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**LAND OPTION AGREEMENT AND  
AGREEMENT TO ASSIGN FACILITY SITE OPTION**

by and between

**RE BARREN RIDGE LANDCO LLC  
as "Seller"**

and

**THE CITY OF LOS ANGELES ACTING BY AND THROUGH  
THE DEPARTMENT OF WATER AND POWER  
as "Buyer"**

Dated as of \_\_\_\_\_

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## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS .....	2
1.1    Definitions .....	2
1.2    Rules of Interpretation .....	2
ARTICLE II OPTION CONSIDERATION; ASSIGNMENT OF FACILITY SITE OPTION; GRANT OF SECURITY INTEREST; OPTION TO PURCHASE; CLOSING .....	2
2.1    Option Consideration .....	2
2.2    Assignment of Facility Site Option .....	2
2.3    Security Interest .....	3
2.4    Option to Purchase .....	4
2.5    Exercise of Land Purchase Option .....	4
2.6    Environmental Review .....	5
2.7    Tentative Exercise Notice .....	5
2.8    Tentative Purchase Price; Exercise Notice .....	7
2.9    Memorandum of Option .....	8
2.10   Deed of Trust .....	8
2.11   Closing .....	8
2.12   EXCLUSIVE WARRANTIES .....	9
2.13   Assumed Liabilities .....	9
2.14   Excluded Liabilities .....	9
2.15   Schedule Updating; Final Purchase Price .....	10
2.16   Proration .....	11
2.17   Closing Costs; Transfer Taxes and Fees .....	12
2.18   Closing Obligations .....	12
2.19   Bulk Sales Law .....	12
ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER .....	12
3.1    Organization and Good Standing .....	13
3.2    Authority; Absence of Conflict or Breach .....	13
3.3    Real Property Matters .....	13
3.4    Consents .....	14
3.5    Assets of the Business .....	14
3.6    Title .....	14
3.7    Environmental .....	14
3.8    No Undisclosed Liabilities .....	16
3.9    Taxes .....	16
3.10   Compliance With Laws .....	17
3.11   Litigation .....	17
3.12   Assumed Contracts .....	18
3.13   Intellectual Property .....	18
3.14   Brokers or Finders .....	19
3.15   Permits .....	19
3.16   Investment Company Act .....	19

3.17	Employees and Employee Benefit Plans.....	19
3.18	No Shared Facilities .....	20
3.19	General Representation .....	20
ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER.....		20
4.1	Organization .....	20
4.2	Authority; Binding Nature.....	20
4.3	Consents .....	21
4.4	Brokers or Finders .....	21
4.5	Litigation. ....	21
ARTICLE V COVENANTS OF SELLER PRIOR TO CLOSING DATE.....		21
5.1	Access to Materials .....	21
5.2	Investigations.....	22
5.3	Facility Site Option .....	22
5.4	Seller's Purchase of Real Property .....	23
5.5	Seller's Assets .....	23
5.6	Operation of the Business.....	23
5.7	Required Approvals.....	23
5.8	Notification.....	23
5.9	Reasonable Efforts .....	23
5.10	Waivers of Claims .....	24
5.11	Additional Contracts.....	24
5.12	Liens; Changes in Zoning.....	24
ARTICLE VI COVENANTS OF BUYER PRIOR TO CLOSING DATE .....		24
6.1	Required Approvals.....	24
6.2	Reasonable Efforts .....	24
ARTICLE VII CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE .....		24
7.1	Accuracy of Representations.....	24
7.2	Seller's Performance .....	24
7.3	Consents .....	25
7.4	Additional Seller Documents .....	25
7.5	Litigation .....	25
7.6	Liens .....	26
7.7	No Material Adverse Effect .....	26
7.8	Final Purchase Price .....	26
ARTICLE VIII CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE.....		26
8.1	Accuracy of Representations.....	26
8.2	Buyer's Performance.....	26
8.3	Consents .....	26
8.4	Asset Assignment Documents.....	27
8.5	Litigation .....	27

ARTICLE IX MUTUAL COVENANTS, TAXES AND OTHER MATTERS.....	27
9.1 Tax Matters.....	27
9.2 Intentionally omitted. ....	29
9.3 Risk of Loss.....	29
9.4 Liabilities.....	29
ARTICLE X TERM AND TERMINATION .....	29
10.1 Term .....	29
10.2 Termination Events .....	30
10.3 Effect of Termination .....	30
ARTICLE XI LIMITATION OF LIABILITY .....	31
11.1 Survival of Representations, Etc .....	31
11.2 Limitation of Liability .....	31
ARTICLE XII GENERAL PROVISIONS.....	32
12.1 Indemnification. ....	32
12.2 Expenses.....	33
12.3 Ambiguity.....	33
12.4 Voluntary Execution.....	33
12.5 Notices.....	33
12.6 Entire Agreement; Amendments .....	34
12.7 Further Assurances .....	34
12.8 Waiver .....	34
12.9 Severability.....	34
12.10 Consequential or Punitive Damages.....	34
12.11 Equitable Remedies .....	34
12.12 Time of Essence .....	34
12.13 Governing Law.....	35
12.14 Execution in Counterparts .....	35
12.15 Relationship of the Parties.....	35
12.16 Third Party Beneficiaries.....	35
12.17 Provisions of PPA .....	35
12.18 First Priority Interests.....	35
12.19 Exhibits and Schedules.....	35
12.20 Relationship with PPA; Right of First Offer and Right of First Refusal .....	35
12.21 Right of First Offer and Right of First Refusal .....	36
12.22 Assignment of Agreement; Change in Control .....	37

**Exhibits**

Exhibit 1.1	Definitions; Rules of Interpretation
Exhibit 2.8	Purchase Price
Exhibit 12.5	Notices

**Schedules**

Schedule 3.3	Real Property Matters
Schedule 3.4	Seller's Consents
Schedule 3.5	Certain Excluded Assets
Schedule 3.6	Liens
Schedule 3.7	Environmental Matters
Schedule 3.8	Liabilities
Schedule 3.9	Tax Matters
Schedule 3.10	Compliance with Laws
Schedule 3.11	Litigation
Schedule 3.12	Contracts
Schedule 3.13	Intellectual Property
Schedule 3.15	Non-Environmental Permits
Schedule 3.17	Employee Matters
Schedule 3.18	Shared Facilities
Schedule 3.19	Untrue Statements; Omissions
Schedule 4.3	Buyer's Consents

**LAND OPTION AGREEMENT  
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**

This LAND OPTION AGREEMENT AND AGREEMENT TO ASSIGN FACILITY SITE OPTION (the "*Agreement*") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014 ("*Effective Date*"), by and between RE BARREN RIDGE LANDCO LLC, a limited liability company organized and existing under the laws of the State of Delaware ("*Seller*"), and THE CITY OF LOS ANGELES ACTING BY AND THROUGH THE DEPARTMENT OF WATER AND POWER, a municipal corporation of the State of California ("*Buyer*"). Each of Buyer and Seller is referred to individually in this Agreement as a "*Party*" and together they are referred to as the "*Parties*."

**RECITALS**

**WHEREAS**, RE BARREN RIDGE 1 LLC ("*Project Seller*") and Buyer have entered into that certain Power Purchase Agreement of even date herewith (the "*PPA*"), relating to the purchase by Buyer of all of the Facility Energy, Capacity Rights and associated Environmental Attributes (each as defined in the PPA and collectively defined therein as the "*Products*") generated by a 60 MW (AC) solar photovoltaic facility to be developed, constructed, owned and operated by Project Seller in Mojave, California;

**WHEREAS**, Project Seller and Buyer have entered into that certain Option Agreement as of even date herewith (the "*Project Option Agreement*"), relating to Buyer's option to purchase the Facility Assets (as defined in the Project Option Agreement);

**WHEREAS**, Seller is a party to that certain Option Agreement for the Purchase and Sale of Real Property dated September 11, 2009 (the "*Facility Site Option*") by and between Lancaster Commercial, LLC and Davood Golshirazian, as Seller thereunder, and Seller's predecessor-in-interest, SiteCo, LLC, as purchaser thereunder, pursuant to which Seller has the option to purchase the real property described therein consisting of approximately 588 acres of land located in Kern County, California, APN 461-150-10 (the "*Real Property*").

**WHEREAS**, the PPA requires Seller to exercise its option to purchase the Real Property under the Facility Site Option by the Site Control Milestone Date defined and described therein.

**WHEREAS**, Project Seller and Seller plan to enter into a land lease (the "*Land Lease*"), pursuant to which Seller plans to lease to Project Seller, and Project Seller plans to lease from Seller, the Real Property on the terms and conditions contained in the Land Lease; and

**WHEREAS**, Seller desires to grant to Buyer, and Buyer wishes to have, an option, exercisable at various times as set forth herein, to purchase the Real Property on the terms and subject to the conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, which are incorporated herein, and the agreements herein and in the other Operative Documents (as defined herein) and in reliance upon the representations and warranties therein and herein, Buyer and Seller, intending to be legally bound, hereby agree as follows:

ARTICLE I  
DEFINITIONS

1.1 Definitions. Except as otherwise expressly provided herein, capitalized terms used in this Agreement, including in its *Recitals*, *Schedules* and *Exhibits*, shall have the meanings given in *Exhibit 1.1*. Capitalized terms used herein but not defined in *Exhibit 1.1* shall have their meanings ascribed thereto in the PPA.

1.2 Rules of Interpretation. Except as otherwise expressly provided herein, the rules of interpretation set forth in *Exhibit 1.1* shall apply to this Agreement.

ARTICLE II  
OPTION CONSIDERATION; ASSIGNMENT OF FACILITY SITE OPTION;  
GRANT OF SECURITY INTEREST; OPTION TO PURCHASE; CLOSING

2.1 Option Consideration. On the Effective Date, as consideration for the grant of the option hereunder, Buyer shall pay to Seller the amount of One Hundred Dollars (\$100).

2.2 Assignment of Facility Site Option. Seller hereby agrees that at any time after (a) a Default by Project Seller under the PPA, (b) either (i) a failure by Seller to perform any of its duties or obligations under this Agreement when and as due, which failure is not cured to the reasonable satisfaction of Buyer by the date that is thirty (30) days after receipt of notice thereof from Buyer, or (ii) an inaccuracy in any material respect of the representations made by Seller in Section 3.1 or Section 3.2, below, (c) subject to the last two sentences of Section 2.3, a failure of the security interest granted pursuant to Section 2.3 to be in full force and effect except if such failure is due to an intentional act of Buyer or any representative of Buyer, or a failure of Buyer to act (where it had a duty to act), or (d) subject to the last two sentences of Section 2.3, Buyer ceases to have a valid security interest in the Collateral except if the same is due to an intentional act of Buyer or any representative of Buyer, or a failure of Buyer to act (where it had a duty to act) (each, a "*Seller Default*"), and so long as Seller has not yet purchased the Real Property pursuant to the Facility Site Option, Buyer may require that Seller, at Seller's cost and expense, assign all of its right, title and interest in, to and under the Facility Site Option to Buyer on a form prepared by Buyer and reasonably acceptable to Seller, by delivering notice to Seller of Buyer's demand to take an assignment of such Facility Site Option, together with a proposed form of assignment document for Seller's review and approval (the "*Assignment Demand*"). In the event of the occurrence of any of (a), (b), (c) or (d) in the foregoing sentence, Seller shall deliver to Buyer an unredacted copy of the Facility Site Option upon Buyer's request therefor. If Buyer delivers the Assignment Demand to Seller and does not concurrently terminate the PPA, Buyer shall thereafter (A) exercise the Facility Site Option, and (B) execute the Land Lease, such obligations expressly surviving any termination of this Agreement; provided, that further authorizations from Buyer's Board of Commissioners and the Los Angeles City Council will be required for Buyer to exercise the Facility Site Option and execute the Land Lease. Buyer and Seller shall execute an agreed upon assignment document after Seller's receipt of the Assignment Demand and, upon execution and delivery of the same by the Parties, this Agreement shall be null and void and of no further force and effect, the Parties expressly acknowledging and agreeing that such future assignment, if it occurs, shall constitute an assignment of all or substantially all of Seller's assets. Such assignment may be recorded by

Buyer in the Official Records of Kern County, California, in Buyer's sole discretion, and Buyer shall be responsible for payment of all fees associated with such recording.

2.3 Security Interest. To secure the full and complete performance of the obligations of Seller under Section 2.2, above, Seller hereby grants to Buyer a first priority security interest in all of Seller's right, title and interest in and to the Facility Site Option ("Collateral"). Seller shall file in the appropriate offices at Seller's cost any financing statements, and amendments, continuation statements, and other instruments related thereto, to perfect and maintain the security interest in the Collateral granted in this Agreement. Seller shall, from time-to-time, promptly execute and deliver all further instruments and documents, and take all further actions that may be reasonably necessary or that Buyer may reasonably request in order to perfect and protect the security interest granted or intended to be granted hereby or to enable Buyer to exercise its rights and remedies hereunder with respect to the security interest of the Collateral, and Seller hereby authorizes Buyer to file such further instruments and documents, including any additional financing statements, or amendments and continuation statements thereof, as Buyer reasonably deems necessary to perfect, maintain, or foreclose on the security interest granted herein as collateral for a contractual right under the Uniform Commercial Code as adopted by the State of California. If Seller fails to comply with the obligations under Section 2.2, then Buyer will have, in addition to the rights and remedies set forth in this Agreement, all of the rights and remedies of a Secured Party under Article 9 of the California Uniform Commercial Code or other applicable law with respect to such pledge, all of which rights and remedies shall, to the full extent permitted by law, be cumulative. Upon any foreclosure by Buyer of the security interest herein granted, and only at such time, Seller shall assign to Buyer all of Seller's right, title, and interest in and to the Facility Site Option, the Parties expressly acknowledging and agreeing that such future assignment, if it occurs, shall constitute an assignment of all or substantially all of Seller's assets. The security interest granted in this Section 2.3 is not an assignment and is not subject to the terms of Section 16(a) of the Facility Site Option. If, at any time, it is determined that the security interest granted herein violates any term or condition of Section 16(a) of the Facility Site Option (a "Section 16(a) Violation"), this Section 2.3 shall be deemed to be void and ineffective for all purposes and shall be treated as if never included in this Agreement. In the event of (a) a Section 16(a) Violation, (b) a failure of the security interest granted pursuant to Section 2.3 to be in full force and effect except if such failure is due to an intentional act of Buyer or any representative of Buyer or a failure of Buyer to act (where it had a duty to act), or (c) Buyer ceases to have a valid security interest in the Collateral, except if the same is due to an intentional act of Buyer or any representative of Buyer or a failure of Buyer to act (where it had a duty to act), the Parties shall work together in good faith to accomplish the intended benefit of the grant of the security interest pursuant to this Section 2.3, during which time no Seller Default shall have occurred, notwithstanding anything to the contrary contained in Section 2.2. If the Parties are unable to accomplish the intended benefit of the grant of the security interest as required by the immediately preceding sentence, Seller may (a) elect to exercise the Facility Site Option, in which event, upon and effective as of the closing of the purchase of the Real Property, no Seller Default shall have occurred, notwithstanding anything to the contrary contained in Section 2.2, and the terms and conditions of Section 2.2 and Section 2.3 will be void and of no force or effect, or (b) elect not to exercise the Facility Site Option, in which event the terms and conditions of Section 2.2 will apply. Seller shall provide Buyer notice of its election.



2.4 Option to Purchase. Seller hereby grants Buyer an option, on the terms and conditions set forth in this Agreement, to purchase all of Seller's right, title and interest in and to the Real Property, but not the Excluded Assets, and to assume the Assumed Liabilities, but not the Excluded Liabilities, on and subject to the terms and conditions set forth in this Agreement (the "Land Purchase Option"). The Land Purchase Option may only be exercised with respect to all of Seller's right, title and interest in and to the Real Property, and not with respect to only a portion thereof.

2.5 Exercise of Land Purchase Option. Buyer may exercise the Land Purchase Option in accordance with the provisions set forth in Section 2.7 at any time:

(a) during the six (6) month period commencing on the date that is eighteen (18) months prior to the sixth (6th) anniversary of the Commercial Operation Date (in which case the Closing Date shall be on the sixth (6th) anniversary of the Commercial Operation Date, subject to the terms and conditions of this Article II, Article VII, and Article VIII); or

(b) during the six (6) month period commencing on the date that is eighteen (18) months prior to the tenth (10th) anniversary of the Commercial Operation Date (in which case the Closing Date shall be on the tenth (10th) anniversary of the Commercial Operation Date, subject to the terms and conditions of this Article II, Article VII, and Article VIII); or

(c) during the six (6) month period commencing on the date that is eighteen (18) months prior to the fifteenth (15th) anniversary of the Commercial Operation Date (in which case the Closing Date shall be on the fifteenth (15th) anniversary of the Commercial Operation Date, subject to the terms and conditions of this Article II, Article VII, and Article VIII);

(d) during the six (6) month period commencing on the date that is eighteen (18) months prior to the twentieth (20th) anniversary of the Commercial Operation Date (in which case the Closing Date shall be on the twentieth (20th) anniversary of the Commercial Operation Date, subject to the terms and conditions of this Article II, Article VII, and Article VIII);

(e) if Buyer exercises its option under the Project Option Agreement, during the six (6) month period commencing on the date that is six (6) months prior to each anniversary of the "Closing Date" under the Project Option Agreement (in which case the Closing Date under this Agreement shall be on the applicable anniversary of the "Closing Date" under the Project Option Agreement, subject to the terms and conditions of this Article II, Article VII, and Article VIII); or

(f) during the sixty (60) day period commencing on the date on which a Termination Notice is provided by Buyer to Project Seller and Buyer has exercised its remedies pursuant to Section 13.2(d) of the PPA (in which case the Closing Date shall be the date designated by Buyer that is no later than the date that is six (6) months following

delivery by Buyer of the Purchase Option Exercise Notice, subject to the terms of this Article II, Article VII, and Article VIII).

Each opportunity of Buyer to exercise the Land Purchase Option set forth in Sections 2.5(a) through (f) above shall be referred to herein as a "*Purchase Option Opportunity*."

Seller acknowledges that Buyer has no obligation to exercise the Land Purchase Option and that Buyer may decline to exercise the Land Purchase Option for any or no reason, as Buyer deems appropriate in its sole discretion.

2.6 Environmental Review. Seller acknowledges and agrees that the sale of the Real Property could potentially be subject to environmental review pursuant to CEQA and the National Environmental Policy Act of 1969. Any additional costs and expenses incurred in connection with any environmental reviews requested by Buyer or required because of Buyer's status as a public agency, in each case, in connection with the exercise of the Land Purchase Option, shall be borne by Buyer.

2.7 Tentative Exercise Notice. Buyer shall exercise the Land Purchase Option (if at all) by delivering to Seller a notice of exercise signed by Buyer (the "*Purchase Option Tentative Exercise Notice*") within the periods of time specified in Section 2.5.

(a) Disclosure Schedules. Within sixty (60) days after Seller receives a Purchase Option Tentative Exercise Notice (the "*Schedule Delivery Date*"), Seller will deliver to Buyer the following, dated as of the Schedule Delivery Date: *Schedule 3.3* (Real Property Matters); *Schedule 3.4* (Seller's Consents); *Schedule 3.5* (Certain Excluded Assets); *Schedule 3.7* (Environmental Matters); *Schedule 3.8* (Liabilities); *Schedule 3.9* (Tax Matters); *Schedule 3.10* (Compliance with Laws); *Schedule 3.11* (Litigation); *Schedule 3.12* (Assumed Contracts); *Schedule 3.13* (Intellectual Property); *Schedule 3.15* (Non-Environmental Permits); *Schedule 3.17* (Employee Matters); *Schedule 3.18* (Shared Facilities); and *Schedule 3.19* (Untrue Statements; Omissions) (collectively, the "*Seller Disclosure Schedules*"), each of which shall be applicable to the Real Property and shall list, as required, any qualifications required to make the representations in Article III true and correct, and Buyer will deliver to Seller, dated as of the Schedule Delivery Date, *Schedule 4.3* (Buyer's Consents) (together with the Seller Disclosure Schedules, the "*Disclosure Schedules*").

(b) Title Review. Within thirty (30) days after Seller receives a Purchase Option Tentative Exercise Notice, Seller shall order (and shall deliver or cause to be delivered to Buyer promptly upon receipt) a current commitment for extended coverage title insurance insuring Buyer in the amount of the Final Purchase Price, together with legible copies of all documents listed as exceptions therein, and a current certificate of taxes due with respect to the Real Property, from the Title Company, on the current standard form of commitment for an extended coverage ALTA Owners Policy (collectively, the "*Title Commitment*"). In order to obtain an extended coverage ALTA Owners Policy, a Survey shall be obtained pursuant to Section (c) and Seller shall provide the affidavits or certificates as may be required by the Title Company, as provided in the last sentence of this Section (b). The Title Company shall promptly

provide copies of any amendments or modifications of the Title Commitment to Buyer prior to Closing. At Closing or as soon as reasonably practicable after Closing, the Title Company shall issue and deliver to Buyer the owner's title insurance policy referred to above (the "*Title Policy*"), issued by the Title Company insuring Buyer's fee title to the Real Property consistent with the Title Commitment, providing "gap" coverage, deleting standard exceptions including deletions for (i) the standard survey exception, (ii) the standard exception regarding parties in possession, (iii) the standard exception regarding easements and other Liens not of public record, and (iv) the standard exception re materialmen's liens, endorsing over arbitration and creditors' rights exceptions, if necessary, and subject only to taxes and assessments for the year of Closing and subsequent years, the other matters approved by Buyer in accordance with Section 2.7(d) below, and any encumbrances upon the Real Property caused by Buyer, which matters and encumbrances shall be deemed Purchase Option Permitted Encumbrances. At Closing, Seller shall pay for the portion of the premium for the Title Policy solely attributable to the Title Company's issuance of a CLTA policy and Buyer shall pay the portion of the premium for the Title Policy attributable to the Title Company's issuance of an extended coverage ALTA Owners Policy. Buyer may obtain endorsements to the Title Policy as Buyer desires, which endorsements will be at the sole cost and expense of Buyer, except for the endorsements to be obtained by Seller pursuant to Section 2.7(d) below. Seller shall provide such affidavits or certificates as may be required by the Title Company to remove all liens, including mechanics' or materialmen's liens, as exceptions to the Title Policy.

(c) Survey Review. Within thirty (30) days after Seller receives a Purchase Option Tentative Exercise Notice, Seller shall order, at Buyer's expense (and shall deliver or cause to be delivered to Buyer promptly upon receipt), an ALTA/ACSM land and improvements survey plat prepared by a surveyor licensed in the State of California containing the description of the Real Property and location of all improvements and encroachments thereon, including but not limited to any improvements, fence locations and easements, rights of way and roadways adjacent to the Real Property, in a form sufficient to enable the Title Company to issue the Title Policy in compliance with this Section 2.7, certified to Buyer, Seller, and the Title Company (the "*Survey*"). Seller shall provide copies of any amendments or modifications of the Survey to Buyer and the Title Company promptly following Seller's receipt thereof.

(d) Title Defects and Objections. Buyer will have until sixty (60) days after the last to be received of the Title Commitment and the Survey to notify Seller of any objections to any items identified in the Title Commitment or on the Survey. Seller will have until forty-five (45) days after receipt of Buyer's objections ("*Seller's Cure Period*") to elect, at its reasonable discretion, to cure all items to which Buyer has objected, cause such items to be modified in a manner which is reasonably satisfactory to Buyer or to advise Buyer that Seller does not intend to cure such items; it being expressly understood and agreed that, if any item objected to by Buyer in such sixty (60) day period is not curable within Seller's Cure Period, Seller shall have such additional time to cure such item(s) as is necessary so long as Seller commences such cure within Seller's Cure Period and diligently pursues the same to completion; provided, that in no event shall the additional time to cure exceed ninety (90) days after the expiration of the initial sixty (60)

day cure period. Alternatively, within the Seller's Cure Period, Seller at Seller's cost may elect to obtain one or more endorsements to the Title Commitment, in a form reasonably acceptable to Buyer, providing title insurance protection with regard to any objections raised by Buyer. If Seller fails to respond with its election prior to the expiration of Seller's Cure Period, or Seller fails to cure to the satisfaction of Buyer any objection by Buyer of which Seller has been given notice in accordance with this Section 2.7(d), or elects not to cure, then Buyer shall elect, in its sole discretion to (i) withdraw its exercise of the Land Purchase Option with respect to the applicable Purchase Option Opportunity by delivering notice thereof to Seller, or (ii) approve any items previously objected to and continue with the exercise of the Land Purchase Option in accordance with the terms of Section 2.8 below by delivering notice to Seller thereof. Buyer will have ten (10) days after receipt of any amendment to the Title Commitment or Survey to object to any changes in the same fashion as objections to the initial Title Commitment or Survey under this Section 2.7(d). Anything above to the contrary notwithstanding, Seller shall be obligated to, and shall, cause all financing, judgment and tax liens to be removed as title exceptions prior to or concurrently with Closing. If Buyer fails to elect either option (i) or option (ii) above to Seller prior to the Purchase Option Exercise Deadline, Buyer will be deemed to have elected to proceed under option (i) above.

**2.8 Tentative Purchase Price; Exercise Notice.**

(a) The Tentative Purchase Price shall be determined in accordance with *Exhibit 2.8* following the later to occur of (i) the delivery of the Seller Disclosure Schedules, and (ii) the Schedule Delivery Date.

(b) After the Disclosure Schedules have been delivered and the Tentative Purchase Price has been determined pursuant to Section 2.8(a), and prior to the Purchase Option Exercise Deadline, Buyer shall elect, in its sole discretion to (i) withdraw its exercise of the Land Purchase Option with respect to the applicable Purchase Option Opportunity by delivering notice thereof to Seller, or (ii) continue with the exercise of the Land Purchase Option by delivering notice to Seller thereof (the "*Purchase Option Exercise Notice*"). The delivery of a Purchase Option Exercise Notice by Buyer shall constitute a binding and irrevocable commitment by Buyer to purchase, and shall create a binding obligation of Seller to sell, the Real Property as specified herein (subject to the satisfaction or waiver of each of the conditions to Closing set forth in Article VII and Article VIII) by the applicable Closing Date.

(c) If Buyer (i) withdraws its exercise of the Land Purchase Option pursuant to Section 2.8(b)(i) or (ii) fails to timely deliver either a Purchase Option Tentative Exercise Notice or Purchase Option Exercise Notice with respect to any Purchase Option Opportunity within the deadlines therefor under Sections 2.7 or 2.8, respectively, then Buyer's right to exercise the Land Purchase Option with respect to such Purchase Option Opportunity shall expire and shall no longer be effective (but such expiration shall not affect Buyer's right to exercise any Land Purchase Option with respect to any future Purchase Option Opportunity).

2.9 Memorandum of Option. Promptly after Seller has acquired a fee interest in the Real Property, the Parties shall execute and acknowledge a memorandum of option in form and substance acceptable to Buyer, and Seller shall record such memorandum in the Official Records of Kern County, California. Seller shall be responsible for payment of all fees and Taxes associated with such recording.

2.10 Deed of Trust. Concurrently with the closing on the acquisition of the Real Property by Seller, the Parties shall execute and record a deed of trust pursuant to which Seller shall grant a security interest in the Real Property to Buyer to secure any damages incurred by Buyer as a result of a Seller Default, in form and substance reasonably acceptable to Buyer; it being expressly acknowledged and agreed that any such deed of trust shall be subordinate to any mortgage or deed of trust of any Land Lender, and Buyer shall execute a subordination and nondisturbance agreement reasonably satisfactory to Land Lender evidencing such subordination. Buyer shall be responsible for payment of all fees and Taxes associated with such recording. In the event the same is requested by any Facility Lender (as defined in the PPA) at any time, Buyer shall execute and deliver a customary nondisturbance agreement in form and substance satisfactory to Buyer to the Project Seller and the Facility Lender, pursuant to which Buyer, on behalf of itself and its successors and assigns, shall agree: (a) not to disturb Project Seller's interest in, or possession under, the Land Lease in connection with Buyer's exercise of any rights or remedies that may be available to Buyer under the deed of trust granted to Buyer pursuant to this Section 2.10, (b) that the interests of Project Seller and Facility Lender in and under the Land Lease will not by operation of law or otherwise be terminated or disturbed, except in accordance with the terms of the Land Lease, (c) that Buyer will provide concurrent notice of any default under the Agreement to Facility Lender and permit Facility Lender to cure any such default and (d) that Buyer will become landlord under, and will be bound by terms and conditions of, the Land Lease if Buyer acquires the Real Property by virtue of exercise of its rights or remedies under the deed of trust granted to Buyer pursuant to this Section 2.10; provided, that in no event shall Buyer, upon any deemed assumption of the Land Lease obligations of the landlord, be liable for any unperformed obligation of landlord or any damages caused by landlord. The General Manager of Buyer is authorized to negotiate and execute the nondisturbance agreement.

2.11 Closing. In the event Buyer delivers a Purchase Option Exercise Notice, the closing of the purchase and sale of the Real Property (the "Closing") shall occur at 11:59 p.m. PST on the Closing Date (subject to the satisfaction or waiver of each of the conditions to Closing set forth in Article VII and Article VIII). The Closing shall be held at the offices of the Title Company by delivery of all closing documents into escrow. All events at the Closing shall be deemed to occur simultaneously, unless otherwise provided herein. In the event the Closing has not occurred by the designated Closing Date in respect of a Purchase Option Opportunity because of the failure of any of the conditions to Closing set forth in Article VII or Article VIII to be satisfied by such designated Closing Date, then Buyer (in the case of the conditions set forth in Article VII) or Seller (in the case of the conditions set forth in Article VIII), upon notice to the other Party and without liability, may terminate the Land Purchase Option with respect to such Purchase Option Opportunity, and such Purchase Option Opportunity shall expire and shall no longer be effective (but such termination shall not effect Buyer's right to exercise any Land Purchase Option with respect to any future Purchase Option Opportunity); provided that a Party cannot terminate any Land Purchase Option with respect to a Purchase Option Opportunity if the

failure of the Closing to occur is the result of the failure on the part of such Party to perform its obligations under this Agreement.

2.12 EXCLUSIVE WARRANTIES. OTHER THAN THE REPRESENTATIONS AND WARRANTIES EXPLICITLY SET FORTH IN THIS AGREEMENT OR ANY OPERATIVE DOCUMENT, NO REPRESENTATIONS OR WARRANTIES SHALL BE GIVEN OR DEEMED GIVEN AS TO THE REAL PROPERTY IN CONNECTION WITH SELLER'S SALE OF THE REAL PROPERTY FOLLOWING THE EXERCISE OF THE LAND PURCHASE OPTION.

2.13 Assumed Liabilities. At the Closing, Buyer shall assume, and agree to pay for, perform, fulfill and discharge from and after the Closing, all liabilities and obligations relating to the Real Property or the Assumed Contracts arising or occurring after the Closing Date other than the Excluded Liabilities (collectively, the "*Assumed Liabilities*").

2.14 Excluded Liabilities. Anything in this Agreement to the contrary notwithstanding, Buyer shall not assume, and shall not be deemed to have assumed, and shall have no liability with respect to (whether asserted before or after the Closing and regardless of whether the same or the basis therefor may have been disclosed to Buyer by Seller or otherwise be known to Buyer), any of the following liabilities or obligations of Seller (all such unassumed liabilities and obligations referred to in this Agreement as the "*Excluded Liabilities*"):

(a) Any liability or obligation of Seller in respect of Taxes attributable to the Real Property for taxable periods ending on or prior to the Closing, including any supplemental tax liability related to activity or state of facts at the Real Property conducted on or before the Closing that arises after the Closing, except that Buyer will be obligated to pay its prorated portion of current property taxes as provided below and all property taxes related to any periods beginning after the Closing;

(b) Any liability or obligation of Seller relating to the Real Property, including arising out of Seller's ownership and operation of the Real Property, arising or occurring prior to the Closing;

(c) Any liability or obligation of Seller arising out of Seller's ownership and operation of any assets other than the Real Property at any time;

(d) Any liability or obligation of Seller arising from a breach by Seller, or any event, circumstance or condition occurring or existing prior to the Closing that, with notice or lapse of time, constitutes or results in a breach by Seller under this Agreement, or any of the Operative Documents;

(e) Any liability or obligation of Seller under any Contract (including with respect to any contractors or subcontractors thereunder) other than an Assumed Contract or a permit other than a Transferred Permit;

(f) Any liability or obligation under any Assumed Contract or a Transferred Permit to the extent such liability or obligation arises from or relates to any breach by

Seller of any provision of any of such Assumed Contracts or Transferred Permits prior to the Closing;

(g) Any liability or obligation under any Contract entered into during the Applicable Diligence Period and not assumed by Buyer pursuant to Section 5.11;

(h) Any liability or obligation of Seller with respect to the employment or termination of any employee or group of employees by Seller, or the terms thereof, whether union or nonunion, whether the liability or obligation calls for performance or observance before or after the Closing and whether the liability or obligation arises from a collective bargaining agreement, pension trust fund plan, or other agreement or arrangement to which Seller is a party or by which Seller is bound (whether oral or written and whether express or implied in fact or in law) or any past practice or custom or otherwise, it being understood and agreed that, after the Closing, Buyer will itself be specifying the terms on which it offers employment to any individual to whom it, in its sole discretion, chooses to offer employment and will not be bound by any term of employment in effect at or at any time prior to the Closing;

(i) Any liability or obligation of Seller for pension fund payments or unfunded pension fund liabilities;

(j) Any liability or obligation arising from or associated with any of the Excluded Assets;

(k) Any liability or obligation of Seller or its Affiliates arising out of or related to any claim or loss against Seller or its Affiliates or any third-party claims or losses which adversely affects the Real Property and which shall have been asserted prior to the Closing or to the extent the basis of which shall have arisen exclusively prior to the Closing;

(l) Any liability or obligation of Seller or its Affiliates to a third party arising from any indemnification claim, injury to or death of any person or damage to or destruction of any property (and including workers' compensation claims, discrimination, wrongful discharge, or unfair labor practice), whether based on negligence, breach of warranty, strict liability, enterprise liability or any other legal or equitable theory arising from actions by, for or on behalf of Seller or its Affiliates arising prior to the Closing; and

(m) Any liability or obligation of Seller or its Affiliates representing Land Debt incurred by Seller or its Affiliates or Liens or encumbrances other than Closing Permitted Encumbrances.

Seller agrees to pay or otherwise discharge, or cause the payment or discharge, of all Excluded Liabilities, prior to the Closing, and shall provide Buyer with evidence thereof that is reasonably satisfactory to Buyer.

2.15 Schedule Updating; Final Purchase Price.

(a) No later than the date that is thirty (30) days prior to the designated Closing Date (the "Updated Schedule Delivery Date"), Seller shall have provided Buyer with updated Seller Disclosure Schedules, and such Seller Disclosure Schedules shall be used as the final Seller Disclosure Schedules for purposes of its representations and warranties made under Article III as of the Closing; provided, however, that if after the Updated Schedule Delivery Date, an event or circumstance occurs or exists that requires additional updates to the Seller Disclosure Schedules, Seller shall deliver such updates to Buyer as soon as practicable, and Buyer may, at its option, extend the Closing Date on a day-for-day basis for the period of time between the Updated Schedule Delivery Date and the date on which such updates were delivered to Buyer. Notwithstanding the foregoing, any update included in an updated Seller Disclosure Schedule delivered pursuant to this Section 2.15(a) shall have no effect for the purposes of determining the satisfaction of any condition to Closing set forth in Article VII and shall not alter or affect Buyer's right to terminate the Land Purchase Option with respect to the applicable Purchase Option Opportunity pursuant to Section 2.11; provided, however, that if a Closing occurs, then Buyer shall be deemed to have waived its right to indemnification under Section 12.1(a) with respect to any matter disclosed in any update.

(b) At the Closing, upon the terms and subject to the conditions set forth herein, Buyer shall, in exchange for the sale, transfer, assignment, conveyance and delivery of the Real Property by Seller, and the assumption by Buyer of the Assumed Liabilities in accordance with this Agreement, pay Seller the Final Purchase Price determined in accordance with Exhibit 2.8. Such Final Purchase Price shall be paid by Buyer by wire transfer of immediately available funds to an account designated by Seller.

2.16 Proration. Without limiting Buyer's obligation to pay its portion of the Transfer Taxes under Section 2.17, Buyer and Seller agree that any items normally prorated, including those listed below, relating to the Real Property, the Assumed Contracts, or the Assumed Liabilities, shall be prorated as of the Closing, with Seller being liable therefor to the extent such items relate to periods on or prior to the Closing Date, and Buyer being liable to the extent such items relate to periods after the Closing with, to the extent practicable, a cash settlement on the Closing:

(a) personal property and real estate Taxes, assessments and other charges, if any, by the applicable municipality, on the basis of the applicable municipality's fiscal year, on or with respect to the Real Property, the Assumed Contracts, or the Assumed Liabilities;

(b) rent, Taxes and other items payable by or to Seller under any of the Assumed Contracts assigned to and assumed by Buyer hereunder which are associated with the Real Property;

(c) any Permit, registration, compliance, assurance fees or other fees with respect to any Transferred Permit comprising part of the Real Property; and

(d) sewer rents and charges for water, telephone, electricity and other utilities.



In connection with the prorations referred to in this Section 2.16, in the event that actual amounts for such items are not available on the Closing Date, the proration shall be based upon the actual Taxes or fees for the preceding year (or appropriate period) for which actual Taxes or fees are available and such Taxes or fees shall be re-prorated upon the request of Seller, on the one hand, or Buyer, on the other hand, within sixty (60) days of the date that the actual amounts become available. Seller and Buyer agree to furnish each other with such documents and other records as may be reasonably requested in order to confirm all adjustment and proration calculations made pursuant to this Section 2.16.

2.17 Closing Costs: Transfer Taxes and Fees. Each Party shall be solely liable for and shall pay (i) all recording, documentary and transfer Taxes and any sales, use or other Taxes imposed on such Party by reason of the transfer of the Real Property, as provided hereunder (excluding Taxes imposed on or measured by the net income or profits of Seller), and any deficiency, interest or penalty asserted with respect thereto, under applicable Laws ("*Transfer Taxes*") and (ii) except as set forth in Section 2.6 and Section 2.16 all transaction costs incurred by it in connection with the exercise of the Land Purchase Option and the Closing (including, but not limited to, the costs and expenses of its outside legal counsel and advisors) except for closing and escrow fees charged by the Title Company, which shall be shared equally by the Parties. Each Party shall provide the other Party with evidence satisfactory to such Party that such Transfer Taxes have been paid by such Party. The Parties acknowledge that a Party's obligation to collect Taxes from the other Party to whom such Taxes are imposed shall not constitute an imposition of such Taxes on such first Party.

2.18 Closing Obligations. At the Closing: (a) Seller will deliver (or will have delivered) to Buyer each of the certificates, instruments, documents and agreements referred to in Article VII to be provided by Seller on or prior to the Closing, and (b) Buyer will deliver (or will have delivered) to Seller (i) the Final Purchase Price, and (ii) each of the certificates, instruments, documents and agreements referred to in Article VIII to be provided by Buyer on or prior to the Closing.

2.19 Bulk Sales Law. Unless waived by Buyer, Seller shall, prior to the Closing, comply with the requirements of sellers under any applicable bulk sales law.

### ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Upon the exercise of the Land Purchase Option, and with the understanding that, following the Schedule Delivery Date, Seller shall have the right, until it delivers final Seller Disclosure Schedules as provided in Section 2.15(a), to update any information contained in the Seller Disclosure Schedules if the occurrence of events or the discovery of new information makes the revision of such Seller Disclosure Schedules necessary or desirable (subject to a Purchase Price adjustment as set forth in Exhibit 2.8 and the limitations on the effect of such updates set forth in Section 2.15), Seller represents and warrants to Buyer as follows, as of the Schedule Delivery Date, the Closing Date, and, with respect to Section 3.1 and Section 3.2, the Effective Date:

3.1 Organization and Good Standing. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of its state of organization and is qualified to do business in the State of California, and has the legal power and authority to own or to hold its interests in properties, to carry on its business as now being conducted and to enter into and perform its obligations under this Agreement and each of the Operative Documents to which Seller is a party.

3.2 Authority: Absence of Conflict or Breach. The sale of the Real Property and the execution, delivery and performance by Seller of this Agreement and each of the Operative Documents to be executed and delivered by Seller in connection with such sale have been duly authorized by all necessary limited liability company action on the part of Seller and the owners of any interest in Seller and do not require any consent or approval other than those which have already been obtained or otherwise as disclosed in the Seller Disclosure Schedules. This Agreement and each of the Operative Documents to which Seller is a party constitutes the legal, valid and binding obligation of Seller, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law. The execution and delivery of this Agreement and each of the Operative Documents to which Seller is a party, the consummation of the sale of the Real Property and the fulfillment of and compliance with the provisions of this Agreement and the Operative Documents to which Seller is a party do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirements of Law, or any Organizational Documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of Seller (except as contemplated hereby).

3.3 Real Property Matters.

(a) *Schedule 3.3(a)* contains a true, correct and complete list of any Contracts, including the Land Documents and the Land Lease, that provide Seller with any rights in or to real property ("**Real Property Contracts**"), including rights in the nature of leases, easements, licenses, rights of way, franchise agreements, restrictive covenants, purchase agreements, agreements to relinquish or limit surface access rights with regards to minerals, options to purchase or lease, or applications for or bids to Governmental Authorities with respect to, any of the foregoing interests in real property (collectively, "**Real Property Interests**"), as well as leases (including farm and grazing leases) and other agreements in the possession of Seller, or of which Seller has Knowledge, that grant or purport to grant, or reserve or purport to reserve, to third parties, interests in or to the land which is subject to Real Property Interests, including grants of mineral and any other surface or access rights to third parties ("**Third Party Property Interests**"). True, correct and complete copies of the Real Property Contracts have been delivered to Buyer. Seller holds no Real Property Interests other than those that are set forth in such Real Property Contracts. Except as set forth in *Schedule 3.3*, to Seller's Knowledge, no counterparty thereto is in default in any material respect of any material obligation with respect to the

Real Property Contracts. Except as set forth in *Schedule 3.3*, each of the Real Property Interests granted by a Real Property Contract provides legal, valid, and enforceable rights in favor of Seller to the extent set forth therein and to Seller's Knowledge constitutes a legal, valid and binding obligation of the other parties thereto. True, correct and complete copies of all title reports, surveys, mineral reports for any severed minerals (including any evaluation as to feasibility or likelihood of mineral extraction and any separate chain of title for severed minerals), material records searches (for any governmental records not included in any title reports) and exception documents referenced in such reports, policies, or searches have been delivered to Buyer.

(b) Except as set forth in *Schedule 3.3(b)*, Seller has not received any written notice of any appropriation, condemnation or like proceeding, or of any material violation of any applicable zoning or land use law, regulation or rule or other law, order, regulation, rule or requirement relating to or affecting any of the Real Property Interests.

(c) Except as set forth in *Schedule 3.3(c)*, Seller has not previously severed any mining, mineral or water rights from any of the Real Property Interests and has disclosed to Buyer any material information in its possession regarding any severed mining, mineral or water rights affecting any of the Real Property Interests.

(d) Other than with respect to the Real Property Contracts or Permits and except as set forth in *Schedule 3.3(d)*, Seller has not received any written notice that any agreements with any Governmental Authority or public or private utility affect the Real Property Interests.

3.4 Consents. Except as set forth in *Schedule 3.4*, other than those that have been obtained or filed, no Consent of, or registration, qualification or filing with any Person, including any Governmental Authority, is required for the sale of the Real Property or the execution and delivery by Seller of this Agreement or any of the Operative Documents to which it is a party or in order for Seller to perform its obligations hereunder or thereunder.

3.5 Assets of the Business. Except as set forth in *Schedule 3.5*, the Real Property constitutes all of the assets, properties, rights, privileges, claims and Contracts of every kind and nature, real or personal, tangible or intangible, absolute or contingent, wherever located, owned or used (including those necessary to access and utilize any common use facilities) comprising the Real Property as owned and operated by Seller prior to the Closing.

3.6 Title. Immediately prior to the Closing, Seller has good and marketable fee title to the Real Property, free and clear of all Liens, except for the Purchase Option Permitted Encumbrances. To Seller's Knowledge, upon the Closing, Buyer will acquire good and marketable fee title to the Real Property free and clear of all Liens, except for Closing Permitted Encumbrances.

3.7 Environmental. Except as set forth in *Schedule 3.7*:

(a) There are no pending, outstanding, or, to Seller's Knowledge, threatened Agency Actions concerning the Real Property with respect to Environmental Laws applicable to Seller, the Real Property, and Seller's ownership, operation and use of the

Real Property. Seller is, and at all times has been, and has owned and operated (or its designee has operated) the Real Property, in compliance with all applicable Environmental Laws. There are no writs, injunctions, decrees, orders or judgments outstanding or pending, or to Seller's Knowledge any notices, actions, suits, or Proceedings threatened involving Seller relating to (i) its compliance with any Environmental Laws with respect to any of the Real Property or any other asset owned or used by Seller or in which it has or had an interest in connection with the Real Property, or (ii) the Release of any Hazardous Substances at the Real Property.

(b) All Permits required by Environmental Laws and necessary for the operation of the Real Property as currently configured and as operated by Seller have been obtained, are currently in full force and effect and are transferrable to Buyer without the requirement of any third party consent; Seller's operations at the Real Property are in compliance in all material respects with all the requirements of such Permits; and, to Seller's Knowledge, Seller is not subject to any pending notice of violation from any Governmental Authority or from any other Person alleging that Seller has committed any act, or failed to act, in any manner or under any circumstance that would preclude continued operation of the Real Property under any of these Permits.

(c) Seller has delivered to Buyer all written reports, written notices or written inquiries from any Governmental Authority that are in Seller's possession relating to the Environmental Conditions at, upon or beneath the Real Property regardless of whether such Environmental Conditions were caused by or arose from Seller's operation of the Real Property, except to the extent (i) such reports, notices or inquiries constitute communications from Seller's counsel to Seller that are subject to attorney-client privilege or (ii) the provision of such reports, notices or inquiries would conflict with any confidentiality obligations to which Seller is bound.

(d) To Seller's Knowledge, (i) each of the Real Property and Seller is in compliance with all Environmental Laws and (ii) there are no circumstances, conditions or proposed regulations that could reasonably be expected to prevent or substantially interfere with Buyer's compliance with Environmental Laws in connection with Buyer's operation or use of the Real Property in the foreseeable future in a manner consistent with Seller's operation or use of the Real Property during the term of the PPA.

(e) To Seller's Knowledge, there are currently no circumstances or conditions existing on the Real Property that could reasonably be expected to prevent or substantially adversely interfere with Seller's compliance with Environmental Laws in connection with Seller's current operation and use of the Real Property.

(f) Seller has not, and to Seller's Knowledge, no third party has, generated, used, treated or stored on, or transported to or from any of the Real Property any Hazardous Substances in violation of Environmental Laws.

(g) There is no asbestos contained in or forming any part of any building, building component, structure or other asset that is part of the Facility Assets, and no asbestos has been stored, disposed of, or otherwise been present at the Real Property, and

Seller does not have any liability for asbestos in connection with the use, operation, or renovation of the Real Property.

(h) There has been no Release or threatened Release of Hazardous Substances by Seller or any party under the reasonable control of Seller, and, to Seller's Knowledge, there has been no Release or threatened Release of Hazardous Substances by any other party at, on, under or from any of the Real Property or at, on, under or from any property adjoining part of the Real Property, other than in compliance with applicable Environmental Laws or as has previously been remediated in accordance with applicable Environmental Laws.

(i) In connection with its ownership and operation of the Real Property, Seller has disposed of all wastes, including those containing any Hazardous Substances, in compliance with all applicable Environmental Laws, and Seller has not received any notice or demand letter from any Person claiming Seller may be liable for any on- or off-site Release or threatened Release of Hazardous Substances.

(j) There are not now and, to Seller's Knowledge, never have been, any aboveground or underground storage tanks or PCB-containing transformers or equipment located at the Real Property.

(k) Seller has provided Buyer with all written reports, surveys, studies, correspondence, investigations, tests and environmental sampling and analyses (whether commissioned by Seller or otherwise) that are in Seller's possession concerning the wildlife, cultural resources, natural resources and the environmental condition of the Real Property, Hazardous Substances in, on and under the Real Property, or Seller's compliance with applicable Environmental Laws in the operation or use of the Real Property, except to the extent (i) such documents constitute communications from Seller's counsel to Seller that are subject to attorney-client privilege or (ii) the provision of such documents would conflict with any confidentiality obligations to which Seller is bound.

(l) Seller has not received any written request for information nor any written notification that it is a potentially responsible party under CERCLA or any similar state Environmental Law, including any such request or notification relating directly or indirectly to the Real Property, and none of the Real Property is proposed to be listed or is listed on the National Priorities List under CERCLA or any similar state Environmental Law requiring environmental investigation or cleanup.

3.8 No Undisclosed Liabilities. Seller has no material liabilities (absolute, accrued, contingent or otherwise) in excess of Fifty Thousand Dollars (\$50,000.00) in the aggregate, except for (a) those set forth in *Schedule 3.5, Schedule 3.7, Schedule 3.8, Schedule 3.9, Schedule 3.10, or Schedule 3.11*, (b) those otherwise disclosed to Buyer or explicitly set forth in any of the Assumed Contracts or Transferred Permits, or (c) those constituting Excluded Liabilities.

3.9 Taxes. Any Liens for Taxes are set forth in *Schedule 3.9*.

(a) There are no Liens for Taxes on the Real Property, except for (i) as of the Schedule Delivery Date, Purchase Option Permitted Encumbrances, and (ii) as of the Closing Date, Closing Permitted Encumbrances.

(b) Intentionally omitted.

(c) Seller has filed or caused to be filed with the appropriate Governmental Authorities all Tax Returns and reports relating to Seller required to be filed as of the Closing Date, all such Tax Returns were correct and complete in all respects and all Taxes of Seller due and payable have been paid whether or not shown to be due on such Tax Returns and reports.

(d) Seller has not received any notice from any Governmental Authority of, and has no other Knowledge of, any outstanding claims or assessments with respect to any Tax relating to the Real Property and, to Seller's Knowledge, no such claim is pending or is presently being asserted against the Seller or with respect to the Real Property.

(e) Seller has no Knowledge of any proposed tax assessment against the Real Property that is not being actively contested by it in good faith and by appropriate proceedings.

(f) Seller has timely paid all Taxes shown to be due on such Tax Returns, all Tax assessments received, and all Taxes that have or may become due under applicable Law with respect to all periods or portions thereof ending on or prior to the Closing Date.

(g) Seller is not a party to any pending Tax audit, investigation, action or Proceeding with any Governmental Authority, and, to Seller's Knowledge, there is no threatened audit, investigation, action or Proceeding by any Governmental Authority with respect to the Real Property. Seller has not received notice of any claim by any Governmental Authority in any jurisdiction where it does not file Tax Returns or pay Taxes that it is or may be subject to Tax by that jurisdiction.

(h) Seller has timely withheld and timely paid all Taxes that are required to have been withheld and paid by it in connection with amounts paid or owing to any employee, independent contractor, creditor or other Person.

3.10 Compliance With Laws. Except as set forth in *Schedule 3.10*, (a) Seller is in compliance with all Laws applicable to the Real Property and operation and use of thereof and (b) there are no condemnations or similar proceedings applicable to the Real Property.

3.11 Litigation. Except as set forth in *Schedule 3.11*:

(a) There are no Proceedings pending or, to Seller's Knowledge, threatened against Seller which could reasonably be expected to result, or have resulted in (i) the institution of legal proceedings to prohibit or restrain the operation or use of the Real Property or any portion thereof, or the consummation of the transactions contemplated

hereby, or (ii) a claim for damages for which Buyer could be liable or that could place any Lien on the Real Property;

(b) There are no existing Orders, writs, injunctions, judgments or decrees of any court, arbitrator, tribunal or other Governmental Authority issued against Seller which could reasonably be expected to result, or have resulted in (i) the institution of legal proceedings to prohibit or restrain the operation or use of the Real Property or any portion thereof, or the consummation of the transactions contemplated hereby, or (ii) a claim for damages for which Buyer could be liable or that could place any Lien on the Real Property.

3.12 Assumed Contracts. Seller has delivered or made available to Buyer true and complete copies of all Contracts. Except as set forth in *Schedule 3.12*, all Assumed Contracts are in full force and effect, and neither Seller, nor any other party thereto, is in default under or in breach of any of them, nor does any event or condition exist that after notice or lapse of time or both could constitute a default thereunder or breach thereof on the part of Seller or any other party thereto (except for defaults, events of default and other events as to which requisite waivers have been, or prior to the Closing will have been, obtained). No approval, consent, or waiver of or by any Person that has not already been obtained is needed in order that the Assumed Contracts continue in full force and effect following the consummation of the transactions contemplated by this Agreement, and no Assumed Contract includes any provision, the effect of which may be to terminate (or give rise to a right of termination under) such Assumed Contract, to give rise to, enlarge, or accelerate any obligations of Seller thereunder, or to give additional rights to any other Person, upon or by reason of the consummation of the transactions contemplated by this Agreement.

3.13 Intellectual Property.

(a) Except as set forth in *Schedule 3.13*, Seller is the licensee of, or has such rights under the patents, patent applications, inventions, improvements, computer programs, computer applications, operating programs, other programs and software, including system documentation and instructions, engineering, construction and other drawings (other than drawings not needed for the operation, maintenance or repair of the Real Property), designs, technology, know-how, trade secrets, trademarks, trademark applications, trade names, copyrights and other proprietary rights and proprietary information (to the extent any of the foregoing are necessary to operate and maintain the Real Property in substantially the same manner as it has been operated or maintained during the Operations Period, collectively, the "*Intellectual Property Assets*"). Except as set forth in *Schedule 3.13*, Seller has not received notice that any of the Intellectual Property Assets infringes on or conflicts with the intellectual property of others. Seller has the right to use the Intellectual Property Assets in connection with its ongoing operation and maintenance of the Real Property.

(b) Except as set forth in *Schedule 3.13*, there have been no claims, and, to Seller's Knowledge, there is no basis for any claim, challenging the scope, validity or enforceability of any of the Intellectual Property Assets. Except as set forth in *Schedule 3.13*, there are no instances where it has been held, or to Seller's Knowledge,

claimed or alleged, whether directly or indirectly, and, to Seller's Knowledge, there is no basis upon which a claim may be made, that any activity of Seller relating to the operation or maintenance of the Real Property, infringes or may infringe upon, is in violation of, or misappropriates, any rights of a third party.

(c) *Schedule 3.13* lists all of the Intellectual Property Assets, including the software used in connection with the operation or use of the Real Property as of the Schedule Delivery Date, including control room operating system software, all of which shall, except as set forth in *Schedule 3.13*, remain available at the Real Property for use by Buyer.

3.14 Brokers or Finders. Neither Seller nor any of its officers, directors, employees, shareholders or Affiliates has employed or made any agreement with any broker, finder or similar agent or any Person which will result in the obligation of Buyer or any of its Affiliates to pay any finder's fee, brokerage fees or commission or similar payment in connection with the transactions contemplated hereby.

3.15 Permits. Except as set forth in *Schedule 3.15*, all non-environmental Permits currently required by Law and necessary for the operation or use of the Real Property as operated and used by Seller have been obtained, are currently in effect, are final and non-appealable, and are transferrable to Buyer without the requirement of any third-party Consent. Seller's operations at the Real Property and use thereof are in compliance with all the requirements of such Permits, and, as of Closing, Seller is not in possession of, and, to Seller's Knowledge, there is no reasonable basis for the issuance of, any written notice of violation or other notification from any Governmental Authority or from any other Person alleging that Seller has committed any act, or failed to act, in any manner or under any circumstance that could preclude continued operation and use of the Real Property by Buyer under any of these Permits. Seller has made available to Buyer complete and correct copies of each such Permit, together with all amendments thereto. No suspension, cancellation or termination of any such Permit is threatened or imminent. Notwithstanding anything to the contrary contained in this Section 3.15 or elsewhere in this Agreement, Seller has not made any representation or warranty to Buyer, and Buyer acknowledges that it is not acting in reliance on any such purported representation or warranty, that the Real Property is fit for use as a solar project or any other use by Project Seller or any other person or entity which may use or occupy the Real Property at any time.

3.16 Investment Company Act. Seller is not an "investment company" or a company "controlled" by an "investment company" within the meaning of the Investment Company Act.

3.17 Employees and Employee Benefit Plans. Except as set forth in *Schedule 3.17*, Seller does not have and has never had any employees, and Seller does not maintain or contribute to, and has not ever maintained or contributed to, any pension, profit-sharing, deferred compensation, bonus, stock, option, share, appreciation right, severance, group or individual health, dental, medical, life, insurance, survivor benefit or similar plan, policy or arrangement for the benefit of any director, officer, consultant or employee, whether active or terminated, of Seller.



3.18 No Shared Facilities. There are no shared facilities (including control rooms, interties, buildings, or rights of way) required for the use or operation of the Real Property, except for those that are required by Law and set forth in *Schedule 3.18*.

3.19 General Representation. Except as set forth on *Schedule 3.19*, no representation or warranty made by Seller, its agents and representatives in this Agreement or any of the Operative Documents or in any certificate or other agreement delivered by Seller to Buyer in connection with the transactions contemplated hereby or thereby contains any untrue statement of a material fact, or omits to state a material fact necessary in order to make the statements contained herein, in light of the circumstances in which they were made, not materially misleading. All material information contained in the Provided Materials is or will be materially consistent with the information which has been used by Seller in the management of the Real Property and also with what has been reported to Seller's management, equity holders and the Land Lender in connection with the Real Property.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows as of the Closing Date:

4.1 Organization. Buyer is a validly existing charter city of the State of California formed under the laws of the State of California and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into and perform its obligations under this Agreement and each of the Operative Documents to which Buyer is a party.

4.2 Authority; Binding Nature. The purchase of the Real Property and the execution, delivery and performance by Buyer of this Agreement and each of the Operative Documents executed and delivered by Buyer in connection with such purchase have been duly authorized by all necessary action, and do not require any consent or approval of Buyer's regulatory/governing bodies, other than that which has been obtained; provided that further authorizations from Buyer's Board of Commissioners and the Los Angeles City Council will be required for Buyer to exercise the Land Purchase Option. This Agreement and each of the Operative Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law. The execution and delivery of this Agreement and each of the Operative Documents to which Buyer is a party, the consummation of the purchase of the Real Property and the fulfillment of and compliance with the provisions of this Agreement and each of the Operative Documents to which Buyer is a party do not and will not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirements of Law, or any Organizational Documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which it or any of its property is bound, or result in a breach of or a default under any of the foregoing, in each case, which breaches or defaults,

individually or in the aggregate, could reasonably be expected to result in a material adverse effect on the ability of Buyer to perform any of its obligations under this Agreement.

4.3 Consents. Except as set forth in *Schedule 4.3*, other than those that have been obtained or filed, no Consent of, or registration, qualification or filing with any Person, including any Governmental Authority, is required for the purchase of the Real Property or the execution and delivery by Buyer of any of the Operative Documents to which it is a party or in order for Buyer to perform its obligations hereunder.

4.4 Brokers or Finders. Neither Buyer nor any of Buyer's officers, directors, or employees has employed or made any agreement with any broker, finder or similar agent or any Person which will result in the obligation of Seller or any of its Affiliates to pay any finder's fee, brokerage fees, or commission or similar payment in connection with the transactions contemplated hereby.

4.5 Litigation. There are no Proceedings pending, or to Buyer's knowledge, threatened, against Buyer which could reasonably be expected to materially adversely affect its ability to perform its obligations with respect to the purchase of the Real Property pursuant to a Purchase Option Exercise Notice.

#### ARTICLE V COVENANTS OF SELLER PRIOR TO CLOSING DATE

5.1 Access to Materials. Prior to the Schedule Delivery Date, Seller will furnish to Buyer all information required to be furnished pursuant to Section 3.7(c). Between the Schedule Delivery Date and the Closing Date (or such earlier date upon which the applicable Purchase Option Opportunity has been declined, expired or is no longer in effect, or when the Agreement has terminated) (such period, the "*Applicable Diligence Period*"), upon reasonable advance notice, Seller will (a) afford Buyer and its Representatives (and the Qualified Appraiser) full and complete access during normal business hours to the Real Property and to Seller's personnel, Assumed Contracts, Transferred Permits, Books and Records, properties and other documents and data (provided that Buyer shall observe, and shall cause its Representatives to observe, all of Seller's security protocols), (b) furnish Buyer and Buyer's Representatives (and the Qualified Appraiser) with copies of all such Assumed Contracts, Transferred Permits, Books and Records, and other existing documents and data in Seller's possession or to which Seller has access with respect to the Real Property as Buyer or the Qualified Appraiser may reasonably request, and (c) furnish Buyer and its Representatives (and the Qualified Appraiser) with such additional financial, operating, and other data and information of or pertaining to the Real Property in Seller's possession or to which Seller has access as Buyer and its representatives (and the Qualified Appraiser) may reasonably request (all such Assumed Contracts, Transferred Permits, Books and Records, documents, data and information required to be furnished by Seller under this Section 5.1 shall hereinafter be referred to as "*Provided Materials*"). Buyer shall have the right to diligently review the Provided Materials. The Provided Materials may be redacted as necessary to allow for disclosure to Buyer and the Qualified Appraiser to the extent any Provided Materials are (i) subject to confidentiality, non-disclosure or similar agreements in favor of third parties whose consent to disclose cannot be obtained by the Closing, (ii) legally-privileged information of Seller, (iii) concerning any alleged dispute or pending litigation, investigation or

Proceeding involving Seller or its Affiliates that is protected by or subject to a court order or the attorney-client privilege, or (iv) restricted by an agreement entered into in connection with such dispute, litigation, investigation or Proceeding or an order entered by any court.

5.2 Investigations. During the Applicable Diligence Period, upon reasonable advance notice (but not less than twenty-four (24) hours), Seller shall afford Buyer and its Representatives (and the Qualified Appraiser), with reasonable access to the Real Property for the purpose of inspecting the same, to conduct any performance tests or physical inspections or otherwise (including to conduct a Phase 1 environmental site assessment), during normal business hours and in such manner so as not to materially disturb or interfere with the normal operations or use of the Real Property. While on the Real Property, Buyer shall cause its Representatives to comply with all of Seller's rules and regulations applicable to individuals at the Real Property. In the event Buyer is dissatisfied with the Real Property for any reason, Buyer may elect, in its sole discretion, to withdraw its exercise of the Land Purchase Option with respect to the applicable Purchase Option Opportunity by delivering notice thereof to Seller on or before delivery by Buyer to Seller of a Purchase Option Exercise Notice.

5.3 Facility Site Option.

(a) Seller shall (i) not encumber, terminate, cancel, sever or surrender, or permit or suffer the subordination, encumbrance, termination, cancellation, severance or surrender of, or modify, change, amend or assign the Facility Site Option in a way that could, individually or in the aggregate, have a material adverse effect on Buyer (including Buyer's ability to exercise the Land Purchase Option and take possession of the Real Property), the Real Property, or Seller's performance of its obligations under this Agreement, without the prior consent of Buyer, (ii) provide to Buyer copies of any proposed amendments or modifications to the Facility Site Option and obtain Buyer's approval (which approval shall not be unreasonably withheld, conditioned, or delayed) prior to execution and delivery of any such amendments or modifications by Seller, (iii) at all times keep, perform, observe and comply with, or cause to be kept, performed, observed and complied with, all covenants, agreements, conditions and other provisions required to be kept, performed, observed and complied with by or on behalf of Seller from time to time pursuant to the Facility Site Option, and Seller shall not do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, could impair or tend to impair the rights of Seller under the Facility Site Option, or could be grounds for the seller thereunder to terminate the Facility Site Option, and (iv) give Buyer immediate notice of (a) any default or of any event which, with the giving of notice or passage of time, or both, would become a default under the Facility Site Option, or of the receipt by Seller of any notice from the seller thereunder, or (b) the commencement or threat of any action or proceeding or arbitration pertaining to the Facility Site Option (and Buyer, at its option may take any action (but shall not be obligated to take any action) from time to time deemed necessary or desirable by Buyer to prevent or cure, in whole or in part, any default by Seller under the Facility Site Option) and Seller shall deliver to Buyer, immediately upon service or delivery thereof on, to or by Seller, a copy of each petition, summons, complaint, notice of motion, order to show cause and other pleading or paper, however designated, which shall be served or delivered in connection with any such action, proceeding or arbitration.

(b) In the event that a petition under the Bankruptcy Code shall be filed by or against Seller, Seller absolutely, irrevocably, and unconditionally grants and assigns to Buyer the sole and exclusive right to designate and direct Seller's assumption and assignment, or rejection, of the Facility Site Option and the Land Lease pursuant to Section 365 of the Bankruptcy Code, and Seller agrees that any such election, if made by Seller or Seller's trustee without the prior consent of Buyer shall be void at inception and of no force or effect. Buyer shall have the right, but not the obligation, to instruct Seller or Seller's trustee as to such assumption and assignment or rejection of the Facility Site Option or the Land Lease, and Seller shall, or shall cause Seller's trustee to, comply with such instructions.

5.4 Seller's Purchase of Real Property. Seller shall deliver evidence of Seller's purchase of the Real Property under the Facility Site Option, promptly upon the purchase thereof, but in no event later than the Site Control Milestone Date specified in the PPA.

5.5 Seller's Assets. Seller represents and warrants to Buyer that, as of the Effective Date, the Facility Site Option is the only asset held by Seller. Until Seller exercises its option to purchase the Real Property under the Facility Site Option, the Facility Site Option will constitute all or substantially all of the assets of Seller.

5.6 Operation of the Business. During the Applicable Diligence Period, Seller will conduct its business with respect to the Real Property in all material respects in accordance with the ordinary course of business consistent with past practices and Prudent Utility Practices.

5.7 Required Approvals. As promptly as practicable following Buyer's delivery of a Purchase Option Exercise Notice until the end of the Applicable Diligence Period, Seller will make, and thereafter diligently pursue during the Applicable Diligence Period, all registrations, qualifications or filings to be identified in *Schedule 3.4* or necessary or appropriate to obtain all the Consents therein identified.

5.8 Notification. During the Applicable Diligence Period, Seller shall give prompt notice (each notice, a "*Breach Notice*") to Buyer of the occurrence or non-occurrence of any event, change, effect or development of any kind which would or might cause (a) any representation or warranty of Seller contained in any Operative Document or this Agreement to be untrue or incorrect in any material respect on the date such representation or warranty is to be made, (b) a Material Adverse Effect, or (c) a breach of any of Seller's covenants under this Agreement or any Operative Document. Each Breach Notice must include a detailed description of the event, change, effect, development or failure and a description of the action Seller has taken and proposes to take with respect thereto. The delivery of, or the failure to deliver, a Breach Notice will not be deemed to (i) modify any representation or warranty hereunder, (ii) modify any condition set forth in Article VII, or (iii) limit or otherwise affect the remedies available hereunder to Buyer.

5.9 Reasonable Efforts. Following Buyer's delivery of the Purchase Option Exercise Notice and until the end of the Applicable Diligence Period, Seller will, or will cause its Affiliates to, use all commercially reasonable efforts to satisfy the conditions in Article VII and Article VIII to be performed by Seller or such Affiliates.

5.10 Waivers of Claims. During the Applicable Diligence Period, Seller shall not cancel or compromise any debt or claim, or waive or release any material right relating to the Real Property and the Assumed Liabilities, other than such adjustments with respect to Persons involved with this transaction.

5.11 Additional Contracts. Any Contract entered into by Seller during the Applicable Diligence Period shall be an Excluded Liability unless Buyer agrees in writing to include such Contract as an Assumed Contract.

5.12 Liens; Changes in Zoning. During the Applicable Diligence Period, Seller shall not consent to, or cause, the placement of any Liens on the Real Property, or a rezoning of the Real Property, without Buyer's prior consent, such consent not to be unreasonably withheld, conditioned, or delayed.

## ARTICLE VI COVENANTS OF BUYER PRIOR TO CLOSING DATE

6.1 Required Approvals. As promptly as practicable following Buyer's delivery of the Purchase Option Exercise Notice and until the end of the Applicable Diligence Period, Buyer will make, and thereafter during the Applicable Diligence Period pursue, all registrations, qualifications or filings identified in *Schedule 4.3* or necessary or appropriate to obtain any Consent therein identified, consistent with and based upon Seller's acknowledgement and agreement in Section 2.6, and Seller shall provide assistance to Buyer in connection therewith.

6.2 Reasonable Efforts. Following Buyer's delivery of the Purchase Option Exercise Notice until the end of the Applicable Diligence Period, Buyer will use reasonable efforts to cause the conditions in Article VII and Article VIII to be performed by Buyer, to be satisfied.

## ARTICLE VII CONDITIONS PRECEDENT TO BUYER'S OBLIGATION TO CLOSE

Buyer's obligation to purchase the Real Property and to take the other actions required to be taken by Buyer at the Closing Date is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Buyer in its sole discretion, in whole or in part):

7.1 Accuracy of Representations. (a) All of Seller's representations and warranties in this Agreement and the other Operative Documents (considered collectively) shall be true and correct, (b) each of these representations and warranties (considered individually) that are qualified with respect to materiality shall be true and correct as so qualified, and (c) each of these representations and warranties that are not so qualified shall be true and correct in all material respects, in each case, as of the date when deemed made.

7.2 Seller's Performance. All of the covenants and obligations that Seller is required to perform or to comply with pursuant to this Agreement or any of the other Operative Documents at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been duly performed and complied with in all material respects.

7.3 Consents. Each of the Consents identified in *Schedule 3.4* and *Schedule 4.3* must have been obtained and must be in full force and effect.

7.4 Additional Seller Documents. Seller shall deliver each of the following documents to Buyer:

- (a) intentionally omitted;
- (b) a written certificate, in form and substance satisfactory to Buyer, executed and delivered by Seller by its authorized officer, certifying that each of the conditions specified in Sections 7.1, 7.2, and 7.3 have been satisfied;
- (c) Intentionally omitted;
- (d) a grant deed with special warranty covenants (the "*Deed*") in a form reasonably acceptable to Buyer and executed by Seller, conveying fee title to the Real Property to Buyer, subject only to the Closing Permitted Encumbrances;
- (e) agreements and related documentation in a form reasonably acceptable to Buyer effective to transfer to Buyer the Transferred Permits, the Assumed Contracts and the Real Property Contracts (the "*Asset Assignment Documents*"), executed by Seller by its authorized officer;
- (f) an irrevocable commitment by the Title Company to issue the Title Policy, subject only to those exceptions that are Closing Permitted Encumbrances;
- (g) Intentionally omitted;
- (h) duly executed pay-off letters for the release or termination of all Liens securing Land Debt that acknowledge repayment in full of such Land Debt (unless Buyer otherwise agrees in writing that any such Liens shall not be released or terminated); and
- (i) such other customary documents as Buyer may reasonably request for the purpose of (i) evidencing the accuracy of any of Seller's representations and warranties, (ii) evidencing the performance by Seller of, or the compliance by Seller with, any covenant or obligation required to be performed or complied with by Seller, including under Section 2.6, or (iii) evidencing the satisfaction of any condition referred to in this Article VII; and such other customary documents as the Title Company may require in order to issue the Title Policy to Buyer.

7.5 Litigation. No Proceeding shall have been instituted or any other action taken or Law or Environmental Law enacted, promulgated or deemed applicable by any Governmental Authority or by any other Person and, at what would otherwise have been the Closing Date, remain pending, to delay, restrain or prohibit any part of the transactions contemplated by this Agreement or to seek any divestiture or to revoke or suspend any Permit by reason of any or all of the transactions contemplated by this Agreement; nor shall any Governmental Authority have notified either Party or any of their respective Affiliates that consummation of any part of the transactions contemplated by this Agreement would constitute a violation of the Laws or

Environmental Laws of any jurisdiction or that it intends to commence a Proceeding to restrain or prohibit any part of the transactions contemplated by this Agreement or to require such divestiture, revocation or suspension; unless, in any such case, such Governmental Authority or other Person shall have withdrawn such notice and abandoned such Proceeding, action, Law or Environmental Law to the satisfaction of Buyer.

7.6 Liens. Title to the Real Property shall be free and clear at the Closing of all Liens other than Closing Permitted Encumbrances.

7.7 No Material Adverse Effect. During the Applicable Diligence Period, no action shall have been taken or omitted and no event shall have occurred or be threatened which has had or could reasonably be expected to result in a Material Adverse Effect.

7.8 Final Purchase Price. All adjustments to the Tentative Purchase Price required under Section 3 of *Exhibit 2.8* shall have been made, including any adjustments required as a result of updates to the Seller Disclosure Schedules delivered by Seller pursuant to Section 2.15(a).

#### ARTICLE VIII CONDITIONS PRECEDENT TO SELLER'S OBLIGATION TO CLOSE

Seller's obligation to sell the Real Property and to take the other actions required to be taken by Seller at the Closing Date is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived by Seller in its sole discretion, in whole or in part):

8.1 Accuracy of Representations. (a) All of Buyer's representations and warranties in this Agreement (considered collectively), (b) each of these representations and warranties (considered individually) that are qualified with respect to materiality shall be true and correct as so qualified, and (c) each of these representations and warranties that are not so qualified shall be true and correct in all material respects, in each case, as of the date of this Agreement and as of the date when deemed made.

8.2 Buyer's Performance.

(a) All of the covenants and obligations that Buyer is required to perform or to comply with pursuant to this Agreement or any of the other Operative Documents at or prior to the Closing (considered collectively), and each of these covenants and obligations (considered individually), must have been performed and complied with in all material respects.

(b) Buyer must have paid the Final Purchase Price to Seller.

8.3 Consents. Each of the Consents identified in *Schedule 3.4* and *Schedule 4.3* must have been obtained and must be in full force and effect.

8.4 Asset Assignment Documents. Buyer shall deliver to Seller all Asset Assignment Documents executed by Buyer by its authorized Representative and such other documents as may be required by the Title Company for the Title Company to issue the Title Policy.

8.5 Litigation. No Proceeding shall have been instituted or any other action taken or Law or Environmental Law enacted, promulgated or deemed applicable by any Governmental Authority or by any other Person and, at what would otherwise have been the Closing Date, remain pending to delay, restrain or prohibit any material part of the transactions contemplated by this Agreement; nor shall any Governmental Authority have notified either Party or any of their respective Affiliates that consummation of any part of the transactions contemplated by this Agreement would constitute a violation of the Laws or Environmental Laws of any jurisdiction or that it intends to commence a Proceeding to restrain or prohibit any part of the transactions contemplated by this Agreement, unless, in any such case, such Governmental Authority or other Person shall have withdrawn such notice and abandoned such Proceeding, action, Law or Environmental Law to the satisfaction of Seller.

#### ARTICLE IX MUTUAL COVENANTS, TAXES AND OTHER MATTERS

9.1 Tax Matters. Seller, at its own expense, will file, to the extent required by applicable Law, all necessary Tax Returns and other documentation with respect to its portion of any Transfer Taxes, and, if required by applicable Law, Seller will join in the execution of any such Tax Returns or other documentation and will take such positions in such returns as are reasonably requested by Buyer.

(a) With respect to Taxes to be prorated in accordance with Section 2.16 only, Buyer shall prepare and timely file all Tax Returns required to be filed with respect to the Real Property, if any, and shall duly and timely pay all such Taxes, whether imposed on Buyer or Seller, shown to be due on such Tax Returns. Buyer's preparation of any such Tax Returns shall be subject to Seller's approval, which approval shall not be unreasonably withheld. Buyer shall make such Tax Returns available for Seller's review and approval no later than fifteen (15) Business Days prior to the due date for filing such Tax Return. Within ten (10) Business Days after receipt of such Tax Return, Seller shall pay to Buyer Seller's proportionate share of the amount shown as due on such Tax Return, determined in accordance with Section 2.16.

(b) Each of Buyer and Seller shall provide the other with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority, or any judicial or administrative Proceeding relating to liability for Taxes, and each will retain and provide the requesting Party with any records or information which may be relevant to such return, audit or examination, Proceedings or determination. Each Party will take any and all commercially reasonable steps, act in good faith, and cooperate fully, to permit the other Party to comply with its obligations and secure its rights to indemnification hereunder.



(c) Seller will be entitled to any refunds or credits of Taxes relating to the Real Property for the period on or prior to the Closing Date (and such refunds and credits shall be Excluded Assets), and Buyer shall be entitled to such refunds or credits of Taxes relating to the Real Property for the period on and after the Closing Date. Each of Buyer and Seller will promptly notify and forward to the other Party the amounts of any such refunds or credits received by such Party, but to which the other Party is entitled, within sixty (60) days after receipt thereof.

(d) After the Closing, Buyer will notify Seller, within thirty (30) days after its receipt, of any correspondence, notice or other communication from a taxing authority or any representative thereof, of any pending or threatened tax audit, or any pending or threatened Proceeding that involves Taxes relating to the Real Property for the period prior to the Closing, and furnish Seller with copies of all correspondence received from any taxing authority in connection with any audit or information request with respect to any such Taxes relating to the Real Property for the period prior to the Closing. After the Closing, Seller will notify Buyer, within thirty (30) days after its receipt, of any correspondence, notice or other communication from a taxing authority or any representative thereof, of any pending or threatened tax audit, or any pending or threatened judicial or administrative Proceeding that involves Taxes relating to the Real Property for the period after the Closing, and furnish Buyer with copies of all correspondence received from any taxing authority in connection with any audit or information request with respect to any such Taxes relating to the Real Property for the period after the Closing.

(e) Notwithstanding any provision of this Agreement to the contrary, with respect to any claim for refund, audit, examination, notice of deficiency or assessment or any Proceeding that involves Taxes relating to the Real Property (collectively, "*Tax Claim*"), each of Buyer and Seller will reasonably cooperate with the other Party in prosecuting or contesting any Tax Claim, including making available original books, records, documents and information for inspection, copying and, if necessary, introduction of evidence at any such Tax Claim contest or Proceeding and making employees available on a mutually convenient basis to provide additional information or explanation of any material provided hereunder with respect to such Tax Claim or to testify at Proceedings relating to such Tax Claim. Seller will control all Proceedings taken in connection with any Tax Claim that pertains entirely to any period prior to the Closing, and Buyer will control all Proceedings taken in connection with any Tax Claim that pertains to any period commencing after the Closing, and Seller and Buyer will jointly control all Proceedings taken in connection with any Tax Claim pertaining to any period commencing prior to and ending after the Closing; provided, however, that Buyer may request that Seller take any action reasonably necessary to remove any Liens on the Real Property relating to any Tax Claim that pertains to the period prior to or including the Closing. Buyer shall have no right to settle or otherwise compromise any Tax Claim which pertains entirely to the period prior to the Closing; Seller shall have no right to settle or otherwise compromise any Tax Claim which pertains entirely to the period after the Closing and neither Buyer nor Seller shall have the right to settle or otherwise compromise any Tax Claim which pertains to the period both prior to and after the

Closing without the other Party's prior consent, which consent shall not be unreasonably withheld or delayed.

9.2 Intentionally omitted.

9.3 Risk of Loss.

(a) If, during the Applicable Diligence Period, all or any portion of the Real Property is damaged or destroyed in whole or in part or becomes subject to or threatened with any condemnation or eminent domain proceeding (the "*Affected Portion*"), the Tentative Purchase Price shall be reduced by an amount that is equal to the greater of the (i) fair market value of the Affected Portion (such value to be determined as of the date immediately prior to such damage, destruction or actual or threatened condemnation or eminent domain proceeding) or (ii) the cost of repair of the Affected Portion, as determined by the Qualified Appraiser; provided, that if Seller elects to repair the Affected Portion prior to the Closing Date, the Tentative Purchase Price shall be adjusted to reflect the reasonable value of the repairs performed by Seller. For the avoidance of doubt, any insurance proceeds received by Seller with respect to the Real Property during the Applicable Diligence Period shall belong to the Seller, subject to application in accordance with the requirements of the Land Debt.

(b) If, during the Applicable Diligence Period, all or any portion of the Real Property is damaged or destroyed in whole or in part or becomes subject to or threatened with any condemnation or eminent domain proceeding such that it cannot reasonably be expected (as determined by the Qualified Appraiser) that, (i) in the case of damage or destruction, the Real Property will be fully repaired within sixty (60) days after the Closing Date or (ii) in the case of a condemnation or eminent domain proceeding, such condemnation or eminent domain proceeding would have a Material Adverse Effect, then Buyer may, in its sole discretion, elect to terminate the Land Purchase Option with respect to the applicable Purchase Option Opportunity.

9.4 Liabilities.

(a) After Closing, Buyer shall assume, shall pay, perform and discharge when due, and, as between Buyer and Seller, shall be solely responsible for, the Assumed Liabilities. Seller shall have no liability or obligation for the Assumed Liabilities after the Closing Date.

(b) Except for the Assumed Liabilities, Buyer shall not assume by virtue of this Agreement or the transactions contemplated by this Agreement, and shall have no liability under this Agreement for, the Excluded Liabilities.

**ARTICLE X  
TERM AND TERMINATION**

10.1 Term. This Agreement shall become effective when it is executed by each of the Parties and delivered to the other Party and the term of this Agreement shall continue for the Agreement Term (including the survival periods of those provisions with survivability under

Section 2.3 of the PPA), or such other period as may be provided for in this Agreement, unless terminated earlier as provided in Section 10.2, or as provided elsewhere under this Agreement; provided that (a) the term of this Agreement shall in any event extend up to and including the Closing so long as Buyer shall be entitled under the terms of this Agreement to exercise its Land Purchase Option and (b) the provisions of this Agreement shall survive any Closing or termination of this Agreement as set forth in Section 10.3(b) and Section 11.1.

10.2 Termination Events. This Agreement may, by notice given prior to the Closing, be terminated:

(a) by either Buyer or Seller upon (i) a failure by the other Party to perform any of its duties or obligations under this Agreement when and as due which is not cured to the reasonable satisfaction of the performing Party by the earlier of the Closing Date or the date that is thirty (30) days after receipt of notice thereof from the other Party, or (ii) an inaccuracy in any material respect of any representation, warranty, certification or other statement made by the other Party herein or in any other document contemplated hereby or in any Operative Document at any time given by a Party pursuant hereto or thereto, or in connection herewith or therewith at the time made or deemed to be made;

(b) either (i) by Buyer if satisfaction of any of the conditions in Article VII has become impossible due to an event outside of Buyer's reasonable control despite the exercise of due care and diligence (and in no event through the failure of Buyer to comply with its obligations under this Agreement) and Buyer has not previously waived such condition; or (ii) by Seller if satisfaction of any of the conditions in Article VIII has become impossible due to an event outside of Seller's reasonable control despite the exercise of due care and diligence (and in no event through the failure of Seller to comply with its obligations under this Agreement) and Seller has not previously waived such condition on or before the Closing Date; or

(c) (i) by Seller, if a Default of Buyer shall have occurred under the PPA and the PPA is terminated prior to or concurrently with this Agreement, or (ii) by either Party, in the event that the PPA shall fail to be in full force and effect in accordance with its terms for any reason other than a termination of the PPA as a result of Buyer's exercise of its right to purchase the Facility Assets pursuant to the terms of the Project Option Agreement, or (iii) by either Party, if the other Party or such other Party's Affiliates shall contest the validity or enforceability of the PPA or any provision thereof in writing or deny that it has any further liability thereunder.

### 10.3 Effect of Termination.

In the event of termination of this Agreement:

(a) Upon a request from the other Party, each Party will redeliver all documents, work papers and other material of any other Party relating to the transactions contemplated hereby or by the other Operative Documents to the Party furnishing the same, whether so obtained before or after the execution hereof, and each Party will

withdraw any applications for approval of transfer of Permits and surrender any Permits already transferred, as necessary;

(b) The provisions of Article XII shall survive and continue in full force and effect;

(c) Neither Party shall have any liability or further obligation to the other Party, except as stated in Sections 10.3(a) and (b), and except for any breach of representation, warranty or obligation arising under this Agreement or otherwise occurring prior to the proper termination of this Agreement. The foregoing provisions shall not limit or restrict the availability of specific performance or other injunctive relief to the extent that specific performance or such other relief would otherwise be available to a Party hereunder; and

(d) The PPA shall remain in full force and effect in accordance with its terms.

#### ARTICLE XI LIMITATION OF LIABILITY

11.1 Survival of Representations, Etc. The representations, warranties, covenants, and agreements, and indemnities of the Parties contained herein shall survive the consummation of the transactions contemplated hereby and the Closing Date, without regard to any investigation made by either of the Parties or the fact that the damaged Party had knowledge of any misrepresentation or breach of warranty or covenant at the time of Closing or at any other time, until the expiration of the applicable statute of limitations (and shall thereafter terminate, at which time the other Party shall be precluded from making a claim or commencing a cause of action with respect thereto). The termination of any representation and warranty provided herein shall not affect the rights of a Party in respect of a Claim made by such Party with specificity and in a writing received by the other Party prior to the expiration of the applicable survival period provided herein.

11.2 Limitation of Liability. Notwithstanding anything contained in this Agreement to the contrary, in no event shall Seller's aggregate liability under this Agreement or any Operative Document to Buyer under any theory of liability (whether contract, tort, strict liability or otherwise) exceed one hundred percent (100%) of the Final Purchase Price, provided that the foregoing limitation shall not apply (A) to the extent based upon a breach of any representation or warranty made in Section 3.1, 3.2, 3.3, 3.4, 3.7, 3.13 or 3.17, or (B) to death, bodily injury or personal injury to any person or damage or destruction to any property of either Party or third persons arising from activities conducted on the Real Property on or prior to the Closing Date or from Hazardous Substances that were present at or on the Real Property on or prior to the Closing Date or that were released by Seller or any other person for whose conduct Seller is responsible at any time on or prior to the Closing Date.

ARTICLE XII  
GENERAL PROVISIONS

12.1 Indemnification.

(a) Subject to Article XI, Seller undertakes and agrees to indemnify and hold harmless Buyer, its Affiliates, the Board of Commissioners, and the City of Los Angeles, and all of their respective commissioners, officers, agents, employees, attorneys, consultants, advisors, representatives, and assigns and successors in interest (collectively, "*Indemnitees*") from and against any and all charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, arising by reason of any (a) breach of this Agreement by Seller, (b) failure of any representation, warranty or guarantee made by Seller herein or in any of the other Operative Documents that is qualified by materiality to be true, (c) failure of any representation, warranty or guarantee made by Seller herein or in any of the other Operative Documents that is not so qualified by materiality to be true in all material respects, or (d) Excluded Liability; provided, however, that before making a Claim based on any misrepresentation or inaccuracy of Seller's representations in Section 3.6 with respect to Seller's title to the Real Property, Buyer shall have exhausted its remedies with respect to the Title Policy delivered to Buyer pursuant to Section 2.7(b).

(b) Buyer shall promptly notify Seller of any action, suit, proceeding, demand, or breach (a "*Claim*") with respect to which Buyer claims indemnification; provided, however, that failure of Buyer to give such notice shall not relieve Seller of its obligations under this Article XII. If such Claim relates to any action, suit, proceeding, or demand instituted by a third party (a "*Third Party Claim*"), upon receipt of such notice from Buyer, Seller shall be entitled to participate in the defense of such Third Party Claim, and if and only if each of the conditions set forth in clauses (i) through (iv) below is satisfied, Seller shall assume the defense of such Third Party Claim, and in the case of such an assumption, Seller shall have the authority, with consent of Buyer, to negotiate, compromise, and settle such Third Party Claim;

(i) Seller confirms in writing, without qualification of any kind, that it is obligated to indemnify the Indemnitees with respect to such Third Party Claim;

(ii) Seller has selected counsel to handle the defense who is acceptable to the Los Angeles City Attorney;

(iii) Buyer does not give Seller notice that it has determined, in the exercise of its reasonable discretion, that matters of policy or a conflict of interest make separate representation by Buyer's own counsel advisable; and

(iv) Seller establishes to the reasonable satisfaction of Buyer that Seller has (and will continue to have) adequate financial resources to satisfy and discharge such action or claim.

(c) Buyer shall retain the right to participate in the defense of any Third Party Claim, the defense of which has been assumed by Seller pursuant hereto, but Buyer shall

bear and shall be solely responsible for its own costs and expenses in connection with such participation. In the event Seller shall fail or not be entitled to assume the defense of any Third Party Claim, then Buyer shall control the defense and settlement thereof at Seller's cost and expense, and any judgment on or settlement of such Third Party Claim shall be conclusive and binding on Seller for all purposes.

(d) The provisions of this Section 12.1 shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies.

(e) No individual Representative of either Party shall be personally liable for any losses under the provisions contained in this Section 12.1. Except as set forth in Section 12.1(d), nothing herein shall relieve either Party of any liability to make any payment expressly required to be made by such Party pursuant to this Agreement.

12.2 Expenses. Except as otherwise expressly provided in this Agreement, each Party will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement, including all fees and expenses of agents, representatives, counsel, and accountants. Both Parties agree that, in any action to enforce the terms of this Agreement, each Party shall be responsible for its own attorney fees and costs. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Agreement.

12.3 Ambiguity. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language, but otherwise shall be interpreted in accordance with Exhibit 1.1 and according to the application of the rules on interpretation of contracts.

12.4 Voluntary Execution. The Parties acknowledge that they have read and fully understand the content and effect of this Agreement and that the provisions of this Agreement have been reviewed and approved by their respective counsel. The Parties further acknowledge that they have executed this Agreement voluntarily, subject only to the advice of their own counsel, and do not rely on any promise, inducement, representation or warranty that is not expressly stated herein.

12.5 Notices. All notices, requests, demands, consents, approvals, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing), (b) deemed properly sent if delivered in person or sent by facsimile transmission, reliable overnight courier, or sent by registered or certified mail, postage prepaid to the persons specified in Exhibit 12.5, and (c) deemed delivered, given and received on the date of delivery, in the case of facsimile transmission, or on the date of receipt or rejection in the case of reliable overnight courier or registered or certified mail. In addition to the foregoing, the Parties may agree in writing at any time to deliver notices, requests, demands, consents, waivers and other communications through alternate methods, such as electronic mail.

12.6 Entire Agreement; Amendments.

(a) This Agreement (including all Schedules and Exhibits) contains the entire understanding concerning the subject matter herein and supersede and replace any prior negotiations, discussions or agreements between the Parties concerning that subject matter, whether written or oral, except as expressly provided for herein. Each Party acknowledges that no other party, representative or agent has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement or the other documents of even date herewith between the Parties that induced the other Party to sign this document.

(b) This Agreement may be amended or modified only by an instrument in writing signed by each Party.

12.7 Further Assurances. The Parties agree to furnish upon request to the other Party such further information, to execute and deliver to the other Party such other documents, and to do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the other Operative Documents, including in the case of Seller, to assist Buyer in pursuing and obtaining any Consents or Permits required to be obtained in the name of Buyer after the Closing Date.

12.8 Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect.

12.9 Severability. In the event all or part of any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect; provided, however that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

12.10 Consequential or Punitive Damages. Neither Party shall be liable to the other Party for special, incidental, exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity, including damages for lost revenues, income or profits.

12.11 Equitable Remedies. The Parties acknowledge that money damages may not be an adequate remedy for violations of this Agreement by Seller and that Buyer may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other equitable relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. The Parties hereby waive any objection to specific performance or injunctive or other equitable relief.

12.12 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

12.13 Governing Law. This Agreement shall be interpreted, governed by, and construed under the laws of the State of California without consideration of conflicts of law principles. The venue for any litigation relating to this Agreement shall be in Los Angeles, California and each Party hereby waives any objections on the basis of *forum non-conveniens* or otherwise with respect to the venue of any such action being heard in Los Angeles, California.

12.14 Execution in Counterparts. This Agreement may be executed in counterparts and upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

12.15 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties or to impose any partnership obligation or liability upon either such Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

12.16 Third Party Beneficiaries. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.

12.17 Provisions of PPA. The provisions of Section 14.3 ("Dispute Resolution") and Section 14.21 ("Confidentiality") of the PPA are incorporated herein in their entirety, *mutatis mutandis*; provided, however, that in such incorporation the term "Option Agreement" shall mean this Agreement, the term "Seller" shall mean Seller, and the term "Party" shall include Seller.

12.18 First Priority Interests. The rights of Buyer under this Agreement shall be prior and superior to the rights of the Land Lender, and prior and superior to any other person or entity that subsequently acquires an interest in the Real Property.

12.19 Exhibits and Schedules. The Exhibits and Schedules referred to in and attached to this Agreement are incorporated herein in full by this reference. To the extent that the terms and conditions of an Exhibit or Schedule conflict with the terms and conditions of the main body of this Agreement, the terms and conditions of the main body of this Agreement shall control.

12.20 Relationship with PPA; Right of First Offer and Right of First Refusal. Except as otherwise specifically stated herein, this Agreement is independent of the PPA and, as a separate agreement, shall survive the amendment, modification, or termination of the PPA, except as otherwise provided herein. In the event of a conflict between this Agreement and the PPA, this Agreement shall control. The only contractual relationship between Buyer and Seller is set forth in this Agreement. Seller has no rights or obligations under the PPA or the Project Option Agreement except to the extent expressly incorporated herein and Seller is not a third-party beneficiary under either of such documents. Notwithstanding the foregoing, this Agreement



shall not be deemed to limit Buyer's Right of First Offer or Right of First Refusal set forth in the PPA, or any rights of Buyer under the Project Option Agreement.

12.21 Right of First Offer and Right of First Refusal.

(a) Buyer has a "*Right of First Offer*" (or "*ROFO*") and a "*Right of First Refusal*" (or "*ROFR*") for any proposed sale of the Real Property by Seller, all in accordance with the provisions of this Section 12.21.

(b) Prior to Seller commencing the negotiation of a sale of the Real Property, Seller shall provide notice to Buyer of Seller's intention to sell the Real Property (a "*Proposed Sale Notice*"). Upon receipt of such Proposed Sale Notice, Buyer shall have forty-five (45) days in which to provide notice to Seller indicating whether Buyer is interested in negotiating with Seller to purchase the Real Property from Seller, which notice shall include Buyer's proposed purchase price for the Real Property (a "*Proposed Purchase Notice*"). If Buyer provides such Proposed Purchase Notice, then the Parties shall undertake for a period of up to ninety (90) days from the date of Buyer's Proposed Purchase Notice to determine if they are able to reach mutual agreement on the terms and conditions of a sale of the Real Property to Buyer.

(c) If (i) Buyer does not timely provide such Proposed Purchase Notice to Seller indicating that Buyer is interested in negotiating the purchase of the Real Property from Seller following a Proposed Sale Notice, or (ii) the Parties are unable to agree upon the terms and conditions of a sale of the Real Property to Buyer within the ninety (90) day period set forth in Section 12.21(b), then Seller shall be free to negotiate the sale of the Real Property to any third party; provided, however, that prior to consummating any such sale, Seller shall provide Buyer with a concise summary of the commercial terms negotiated by Seller with the third party (a "*Notice of Proposed Third Party Sale*"). If the proposed purchase price for the Real Property set forth in the Notice of Proposed Third Party Sale is equal to or less than 105% of the purchase price included in the Proposed Purchase Notice or negotiated in connection with Buyer's exercise of the ROFO pursuant to Section 12.21(b), then Buyer shall have forty-five (45) days to exercise its Right of First Refusal and complete its purchase of the Real Property on substantially similar terms as set forth in the Notice of Proposed Third Party Sale, subject to any modifications required to conform the transaction to requirements for transactions entered into by public agencies. If Buyer does not elect to exercise its Right of First Refusal and complete its purchase within such forty-five (45) days, Seller shall be free to consummate the sale of the Real Property to the third party; provided, that such sale shall be on substantially similar terms and conditions presented to Buyer in the Notice of Proposed Third Party Sale.

(d) If Seller fails to (i) present a Notice of Proposed Third Party Sale within six (6) months after the expiration of the ninety (90) day period set forth in Section 12.21(b), or (ii) consummate the sale of the Real Property to a third party within forty-five (45) days after the expiration of the forty-five (45) day period set forth in Section 12.21(c), then Seller shall provide another Proposed Sale Notice hereunder (and go through the ROFO and ROFR processes hereunder) before commencing or continuing negotiations with any third party or consummating a sale of the Real Property.

(e) Neither the ROFO nor the ROFR shall (i) apply to any sale-leaseback or similar financing by Seller, nor (ii) limit Buyer's rights to purchase the Facility Assets under the Project Option Agreement.

12.22 Assignment of Agreement: Change in Control.

(a) Except as set forth in this Section 12.22, neither Party may assign any of its rights, or delegate any of its obligations, under this Agreement without the prior consent of the other Party, such consent not to be unreasonably withheld. Any Change in Control (whether voluntary or by operation of law) shall be deemed an assignment and shall require the prior consent of Buyer, which consent shall not be unreasonably withheld. Concurrently with any reorganization, financing transaction, or other transactions constituting any Change in Control (whether voluntary or by operation of law), the successor entity to Seller shall execute a written assumption agreement in favor of Buyer pursuant to which any such successor entity shall assume all of the obligations of Seller under this Agreement and agree to be bound by all the terms and conditions of this Agreement. Seller shall (i) provide Buyer with ninety (90) days' prior notice of any proposed voluntary transaction which could constitute a Change in Control and (ii) provide notice to Buyer of (x) any transaction or series of transactions with respect to the sale, transfer or disposition of any RE Holding Company or any parent entity holding directly or indirectly at least fifty percent (50%) of the equity ownership or the power to control the management and policies of any RE Holding Company and (y) any Bankruptcy of any RE Holding Company. The general manager of Buyer is authorized to grant the consents contemplated by this Section 12.22 on behalf of Buyer.

(b) In the event that Buyer also assigns the Project Option Agreement and the PPA to a third party, and only in such event, Buyer may assign this Agreement without the consent of Seller to such third party, so long as such third party is rated (i) "A3" or higher by Moody's and "A-" or higher by S&P, if such third party is rated by both Moody's and S&P or equivalent ratings by any other credit rating agency of recognized national standing, or (ii) "A3" or higher by Moody's or "A-" or higher by S&P if such third party is rated by either S&P or Moody's or equivalent ratings by any other credit rating agency of recognized national standing; provided, that in connection with any such assignment any such assignee shall execute a written assumption agreement in favor of Seller pursuant to which any such assignee shall assume all the obligations of Buyer under this Agreement and agree to be bound by all the terms and conditions of this Agreement.

(c) Seller shall not sell or transfer the Real Property to any Person other than a Person to whom Seller assigns this Agreement in accordance with this Section 12.22, without the prior written consent of Buyer, an assumption in writing by such assignee of all of the obligations of Seller under this Agreement, and an agreement to be bound thereby and otherwise subject to compliance with the Right of First Offer and Right of First Refusal set forth in Section 12.21. Any purported sale or transfer in violation of this Section 12.22(c) shall be null and void and of no force or effect.

IN WITNESS WHEREOF, the Parties have executed and delivered this Agreement as of the date first written above.

CITY OF LOS ANGELES acting by and through  
the DEPARTMENT OF WATER AND POWER

By BOARD OF WATER AND POWER  
COMMISSIONERS OF THE CITY OF  
LOS ANGELES

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Marcie L. Edwards  
GENERAL MANAGER

APPROVED AS TO FORM AND LEGALITY  
MICHAEL N. FEUER, CITY ATTORNEY


MAY 23 2014

BY \_\_\_\_\_  
VAUGHN MINASSIAN  
DEPUTY CITY ATTORNEY

And: \_\_\_\_\_  
Barbara E. Moschos  
BOARD SECRETARY

RE BARREN RIDGE LANDCO LLC

Date: May 23, 2014

By:  \_\_\_\_\_  
Michael Metzner  
Its: Chief Financial Officer \_\_\_\_\_

**EXHIBIT 1.1**  
to  
**LAND OPTION AGREEMENT**  
dated as of \_\_\_\_\_, 2014  
by and between  
**RE BARREN RIDGE LANDCO LLC**  
and  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

**DEFINITIONS; RULES OF INTERPRETATION**

***“Affected Portion”*** shall have the meaning ascribed to it in Section 9.3(a).

***“Affiliate”*** means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with, such Person, or is a director or officer of such Person or of an Affiliate of such Person. As used in this Agreement, “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management, policies or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

***“Agency Action”*** means any notice of violation, complaint, order, consent order, consent agreement, assessment of a fine or penalty or other similar demand for action brought by a Governmental Authority having the requisite authority and jurisdiction to bring such action.

***“Agreement”*** means this Land Option Agreement and Agreement to Assign Facility Site Option.

***“Applicable Diligence Period”*** shall have the meaning ascribed to it in Section 5.1.

***“Asset Assignment Documents”*** shall have the meaning ascribed to it in Section 7.4(e).

***“Assignment Demand”*** shall have the meaning ascribed to it in Section 2.2.

***“Assumed Contracts”*** means the Contracts to which Seller is a party or to which the Real Property is subject listed in *Schedule 3.3* and *Schedule 3.12*.

***“Assumed Liabilities”*** shall have the meaning ascribed to it in Section 2.12.

***“Board of Commissioners”*** means the Board of Water and Power Commissioners of the City of Los Angeles created pursuant to Section 600 and 670 of the Charter of the City of Los Angeles.

***“Books and Records”*** means, to the extent relating to any period of time prior to the Closing, (a) all books, records, purchasing records, lists, files and papers in the possession of Seller or its agents pertaining to the Real Property, and all records and lists concerning suppliers to and personnel of the Real Property or Taxes with respect thereto; (b) all ledgers, and reports, plans, drawings, maps, photographs, technical manuals and operating records of every kind

maintained by Seller with respect to the Real Property, whether in hard copy or electronic format; and (c) all software used by Seller primarily in connection with the operation of the Real Property, in each case to the extent transferable; provided that Books and Records may include inextricable information or data unrelated to the Facility, in which case such information or data may be redacted.

*"Breach Notice"* shall have the meaning ascribed to it in Section 5.8.

*"Business Day"* means any calendar day that is not a Saturday, a Sunday, or a day on which commercial banks are authorized or required to be closed in Los Angeles, California, or New York, New York.

*"Buyer"* shall have the meaning ascribed to it in the first paragraph of this Agreement.

*"CEQA"* means the California Environmental Quality Act.

*"CERCLA"* means the federal Comprehensive Environmental Response, Compensation and Liability Act.

*"Change in Control"* means the occurrence, whether in a single transaction or in a series of related transactions, of any one or more of the following: (i) a merger or consolidation of Seller or any RE Holding Company with or into any other Person or any other reorganization in which the members of Seller or any RE Holding Company immediately prior to such consolidation, merger, or reorganization, own less than fifty percent (50%) of the equity ownership of the surviving entity or cease to have the power to control the management and policies of the surviving entity immediately after such consolidation, merger, or reorganization, (ii) any transaction or series of related transactions in which in excess of fifty percent (50%) of the equity ownership of Seller or any RE Holding Company, or the power to control the management and policies of Seller or any RE Holding Company is transferred to another Person, (iii) a sale, lease, or other disposition of all or substantially all of the assets of Seller or any RE Holding Company, (iv) the dissolution or liquidation of Seller or any RE Holding Company, or (v) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing.

*"Claim"* has the meaning ascribed to it in Section 12.1(b).

*"Closing"* shall have the meaning ascribed to it in Section 2.11.

*"Closing Date"* means the date on which the Closing is required to take place, as set forth in Section 2.5.

*"Closing Permitted Encumbrances"* means any Purchase Option Permitted Encumbrances other than those that secure any form of Land Debt or any other monetary obligation (other than Liens for Taxes not yet due).

*"Code"* means the Internal Revenue Code of 1986.

*"Collateral"* shall have the meaning ascribed to it in Section 2.3.

***“Commercial Operation Date”*** shall have the meaning ascribed to it in the PPA.

***“Consent”*** means any approval, consent, ratification, waiver, license, permit, certification, registration or other authorization (including any Governmental Approval).

***“Contract”*** means any agreement, arrangement, lease, commitment, sales order, purchase order, indenture, mortgage, right, warrant or instrument, which provides for ownership or operation of the Real Property and is intended to, or purports to be, or is required to be binding and enforceable as contemplated under this Agreement, other than the Permits, but expressly including any Real Property Contract.

***“Deed”*** shall have the meaning ascribed to it in Section 7.4(d).

***“Disclosure Schedules”*** shall have the meaning ascribed to it in Section 2.7(a).

***“Effective Date”*** shall have the meaning ascribed to it in the preamble of this Agreement.

***“Environment”*** includes (a) the navigable waters, the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson-Stevens Fishery Conservation and Management Act and (b) any other surface water, ground water, drinking water supply, stream sediments, soil, land surface or subsurface strata, or ambient air, plant and animal life, and any other environmental medium or natural resource within the United States, or a foreign nation or under jurisdiction of the United States or a foreign nation.

***“Environmental Conditions”*** means the presence of Hazardous Substances which have been Released into the Environment or the presence of Hazardous Substances that could reasonably be expected to pose a threat of Release of Hazardous Substances into the Environment.

***“Environmental Law”*** means any applicable current or future treaty, constitution, law, statute, ordinance, rule, order, decree, regulation or other directive which is legally binding and has been enacted, issued or promulgated by any Governmental Authority that imposes liability for or standards of conduct or compliance or other requirements or obligations concerning protection of health, or safety (in each case, to the extent relating to exposure to Hazardous Substances), natural resources or the Environment and includes all Hazardous Substances Law.

***“Excluded Assets”*** means, notwithstanding any other provision of this Agreement, the following assets:

- (a) cash, certificates of deposit and other bank deposits, treasury bills and other cash equivalents or other investments, on hand or in bank accounts, and all of Seller’s bank accounts, intercompany accounts and accounts receivable;
- (b) accounts and notes receivable relating to the period prior to the Closing Date, including amounts owing under the PPA;
- (c) intentionally omitted;

(d) any Contract between Seller and its Affiliates, other than for on-going operations and maintenance of the Real Property;

(e) any Contract that is not an Assumed Contract and any Permit that is not a Transferred Permit;

(f) any computers not used primarily in connection with the Real Property, any communication or data network systems not used primarily in connection with the Real Property, and any other equipment not reasonably required to operate the Real Property;

(g) all refunds or credits, if any, of Taxes due to or from Seller and (i) accrued prior to the Closing or (ii) which otherwise cannot be assigned by Law;

(h) all corporate, financial and tax records of Seller which (i) do not relate in whole or in part to the Real Property, (ii) relates solely to any Excluded Asset, (iii) relates solely to any Excluded Liability, (iv) relates to the organization, existence, capitalization or debt financing of Seller, (v) relates to information about Seller or its Affiliates pertaining to energy or project evaluation methodologies, economic evaluation of the Real Property, energy or natural gas price curves or projections or other economic predictive models, or (vi) do not constitute Books and Records;

(i) all rights to claims, refunds or adjustments against Buyer or any other third parties arising out of the period prior to the Closing Date;

(j) Seller's insurance policies; and

(k) the assets identified as "Excluded Assets" in *Schedule 3.5*.

"*Excluded Liability*" shall have the meaning set forth in Section 2.14.

"*Facility Assets*" shall have the meaning ascribed to it in the Project Option Agreement.

"*Facility Site Option*" shall have the meaning ascribed to it in the Recitals.

"*Fair Market Value*" shall mean, with respect to a particular time of calculation, the amount a willing buyer would pay for the Real Property and all rights and interests associated therewith, in an arm's-length transaction, to a willing seller under no compulsion to sell on the applicable Closing Date, taking into account all relevant facts and circumstances relating to the Real Property, the Excluded Assets, the Assumed Liabilities, the Excluded Liabilities and the Disclosure Schedules, as of the Closing Date, and assuming the Land Lease will remain in place for the term thereof (assuming all extensions in the Land Lease are exercised).

"*Final Purchase Price*" shall have the meaning ascribed to it in *Exhibit 2.8*.

"*GAAP*" means generally accepted accounting principles that are consistent with the principles promulgated or adopted by the Financial Accounting Standards Board and its predecessors in effect for the applicable period of Seller.

**"Governmental Approval"** means any Consent issued, granted, given, or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law or Environmental Law.

**"Governmental Authority"** means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, or other governmental, regulatory or administrative agency, court, commission, administration, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority, or any Person acting as a delegate or agent of any Governmental Authority. The term "Governmental Authority" shall not include either Party.

**"Hazardous Substances"** means any substance, material or waste that is regulated by or forms the basis of liability now or hereafter under, any Hazardous Substances Law, including any material, substance or waste that is (a) defined as a "solid waste," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "contaminant," "hazardous constituent," "special waste," "toxic substance" or other similar term or phrase under any Environmental Law, (b) petroleum or any fraction or by-product thereof, asbestos, polychlorinated biphenyls (PCB's), or any radioactive substance.

**"Hazardous Substances Law"** means any applicable current or future treaty, constitution, law, statute, ordinance, rule, order, decree, regulation or other directive which is legally binding and has been enacted, issued or promulgated by any Governmental Authority that imposes liability for or standards of conduct or compliance concerning the generation, distribution, use, treatment, storage, disposal, cleanup, transport or handling of Hazardous Substances, including, the Federal Water Pollution Control Act, the Resource Conservation and Recovery Act of 1976, CERCLA, the Toxic Substances Control Act, the Oil Pollution Act, the Safe Drinking Water Act, and the Occupational Safety and Health Act of 1970 (to the extent that it relates to the handling of and exposure to hazardous or toxic materials or similar substances).

**"Indemnitees"** shall have the meaning ascribed to it in Section 12.1(a).

**"Intellectual Property Assets"** shall have the meaning ascribed to it in Section 3.13(a).

**"Investment Company Act"** means the Investment Company Act of 1940.

**"Knowledge"** means with respect to any fact, circumstance, or condition, (a) the actual, current knowledge of any officer, agent, employee, or representative of the applicable Party, or (b) the knowledge that an officer of such Party should have had upon reasonable investigation and inquiry.

**"Law"** means any Order, and any federal, state, local, or foreign law, statute, regulation, rule, code or ordinance enacted, adopted, issued or promulgated by any Governmental Authority, but excluding Environmental Laws.

**"Land Debt"** means the obligations of Seller secured by a Lien of a Land Lender, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, or benefit monetization, swap or



interest rate hedging breakage costs and any claims or interest due with respect to any of the foregoing.

*"Land Documents"* means the real property leases and easements for the Real Property that together establish control of the same in Seller.

*"Land Lease"* shall have the meaning ascribed to it in the Recitals.

*"Land Lender"* means any lender providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with Seller's acquisition of the Real Property.

*"Land Purchase Option"* shall have the meaning ascribed to it in Section 2.4.

*"Lien"* means any mortgage, deed of trust, lien, security interest, retention of title or lease for security purposes, pledge, charge, encumbrance, equity, attachment, claim, easement, right of way, covenant, condition or restriction, leasehold interest, purchase right or other right of any kind, including an option, of any other Person in or with respect to any real or personal property.

*"Material Adverse Effect"* means a material adverse effect on (a) Seller, (b) the Real Property, or (c) the business, condition (financial or otherwise), results of operations or prospects of the Real Property.

*"Maximum Purchase Price"* shall have the meaning ascribed to it in *Exhibit 2.8*.

*"Minimum Purchase Price"* shall have the meaning ascribed to it in *Exhibit 2.8*.

*"National Priorities List"* means the list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States and its territories and that guides the Environmental Protection Agency in determining which sites warrant further investigation.

*"Notice of Proposed Third Party Sale"* shall have the meaning ascribed to it in Section 12.21(c).

*"Operations Period"* means the six (6) month period of time prior to the delivery by Buyer of the Purchase Option Exercise Notice.

*"Operative Documents"* means each of the agreements, instruments, certificates and other documents executed and delivered by a Party under this Agreement in connection with the performance and consummation of the transaction contemplated by this Agreement.

*"Order"* means any final, non-appealable award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any court, administrative agency, or other Governmental Authority, or by any arbitrator.

*"Organizational Documents"* means as applicable, (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) any charter or similar document adopted or

filed in connection with the creation, formation, or organization of a Person; (c) the certificate of organization and the operating agreement of a limited liability company; and (d) any amendment to any of the foregoing.

**"Party"** and **"Parties"** shall have the meaning ascribed to it in the first paragraph of this Agreement.

**"Permit"** means any permit, license, franchise, concession, consent, authorization, approval, registration, filing or similar act of or made with any Governmental Authority that are used by or necessary to operate the Real Property.

**"Person"** means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Authority.

**"PPA"** shall have the meaning ascribed to it in the Recitals.

**"Proceeding"** means any action, order, writ, judgment or decree outstanding, arbitration, audit, hearing, investigation, claim, litigation, or suit (whether civil, criminal, regulatory, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Person.

**"Products"** shall have the meaning ascribed to it in the Recitals.

**"Project Option Agreement"** shall have the meaning ascribed to it in the Recitals.

**"Project Seller"** shall have the meaning ascribed to it in the Recitals.

**"Proposed Purchase Notice"** shall have the meaning ascribed to it in Section 12.21(b).

**"Proposed Sale Notice"** shall have the meaning ascribed to it in Section 12.21(b).

**"Provided Materials"** shall have the meaning ascribed to it in Section 5.1.

**"Purchase Option Exercise Deadline"** means a period of one hundred twenty (120) days after the determination of the Fair Market Value for the applicable Purchase Option Opportunity, as such period shall be extended on a day for day basis by the number of days it takes for Seller to cure a defect pursuant to Section 2.7(d).

**"Purchase Option Exercise Notice"** shall have the meaning ascribed to it in Section 2.8(b).

**"Purchase Option Opportunity"** shall have the meaning ascribed to it in Section 2.5.

**"Purchase Option Permitted Encumbrances"** means (a) any Lien approved by Buyer in a writing or set forth in Schedule 3.6; (b) Liens for Taxes not yet due or for Taxes being contested in good faith by appropriate proceedings, so long as either (i) such proceedings do not involve a substantial risk of the sale, forfeiture, loss or restriction on the use of the Real Property

or any part thereof, or (ii) a bond or other security reasonably acceptable to Buyer has been posted or provided in such manner and amount as to assure Buyer that any Taxes determined to be due will be promptly paid in full when such contest is determined; (c) zoning, building codes and other land use laws regulating the use or occupancy of the Real Property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over the Real Property; (d) suppliers', vendors', mechanics', workman's, repairman's, employees' or other like Liens arising in the ordinary course of business for work or service performed, or materials furnished in connection with, the Real Property for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings, so long as either (i) such proceedings do not involve a substantial risk of the sale, forfeiture, loss or restriction on use of the Real Property or any part thereof, or (ii) a bond or other security reasonably acceptable to Buyer has been posted or provided in such manner and amount as to assure Buyer that any amounts determined to be due will be promptly paid in full when such contest is determined; (e) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations which do not materially impair the Real Property affected thereby for the purpose for which title was acquired or materially interfere with or impair the operation of the Real Property, as well as any items identified in the Title Commitment or on the Survey which are not objected to, are deemed acceptable, or are waived, by Buyer pursuant to Section 2.7(d) above; (f) intentionally omitted; (g) intentionally omitted; (h) the terms and conditions of the Land Documents; and (i) Liens created or reserved pursuant to or contemplated by this Agreement.

*"Purchase Option Tentative Exercise Notice"* shall have the meaning ascribed to it in Section 2.7.

*"Qualified Appraiser"* means a nationally recognized California Licensed Certified General Real Estate Appraiser, which shall (a) be qualified to appraise land substantially similar to the Real Property in location, size, and intended use, (b) have been engaged in the appraisal or business valuation and consulting business for a period of not less than ten (10) years, and (c) not be associated with Seller, Buyer or any of their respective Affiliates.

*"RE Holding Companies"* means Recurrent Energy Portfolio Holdings, LLC, Recurrent Energy US Holdings, LLC, and Recurrent Energy LandCo LLC.

*"Real Property"* shall have the meaning ascribed to it in the Recitals.

*"Real Property Contracts"* shall have the meaning ascribed to it in Section 3.3(a).

*"Real Property Interests"* shall have the meaning ascribed to it in Section 3.3(a).

*"Release"* means any physical release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Substances in the Environment, including the movement of Hazardous Substances through or in the Environment, including the Premises.

*"Representative"* means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

***“Requirements of Law”*** means all Laws, Permits (including those pertaining to electrical, building, zoning, and occupational safety and health requirements) and Environmental Laws.

***“Right of First Offer”*** (or ***“ROFO”***) shall have the meaning ascribed to it in Section 12.21(a).

***“Right of First Refusal”*** (or ***“ROFR”***) shall have the meaning ascribed to it in Section 12.21(a).

***“Schedule Delivery Date”*** shall have the meaning ascribed to it in Section 2.7(a).

***“Section 16(a) Violation”*** shall have the meaning ascribed to it in Section 2.3.

***“Seller”*** shall have the meaning ascribed to it in the first paragraph of this Agreement.

***“Seller Default”*** shall have the meaning ascribed to it in Section 2.2.

***“Seller Disclosure Schedules”*** shall have the meaning ascribed to it in Section 2.7(a).

***“Seller’s Cure Period”*** shall have the meaning ascribed to it in Section 2.7(d).

***“Survey”*** shall have the meaning ascribed to it in Section 2.7(c).

***“Tax Claim”*** shall have the meaning ascribed to it in Section 9.1(e).

***“Tax Return”*** means any return, report, information return or other document (including any related or supporting information) required to be supplied to any authority with respect to Taxes.

***“Taxes”*** means all taxes, charges, fees, levies, penalties or other similar assessments imposed by any United States federal, state or local, or foreign taxing authority, including, income, excise, property, sales, use, transfer, franchise, payroll, withholding, social security or other taxes, including any interest, penalties or additions attributable thereto.

***“Tentative Purchase Price”*** shall have the meaning ascribed to it in Exhibit 2.8.

***“Third Party Claim”*** shall have the meaning ascribed to it in Section 12.1(b).

***“Third Party Property Interests”*** shall have the meaning ascribed to it in Section 3.3(a).

***“Title Company”*** means a title company acceptable to Buyer.

***“Title Commitment”*** shall have the meaning ascribed to it in Section 2.7(b).

***“Title Policy”*** shall have the meaning ascribed to it in Section 2.7(b).

***“Transferred Permits”*** means all Permits other than those Permits that will not be transferred to Buyer as of the Closing.

*“Transfer Taxes”* shall have the meaning ascribed to it in Section 2.17.

*“Treasury”* means the regulations issued by the U.S. Department of Treasury under the Internal Revenue Code.

*“Updated Schedule Delivery Date”* shall have the meaning ascribed to it in Section 2.15(a).

*“Warranties”* means all rights of Seller under or pursuant to all third-party warranties, representations and guarantees made by manufacturers and suppliers in connection with the Real Property or services furnished to Seller pertaining to the Real Property.

## RULES OF INTERPRETATION

1. The headings of Sections in this Agreement are provided for convenience only and shall not affect its construction or interpretation.
2. All references to "Article," "Articles," "Section" or "Sections" refer to the corresponding Article, Articles, Section or Sections of this Agreement, unless otherwise specified. Each reference to an Article or Section of, or Exhibit or Schedule to, this Agreement shall be deemed to be followed by the word "hereof."
3. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require.
4. The word "including" does not limit the preceding words or terms.
5. A reference to any Person includes its permitted successors and permitted assigns.
6. The words "herein," "hereof," "hereunder" and words of like import shall refer to this Agreement as a whole and not to any particular section or subdivision of this Agreement.
7. The singular includes the plural and the plural includes the singular.
8. The term "or" is not exclusive, regardless of whether "and/or" is included in the applicable provision.
9. A reference to any Law, rule, regulation, statute, ordinance, Order, code or similar form of decision of any Governmental Authority having the effect and force of Law includes any amendment or modification or successor thereto, and all regulations rulings promulgated under such Governmental Rule.
10. Accounting terms have the meanings assigned to them by generally accepted accounting principles, as consistently applied by the accounting entity to which they refer.
11. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time, regardless of whether any of the foregoing are expressly referred to in the applicable provision.
12. References to "days" and "months" shall mean calendar days and calendar months, respectively. References to a time of day shall mean such time in Los Angeles, California.

13. The terms "shall," "will," and "must" shall have the same meaning and be of equal force and effect.

**EXHIBIT 2.8**  
to  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
dated as of \_\_\_\_\_, 2014  
by and between  
**RE BARREN RIDGE LANDCO LLC**  
and  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

**PURCHASE PRICE**

1. The "*Tentative Purchase Price*" shall be an amount equal to the Fair Market Value, as determined in accordance with this *Exhibit 2.8*.
2. Within fifteen (15) days following the later of (a) the Schedule Delivery Date, or (b) the actual delivery by Seller to Buyer of the Seller Disclosure Schedules (the "*Actual Schedule Delivery Date*"), the Parties shall meet and attempt to agree on the Tentative Purchase Price based on the Seller Disclosure Schedules delivered by Seller. If the Parties are unable to agree on the Tentative Purchase Price within thirty (30) days after the Actual Schedule Delivery Date, the Parties shall, within fourteen (14) additional days, jointly select a Qualified Appraiser. If the Parties cannot agree on a Qualified Appraiser within such fourteen (14) day period, then each of Seller and Buyer shall select an independent recognized appraiser within fourteen (14) days after the conclusion of such period, which independent appraisers shall, within fourteen (14) days after being selected by each of Buyer and Seller, agree upon and appoint a third Qualified Appraiser to perform the appraisal. If the two selected appraisers cannot agree on a third Qualified Appraiser within such fourteen (14) day period, then either Party may apply to the American Arbitration Association to make such an appointment within fourteen (14) days after such application. The appraisal shall be completed within thirty (30) days of the appointment of the Qualified Appraiser.
3. The Tentative Purchase Price shall be adjusted from time to time by the amount (as determined by the Parties in good faith, or absent their mutual agreement, by Qualified Appraisers using the same methodology set forth in paragraph 2 above) necessary to take into account (i) any differences between the Seller Disclosure Schedules originally delivered to Buyer on the Actual Schedule Delivery Date and any updated Seller Disclosure Schedules delivered to Buyer from time to time prior to Closing, (ii) any item or omission in a Seller Disclosure Schedule that is not resolved to the reasonable satisfaction of Buyer, (iii) any differences in the Real Property, Excluded Assets, Assumed Liabilities or Excluded Liabilities from the Actual Schedule Delivery Date to the Closing, (iv) the inability of Seller to satisfy any of the Buyer Closing Conditions set forth in Article VII, (v) damage or destruction of all or a portion of the Real Property or any real or threatened condemnation or eminent domain proceeding as described under Section 9.3(a) of the Agreement, or (vi) following the delivery of a Breach Notice, the event or circumstance described in such Breach Notice.



4. The "*Final Purchase Price*" to be paid by Buyer at the Closing shall be an amount equal to the greater of (a) the Tentative Purchase Price, or (b) the Minimum Purchase Price (as defined below); provided that in the event that (i) the Tentative Purchase Price is at any time greater than the Maximum Purchase Price (as defined below), then Buyer, upon notice to Seller, may, without liability, terminate the Land Purchase Option with respect to the relevant Purchase Option Opportunity, and such Purchase Option Opportunity shall expire and shall no longer be effective (but such expiration shall not affect Buyer's right to exercise any Land Purchase Option with respect to any future Purchase Option Opportunity).
5. The "*Minimum Purchase Price*" and the "*Maximum Purchase Price*" shall be as follows, corresponding to the applicable Purchase Option Opportunity for which Buyer has exercised its Land Purchase Option:

Purchase Option Opportunity	Minimum Purchase Price	Maximum Purchase Price
1 <sup>st</sup> Contract Year	\$3,645,000	\$4,375,000
2 <sup>nd</sup> Contract Year	\$3,780,000	\$4,535,000
3 <sup>rd</sup> Contract Year	\$3,925,000	\$4,710,000
4 <sup>th</sup> Contract Year	\$4,090,000	\$4,910,000
5 <sup>th</sup> Contract Year	\$4,275,000	\$5,130,000
6 <sup>th</sup> Contract Year	\$4,480,000	\$5,375,000
7 <sup>th</sup> Contract Year	\$4,700,000	\$5,640,000
8 <sup>th</sup> Contract Year	\$4,955,000	\$5,945,000
9 <sup>th</sup> Contract Year	\$5,240,000	\$6,290,000
10 <sup>th</sup> Contract Year	\$5,555,000	\$6,665,000
11 <sup>th</sup> Contract Year	\$5,890,000	\$7,070,000
12 <sup>th</sup> Contract Year	\$6,280,000	\$7,535,000
13 <sup>th</sup> Contract Year	\$6,710,000	\$8,050,000
14 <sup>th</sup> Contract Year	\$7,195,000	\$8,635,000
15 <sup>th</sup> Contract Year	\$7,730,000	\$9,275,000
16 <sup>th</sup> Contract Year	\$8,095,000	\$9,715,000

17 <sup>th</sup> Contract Year	\$8,450,000	\$10,140,000
18 <sup>th</sup> Contract Year	\$8,820,000	\$10,585,000
19 <sup>th</sup> Contract Year	\$9,160,000	\$10,990,000
20 <sup>th</sup> Contract Year	\$9,500,000	\$11,400,000
Event of Default under PPA	The aggregate of the Land Debt immediately prior to Closing, if any. Otherwise, none.	None.

**EXHIBIT 12.5**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

**NOTICES**

**Notices to Seller:**

RE Barren Ridge LandCo LLC  
c/o Recurrent Energy, LLC  
300 California St, 7th Floor  
San Francisco, CA 94104  
Attention: Office of the General Counsel  
Telephone: (415) 675-1500  
Facsimile: (415) 675-1501  
Email: legal@recurrentenergy.com

**Notices to Buyer:**

Los Angeles Department of Water and Power  
Reynan Luison Ledesma  
Property Manager  
111 North hope Street  
Room 1025  
Los Angeles, CA 90012  
Telephone: (213) 792-9076  
Facsimile: (213) 367-0746  
Email: reynan.ledesma@ladwp.com

**SCHEDULE 3.3**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

[All Real Property Contracts of Seller shall be specified and briefly described in this Schedule]

**SCHEDULE 3.3(a)**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

[All known defaults to Real Property Contracts or Real Property Interests not providing legal, valid, and enforceable rights in favor of Seller shall be specified and briefly described in this Schedule]

**SCHEDULE 3.3(b)**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

[All appropriation, condemnation, or other like proceedings, or any material violation shall be specified and briefly described in this Schedule]

**SCHEDULE 3.3(c)**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

[All mining, mineral, or water rights severed from any of the Real Property Interests shall be specified and briefly described in this Schedule]

**SCHEDULE 3.3(d)**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

[All written notices that any agreements with any Governmental Authority or private utility affect the Real Property Interests shall be specified and briefly described in this Schedule]



**SCHEDULE 3.4**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

**SELLER'S CONSENTS**

[All Consents that need to be obtained by Seller shall be specified and briefly described in this Schedule]

**SCHEDULE 3.5**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**  
  
**CERTAIN EXCLUDED ASSETS**

[Any assets that Seller specifically intends to exclude  
shall be specified and briefly described in this Schedule]

SCHEDULE 3.6  
to  
LAND OPTION AGREEMENT  
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION  
dated as of \_\_\_\_\_, 2014  
by and between  
RE BARREN RIDGE LANDCO LLC  
and  
THE CITY OF LOS ANGELES ACTING BY AND THROUGH  
THE DEPARTMENT OF WATER AND POWER

LIENS

[All Liens that are to be set forth in accordance with Section 3.6 shall be specified and fully described in this Schedule.]

**SCHEDULE 3.7**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

**ENVIRONMENTAL MATTERS**

[All environmental matters referred to in Section 3.7  
shall be specified and briefly described in this Schedule]

SCHEDULE 3.8  
to  
LAND OPTION AGREEMENT  
AND AGREEMENT TO ASSIGN FACILITY SITE OPTION  
dated as of \_\_\_\_\_, 2014  
by and between  
RE BARREN RIDGE LANDCO LLC  
and  
THE CITY OF LOS ANGELES ACTING BY AND THROUGH  
THE DEPARTMENT OF WATER AND POWER

LIABILITIES

[All liabilities referred to in Section 3.8  
shall be specified and briefly described in this Schedule]

**SCHEDULE 3.9**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

**TAX MATTERS**

[All tax matters referred to in Section 3.9  
shall be specified and briefly described in this Schedule]

**SCHEDULE 3.10**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

**COMPLIANCE WITH LAWS**

[All non-compliance with laws referred to in Section 3.10  
shall be specified and briefly described in this Schedule]

**SCHEDULE 3.11**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

**LITIGATION**

[All litigation proceedings referred to in Section 3.11  
shall be specified and briefly described in this Schedule]



**SCHEDULE 3.12**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

**CONTRACTS**

[All Contract matters referred to in Section 3.12 of the Agreement shall be specified and briefly described in this Schedule]

**SCHEDULE 3.13**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

**INTELLECTUAL PROPERTY**

[All Intellectual Property Asset matters referred to in Section 3.13 with respect to the Real Property shall be specified and briefly described in this Schedule]

None.

**SCHEDULE 3.15**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**  
  
**NON-ENVIRONMENTAL PERMITS**

[All Permits, other than those included in Section 3.7(b), which are necessary or incidental to the Real Property shall be specified and briefly described in this Schedule]

**SCHEDULE 3.17**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**  
  
**EMPLOYEE MATTERS**

[All employee matters referred to in Section 3.17  
shall be specified and briefly described in this Schedule]

**SCHEDULE 3.19**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

**UNTRUE STATEMENTS; OMISSIONS**

[Any untrue statement of a material fact or omission of a material fact in the Agreement, the Operative Documents, or any certificate or other agreement delivered by Seller shall be stated in this Schedule]

**SCHEDULE 4.3**  
**to**  
**LAND OPTION AGREEMENT**  
**AND AGREEMENT TO ASSIGN FACILITY SITE OPTION**  
**dated as of \_\_\_\_\_, 2014**  
**by and between**  
**RE BARREN RIDGE LANDCO LLC**  
**and**  
**THE CITY OF LOS ANGELES ACTING BY AND THROUGH**  
**THE DEPARTMENT OF WATER AND POWER**

**BUYER'S CONSENTS**

[All Consents of Buyer which are necessary or incidental to the Closing shall be specified and briefly described in this Schedule]