Seller under the Power Purchase Agreement, (b) constitute a consent by Buyer to, or impute knowledge to Buyer of, any specific terms or conditions of the Financing Agreements, the Security Agreement or any of the other Financing Documents, or (c) except as expressly set forth in this Consent, constitute a waiver by Buyer of any of its rights under the Power Purchase Agreement. Borrower acknowledges hereby for the benefit of Buyer that other than as set forth in this Consent, none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the Power Purchase Agreement. Neither Seller nor any party (other than Collateral Agent or its successor(s), designee(s) or assignee(s) as set forth in this Consent) shall have any rights against Buyer on account of this Consent.

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IN WITNESS WHEREOF, the parties hereto by their officers thereunto duly authorized, have duly executed this Consent as of the date first set forth above.

[_____],
as Buyer

By:_____
Name: _____
Title: _____

[_____],
a Delaware limited liability company,
as Seller

By:_____
Name: _____
Title: _____

[_____],
as the Collateral Agent

By:_____
Name: _____
Title: _____

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APPENDIX H
FORM OF ESTOPPEL

ESTOPPEL CERTIFICATE

Addressees:

[Financing parties to be added]

RE: Status of Power Purchase Agreement

Ladies and Gentlemen,

This letter is being delivered at the request of [_____] in connection with that certain Power Purchase Agreement, dated as of [_____] (the "Agreement"), by and between [_____] (the "Buyer") and the Seller. This letter is also being delivered in connection with [financing arrangements to be described]. Capitalized terms not defined herein shall have the meanings set forth in the Agreement.

The Buyer hereby confirms to each of the Addressees as of the date hereof that:

1. The copy of the Agreement, attached hereto as Exhibit A, constitutes a true, correct and complete copy of the Agreement.

2. The Agreement is in full force and effect and has not been modified, supplemented or amended in any way, except as set forth on Exhibit A hereto, and constitutes the entire agreement between the Buyer and the Seller relating to the matters set forth therein.

3. The Buyer represents that it was formed and is operating in accordance with the laws of the State of New Mexico and has all requisite power and authority to execute, deliver and perform its obligations under the Agreement and this letter.

4. The execution, delivery and performance by the Buyer of the Agreement and this letter have been duly authorized by all necessary company action on the part of the Buyer and do not require any approvals, filings with or consents of any entity or person which have not previously been obtained or made.

5. The Buyer has not transferred, pledged or assigned, in whole or in part, any of its right, title, interest in, to and under the Agreement.

6. The Buyer is not and, to the knowledge of the Buyer, the Seller is not, subject to an Event of Default under the Agreement, and to the knowledge of Buyer no facts or circumstances currently exist which, with the passage of time or the giving of notice or both, would constitute an Event of Default by either such party under the Agreement.

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7. There are no actions pending against the Buyer under the bankruptcy or any similar laws of the United States or any state.

8. Buyer has not provided any notice to the Seller that it is unable to perform its obligations under the Agreement due to a Force Majeure, and to the Buyer's knowledge, there is currently no Force Majeure Event affecting the Buyer under the Agreement, as defined therein, and the Buyer has not received any notice from the Seller that the Seller is unable to perform its obligations to the Buyer under the Agreement due to a Force Majeure.

9. Seller has not received or, to Buyer's knowledge, claimed any amounts under the indemnification obligations of Buyer set forth in the Agreement.

10. No payments have been due under the Agreement to the Buyer through the period ending on the date hereof.

11. To the Buyer's actual knowledge, Seller is not in default of any of its obligations under the Agreement.

12. To the Buyer's knowledge, there are no disputes or proceedings between the Buyer on the one hand and the Seller on the other hand.

13. This letter may be executed and delivered by facsimile or other electronic means (e.g., e-mail transmission of version in .pdf format) and shall be legally binding on the party so executing and delivering such counterpart.

14. Buyer acknowledges that each of the addressees is a Financing Party under, and as defined in, the Agreement.

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Sincerely,

[_____]

By:_____
Name:
Title:

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EXHIBIT A

AGREEMENT

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