

RESOLUTION NO. 23-06-052

**RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN
POWER ALLIANCE OF SOUTHERN CALIFORNIA (CLEAN
POWER ALLIANCE) AUTHORIZING AND APPROVING
CERTAIN AMENDMENTS TO A REVOLVING CREDIT
AGREEMENT WITH JPMORGAN CHASE BANK, N.A. AND
DELEGATING AUTHORITY TO THE CLEAN POWER
ALLIANCE AUTHORIZED REPRESENTATIVES TO EXECUTE
AND DELIVER SUCH AMENDMENTS AND OTHER
DOCUMENTS RELATED THERETO**

**THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA HEREBY RESOLVES AS FOLLOWS:**

WHEREAS, Clean Power Alliance of Southern California (formerly known as Los Angeles Community Choice Energy Authority) ("**Clean Power Alliance**") was formed on June 27, 2017 under the provisions of the Joint Exercise Powers Act of the State of California, Government Code section 6500 *et seq.*;

WHEREAS, Clean Power Alliance is duly organized, validly existing, and in good standing under and by virtue of the laws of the State of California, is duly authorized to transact business, having obtained all necessary filings, governmental licenses and approvals in the State of California, and has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage;

WHEREAS, Clean Power Alliance maintains an office at 801 S. Grand Ave., Suite 400, Los Angeles, CA 90017, and this is the principal office at which it keeps its books and records;

WHEREAS, the Board wishes to authorize and approve certain amendments to the Revolving Credit Agreement, dated September 22, 2021 (the "**JPM Credit Agreement**") between Clean Power Alliance and JPMorgan Chase Bank, N.A. (the "**Lender**"), and to authorize the Authorized Representatives, specified below, to execute and deliver an amendment to, or amendment and restatement of, the Revolving Credit Agreement attached hereto as Exhibit A (the "**Amendment**"), with such modifications as the Authorized Representatives shall approve as in the best interest of Clean Power Alliance;

NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED AS FOLLOWS:

- (1) **AUTHORIZED REPRESENTATIVES.** The following named individuals are the authorized representatives of Clean Power Alliance with the respective titles specified below (collectively referred to as "**Authorized Representatives**" and individually referred to as an "**Authorized Representative**");

<u>NAMES</u>	<u>TITLES</u>
Julian Gold	Chair of the Board
Ted Bardacke	Chief Executive Officer
David McNeil	Chief Financial Officer
Nancy Whang	General Counsel

- (2) **ACTIONS AUTHORIZED.** Any one (1) of the Authorized Representatives are authorized and approved to execute and deliver the Amendment attached hereto as Exhibit A. The Authorized Representatives may approve the definitive form of the Amendment with such other modifications as are in the best interest of Clean Power Alliance, such approval to be conclusively evidenced by the Authorized Representative's execution and delivery thereof, and the Amendment will bind Clean Power Alliance. The Amendment is hereby incorporated herein by reference.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that the Authorized Representatives are duly elected, appointed, or employed by or for the Clean Power Alliance, as the case may be. This Resolution now stands of record on the books of the Clean Power Alliance, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

IT IS HEREBY FURTHER DETERMINED AND ORDERED that any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved. This Resolution shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address set forth in the Revolving Credit Agreement. Any such notice shall not affect any of the Clean Power Alliance's agreements or commitments in effect at the time notice is given.

IT IS FURTHER DETERMINED AND ORDERED that this Resolution shall take effect upon its passage.

ADOPTED AND APPROVED this 1st day of June 2023.



 Julian Gold, Chair

ATTEST:



 Gabriela Monzon, Secretary

EXHIBIT A

Amendment

[To be attached]

FIRST AMENDMENT TO CREDIT AGREEMENT

This FIRST AMENDMENT TO CREDIT AGREEMENT (this “Amendment”), dated as of June [], 2023, is entered into by and between CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (the “Borrower”), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, a national banking association (the “Lender”).

W I T N E S S E T H

WHEREAS, the Borrower and the Lender have previously entered into that Credit Agreement, dated as of September 22, 2021 (the “Existing Credit Agreement”; capitalized terms used in this Amendment that are defined in the Existing Credit Agreement shall be given the same meaning herein as therein defined); and

WHEREAS, the Borrower and the Lender desire to amend and restate the Existing Credit Agreement as provided herein.

NOW, THEREFORE, in consideration of the foregoing, the premises and mutual covenants contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Amendment and Restatement. Effective upon satisfaction of the conditions precedent set forth in Section 2 below, the Existing Credit Agreement (including the Schedules and Exhibits thereto) is hereby amended and restated in its entirety as set forth in Annex A attached hereto (as so amended, the “Credit Agreement”). As so amended, the Credit Agreement shall continue in full force and effect (subject to the terms and conditions set forth therein as of the Amendment Effective Date (as defined below)).

2. Effectiveness of this Amendment. This Amendment shall become effective as of the first date (the “Amendment Effective Date”) on which each of the following conditions shall be satisfied or waived by the Existing Lenders:

(a) Execution of this Amendment. Each of the Borrower and the Lender shall have executed a copy of this Amendment (whether the same or different copies) and shall have delivered the same to the other party;

(b) No Default; Representations and Warranties. The Lender shall be satisfied that immediately prior to the Amendment Effective Date and after giving effect to this Amendment, (i) there shall exist no Default or Event of Default under the Existing Credit Agreement and (ii) the representations and warranties of Borrower contained in this Amendment are true and correct in all material respects as of the Amendment Effective Date with the same effect as though such representations and warranties had been made on the Amendment Effective Date;

(c) Payments. The Lender shall have received all amounts, if any, owing under the Existing Credit Agreement and the Fee Agreement from the Borrower through and including the Amendment Effective Date and the Borrower shall have paid the fees and expenses of counsel to the Lender incurred in connection with the Amendment Documents;

(d) Authority. The Lender shall have received a copy of the resolutions of the governing body of the Borrower approving the execution, delivery and performance of this Amendment and the Credit Agreement (collectively, the “Amendment Documents”), certified by an Authorized Representative or the secretary of the governing body of the Borrower as being true and complete and in full force and effect on the Amendment Effective Date;

(e) Incumbency. The Lender shall have received a certificate, dated the Amendment Effective Date, and executed by an Authorized Representative certifying the names, titles, offices and signatures of the individuals authorized to sign, on behalf of the Borrower, the Amendment Documents to be executed and delivered on the Amendment Effective Date;

(f) Opinion of Counsel. An opinion of counsel to the Borrower, addressed to the Lender and dated the Amendment Effective Date, opining as to the Borrower’s legal existence, power and authority, due execution and delivery of Amendment Documents, enforceability of the Amendment Documents, no conflicts with Law, the Joint Powers Agreement or the bylaws of the Borrower, no consents required in order for the Borrower to execute, deliver and perform the Amendment Documents (other than those that have already been obtained) and such other customary matters as the Lender may reasonably request; and

(g) Borrower’s Closing Certificate. A certificate, dated the Amendment Effective Date, executed by an Authorized Representative certifying (i) that there has been no event or circumstance since June 30, 2022, that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, (ii) that the representations and warranties contained in Article 4 of the Existing Credit Agreement that are not qualified by concepts of materiality are true and correct in all material respects on the Amendment Effective Date as though made on and as of the Amendment Effective Date, (iii) that the representations and warranties contained in Article 4 of the Existing Credit Agreement that are qualified by concepts of materiality (including Material Adverse Effect) are true and correct in all respects on the Amendment Effective Date as though made on and as of the Amendment Effective Date, and (iv) no event has occurred and is continuing, or would result from entry into Amendment Documents, which would constitute a Default or Event of Default.

3. Ratification of Basic Documents. Except as specifically amended herein, all Basic Documents shall continue to be in full force and effect and are hereby in all respects ratified and confirmed. The Borrower acknowledges and consents to the terms set forth herein and agrees that the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of any Lender under any of the Basic Documents, nor

constitute a waiver of any provision of the Basic Documents or in any way impair, reduce or limit any of the obligations of the Borrower under the Basic Documents, as amended hereby. This Amendment is a Basic Document.

4. Representations and Warranties. The Borrower hereby makes, as of the Amendment Effective Date, each of the representations and warranties set forth in Article 4 of the Existing Credit Agreement, and such representations and warranties are, by this reference, incorporated herein as if set forth herein in their entirety, provided that references to “Agreement” shall, for purposes of this paragraph, be deemed to include this Amendment.

5. Miscellaneous.

(a) Except as expressly modified by this Amendment, the Existing Credit Agreement shall continue to be and remain in full force and effect in accordance with its terms.

(b) This Amendment may be executed in any number of counterparts and by the different parties hereto in different counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract.

(c) The Amendment Documents and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to the Amendment Documents and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the Law of (i) the State of California, in the case of the Borrower, and (ii) the State of New York, in the case of the Lender.

(d) Delivery of an executed counterpart of a signature page of any Amendment Document by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of such Amendment Document. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to any document to be signed in connection with any Amendment Document and the transactions contemplated thereby shall be deemed to include Electronic Signatures (as hereinafter defined in this Section 5(d)), deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state Laws based on the Uniform Electronic Transactions Act. Without limiting the generality of the foregoing, the Borrower hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation between the Lender, on the one hand, and the Borrower, on the other hand, electronic images of the Amendment Documents (in each case, including with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (ii) waives any argument, defense or right to contest the validity or enforceability of any Amendment Document based solely on the lack of paper original copies of such Amendment Document, including with respect to any signature pages thereto. As used herein, “Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a

contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto, by their officers thereunto duly authorized, have executed and delivered this Agreement, effective as of the day and year first above written.

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA

By _____

Name: Theodore Bardacke

Title: Executive Director

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION

By _____
Name: Allyson Goetschius
Title: Executive Director

Annex A

Credit Agreement

REVOLVING CREDIT AGREEMENT

Dated as of September 22, 2021^{[1](#)}

by and between

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA,
as Borrower

and

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION,
as Lender

¹ [Amended and Restated as of June __, 2023](#)

TABLE OF CONTENTS [\[TOC PAGE NUMBERS TO BE UPDATED\]](#)

SECTION	HEADING	PAGE
ARTICLE 1	DEFINITIONS	1
Section 1.1.	Definitions.....	1
Section 1.2.	Terms Generally.....	21 20
Section 1.3.	Accounting Terms; GAAP.....	22 21
Section 1.4.	Interest Rates; LIBOR Notification	22
	21
ARTICLE 2	THE CREDITS	23 21
Section 2.1.	Commitments	23 Commitment
	21
Section 2.2.	Loans and Borrowings	23 22
Section 2.3.	Requests for Revolving Borrowings.....	23 22
Section 2.4.	Letters of Credit	24 22
Section 2.5.	Interest Elections.....	27 25
Section 2.6.	Termination and Reduction of Commitment	28 27
Section 2.7.	Repayment of Loans; Evidence of Debt	28 27
Section 2.8.	Prepayment of Loans	29 28
Section 2.9.	Fees	29 28
Section 2.10.	Interest.....	29 28
Section 2.11.	Inability to Determine Rates ; Alternate Rate of Interest; Illegality.....	31 29
Section 2.12.	Increased Costs	33 31
Section 2.13.	Break Funding Payments	34 32
Section 2.14.	Payments Free of Taxes.....	34 33
Section 2.15.	Payments Generally	35 34
Section 2.16.	Mitigation Obligation.....	36 35
Section 2.17.	Extension of Maturity Date.....	36 35
Section 2.18.	Pledge; Security of Obligations	36 35
ARTICLE 3	CONDITIONS.....	37 36
Section 3.1.	Conditions Precedent to Effectiveness.....	37 36
Section 3.2.	Conditions Precedent to each Credit Event	38
ARTICLE 4	REPRESENTATIONS AND WARRANTIES.....	39 38
Section 4.1.	Organization, Powers, Etc.....	39 38
Section 4.2.	Authorization, Absence of Conflicts, Etc	40 39
Section 4.3.	Binding Obligations.....	40 39
Section 4.4.	Governmental Consent or Approval	40 39
Section 4.5.	Absence of Material Litigation	40 39
Section 4.6.	Financial Condition.....	41 39
Section 4.7.	Incorporation of Representations and Warranties.....	41 40

Section 4.8.	Accuracy and Completeness of Information.....	41 <u>40</u>
Section 4.9.	No Default.....	41 <u>40</u>
Section 4.10.	No Proposed Legal Changes.....	41 <u>40</u>
Section 4.11.	Compliance with Laws, Etc	41 <u>40</u>
Section 4.12.	Environmental Matters.....	42 <u>[Reserved.]</u>
		40 <u>40</u>
Section 4.13.	Regulation U	42 <u>41</u>
Section 4.14.	Liens.....	42 <u>41</u>
Section 4.15.	Sovereign Immunity.....	42 <u>41</u>
Section 4.16.	Usury.....	42 <u>41</u>
Section 4.17.	Insurance	42 <u>41</u>
Section 4.18.	ERISA	42 <u>41</u>
Section 4.19.	Sanctions Concerns and Anti-Corruption Laws	43 <u>41</u>
Section 4.20.	Secured Debt.....	43 <u>42</u>
ARTICLE 5	COVENANTS.....	43 <u>42</u>
Section 5.1.	Affirmative Covenants.....	43 <u>42</u>
Section 5.2.	Negative Covenants	49 <u>48</u>
ARTICLE 6	DEFAULTS.....	53 <u>52</u>
Section 6.1.	Events of Default and Remedies	53 <u>52</u>
Section 6.2.	Remedies.....	55 <u>54</u>
ARTICLE 7	MISCELLANEOUS	56 <u>55</u>
Section 7.1.	Amendments, Waivers, Etc.....	56 <u>55</u>
Section 7.2.	Notices	56 <u>55</u>
Section 7.3.	Survival of Covenants; Successors and Assigns.....	57 <u>56</u>
Section 7.4.	No Recourse Against Members	58 <u>57</u>
Section 7.5.	Liability of Lender; Indemnification	58 <u>57</u>
Section 7.6.	Expenses	59 <u>58</u>
Section 7.7.	No Waiver; Conflict.....	59 <u>58</u>
Section 7.8.	Modification, Amendment Waiver, Etc.....	59 <u>58</u>
Section 7.9.	Dealings	59 <u>59</u>
Section 7.10.	Severability	60 <u>59</u>
Section 7.11.	Counterparts; Integration; Effectiveness; Electronic Execution.....	60 <u>59</u>
Section 7.12.	Table of Contents; Headings.....	61 <u>60</u>
Section 7.13.	Entire Agreement.....	61 <u>60</u>
Section 7.14.	Governing Law Waiver of Jury Trial.....	61 <u>60</u>
Section 7.15.	Government Regulations	62 <u>61</u>
Section 7.16.	USA PATRIOT Act.....	62 <u>61</u>
Section 7.17.	Electronic Transmissions.....	62 <u>61</u>
Section 7.18.	Assignment to Federal Reserve Bank	62 <u>62</u>
Section 7.19.	Arm's Length Transaction	63 <u>62</u>

EXHIBITS

Exhibit A	—	Form of Opinion of Chapman and Cutler LLP
Exhibit B	—	Form of Compliance Certificate
Exhibit C	—	Form of Borrowing Request
Exhibit D-1	—	Form of Letter of Credit Request
Exhibit D-2	—	Form of Continuing Agreement for Commercial and Standby Letters of Credit
Exhibit E	—	Account Control Agreement
Exhibit F	—	Intercreditor and Collateral Agency Agreement
Exhibit G	—	Security Agreement

REVOLVING CREDIT AGREEMENT

THIS REVOLVING CREDIT AGREEMENT, dated as of September 22, 2021 (together with all amendments and supplements hereafter, this “*Agreement*”) is by and between CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a public agency formed under the provisions of the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq. (together with its successors and assigns, “*Borrower*” or “*CPA*”), and JPMORGAN CHASE BANK, NATIONAL ASSOCIATION (together with its successors and assigns, the “*Lender*”).

WITNESSETH:

WHEREAS, Borrower has requested, and Lender has agreed to make available to Borrower, a revolving credit facility upon and subject to the terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the premises and the mutual agreements herein contained, the Borrower and the Lender agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1. Definitions. As used in this Agreement:

“*ABR*”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, bear interest at a rate determined by reference to the Alternate Base Rate.

“*ABR Term SOFR Determination Day*” has the meaning specified in the definition of “Term SOFR”.

“*Account Control Agreement*” means the Account Control Agreement, dated as of April 16, 2018, entered into by and among by and among (i) River City Bank, a California corporation, (ii) CPA and (iii) River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent, as amended and supplemented in accordance with the terms hereof, a copy of which is attached hereto as Exhibit E.

“*Act*” means the Joint Exercise of Powers Act of the State of California, Government Code Section 6500 et. seq.

“*Adjusted LIBO-Rate Daily Simple SOFR*” means, ~~with respect to any Eurodollar Borrowing~~ for any ~~Interest Period, an interest day,~~ the rate per annum ~~(rounded upwards, equal to (a) Daily Simple SOFR for such calculation plus (b) the SOFR Adjustment; provided, that if necessary,~~ Adjusted Daily Simple SOFR as so determined shall ever be less than the Floor, then Adjusted Daily Simple SOFR shall be deemed to be the ~~next 1/16~~ Floor.

“*Adjusted Term SOFR*” means, for purposes of ~~1%~~ any calculation, the rate per annum equal to (a) ~~the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve~~

Rate Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided, that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agreement” has the meaning set forth in the introductory paragraph hereof.

“Alternate Base Rate” means, for any day, a rate per annum equal to the highest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus 0.50% and (c) Adjusted Term SOFR for a one-month tenor in effect on such day plus 1.00 %, provided that if the Alternate Base Rate as determined pursuant to the foregoing would be less than one percent (1%), such rate shall be deemed to be one percent (1%) for purposes of this Agreement. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or Adjusted Term SOFR shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or Adjusted Term SOFR, respectively.

“Annual Debt Service” means, as of any date of calculation, for any Fiscal Year or other designated four fiscal quarter period, the sum of (a) all interest and fees (including LC Facility Fees and Undrawn Fees) due and payable on the Loans, other Secured Debt and Unsecured Debt (or, in the case of projected Annual Debt Service, projected to be due and payable) in such Fiscal Year or other designated four fiscal quarter period and (b) the quotient obtained by dividing the average daily outstanding principal balance of the Loans, other Secured Debt and Unsecured Debt during such Fiscal Year or other designated four fiscal quarter period by 5.

“Annual Financial Statements” means, with respect to any completed Fiscal Year of the Borrower, the Financial Statements for such Fiscal Year.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower from time to time concerning or relating to bribery or corruption.

“Applicable Law” means (i) all applicable common law and principles of equity and (ii) all applicable provisions of all (A) constitutions, statutes, rules, regulations and orders of all governmental and non-governmental bodies, (B) Governmental Approvals and (C) orders, decisions, judgments and decrees of all courts (whether at law or in equity) and arbitrators.

“Applicable Margin” has the meaning set forth in the Fee Agreement.

“Authorized Representative” means an “Authorized Representative” as defined in the Resolution, and any other individual designated from time to time as an “Authorized Representative” in a certificate executed by the Borrower and delivered to the Lender.

“Availability” means, as of any date of determination, the Commitment minus the Revolving Credit Exposure, in each case as determined on such date.

“Availability Period” means the period from and including the Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitment.

“Available Tenor” means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (x) if such Benchmark is a term rate, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (y) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to ~~clause (f) of~~ Section 2.11 ~~.(f).~~

“Bank Agreement” means any credit agreement, liquidity agreement, standby bond purchase agreement, reimbursement agreement, direct purchase agreement, bond purchase agreement, or other agreement or instrument (or any amendment, supplement or other modification thereof) under which, directly or indirectly, any Person or Persons undertake(s) to (x) make or provide funds to make payment of, or to purchase or provide credit or liquidity enhancement for, bonds or notes of the Borrower or (y) extend credit to the Borrower.

~~*“Base Rate”* means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus 0.5% per annum, and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1.0%; provided that for the purpose of this definition, the Adjusted LIBO Rate for any day shall be based on the LIBO Screen Rate (or if the LIBO Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the LIBO Rate, respectively. If the Base Rate is being used as an alternate rate of interest pursuant to Section 2.11 hereof (for the avoidance of doubt, only until any amendment has become effective pursuant to Section 2.11(b)), then the Base Rate shall be the greater of clause (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Base Rate shall be less than one percent (1.0%), such rate shall be deemed to be one percent (1.0%) for purposes of this Agreement.~~

~~*“Base Rate Borrowing”*, when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan or Borrowing bears interest at a rate determined by reference to the Base Rate.~~

“Basic Documents” means, at any time, each of the following documents and agreements as in effect or as outstanding, as the case may be, at such time: (a) this Agreement, including schedules and exhibits hereto, (b) the Fee Agreement, and (c) and any other documents executed and delivered by Borrower in connection with this Agreement or the Fee Agreement, if any. For the avoidance of doubt, PPAs are not Basic Documents.

“Benchmark” means, initially, ~~LIBO~~the Term SOFR Reference Rate; provided that if a Benchmark Transition Event, ~~a Term SOFR Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have~~ has occurred with respect to ~~LIBO~~the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to ~~clause (b) or clause (c) of~~ Section 2.11:(c).

“Benchmark Replacement” means, ~~for~~ with respect to any ~~Available Tenor~~Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Lender for the applicable Benchmark Replacement Date:

~~(1) — the sum of: (a) Term SOFR and (b) the related Benchmark Replacement Adjustment;~~

~~(2) — the sum of: (a) Adjusted Daily Simple SOFR and; or (b) the related Benchmark Replacement Adjustment;~~

~~(3) — the sum of: (a) the alternate benchmark rate that has been selected by the Lender and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) A any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) B any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for Dollar-denominated ~~syndicated~~ credit facilities at such time and (b) ii the related Benchmark Replacement Adjustment; provided that, in the case of clause (1), if such Unadjusted Benchmark Replacement is displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Basic Document, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Benchmark Replacement Adjustment, as set forth in clause (1) of this definition (subject to the first proviso above).~~

~~If the Benchmark Replacement as so determined pursuant to clause (1), (2) or (3) above would be less than the Floor, the such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Basic Documents.~~

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement ~~for any applicable Interest Period and Available Tenor for any setting of such Unadjusted Benchmark Replacement;~~

~~(1) — for purposes of clauses (1) and (2) of the definition of “Benchmark Replacement,” the first alternative set forth in the order below that can be determined by the Lender:~~

~~(a) — the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that has been selected or recommended by the Relevant Governmental Body for the replacement of such Benchmark~~

~~with the applicable Unadjusted Benchmark Replacement for the applicable Corresponding Tenor;~~

~~(b) — the spread adjustment (which may be a positive or negative value or zero) as of the Reference Time such Benchmark Replacement is first set for such Interest Period that would apply to the fallback rate for a derivative transaction referencing the ISDA Definitions to be effective upon an index cessation event with respect to such Benchmark for the applicable Corresponding Tenor; and~~

~~(2) — for purposes of clause (3) of the definition of “Benchmark Replacement,” the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Lender and the Borrower for the applicable Corresponding Tenor giving due consideration to (ia) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body on the applicable Benchmark Replacement Date or (ii) (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities;~~

~~provided that, in the case of clause (1) above, such adjustment is displayed on a screen or other information service that publishes such Benchmark Replacement Adjustment from time to time as selected by the Lender in its reasonable discretion.~~

“*Benchmark Replacement Conforming Changes*” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Alternate Base Rate,” the definition of “Business Day,” the definition of “~~Interest Period,~~” U.S. Government Securities Business Day, the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of ~~breakage provisions,~~ Section 2.13 and other technical, administrative or operational matters) that the Lender decides ~~in its reasonable discretion~~ may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Lender in a manner substantially consistent with market practice (or, if the Lender decides that adoption of any portion of such market practice is not administratively feasible or if the Lender determines that no market practice for the administration of such Benchmark Replacement exists, in such other manner of administration as the Lender decides is reasonably necessary in connection with the administration of this Agreement and the other Basic Documents).

“*Benchmark Replacement Date*” means the earliest to occur of the following events with respect to the then-current Benchmark:

~~(1) —~~ a in the case of clause ~~(1a)~~ or ~~(2b)~~ of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) ii the date on which the administrator of such

Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

~~(2) —~~ b in the case of clause ~~(3c)~~ of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the public administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness will be determined by reference to the most recent statement or publication of information referenced therein;

~~(3) — in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Borrower pursuant to Section 2.11(c); or~~

~~(4) — in the case~~ such clause (c) and even if any Available Tenor of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is such Benchmark (or such component thereof) continues to be provided to the Borrower on such date.

For the avoidance of doubt, (i) if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause ~~(1a)~~ or ~~(2b)~~ with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“*Benchmark Transition Event*” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

~~(1) —~~ a a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

~~(2) —~~ b a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the NYFRB, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available

Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

~~(3)~~ c a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or ~~the published~~such component ~~used in the calculation~~ thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“Benchmark Transition Start Date” means, in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means, the period (if any) (~~xa~~) beginning at the time that a Benchmark Replacement Date ~~pursuant to clauses (1) or (2) of that definition~~ has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.11 and (~~y~~b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Basic Document in accordance with Section 2.11.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

“Beneficial Ownership Regulation” means 31 C.F.R. § 1010.230.

“Board” means the Board of Directors of the Borrower.

“Borrower” has the meaning set forth in the introductory paragraph hereof.

“Borrowing” means the making, conversion or continuation of a Loan.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.3 and in the form of Exhibit C hereto.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City or the City of Los Angeles are authorized or required by law to remain closed; ~~provided that, when used in connection with a Eurodollar Loan, the term~~

~~“Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.~~

“Cash and Cash Equivalents” means, as of any date of determination, the Borrower’s cash on hand (other than Restricted Cash and other than borrowing availability under this Agreement), demand deposits and any of the following short-term investments, in each case as of such date: (a) readily marketable obligations issued or directly and fully guaranteed or insured, by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof; (b) time deposits with, or insured certificates of deposit or bankers’ acceptances of, any commercial bank that (i) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than 90 days from the date of acquisition thereof; (c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least “Prime-1” (or the then equivalent grade) by Moody’s Investors Service, Inc. or at least “A-1” (or the then equivalent grade) by Standard & Poor’s Financial Services LLC, in each case with maturities of not more than 90 days from the date of acquisition thereof; (d) investments, classified in accordance with GAAP as current assets of the Borrower in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody’s Investors Service, Inc. or Standard & Poor’s Financial Services LLC, and the portfolios of which are limited solely to investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition; and (e) investments in the Local Agency Investment Fund established pursuant to Section 16429.1 of the California Government Code and maintained by the Treasurer of the State of California.

“Cash Collateral Loan” means a Loan (or a portion of a Loan) the proceeds of which are deposited with a Person other than the Borrower in order to secure the Borrower’s payment obligations under one or more PPAs or to make a termination payment under one or more PPAs.

“Change in Law” means the occurrence after the date of this Agreement of (a) the adoption of or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by the Lender (or, for purposes of Section 2.12(b), by any lending office of the Lender or its holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; *provided* that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Lender for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case

pursuant to Basel III, shall be deemed to be a “Change in Law,” regardless of the date enacted, adopted or issued.

“*Closing Date*” means the first date on which the conditions precedent set forth in Section 3.1 hereof are satisfied and/or waived in writing by the Lender.

“*Code*” means the Internal Revenue Code of 1986, as amended from time to time, including regulations, rulings and judicial decisions promulgated thereunder.

“*Commitment*” means the commitment of the Lender to make Loans and to issue Letters of Credit, expressed as an amount representing the maximum aggregate amount of the Lender’s Revolving Credit Exposure hereunder, as such commitment may be reduced from time to time pursuant to Section 2.6. The initial amount of the Commitment is \$~~80~~160,000,000 .

“*Connection Income Taxes*” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

“*Control*” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise, “Controlling” and “Controlled” have meanings correlative thereto.

~~“*Corresponding Tenor*” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.~~

“*County of Los Angeles Funding Agreement*” means that certain Funding Agreement between the County of Los Angeles and the Clean Power Alliance of Southern California entered into on August 5, 2021.

~~“*Daily Simple SOFR*” means, for any day, SOFR, with the conventions for this rate (which may include a lookback) being established by the Lender in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for business loans; provided, that if the Lender decides that any such convention is not administratively feasible for the Lender, then the Lender may establish another convention in its reasonable discretion.~~

“*Daily Simple SOFR*” means, for any day (a “*SOFR Rate Day*”), a rate per annum equal SOFR for the day (such day “*SOFR Determination Date*”) that is five (5) U.S. Government Securities Business Day prior to (i) if such SOFR Rate Day is a U.S. Government Securities Business Day, such SOFR Rate Day or (ii) if such SOFR Rate Day is not a U.S. Government Securities Business Day, the U.S. Government Securities Business Day immediately preceding such SOFR Rate Day, in each case, as such SOFR is published by the SOFR Administrator on the SOFR Administrator’s Website. Any change in Daily Simple SOFR due to a change in SOFR shall be effective from and including the effective date of such change in SOFR without notice to the Borrower.

“Days Liquidity on Hand” means, as of any date of determination, the quotient, in number of days, obtained by dividing (i) sum of the Cash and Cash Equivalents and Availability on such date of determination by (ii) the product of (A) the sum of Operating Expenses and Interest Expense for the four consecutive fiscal quarter period ended immediately prior to such date of determination and (B) 1/365.

“Debt” of any Person means, at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person as lessee under capital leases, (e) all debt of others secured by a Lien on any asset of such Person, whether or not such debt is assumed by such Person, (f) all Guarantees by such Person of debt of other Persons, (g) the net obligations of such Person under any Swap Agreement and (h) all obligations of such Person to reimburse or repay any bank or other Person in respect of amounts paid or advanced under a letter of credit, credit agreement, liquidity facility or other instrument. The amount of any net obligation under any Swap Agreement on any date shall be deemed to be the Swap Termination Value thereof as of such date.

“Debt Service Coverage Ratio” means, for any fiscal quarter of the Borrower, the quotient obtained by dividing Net Revenues by Annual Debt Service, in each case as determined for the four consecutive fiscal quarter periods ended on the last date of such fiscal quarter. The Debt Service Coverage Ratio shall be tested both on a rolling last four consecutive fiscal quarter basis and on a projected following four consecutive fiscal quarter basis, in each case as of the last day of each fiscal quarter.

“Debt Service Coverage Ratio Notice” has the meaning set forth in Section 5.1(q) hereof.

“Default” means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

“Default Rate” has the meaning set forth in the Fee Agreement.

“Direction Letter” has the meaning set forth in the Security Agreement.

“dollars” or *“\$”* refers to lawful money of the United States of America.

“EEI Master Agreement” means the EEI Master Power Purchase and Sale Agreement, version 2.1 (modified 4/25/00), created by the Edison Electric Institute and National Energy Marketers Association.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.

“Electronic System” means any electronic system, including e-mail, e-fax, web portal access for the Borrower, and any other Internet or extranet-based site, whether such electronic

system is owned, operated or hosted by the Lender and any of its respective Related Parties or any other Person, providing for access to data protected by passcodes or other security system.

~~“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a person with the intent to sign, authenticate or accept such contract or record.~~

“Employee Plan” means an employee benefit plan covered by Title I of ERISA and maintained for employees of the Borrower.

“Enterprise” means the current operations of the Borrower related to the procurement of electric power for its customers from third parties, trading of energy and other electric power in the normal course of business, wholesale purchases and sales of energy, energy related programs including demand management, transportation and building electrification and energy efficiency, and related services and incentives to its customers, and shall include (i) all contractual rights to distribution, metering and billing services, energy procurement, scheduling and coordination, transmission capacity, and fuel supply of Borrower for the purchase, generation, transmission or distribution of electric power, and (ii) facilities, properties and structures of the Borrower, wherever located. If Borrower acquires electric generating assets or is otherwise engaged in any business in addition to that described in the previous sentence, the term “Enterprise” shall include all associated general plant facilities, works, properties and structures, wherever located and any associated contractual rights not otherwise included in the foregoing sentence.

“Environmental Laws” means any and all federal, state and local statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions relating to the environment or to emissions, discharges or releases of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, petroleum or petroleum products, chemicals or industrial, toxic or hazardous substances or wastes or the clean-up or other remediation thereof.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute thereto.

~~“Eurodollar” when used in reference to any Loan or Borrowing of a Loan, refers to whether such Loan, or the Loan comprising such Borrowing, bears interest at a rate determined by reference to the Adjusted LIBO Rate.~~

“Event of Default” has the meaning set forth in Section 6.1 hereof.

“Excluded Taxes” means, with respect to the Lender or any Participant, (a) taxes imposed on or measured by its overall net income (however denominated), and franchise taxes imposed on it (in lieu of net income taxes), by the jurisdiction (or any political subdivision thereof) under the laws of which the Lender or such Participant is organized or in which its principal office is located

and (b) any branch profits taxes imposed by the United States or any similar tax imposed by any other jurisdiction in which the Borrower is located.

“*FATCA*” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“*Federal Funds Effective Rate*” means, for any day, the rate calculated by the NYFRB based on such day’s federal funds transactions by depository institutions, as determined in such manner as shall set forth on NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal funds rate, *provided* that if the Federal Funds Effective Rate as so determined would be less than zero (0.0%), such rate shall be deemed to be zero (0.0%) for the purposes of this Agreement.

“*Federal Reserve Board*” means the Board of Governors of the Federal Reserve System of the United States of America.

“*Fee Agreement*” means the Fee Agreement of even date herewith between the Borrower and the Lender, as supplemented, amended, restated or otherwise modified from time to time.

“*Financial Reserve Policy*” means the Financial Reserve Policy (CPA 2019-09) of the Borrower, amended as of February 4, 2021, as further amended or modified to the extent permitted hereunder.

“*Financial Statements*” means, with respect to any completed fiscal period of the Borrower, the statements of net position of the Borrower at the last day of such fiscal period, the statements of revenues, expenses and changes in net position of the Borrower for such fiscal period, and the statements of cash flows of the Borrower for such fiscal period.

“*Fiscal Stabilization Fund Policy*” means the Fiscal Stabilization Fund Policy (CPA 2020-16) of the Borrower, as of September 3, 2020, as amended or modified to the extent permitted hereunder.

“*Fiscal Year*” means each twelve-month period commencing on July 1 of a calendar year and ending on June 30 of the following calendar year, or such other twelve month period as may be determined by the Board as the Borrower’s fiscal year.

~~“*Floor*” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to LIBO Rate.~~

“*Floor*” means a rate of interest equal to 0.00% per annum.

“*GAAP*” means generally accepted accounting principles in the United States of America from time to time as set forth in (a) the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and (b) statements and

pronouncements of the Government Accounting Standards Board, as modified by the opinions, statements and pronouncements of any similar accounting body of comparable standing having authority over accounting by governmental entities.

“Governmental Approval” means an authorization, consent, approval, license or exemption of, registration or filing with, or report to, any Governmental Authority.

“Governmental Authority” means the government of the United States or any political subdivision thereof or any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other Person with authority to bind a party at law.

“Guarantees” means, for any Person, all guarantees, endorsements (other than for collection or deposit in the ordinary course of business) and other contingent obligations of such Person to purchase, to provide funds for payment, to supply funds to invest in any other Person or otherwise to assure a creditor of another Person against loss.

~~*“Impacted Interest Period”* has the meaning assigned to it in the definition of “LIBO Rate.”~~

“Indemnified Taxes” means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise described in (a) hereof, Other Taxes.

“Initial Borrowing” means the initial Borrowing, if any, to be made under this Agreement on the Closing Date in the amount specified in the Borrowing Request provided by the Borrower on the Closing Date, the proceeds of which will be applied solely to pay amounts due to RCB under the RCB Credit Agreement as referenced in Section 3.1(i).

“Intercreditor and Collateral Agency Agreement” means the Intercreditor and Collateral Agency Agreement, dated as of April 16, 2018, entered into by and among (i) River City Bank, a California corporation, not in its individual capacity, but solely in its capacity as collateral agent, (ii) each of the creditors from time to time signatory thereto that are party to a Power Purchase Agreement (as defined in the Security Agreement), and (iii) CPA, as amended and supplemented in accordance with the terms hereof, a copy of which is attached hereto as Exhibit F.

“Interest Election Request” means a request by the Borrower to convert or continue a Revolving Borrowing (other than ~~a Base Rate~~ an ABR Borrowing of a Reimbursement Loan) in accordance with Section 2.5.

“Interest Expense” means, for any period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, (b) all interest paid or payable with respect to discontinued operations and (c) the portion of rent expense under capitalized leases that is treated as interest in accordance with GAAP, in each case, of or by the Borrower for such period.

“Interest Payment Date” means, (a) with respect to any ~~Base Rate~~ ABR Loan, the first Business Day of the month, and (b) with respect to any ~~Eurodollar~~ SOFR Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part, and the Maturity Date.

“Interest Period” means, ~~with respect~~ as to any ~~Eurodollar~~ Borrowing, the period commencing on the date of such ~~Eurodollar~~ Borrowing and ending on the numerically corresponding day in the calendar month that is one or three months thereafter, ~~as the Borrower may elect~~ (in each case, subject to the availability thereof), as specified in the Borrowing Request or Interest Election Request; *provided*, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day ~~and~~; (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period ~~;~~ (iii) no Interest Period shall extend beyond the Maturity Date; and (iv) no tenor that has been removed from this definition pursuant to Section 2.11(d) shall be available for specification in the Borrowing Request or Interest Election Request. For purposes hereof, the date of a Borrowing initially shall be the date on which such Loan or Borrowing is made and, ~~in the case of a Revolving Borrowing~~, thereafter shall be the effective date of the most recent conversion or continuation of such Loan or Borrowing.

~~*“Interpolated Rate”* means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Lender (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available that is shorter than the Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available that exceeds the Impacted Interest Period, in each case, at such time.~~

“Investment Policy” means the investment guidelines of the Borrower as in effect on the date hereof, as such investment guidelines may be amended from time to time in accordance with State laws.

“ISDA Definitions” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.

“Joint Powers Agreement” means the Joint Powers Agreement of Borrower effective as of June 27, 2017, and as amended from time to time.

“Law” means any treaty or any Federal, regional, state and local law, statute, rule, ordinance, regulation, code, license, authorization, decision, injunction, interpretation, policy, guideline, supervisory standard, order or decree of any court or other Governmental Authority.

“LC Collateral Account” has the meaning set forth in Section 2.4(h).

“LC Disbursement” means a payment made by the Lender pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time, plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time.

“Letter of Credit” means any letter of credit issued pursuant to a Letter of Credit Request provided by Borrower pursuant to this Agreement.

“Letter of Credit Fees” has the meaning set forth in the Fee Agreement.

“Letter of Credit Request” means a request by the Borrower for a Letter of Credit in accordance with Section 2.4(a) and in the form of Exhibit D-1 hereto.

“Lender” has the meaning set forth in the introductory paragraph hereof.

“Liabilities” mean all claims (including intraparty claims), actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, Taxes, commissions, charges, disbursements and expenses (including those incurred upon any appeal or in connection with the preparation for and/or response to any subpoena or request for document production relating thereto), in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

~~*“LIBO Rate”* means, with respect to any Eurodollar Borrowing for any applicable Interest Period, the LIBO Screen Rate at approximately 11:00 a.m., London time, two (2) Business Days prior to the commencement of such Interest Period; provided that if the LIBO Screen Rate shall not be available at such time for such Interest Period (an “Impacted Interest Period”) then the LIBO Rate shall be the Interpolated Rate.~~

~~*“LIBO Screen Rate”* means, for any day and time, with respect to any Eurodollar Borrowing for any Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate, for Dollars for a period equal in length to such Interest Period as displayed on such day and time on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion, provided that if the LIBO Screen Rate as so determined would be less than zero basis points (0.00%), such rate shall be deemed to zero basis points (0.00%) for the purposes of this Agreement.~~

“Lien” means, with respect to any asset, (a) any lien, charge, claim, mortgage, security interest, pledge or assignment of revenues of any kind in respect of such asset or (b) the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“*Loans*” means the loans made by the Lender to the Borrower pursuant to this Agreement, including, without limitation, Cash Collateral Loans, Working Capital Loans and Reimbursement Loans.

“*Lockbox Security Document(s)*” means, individually or collectively, as applicable, the Security Agreement, the Account Control Agreement, the Intercreditor and Collateral Agency Agreement and the Direction Letter.

“*Material Adverse Change*” means any material or adverse change in the business, operations, properties, assets, liability, condition (financial or otherwise) or prospects of the Borrower which, in the reasonable determination of the Lender, is reasonably likely to materially adversely affect Borrower’s ability to perform Borrower’s Obligations hereunder.

“*Material Adverse Effect*” means (a) a Material Adverse Change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of the Borrower; (b) a material impairment of the rights and remedies of the Lender under this Agreement or any other Basic Document, or of the ability of the Borrower to perform its Obligations under this Agreement, any other Basic Document to which it is a party, or any Lockbox Security Agreement to which the Borrower is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability of Borrower’s Obligations under this Agreement, any other Basic Document to which Borrower is a party, or any Lockbox Security Agreement to which the Borrower is a party.

“*Material Litigation*” shall have the meaning assigned to such term in Section 4.5.

“*Maturity Date*” means the date on which Commitment is scheduled to expire pursuant to its terms, initially 5:00 p.m. (New York time) on ~~October~~[\[March 31, 2023, 2024\]](#), or such later date to which the Maturity Date may be extended pursuant to Section 2.17 and, if any such date is not a Business Day, the next preceding Business Day.

“*Maximum Rate*” means the maximum non-usurious interest rate that may, under applicable federal law and applicable state law, be contracted for, charged or received under such laws.

“*Member*” or “*Members*” means, individually or collectively, as applicable, the public agencies that are, from time to time, party to the Joint Powers Agreement.

“*Net Revenues*” means, for any period and as of any date of determination, the amount obtained by subtracting Operating Costs from Revenues, in each case for such period as of such date. For the avoidance of doubt, “*Net Revenues*” does not include the “Collateral” (as defined in the Security Agreement).

“*NYFRB*” means the Federal Reserve Bank of New York.

“*NYFRB Rate*” means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of

such rates are published for any day that is a Business Day, the term “NYFRB Rate” means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Lender from a Federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“*NYFRB’s Website*” means the website of the NYFRB at <http://www.newyorkfed.org>, or any successor source.

“*Obligations*” means all obligations of the Borrower to the Lender or any Participant or the Lender’s or any Participant’s Related Parties arising under or in relation to the Basic Documents, including all unpaid principal of and accrued and unpaid interest on the Loans, all LC Exposure, all accrued and unpaid fees (including, without limitation, the Undrawn Fee and the LC Facility Fees) and all expenses, reimbursements, indemnities and other obligations and indebtedness (including interest and fees accruing during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), obligations and liabilities of the Borrower to the Lender or any indemnified party, individually or collectively, existing on the Effective Date or arising thereafter, direct or indirect, joint or several, absolute or contingent, matured or unmatured, liquidated or unliquidated, secured or unsecured, arising by contract, operation of law or otherwise, arising or incurred under this Agreement or any of the other Basic Documents or in respect of any of the Loans made or reimbursement or other obligations incurred or any of the Letters of Credit or other instruments at any time evidencing any thereof.

“*Operating Costs*” shall be determined in accordance with the accrual basis of accounting in accordance with GAAP and shall mean the reasonable and necessary costs incurred by Borrower in connection with the operation and maintenance of the Enterprise, including the costs of Product purchased for resale to the Borrower’s customers pursuant to a PPA or, if applicable, generated by or from Property of Borrower, costs of transmission, distribution and fuel supply, all reasonable expenses of management and repair and other expenses necessary to maintain and preserve its Properties in good repair and working order, and all administrative costs of Borrower that are charged directly or apportioned to the Enterprise, such as salaries and wages of employees, overhead, insurance, taxes (if any) and insurance premiums, and including all other reasonable and necessary costs of Borrower such as fees and expenses of an independent certified public accountant, and including Borrower’s share of the foregoing types of costs of any electric generating properties co-owned with others, excluding in all cases depreciation, replacement and obsolescence charges or reserves therefor, interest charges including interest on Debt and principal repayment of Debt, amortization of intangibles and extraordinary items computed in accordance with GAAP or other bookkeeping entries of a similar nature, and pass-through charges that are paid to or set aside for payment to third parties and which charges are not included as Revenues of the Enterprise. Operating Costs shall include all amounts required to be paid by Borrower under contracts for the purchase of Product.

“*Other Connection Taxes*” means, with respect to the Lender, Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to,

performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Basic Document, or sold or assigned an interest in any Loan or Basic Document).

“Other Taxes” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Basic Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment.

“Overnight Lender Funding Rate” means, for any day, the rate comprised of both overnight federal funds and overnight ~~Eurodollar~~SOFR borrowings by U.S. managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the NYFRB’s Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

“Parity Debt” means any Secured Debt issued or incurred by the Borrower the payment of which and the security therefor is on parity with the Borrower’s payment Obligations and security therefor under this Agreement.

“Participant” has the meaning set forth in Section 7.3(b) hereof.

“Participation” has the meaning set forth in Section 7.3(b) hereof.

“Periodic Term SOFR Determination Day” has the meaning specified in the definition of “Term SOFR”.

“Person” means an individual, a firm, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or any agency or instrumentality thereof.

“PPA” means an agreement for purchase of Product executed between the Borrower and a PPA Counterparty and includes (i) Power Purchase Agreements (as defined in the Security Agreement, (ii) EEI Master Agreements, and individual transaction confirmations executed under an EEI Master Agreement, and (iii) the WSPP Agreement.

“PPA Counterparty” means a party to a PPA other than the Borrower.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Lender) or any similar release by the Federal Reserve Board (as determined by the Lender). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Product” means any of the following: energy, renewable energy and renewable energy attributes, carbon free energy, capacity attributes, resource adequacy benefits, energy storage or any other similar or related products contemplated in the PPAs.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, whether now owned or hereafter acquired.

~~*“Reference Time” with respect to any setting of the then current Benchmark means (1) if such Benchmark is LIBO Rate, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not LIBO Rate, the time determined by the Lender in its reasonable discretion.*~~

“Reimbursement Loan” has the meaning assigned to such term in Section 2.4(d).

“Reimbursement Obligations” means any and all obligations of the Borrower to reimburse the Lender for LC Disbursements under Letters of Credit and all obligations to repay the Lender for any Loan relating thereto, including in each instance all interest accrued thereon.

“Related Parties” means, with respect to any specified Person, such Person’s Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person’s Affiliates.

“Relevant Governmental Body” means the Federal Reserve Board or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board or the NYFRB, or any successor thereto.

“Requirement of Law” means, with respect to any Person, (a) the charter, articles or certificate of organization or incorporation and bylaws or operating, management or partnership agreement, or other organizational or governing documents of such Person and (b) any statute, law (including common law), treaty, rule, regulation, code, ordinance, order, decree, writ, judgment, injunction or determination of any arbitrator or court or other Governmental Authority (including Environmental Laws), in each case applicable to or binding upon such Person or any of its property or assets or to which such Person or any of its property is subject.

“Reserve” means, with respect to a policy established by the Borrower, the reserve(s) (if any) identified in such policy, and *“Reserves”* means any and all reserves established by the Borrower pursuant to any and all policies of the Borrower.

“Resolution” means Resolution No. 21-04-013, adopted by the Board on September 2, 2021.

“Restricted Cash” means, as of any date of determination, (a) cash and claims to cash that are restricted as to withdrawal or use for other than current operations, that are designated for disbursement in the acquisition or construction of noncurrent assets, or that are segregated for the liquidation of long-term debts; (b) receivables arising from unusual transactions (such as the sale of capital assets) that are not expected to be collected within 12 months; (c) cash surrender value of life insurance policies; (d) land and other natural resources; and (e) depreciable assets.

“*Revenues*” means, for any period, all revenues and charges received and accrued by the Borrower for electric power and energy and other services, facilities and commodities sold, furnished or supplied by Borrower from the Enterprise, together with income, earnings and profits therefrom, as determined in accordance with GAAP, for such period less the Borrower’s bad debt expense for such period.

“*Revolving Borrowing*” means a Loan hereunder other than a Reimbursement Loan.

“*Revolving Credit Exposure*” means, with respect to the Lender at any time, the sum of the outstanding principal amount of the Loans and its LC Exposure at such time.

“*RCB*” means River City Bank.

“*RCB Credit Agreement*” means that certain Amended and Restated Credit Agreement dated as of April 5, 2021 between RCB, as lender, and CPA, as borrower.

“*Sanctioned Country*” means, at any time, a country, region or territory which is the subject or target of any Sanctions (at the time of this Agreement, [the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, the Crimea, Zaporizhzhia and Kherson Regions of Ukraine](#), Cuba, Iran, North Korea, and Syria).

“*Sanctioned Person*” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, or by the United Nations Security Council, the European Union, any European Union member state, ~~Her~~[His](#) Majesty’s Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

“*Sanctions*” means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or ~~Her~~[His](#) Majesty’s Treasury of the United Kingdom or other relevant sanctions authority.

“*SCE Letter of Credit*” means that certain irrevocable standby letter of credit number SLCPD08099 issued by U.S. Bank National Association in favor of Southern California Edison Company in the initial stated amount of \$147,000 and expiring on December 7, 2021.

“*Secured Debt*” means all Debt of the Borrower other than Unsecured Debt.

“*Security Agreement*” means the Security Agreement, dated as of April 16, 2018, entered into by and among CPA, and River City Bank, a California corporation, not in its individual capacity, but solely as collateral agent, for the benefit of each seller of Product (as defined in the Security Agreement) under a Power Purchase Agreement (as defined in the Security Agreement)

that is made a party to the Intercreditor Agreement, and its respective successors and assigns, as amended and supplemented in accordance with the terms hereof, a copy of which is attached hereto as Exhibit G.

“Senior Debt” means any Debt issued or incurred by the Borrower, whether secured or unsecured, the payment of which is senior to the payment in full in cash of the Borrower’s payment Obligations under this Agreement.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

“SOFR Adjustment” means a percentage equal to 0.10% per annum.

“SOFR Administrator” means the NYFRB (or a successor administrator of the secured overnight financing rate).

“SOFR Administrator’s Website” means the NYFRB’s Website, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“SOFR Borrowing” means, as to any Borrowing, the SOFR Loan comprising such Borrowing.

“SOFR Determination Date” has the meaning specified in the definition of “Daily Simple SOFR”.

“SOFR Rate Day” has the meaning specified in the definition of “Daily Simple SOFR”.

“SOFR Loan” means a Loan that bears interest at a rate based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “Alternate Base Rate”.

“State” means the State of California.

~~*“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) established by the Federal Reserve Board to which the Lender is subject with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency liabilities” in Regulation D). Such reserve percentage shall include those imposed pursuant to such Regulation D of the Federal Reserve Board. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to the Lender under Regulation D of the Federal Reserve Board or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.*~~

“*Subordinate Debt*” means any unsecured Secured Debt issued or incurred by the Borrower, the payment of which is subordinate to the payment in full in cash of the Borrower’s payment Obligations under this Agreement and the payment in full of all Parity Debt.

“*Swap Agreement*” means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“*Swap Termination Value*” means, in respect of any one or more Swap Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Agreements, (a) for any date on or after the date such Swap Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Agreements (if such Swap Agreements are required by GAAP to be marked-to-market), as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Agreements (which may include the Lender or any Affiliate of the Lender).

“*Taxes*” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), value added taxes, or any other goods and services, use or sales taxes, assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“*2020 Audited Financial Statements*” means the Annual Financial Statements for the Fiscal Year ended June 30, 2020, together with unqualified audit opinion of Baker Tilly US, LLP.

“*Term SOFR*” means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable ~~Corresponding Tenor as of the applicable Reference Time; the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body~~ Interest Period on the day (such day, the “Periodic Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term

SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; and

~~“Term SOFR Notice” means a notification by the Lender to the Borrower of the occurrence of a Term SOFR Transition Event.~~

~~“Term SOFR Transition Event” means the determination by the Lender that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Lender and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with Section 2.11 that is not Term SOFR.~~

(b) for any calculation with respect to an ABR Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the “ABR Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any ABR Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such ABR Term SOFR Determination Day; provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso under clause (a) or clause (b) above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

“Term SOFR Adjustment” means a percentage equal to 0.10% per annum.

“Term SOFR Administrator” means the CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Lender in its reasonable discretion).

“Term SOFR Reference Rate” means the rate per annum determined by the Lender as the forward-looking term rate based on SOFR.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted ~~LIBO Rate~~ Term SOFR or the Alternate Base Rate.

“*Unadjusted Benchmark Replacement*” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“*Undrawn Fee*” has the meaning set forth in the Fee Agreement.

“*Unsecured Debt*” means Debt of the Borrower that is not secured by Net Revenues or any other Property of the Borrower.

“*U.S.*” and “*United States*” means the United States of America.

“*U.S. Government Securities Business Day*” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

“*Working Capital Loan*” means any Loan other than a Cash Collateral Loan or a Reimbursement Loan.

“*WSPP Agreement*” means the WSPP Agreement created by WSPP Inc. and filed with the Federal Energy Regulatory Commission, as revised by the WSPP Inc. from time to time.

Section 1.2. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “~~hereof~~ hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.3. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; *provided that*, if the Borrower notifies the Lender that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately

before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

Section 1.4. Interest Rates; ~~LIBOR Notification.~~ ~~LIBOR is intended to represent the rate at which contributing banks may obtain short term borrowings from each other in the London interbank market. On March 5, 2021, the U.K. Financial Conduct Authority (“FCA”) publicly announced that, among other matters: (a) immediately after December 31, 2021, publication of the 1 week and 2 month U.S. Dollar LIBOR settings will permanently cease; immediately after June 30, 2023, publication of the overnight and 12 month U.S. Dollar LIBOR settings will permanently cease; and immediately after June 30, 2023, the 1 month, 3 month and 6 month U.S. Dollar LIBOR settings will cease to be provided or, subject to the FCA’s consideration of the case, be provided on a synthetic basis and no longer be representative of the underlying market and economic reality they are intended to measure and that representativeness will not be restored. There is no assurance that dates announced by the FCA will not change or that the administrator of LIBOR and/or regulators will not take further action that could impact the availability, composition, or characteristics of LIBOR or the currencies and/or tenors for which LIBOR is published. Each party to this agreement should consult its own advisors to stay informed of any such developments. Public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of LIBOR. Upon the occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt in Election, Section 2.11(b) and (c) provide the mechanism for determining an alternative rate of interest. The Lender will promptly notify the Borrower, pursuant to Section 2.11(e), of any change to the reference rate upon which the interest rate on Eurodollar Loans is based. However,~~ The Lender does not warrant or accept ~~any~~ responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to LIBOR or other rates in the definition of “LIBO~~Alternate Base Rate” or with respect to any alternative or, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referenced in the definition thereof, or any alternative, successor rate thereto, or replacement rate thereof thereto (including, without limitation, (i) any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate implemented pursuant to Section 2.11(b) or (c), whether upon the occurrence of a (including any Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.11(d)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate~~Replacement) will be similar to, or produce the same value or economic equivalence of, ~~the LIBO Rate~~ or have the same volume or liquidity as ~~did the London interbank offered rate,~~ Alternate Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Benchmark Replacement Conforming Changes. The Lender and its Affiliates or other related entities may engage in transactions that affect the calculation of Alternate Base Rate, the Term SOFR Reference Rate, Term SOFR, Adjusted Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Lender may select information sources or services in its reasonable discretion to ascertain Alternate Base Rate, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark, in each

case pursuant to the terms of this Agreement, and shall have no liability to the Borrower or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

ARTICLE 2 THE CREDITS

Section 2.1. Commitment. Subject to the terms and conditions set forth herein, the Lender agrees to make Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result (after giving effect to any application of proceeds of such Borrowing pursuant to Section 2.7) in the Revolving Credit Exposure exceeding the Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

Section 2.2. Loans and Borrowings.

(a) Subject to Section 2.4(d), Section 2.5(d) and Section 2.11, at the time of each Borrowing, the Borrower may elect to incur a Loan as ~~a Base Rate~~ ABR Loan or a ~~Eurodollar~~ SOFR Loan.

(b) At the commencement of each Interest Period for any ~~Eurodollar~~ SOFR Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$100,000. At the time that each ~~Base Rate~~ ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$25,000 and not less than \$100,000; *provided that* ~~a Base Rate~~ ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Commitment or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.4(d). Borrowings of more than one Type may be outstanding at the same time; *provided that* there shall not at any time be more than a total of five (5) ~~Eurodollar~~ SOFR Borrowings outstanding.

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

Section 2.3. Requests for Revolving Borrowings. To request a Borrowing, the Borrower shall notify the Lender of such request by telephone (a) in the case of a ~~Eurodollar~~ SOFR Borrowing, not later than 2:00 p.m., New York City time, three (3) U.S. Government Securities Business Days before the date of the proposed Borrowing or (b) in the case of ~~a Base Rate~~ ABR Borrowing, not later than 2:00 p.m., New York City time, one Business Day before the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by electronic means to the Lender of a written Borrowing Request in a form attached hereto as Exhibit C and signed by the Borrower. Each such telephonic and written Borrowing Request shall specify the information set forth in Exhibit C hereto.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be ~~a Base Rate~~ an ABR Borrowing. If no Interest Period is specified with respect to any requested ~~Eurodollar~~ SOFR Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Subject to satisfaction of the terms and conditions of Section 3.2, the Lender shall make available to, or for the account of, the Borrower the amount of each Borrowing no later than 2:00 p.m., New York City time, on the date of the applicable Borrowing.

Section 2.4. Letters of Credit.

(a) *General.* Subject to the terms and conditions set forth herein, the Borrower may request the issuance of Letters of Credit as the applicant thereof in the form of a Letter of Credit Request set forth in Exhibit D-1 hereto at any time and from time to time during the Availability Period; *provided, however,* that prior to the issuance of the initial Letter of Credit hereunder, the Borrower and the Lender shall execute a Continuing Agreement for Commercial and Standby Letters of Credit in the form of Exhibit D-2 hereto. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the Lender relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything herein to the contrary, the Lender shall have no obligation hereunder to issue, and shall not issue, any Letter of Credit the proceeds of which would be made available to any Person (i) to fund any activity or business of or with any Sanctioned Person, or in any country or territory that, at the time of such funding, is the subject of any Sanctions or (ii) in any manner that would result in a violation of any Sanctions by any party to this Agreement.

(b) *Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions.* To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or fax (or transmit through an Electronic System, if arrangements for doing so have been approved by the Lender) to the Lender (reasonably in advance of the requested date of issuance, amendment, renewal or extension, but in any event no less than five (5) Business Days) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the Lender, the Borrower also shall submit a letter of credit application on the Lender's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension the Revolving Credit Exposure shall not exceed the Commitment.

The Lender shall not be under any obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Lender from issuing such Letter of Credit,

or any Requirement of Law relating to the Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Lender shall prohibit, or request that the Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Lender is not otherwise compensated hereunder) not in effect on the Effective Date, or shall impose upon the Lender any unreimbursed loss, cost or expense which was not applicable on the Effective Date and which the Lender in good faith deems material to it, or

(ii) the issuance of such Letter of Credit would violate one or more policies of the Lender applicable to letters of credit generally.

(c) *Expiration Date.* Unless otherwise expressly agreed to by the Lender, each Letter of Credit shall expire (or be subject to termination by notice from the Lender to the beneficiary thereof) at or prior to the close of business on the date that is five (5) Business Days prior to the Maturity Date.

(d) *Reimbursement.* If the Lender shall make any LC Disbursement in respect of a Letter of Credit, the Borrower shall reimburse such LC Disbursement by paying to the Lender an amount equal to such LC Disbursement not later than 11:00 a.m., New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 9:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 11:00 a.m., New York City time, on the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that, if such LC Disbursement is not less than \$100,000, and no Default or Event of Default shall have occurred, the Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.3 that such payment be financed with ~~a Base Rate~~ an ABR Borrowing in an equivalent amount and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting ~~Base Rate~~ ABR Borrowing (such ~~Base Rate~~ ABR Borrowing, a "Reimbursement Loan").

(e) *Obligations Absolute.* The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (d) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or any other Basic Document, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by the Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Lender nor any of its Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit,

any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms, any error in translation or any consequence arising from causes beyond the control of the Lender; provided that the foregoing shall not be construed to excuse the Lender from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by Applicable Law) suffered by the Borrower that are caused by the Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Lender (as finally determined by a court of competent jurisdiction), the Lender shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(f) *Disbursement Procedures.* The Lender shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The Lender shall promptly after such examination notify the Borrower by telephone (confirmed by fax or through an Electronic System) of such demand for payment if the Lender has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Lender with respect to any such LC Disbursement.

(g) *Interim Interest.* If the Lender shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the reimbursement is due and payable at the rate per annum set forth in Section 2.10(d) for ~~Base Rate~~ABR Loans and such interest shall be due and payable on the date when such reimbursement is payable.

(h) *Cash Collateralization.* If any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Lender demanding the deposit of cash collateral pursuant to this paragraph, the Borrower shall deposit in an account with the Lender, in the name and for the benefit of the Lender (the "*LC Collateral Account*"), an amount in cash equal to 105% of the amount of the LC Exposure as of such date plus accrued and unpaid interest thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in Section 6.01(e) or Section 6.01(f) hereof. The Lender shall have exclusive dominion and control, including the exclusive right of withdrawal, over the LC Collateral Account and the Borrower

hereby grants the Lender a security interest in the LC Collateral Account and all moneys or other assets on deposit therein or credited thereto. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Lender and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Lender for LC Disbursements for which it has not been reimbursed, together with related fees, costs, and customary processing charges, and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated, be applied to satisfy other Obligations. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all such Events of Default have been cured or waived as confirmed in writing by the Lender.

Section 2.5. Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a ~~Eurodollar~~SOFR Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing (other than a ~~Base-Rate~~an ABR Borrowing of a Reimbursement Loan) to a different Type or to continue such Borrowing and, in the case of a ~~Eurodollar~~SOFR Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing (other than a ~~Base-Rate~~an ABR Borrowing of a Reimbursement Loan) and the Loan comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section, the Borrower shall notify the Lender of such election by telephone by the time that a Borrowing Request would be required under Section 2.3 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by electronic copy to the Lender of a written Interest Election Request in a form approved by the Lender and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.2:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be ~~a Base Rate~~ an ABR Borrowing or a ~~Eurodollar~~ SOFR Borrowing; and

(iv) if the resulting Borrowing is a ~~Eurodollar~~ SOFR Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a ~~Eurodollar~~ SOFR Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) If the Borrower fails to deliver a timely Interest Election Request with respect to a ~~Eurodollar~~ SOFR Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to ~~a Base Rate~~ an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Lender so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a ~~Eurodollar~~ SOFR Borrowing and (ii) unless repaid, each ~~Eurodollar~~ SOFR Borrowing shall be converted to ~~a Base Rate~~ an ABR Borrowing at the end of the Interest Period applicable thereto; provided, however, that the actions specified in clauses (i) and (ii) immediately above shall apply automatically without notice from the Lender if the Event of Default that has occurred and is continuing is an Event of Default described in Section 6.1(e) or Section 6.1(f).

Section 2.6. Termination and Reduction of Commitment.

(a) Unless previously terminated, the Commitment shall terminate automatically on the Maturity Date.

(b) Subject to the provisions of the Fee Agreement, the Borrower may at any time terminate, or from time to time reduce, the Commitment; provided that (i) each reduction of the Commitment shall be in an amount that is an integral multiple of \$100,000 and not less than \$500,000 and (ii) the Borrower shall not terminate or reduce the Commitment if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.8, the Revolving Credit Exposure would exceed the Commitment.

(c) The Borrower shall notify the Lender of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitment delivered by the Borrower may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrower (by notice to the Lender on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitment shall be permanent.

Section 2.7. Repayment of Loans; Evidence of Debt.

(a) The Borrower hereby unconditionally promises to pay to the Lender the then unpaid principal amount of each Loan on the Maturity Date.

(b) The Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to the Lender resulting from each Loan made by the Lender, the Type of each Loan and the Interest Period, if any, applicable thereto and the amounts of principal and interest payable and paid to the Lender from time to time hereunder. The entries made in such account or accounts shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided that the failure of the Lender to maintain such account or accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(c) The Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to the Lender a promissory note payable to the Lender and in a form approved by the Lender. Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 7.3) be represented by one or more promissory notes in such form.

Section 2.8. Prepayment of Loans.

(a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section and in accordance with any amounts due and owing pursuant to Section 2.13 of this Agreement.

(b) The Borrower shall notify the Lender by telephone (confirmed by fax) or through Electronic System, if arrangements for doing so have been approved by the Lender, of any prepayment hereunder (i) in the case of prepayment of a ~~Eurodollar~~SOFR Borrowing, not later than 10:00 a.m., New York City time, three U.S. Government Securities Business Days before the date of prepayment, or (ii) in the case of prepayment of ~~a Base Rate~~an ABR Borrowing, not later than 10:00 a.m., New York City time, one Business Day before the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.6, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.6. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.2. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.10.

(c) If at any time the Revolving Credit Exposure exceeds the Commitment, the Borrower agrees to prepay immediately, upon notice from the Lender, Loans and/or deliver to the

Lender cash (to be held by the Lender as collateral to secure the Obligations) in an aggregate amount equal to such excess.

Section 2.9. Fees. The Borrower agrees to pay to the Lender the fees and other amounts set forth in the Fee Agreement at the time and in the manner set forth in the Fee Agreement, including, but not limited to, the Undrawn Fee and the Letter of Credit Fees. The Fee Agreement is, by this reference, incorporated herein in its entirety as if set forth herein in full. All fees and other amounts payable under the Fee Agreement shall be paid in immediately available funds. Fees paid shall not be refundable under any circumstances.

Section 2.10. Interest.

(a) The Loans comprising each ~~Base-Rate~~ ABR Borrowing (other than Reimbursement Loans) shall bear interest at the Alternate Base Rate plus the Applicable Margin.

(b) The Loans comprising each ~~Eurodollar~~ SOFR Borrowing shall bear interest at the Adjusted ~~LIBO~~ SOFR Rate for the Interest Period in effect for such Borrowing plus the Applicable Margin.

(c) The Reimbursement Loans shall bear interest at the Alternate Base Rate plus the Applicable Margin.

(d) Upon the occurrence and continuance of an Event of Default hereunder, the Default Rate shall apply to all Loans. Interest accruing at the Default Rate shall be payable on demand of the Lender. Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder or under the Fee Agreement is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to the Default Rate.

(e) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitment; provided that (i) interest accrued pursuant to paragraph (d) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of a ~~Base-Rate~~ ABR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any ~~Eurodollar~~ SOFR Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(f) All interest hereunder shall be computed on the basis of a year of 360 days and the actual number of days elapsed, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 or 366 days, as applicable, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted ~~LIBO-Rate~~ Term SOFR, Adjusted Daily Simple SOFR or ~~LIBO Rate~~ Daily Simple SOFR shall be determined by the Lender, and such determination shall be conclusive absent manifest error.

(g) Anything herein to the contrary notwithstanding, the amount of interest payable hereunder for any interest period shall not exceed the Maximum Rate. If for any interest period the applicable interest rate would exceed the Maximum Rate, then (i) such interest rate will not exceed but will be capped at such Maximum Rate and (ii) in any interest period thereafter that the applicable interest rate is less than the Maximum Rate, any Obligation hereunder will bear interest at the Maximum Rate until the earlier of (x) payment to the Lender of an amount equal to the amount which would have accrued but for the limitation set forth in this Section and (y) the Maturity Date. Upon the Maturity Date or, if no Revolving Credit Exposure is outstanding, on the date the Commitment is permanently terminated, in consideration for the limitation of the rate of interest otherwise payable hereunder, to the extent permitted by Applicable Law, the Borrower shall pay to the Lender a fee in an amount equal to the amount which would have accrued but for the limitation set forth in this Section 2.10(g) that has not previously been paid to the Lender in accordance with the immediately preceding sentence.

Section 2.11. Inability to Determine Rates; Alternate Rate of Interest; Illegality.

(a) Subject to clauses ~~(b), (c), (d), (e), (f) and~~ through (g) of this Section 2.11, if prior to the commencement of any Interest Period for a ~~Eurodollar~~SOFR Borrowing:

(i) the Lender determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining ~~the Adjusted LIBO Rate or the LIBO Rate, as applicable (including because the LIBO Screen Rate is not available or published on a current basis), for such Interest Period; provided that no Benchmark Transition Event shall have occurred at such time~~Adjusted Term SOFR for such Interest Period; or

(ii) the Lender determines that the Adjusted ~~LIBO Rate or the LIBO Rate, as applicable,~~Term SOFR for such Interest Period will not adequately and fairly reflect the cost to the Lender of making or maintaining its Loans included in such Borrowing for such Interest Period;

then the Lender shall give notice thereof to the Borrower by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until the Lender notifies the Borrower that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a ~~Eurodollar~~SOFR Borrowing shall be ineffective, and (B) if any Borrowing Request requests a ~~Eurodollar Revolving~~SOFR Borrowing, such Borrowing shall be made as an ~~Base Rate~~ABR Borrowing.

~~(b)~~(b) Subject to clauses (c) through (g) of this Section 2.11, if on or prior to the commencement of any Interest Period for a SOFR Borrowing, the Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Lender or its applicable lending office to make, maintain or fund Loans whose interest is determined by reference to SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or to determine or charge interest rates based upon SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, then, upon notice thereof by the Lender to the Borrower, (a) any obligation of the Lender

to make SOFR Loans, and any right of the Borrower to continue SOFR Loans or to convert ABR Loans to SOFR Loans, shall be suspended, and (b) the interest rate on which ABR Loans shall, if necessary to avoid such illegality, be determined by the Lender without reference to clause (c) of the definition of “Alternate Base Rate”, in each case until the Lender notifies the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (i) the Borrower shall, if necessary to avoid such illegality, upon demand from the Lender, prepay or, if applicable, convert all SOFR Loans to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Lender without reference to clause (c) of the definition of “Alternate Base Rate”), on the last day of the Interest Period therefor, if the Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if the Lender may not lawfully continue to maintain such SOFR Loans to such day, and (ii) if necessary to avoid such illegality, the Lender shall during the period of such suspension compute the ABR without reference to clause (c) of the definition of “Alternate Base Rate” until it is no longer illegal for the Lender to determine or charge interest rates based upon SOFR, Adjusted Daily Simple SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR. Upon any such prepayment or conversion, the Borrower shall also pay any additional amounts required pursuant to Section 2.13.

(c) Notwithstanding anything to the contrary herein or in any other Basic Document, if a Benchmark Transition Event ~~or an Early Opt-in Election, as applicable,~~ and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause ~~(1) or (2a)~~ of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Basic Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document and (y) if a Benchmark Replacement is determined in accordance with clause ~~(3b)~~ of the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any ~~Basic Loan~~ Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the Business Day ~~following the date agreed to by~~ the Lender and the Borrower ~~reach agreement on such replacement.~~ If the Benchmark Replacement without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document is Adjusted Daily Simple SOFR, all interest payments will be payable on a monthly basis.

~~(c) — Notwithstanding anything to the contrary herein or in any other Basic Document and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then the applicable Benchmark Replacement will replace the then-current Benchmark for all purposes hereunder or under any Basic Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Basic Document; provided that, this clause (c) shall not be effective unless the Lender has delivered to the Borrower a Term SOFR Notice. For the avoidance of doubt, the Lender shall not be required to deliver a Term SOFR Notice after a Term SOFR Transition Event and may do so in its sole discretion.~~

(d) In connection with the implementation of a Benchmark Replacement, the Lender will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Basic Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Basic Document.

(e) The Lender will promptly notify the Borrower of (i) ~~any occurrence of a Benchmark Transition Event, a Term SOFR Transition Event or an Early Opt-in Election, as applicable,~~ (ii) ~~the~~ the implementation of any Benchmark Replacement, (iii) ~~the~~ the effectiveness of any Benchmark Replacement Conforming Changes, (iv) ~~the~~ the removal or reinstatement of any tenor of a Benchmark pursuant to clause (d) below and (v) ~~the~~ the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Lender pursuant to this Section 2.11, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Basic Document, except, in each case, as expressly required pursuant to this Section 2.11.

(f) Notwithstanding anything to the contrary herein or in any other Basic Document, at any time (including in connection with the implementation of a Benchmark Replacement), (i) if the then-current Benchmark is a term rate (including the Term SOFR ~~or LIBO~~ Reference Rate) and either (A) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Lender in its reasonable discretion or (B) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is or will be no longer representative, then the Lender may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (ii) if a tenor that was removed pursuant to clause (i) above either (A) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is or will no longer be representative for a Benchmark (including a Benchmark Replacement), then the Lender may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(g) Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a ~~Eurodollar~~ SOFR Borrowing of, conversion to or continuation of ~~Eurodollar~~ SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a Borrowing of or conversion to ~~Base Rate~~ ABR Loans. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Alternate Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Alternate Base Rate.

Section 2.12. Increased Costs.

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, the Lender (except any such reserve requirement reflected in the Adjusted ~~LIBO-Rate~~Term SOFR); or

(ii) impose on the Lender ~~or the London interbank market~~ any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by the Lender or any Letter of Credit ~~or~~ participation therein; or

(iii) subject the Lender to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to the Lender of making, continuing, converting into or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to the Lender of issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by the Lender hereunder (whether of principal, interest or otherwise), then the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender for such additional costs incurred or reduction suffered.

(b) If the Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on the Lender's capital or on the capital of the Lender's holding company, as a consequence of this Agreement, the Commitment ~~of~~ or the Loans made by, or the Letters of Credit issued by, the Lender, to a level below that which the Lender or the Lender's holding company could have achieved but for such Change in Law (taking into consideration the Lender's policies and the policies of the Lender's holding company with respect to capital adequacy and liquidity), then from time to time the Borrower will pay to the Lender such additional amount or amounts as will compensate the Lender or the Lender's holding company for any such reduction suffered.

(c) A certificate of the Lender setting forth the amount or amounts necessary to compensate the Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender or its holding company, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of the Lender to demand compensation pursuant to this Section shall not constitute a waiver of the Lender's right to demand such compensation; *provided* that the Borrower shall not be required to compensate the Lender pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that the Lender notifies

the Borrower of the Change in Law giving rise to such increased costs or reductions and of the Lender's intention to claim compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.13. Break Funding Payments. In the event of (a) the payment of any principal of any ~~Eurodollar~~SOFR Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default or any prepayment pursuant to Section 2.8 hereof or Section 2.11 hereof), (b) the conversion of any ~~Eurodollar~~SOFR Loan other than on the last day of the Interest Period applicable thereto or (c) the failure to borrow, convert, continue or prepay any ~~Eurodollar~~SOFR Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.8(b) and is revoked in accordance therewith), then, in any such event, the Borrower shall compensate the Lender for the loss, cost and expense attributable to such event. In the case of a ~~Eurodollar~~SOFR Loan, such loss, cost or expense to the Lender shall be deemed to include an amount determined by the Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted ~~LIBO-Rate~~Term SOFR that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which the Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of the Lender setting forth any amount or amounts that the Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay the Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

Section 2.14. Payments Free of Taxes.

(a) Any and all payments by or on account of any obligation of the Borrower under any Basic Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of the Borrower) requires the deduction or withholding of any Tax from any such payment by the Borrower, then the Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.14) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(b) The Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Lender timely reimburse the Lender for, Other Taxes.

(c) As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.14, the Borrower shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(d) The Borrower shall indemnify the Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by the Lender or required to be withheld or deducted from a payment to the Lender and any reasonable expenses actually incurred arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

(e) If the Lender determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.14 (including by the payment of additional amounts pursuant to this Section 2.14), it shall pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made under this Section 2.14 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of the Lender reasonably and actually incurred and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). The Borrower, upon the request of the Lender, shall repay to the Lender the amount paid over pursuant to this paragraph (e) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that the Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (e), in no event will the Lender be required to pay any amount to the Borrower pursuant to this paragraph (e) the payment of which would place the Lender in a less favorable net after-Tax position than the Lender would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require the Lender to make available its Tax returns (or any other information relating to its Taxes that it deems confidential in its sole discretion) to the Borrower or any other Person.

(f) Each party's obligations under this Section 2.14 shall survive any assignment of rights by the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Basic Document.

(g) For purposes of this Section 2.14, the term "Applicable Law" includes FATCA.

Section 2.15. Payments Generally.

(a) The Lender shall calculate and use commercially reasonable efforts to notify the Borrower in writing not less than ten (10) Business Days before the due date of the amounts payable by the Borrower hereunder; provided, however, that the failure of the Bank to provide such notice or provide such notice on a timely basis shall not affect the obligation of the Borrower

to make any payments owed to the Lender hereunder when due. The Borrower shall make each payment required to be made by it hereunder or under the Fee Agreement (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.12, 2.13 or 2.14, or otherwise) prior to 5:00 p.m., New York City time, on the date when due, in immediately available funds, without set off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Lender, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Lender at its offices at 270 Park Avenue, New York, New York, except that payments pursuant to Sections 2.12, 2.13, 2.14 and 7.5 shall be made directly to the Persons entitled thereto. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Lender to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, and (ii) second, ratably towards payment of principal and unreimbursed LC Disbursements then due hereunder.

Section 2.16. Mitigation Obligation. If the Lender requests compensation under Section 2.12, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to the Lender or any Governmental Authority for the account of the Lender pursuant to Section 2.14, then the Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of the Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Sections 2.12 or 2.14, as the case may be, in the future and (ii) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to the Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by the Lender in connection with any such designation or assignment.

Section 2.17. Extension of Maturity Date. The Maturity Date may be extended an unlimited number of times, in each case in the manner set forth in this Section 2.17. Upon receipt of written request of the Borrower to extend the Maturity Date, received no more than one hundred ninety (90) days and no less than sixty (60) days prior to the then current Maturity Date, the Lender will use its commercially reasonable efforts to notify the Borrower of its response within thirty (30) days of receipt of the request therefor (the Lender's decision to be made in its sole and absolute discretion and on such terms and conditions as to which the Lender and the Borrower may agree); provided, however, that the failure of the Borrower to receive a written confirmation from the Lender within the time established therefor shall be deemed a denial of such request. Any extension of the Maturity Date will be deemed to be on the existing terms of this Agreement unless the Lender and the Borrower have entered into a written agreement confirming a change in any term of this Agreement.

Section 2.18. Pledge; Security of Obligations. The Net Revenues are hereby pledged by the Borrower to the payment of the Obligations without priority or distinction of one Obligation

over another Obligation. The pledge of Net Revenues is valid and binding in accordance with the terms of the Act, the Joint Powers Agreement and the Resolution, and the Net Revenues shall immediately be subject to the pledge, and the pledge shall constitute a lien and security interest which shall immediately attach to the Net Revenues and be effective, binding, and enforceable against the Borrower, its successors, creditors, and all others asserting the rights therein, to the extent set forth in this Agreement, and in accordance with the Act, the Joint Powers Agreement and the Resolution, irrespective of whether those parties have notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. The pledge of the Net Revenues herein made shall be irrevocable until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full in cash and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed. Notwithstanding any other provision of this Agreement to the contrary, all Obligations are limited obligations of the Borrower payable solely from Net Revenues. The pledge of the Net Revenues herein made shall be senior to any pledge of the Net Revenues made with respect to any Subordinate Debt.

ARTICLE 3 CONDITIONS

Section 3.1. Conditions Precedent to Effectiveness. The obligation of the Lender to make Loans and to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied:

(a) *Opinions.* The Lender has received an opinion of Chapman & Cutler LLP, special counsel to the Borrower, dated the Closing Date and addressed to the Lender in the form attached hereto as Exhibit A.

(b) *Documents.* The Lender has received (i) executed copies of the Basic Documents and the Lockbox Security Documents executed by the Borrower on the Closing Date or prior to the Closing Date if certified by the Secretary of the Borrower, the Clerk of the Board or any Authorized Representative, as applicable, as being complete and in full force and effect on and as of the Closing Date, and (ii) a certified copy of the Joint Powers Agreement.

(c) *Defaults; Representations and Warranties.* On and as of the Closing Date, (i) no Default or Event of Default has occurred and is continuing or would result from the execution and delivery of this Agreement and the Fee Agreement, and (ii) the representations of the Borrower set forth in Article 4 hereof (A) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the Closing Date with the same force and effect as if made on and as of such date, and (B) that are qualified by concepts of materiality are true and correct in all respects on and as of the Closing Date with the same force and effect as if made on and as of such date.

(d) *No Litigation.* No action, suit, investigation or proceeding is pending or, to the knowledge of the Borrower, threatened (i) in connection with the Basic Documents, the Lockbox Security Documents or any transactions contemplated thereby or (ii) against or

affecting the Borrower, the result of which could reasonably be expected to have a Material Adverse Effect.

(e) *No Material Adverse Change.* Since the date of the ~~2020~~2022 Audited Financial Statements, (i) no Material Adverse Change has occurred and (ii) to the best of its knowledge, no law, regulation, ruling or other action (or interpretation or administration thereof) of the United States, the State of California or any political subdivision or authority therein or thereof is in effect or has occurred, the effect of which would be to prevent the Lender from fulfilling its obligations under this Agreement or the Letters of Credit.

(f) *Certificate.* The Lender has received (i) certified copies of all proceedings of the Borrower authorizing the execution, delivery and performance of the Basic Documents and the transactions contemplated thereby and (ii) a certificate or certificates of one or more Authorized Representatives dated the Closing Date certifying the accuracy of the statements made in Section 3.1(c), (d), (e) and (i) hereof and further certifying the name, incumbency and signature of each individual authorized to sign this Agreement, the Fee Agreement and the other documents or certificates to be delivered by the Borrower pursuant hereto or thereto, on which certification the Lender may conclusively rely until a revised certificate is similarly delivered, and that the conditions precedent set forth in this Section 3.1 have been satisfied.

(g) *Payment of Fees.* The Lender has received all fees and expenses due and payable to the Lender and/or its legal counsel pursuant to the Fee Agreement.

(h) *Financial Statements.* The Lender has received the 2020 Audited Financial Statements, internally prepared quarterly budget reports of the Borrower for the most recent fiscal quarter end for which quarterly budget reports are available, if not previously provided.

(i) *Repayment and RCB Debt Termination of RCB Credit Agreement.* The Lender shall have received a payoff letter from RCB to the effect that, upon application of the Initial Borrowing hereunder and receipt from the Borrower of cash in an amount sufficient to cash collateralize the Borrower's reimbursement obligations to RCB in respect of the SCE Letter of Credit, (i) all Debt in favor of RCB (if any) that is outstanding on the Closing Date under the RCB Credit Agreement will have been paid in full in immediately available funds; (ii) any commitment by RCB to provide future advances to, or to issue letters of credit on behalf of, the Borrower under the RCB Credit Agreement has been terminated in full as of the Closing Date; (iii) all fees and other amounts owing to RCB through the Closing Date under the RCB Credit Agreement and related documents have been paid in full in immediately available funds; (iv) all Liens in favor of RCB over Property of the Borrower (other than the aforementioned cash collateral) that secure Debt under the RCB Credit Agreement and related documents (which for the avoidance of doubt does not include the Collateral described in the Security Agreement) will be released (or provision for such release will be irrevocably made); and (v) all documents evidencing Debt under the RCB Credit Agreement and related documents will be terminated (other than those provisions set forth therein that expressly survive termination).

(j) *Other Matters.* The Lender has received such other statements, certificates, agreements, documents and information with respect to the Borrower and matters contemplated by the Basic Documents and the Lockbox Security Documents as the Lender may have requested.

The execution and delivery of this Agreement by the Lender signifies its satisfaction with the conditions precedent set forth in this Section 3.1.

Section 3.2. Conditions Precedent to each Credit Event. The obligation of the Lender to make a Loan on the occasion of any Borrowing, and of the Lender to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) Solely with respect to the issuance of the initial Loan or Letter of Credit hereunder, that the Borrower shall have filed the necessary notices and filings with, and provided for payment of any fee related thereto to, the California Debt Issuance Advisory Commission.

(b) The representations and warranties of the Borrower set forth in this Agreement (other than the representations set forth in Section 4.9 but solely as they relate to Section 6.1(m)) (i) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality are true and correct in all respects on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable, with the same force and effect as if made on and as of such date.

~~(c)~~ The Borrower shall represent that there has not occurred any event or any series of events that has had or is reasonably likely to have or to cause (in each case both prior to the execution and delivery of this Agreement and the Fee Agreement and/or resulting therefrom) a Material Adverse Change.

(d) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Default or Event of Default (other than any Event of Default solely pursuant to Section 6.1(m) or resulting solely from Section 3.2(c)) shall have occurred and be continuing.

~~(d)~~ It has provided the Lender with a completed Borrowing Request substantially in the form of Exhibit C hereto or a Letter of Credit Request substantially in the form of Exhibit D-1 hereto, as applicable.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (b), (c) and ~~(d)~~ of this Section.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to make Loans and issue the Letters of Credit, the Borrower represents and warrants to the Lender as follows:

Section 4.1. Organization, Powers, Etc. The Borrower (a) is a public agency formed under the provisions of the Act that is qualified to be a community choice aggregator pursuant to California Public Utilities Code Section 366.2 and; (b) has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying. The Borrower has the agency power, and has exercised such agency power, to (i) execute, deliver and perform its obligations under the Basic Documents and the Lockbox Security Agreements; and (ii) grant the Lien over Net Revenues as security for the performance of the Obligations.

Section 4.2. Authorization, Absence of Conflicts, Etc. The execution, delivery and performance by the Borrower of the Basic Documents (a) have been duly authorized by all necessary action on the part of the Borrower and its Members , (b) do not conflict with, or result in a violation of, the Act, the Joint Powers Agreement or the Resolution, (c) do not conflict with, or result in a violation of, any Laws (other than the Act) or any order, writ, rule or regulation of any court or governmental agency or instrumentality binding upon or applicable to the Borrower which conflict or violation could reasonably be expected to result in a material ~~Adverse Effect~~impairment of the rights and remedies of the Lender under this Agreement or any other Basic Document, or of the ability of the Borrower to perform its Obligations under this Agreement, any other Basic Document to which it is a party, or any Lockbox Security Agreement to which the Borrower is a party and (d) do not conflict with, result in a violation of, or constitute a default under, any resolution, agreement or instrument to which the Borrower is a party (other than the Joint Powers Agreement), or by which the Borrower or any of its Property is bound which, in any case, could reasonably be expected to result in a material ~~Adverse Effect~~impairment of the rights and remedies of the Lender under this Agreement or any other Basic Document, or of the ability of the Borrower to perform its Obligations under this Agreement, any other Basic Document to which it is a party, or any Lockbox Security Agreement to which the Borrower is a party.

Section 4.3. Binding Obligations. The Basic Documents are valid and binding obligations of the Borrower (assuming due authorization, execution and delivery by the other parties thereto) enforceable against the Borrower in accordance with their respective terms, except to the extent, if any, that the enforceability thereof may be limited by (i) any applicable bankruptcy, insolvency, reorganization, moratorium or other similar law of the State or Federal government affecting the enforcement of creditors' rights generally heretofore or hereafter enacted, (ii) the fact that enforcement may also be subject to the exercise of judicial discretion in appropriate cases and (iii) the limitations on legal remedies against public agencies of the State.

Section 4.4. Governmental Consent or Approval. No consent, approval, permit, authorization or order of, or registration or filing with, any court or government agency, authority

or other instrumentality not already obtained, given or made is required on the part of the Borrower for execution, delivery and performance by the Borrower of the Basic Documents.

Section 4.5. Absence of Material Litigation. There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, arbitrator or governmental or other board, body or official pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower questioning the validity of the Joint Powers Agreement, the execution, delivery and performance by the Borrower of the Basic Documents or any proceeding taken or to be taken by the Borrower or the Board in connection therewith, or seeking to prohibit, restrain or enjoin the execution, delivery and performance by the Borrower of the Basic Documents, or which could reasonably be expected to result in ~~any Material Adverse Effect~~ a material impairment of the rights and remedies of the Lender under this Agreement or any other Basic Document, or of the ability of the Borrower to perform its Obligations under this Agreement, any other Basic Document to which it is a party, or any Lockbox Security Agreement to which the Borrower is a party, or wherein an unfavorable decision, ruling or finding would in any way materially adversely affect the transactions contemplated by the Basic Documents (any such action or proceeding being herein referred to as “Material Litigation”).

Section 4.6. Financial Condition. The most recent Annual Financial Statements delivered (or deemed delivered) to the Lender were prepared in accordance with GAAP and were subject to certification by independent certified public accountants of nationally recognized standing or by independent certified public accountants otherwise acceptable to the Lender. The most recent unaudited Financial Statements of the Borrower delivered (or deemed delivered) to the Lender were prepared in accordance with GAAP. The data on which such Financial Statements are based (as modified or supplemented by additional data) were accurate in all material respects. Since the date of the most recent Annual Financial Statements delivered to the Lender, no material ~~Adverse Effect has occurred~~ impairment of the rights and remedies of the Lender under this Agreement or any other Basic Document, or of the ability of the Borrower to perform its Obligations under this Agreement, any other Basic Document to which it is a party, or any Lockbox Security Agreement to which the Borrower is a party has occurred. The most recent budget report delivered to the Lender was prepared in good faith based upon assumptions believed to be reasonable by the Borrower at the time the budget was prepared.

Section 4.7. Incorporation of Representations and Warranties. The representations and warranties of the Borrower set forth in the Basic Documents (other than this Agreement and the Fee Agreement) and the Lockbox Security Documents are true and accurate in all material respects on the Closing Date, as fully as though made on the Closing Date. The Borrower makes, as of the Closing Date, each of such representations and warranties to, and for the benefit of, the Lender, as if the same were set forth at length in this Section 4.7 together with all applicable definitions thereto. No amendment, modification or termination of any such representations, warranties or definitions contained in the Basic Documents (other than this Agreement and the Fee Agreement) and the Lockbox Security Documents will be effective to amend, modify or terminate the representations, warranties and definitions incorporated in this Section 4.7 by this reference, without the prior written consent of the Lender.

Section 4.8. Accuracy and Completeness of Information. The Basic Documents, the Lockbox Security Documents and all certificates, financial statements, documents and other written information furnished to the Lender by or on behalf of the Borrower in connection with the transactions contemplated hereby were, as of their respective dates, complete and correct in all material respects to the extent necessary to give the Lender true and accurate knowledge of the subject matter thereof and did not contain any untrue statement of a material fact.

Section 4.9. No Default. No Default or Event of Default under this Agreement has occurred and is continuing. No “event of default” (after giving effect to applicable cure periods, if any) has occurred and is continuing with respect to the Borrower under any other material mortgage, indenture, contract, agreement or undertaking respecting the Enterprise (including, but not limited to, any PPA) to which the Borrower is a party or which purports to be binding on the Borrower or on any of the property of the Enterprise.

Section 4.10. No Proposed Legal Changes. There is no amendment or, to the knowledge of the Borrower, proposed amendment to the Constitution of the State, any State law or the Joint Powers Agreement or any administrative interpretation of the Constitution of the State, any State law, or the Joint Powers Agreement, or any judicial decision interpreting any of the foregoing, the effect of which could reasonably be expected to ~~have a Material Adverse Effect~~ materially impair the rights and remedies of the Lender under this Agreement or any other Basic Document, or of the ability of the Borrower to perform its Obligations under this Agreement, any other Basic Document to which it is a party, or any Lockbox Security Agreement to which the Borrower is a party.

Section 4.11. Compliance with Laws, Etc. The Borrower is in material compliance with all Applicable Laws.

Section 4.12. ~~Environmental Matters.~~ ~~In the ordinary course of its business, the Borrower conducts an ongoing review of Environmental Laws on the business, operations and the condition of its Property, in the course of which it identifies and evaluates associated liabilities and costs (including, but not limited to, any capital or operating expenditures required for clean-up or closure of properties currently or previously owned or operated, any capital or operating expenditures required to achieve or maintain compliance with environmental protection standards imposed by law or as a condition of any license, permit or contract, any related constraints on operating activities, including any periodic or permanent shutdown of any facility or reduction in the level of or change in the nature of operations conducted thereat and any actual or potential liabilities to third parties, including employees, and any related costs and expenses). On the basis of such review, the Borrower does not believe that compliance by the Borrower with Environmental Laws is likely to have a Material Adverse Effect.~~ [Reserved.]

Section 4.13. Regulation U. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System).

Section 4.14. Liens. This Agreement creates a valid Lien on and pledge of the Net Revenues to secure the payment and performance of the Borrower’s obligations under this

Agreement and the Fee Agreement, and no filings, recordings, registrations or other actions are necessary on the part of the Borrower, the Lender or any other Person to create or perfect such Lien. Except for the Lien over Net Revenues contained in this Agreement and Liens over Net Revenues securing Parity Debt and Subordinate Debt permitted by this Agreement, there is no pledge of or Lien on Net Revenues. There is no pledge of or Lien on Net Revenues that ranks senior to the Obligations.

Section 4.15. Sovereign Immunity. The Borrower is not entitled to claim immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) with respect to itself or the Revenues (irrespective of their use or intended use) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Basic Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or for recovery of property or (iii) execution or enforcement of any judgment to which it or the Revenues might otherwise be made subject in any action, suit or proceeding relating to this Agreement or any other Basic Document, and no such immunity (whether or not claimed) may be attributed to the Borrower or the Revenues.

Section 4.16. Usury. The terms of the Basic Documents regarding the calculation and payment of interest and fees do not violate any applicable usury laws.

Section 4.17. Insurance. As of the Closing Date, the Borrower maintains such insurance, including self-insurance, as is required by Section 5.1(k) hereof.

Section 4.18. ERISA. The Borrower does not maintain or contribute to, and has not maintained or contributed to, any Employee Plan that is subject to Title IV of ERISA.

Section 4.19. Sanctions Concerns and Anti-Corruption Laws. Neither the Borrower nor, to the best knowledge of the Borrower, any director, officer, employee, or affiliate thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions or (ii) included on OFAC's List of Specially Designated Nationals, HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority. The Borrower has conducted its business in compliance with the United States Foreign Corrupt Practices Act of 1977, other similar Anti-Corruption Laws in other jurisdictions, Sanctions and has instituted and maintained policies and procedures designed to promote and achieve compliance with such Laws. No transaction contemplated by this Agreement will violate Anti-Corruption Laws or Sanctions.

Section 4.20. Secured Debt. As of the Closing Date, the Borrower has no Debt for borrowed money other than Debt under the County of Los Angeles Funding Agreement, and no Debt secured by Property of the Borrower (including Revenues and Net Revenues). The Debt in favor of the County of Los Angeles under the County of Los Angeles Funding Agreement is not secured by any Property of the Borrower.

ARTICLE 5 COVENANTS

Section 5.1. Affirmative Covenants. Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full in cash and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed in full in cash, the Borrower covenants and agrees with the Lender that:

(a) *Accounting and Reports.* The Borrower shall maintain a standard system of accounting in accordance with GAAP consistently applied and furnish to the Lender:

(i) as soon as available, and in any event within (A) sixty (60) days after the close of each of the first three fiscal quarters of each Fiscal Year and (B) one hundred twenty (120) days after the close of each of the fourth fiscal quarter of each Fiscal Year, unaudited Financial Statements for the quarterly period then ended, prepared in accordance with GAAP;

(ii) as soon as available, and in any event within six (6) months after the close of each Fiscal Year, a copy of the Annual Financial Statements at and as of the last day of the Fiscal Year then ended, and accompanying notes thereto, each in reasonable detail showing in comparative form the figures for the previous Fiscal Year, accompanied by an unqualified opinion thereon of Borrower's independent public accountants, to the effect that the financial statements have been prepared in accordance with GAAP and present fairly in accordance with GAAP the financial condition of Borrower as of the close of such Fiscal Year and the results of its operations and cash flows for the Fiscal Year then ended and that an examination of such accounts in connection with such financial statements has been made in accordance with generally accepted auditing standards and, accordingly, such examination included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(iii) promptly after receipt thereof, any additional written reports, management letters or other detailed information contained in writing concerning significant aspects of Borrower's operations and financial affairs given to it by its independent public accountants;

(iv) promptly after knowledge thereof shall have come to the attention of any responsible officer of Borrower, written notice of any litigation threatened in writing or any pending litigation or governmental proceeding or labor controversy against Borrower which, if adversely determined, could reasonably be expected to have a Material Adverse Effect or result in the occurrence of any Default or Event of Default hereunder;

(v) as soon as available, and in any event within 45 days of adoption, the Borrower shall provide the Lender its annual budget and all amendments and modifications thereof;

(vi) as soon as available, and in any event within 60 days of the end of each month, a copy of the Borrower's monthly "financial dashboard" or such other the monthly operating and financial information as may be requested by the Lender;

(vii) promptly after incurrence or issuance thereof by the Borrower, copies of each agreement in respect of Secured Debt;

(viii) promptly thereafter, and in any event within 10 Business Days of the occurrence thereof, any change in the Borrower's Fiscal Year together a written explanation of the rationale therefor;

(ix) promptly thereafter, and in any event within 10 Business Days of the occurrence thereof, (A) any change or modification in the Borrower's accounting methodology (including the basis on which accounting determinations are made) that, when applied to the Financial Statements to be prepared by the Borrower following such change or modification, would render such Financial Statements inconsistent with the Financial Statements prepared by the Borrower prior to such change or modification, and (B) a written ~~explanantion~~explanation of the rationale for making such change or modification; ~~and~~

~~(x)~~(x) promptly following any change in the information provided in the Beneficial Ownership Certification delivered to the Lender that would result in a change to the list of beneficial owners identified in such certification, written notice of such change; and

(xi) promptly after the request therefor, all such other information as Lender may reasonably request.

Each of the quarterly and annual Financial Statements furnished to Lender pursuant to subsection (a)(i) and (ii) of this Section 5.1 shall be accompanied by a compliance certificate, substantially in the form of Exhibit B hereto, signed by an Authorized Representative stating that no Event of Default or Default has occurred or if any Event of Default or Default has occurred, specifying the nature of such Event of Default or Default, the period of its existence, the nature and status thereof and any remedial steps taken or proposed to correct such Event of Default or Default.

(b) *Access to Records.* At any reasonable time and from time to time, during normal business hours and, so long as no Event of Default has occurred and is continuing, on at least five (5) Business Days' notice, the Borrower shall permit the Lender or any of its agents or representatives to visit and inspect any of the Properties of the Borrower, to examine the books of account of the Borrower (and to make copies thereof and extracts therefrom), and to discuss the affairs, finances and accounts of the Borrower with, and to

be advised as to the same by, its officers, all at such reasonable times and intervals as the Lender may reasonably request.

(c) *Compliance with Basic Documents; Operation and Maintenance of Enterprise.*

(i) The Borrower shall perform and comply with each covenant set forth in the Basic Documents and any other agreements, instruments or documents evidencing Debt of the Borrower, including Parity Debt or Subordinate Debt. By the terms of this Agreement, the Lender is hereby made a third-party beneficiary of the covenants set forth in each of the Basic Documents (other than this Agreement and the Fee Agreement), and each such covenant, together with the related definitions of terms contained therein, is incorporated by reference in this Section 5.1(c) with the same effect as if it were set forth herein in its entirety. Except as otherwise set forth in paragraph (ii) below and in Section 5.2(a) hereof, the Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing), or request or agree to any consent or waiver under, or effect or permit the cancellation, acceleration or termination of, or release or permit the release of any collateral held under any of the Basic Documents in any manner without the prior written consent of the Lender, and the Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by the Lender to strictly enforce the obligations of the other parties to any of the Basic Documents, as well as each of the covenants set forth therein. The Borrower shall give prior written notice to the Lender of any action referred to in this subparagraph (i).

(ii) The Borrower covenants that it will maintain and preserve the Enterprise in good repair and working order at all times from the Revenues available for such purposes, in conformity with standards customarily followed for community choice aggregators of like size and character. The Borrower will from time to time make all necessary and proper repairs, renewals, replacements and substitutions to the Properties of the Borrower, so that at all times business carried on in connection with the Enterprise shall and can be properly and advantageously conducted in an efficient manner and at reasonable cost, and will operate the Enterprise in an efficient and economical manner and shall not commit or allow any waste with respect to the Enterprise.

(d) *Defaults.* The Borrower shall notify the Lender of any Default or Event of Default of which the Borrower has knowledge, as soon as possible and, in any event, within three (3) Business Days of acquiring knowledge thereof, setting forth the details of such Default or Event of Default and the action which the Borrower has taken and/or proposes to take with respect thereto.

(e) *Compliance with Laws.* The Borrower shall comply in all material respects with all Laws binding upon or applicable to the Borrower (including Environmental Laws). The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower and its respective directors, officers, employees and

agents with Anti-Corruption Laws and applicable Sanctions. The Borrower will not use or allow any tenants or subtenants to use the Borrower's Property for any business activity that violates any Law or that supports a business that violates any Law.

(f) *Investment Policy.* The Borrower shall promptly notify the Lender in writing, not less than thirty (30) days after the Borrower receives notice of the formal consideration thereof, of any change proposed to the Investment Policy, which proposed change would increase or modify the types of investments permitted thereby as of the Closing Date.

(g) *Notices.* The Borrower shall promptly give notice to the Lender of any action, suit or proceeding actually known to it at law or in equity or by or before any court, governmental instrumentality or other agency which, if adversely determined, could reasonably be expected to materially adversely impair the ability of the Borrower to perform its obligations under any Basic Document.

(h) *Bank Agreements.* In the event that Borrower shall enter into or otherwise consent to any amendment, supplement or other modification of any Bank Agreement after the Closing Date which Bank Agreement contains additional or more restrictive covenants or additional or more restrictive events of default or additional or improved remedies ("*Improved Provisions*," which for the avoidance of doubt does not include pricing, termination fees and provisions related to interest rates but does include improved term-out provisions), then the Borrower shall provide the Lender with a copy of such Bank Agreement and the Improved Provisions shall automatically be deemed incorporated into this Agreement and the Lender shall have the benefit of the Improved Provisions until such time as the Bank Agreement containing such Improved Provisions terminates. The Borrower shall promptly cooperate with the Lender to enter into an amendment of this Agreement to include such Improved Provisions.

(i) *Further Assurances.* The Borrower shall execute, acknowledge where appropriate and deliver, and cause to be executed, acknowledged where appropriate and delivered, from time to time, promptly at the request of the Lender, all such instruments and documents as are usual and customary or advisable to carry out the intent and purpose of the Basic Documents.

(j) *Notices.* The Borrower shall promptly furnish, or cause to be furnished, to the Lender (i) notice of the occurrence of any "default" or "event of default" or "termination event" under any Basic Document (other than this Agreement and the Fee Agreement), any Lockbox Security Document or any other agreement related to Secured Debt, (ii) copies of any communications received from any Governmental Authority with respect to the transactions contemplated by the Basic Documents, the Lockbox Security Documents or any other agreement related to Secured Debt which are not restricted or prohibited from being shared with the Lender under Applicable Law or the direction of a court of competent jurisdiction or other Governmental Authority, (iii) notice of any proposed substitution of any Letter of Credit, and (iv) notice of the passage of any state or local Law relating to, or affecting, community choice aggregators which the Borrower, in

its reasonable determination believes, could reasonably be expected to result in a Material Adverse Effect of the type described in clause (b) or (c) of the definition thereof.

(k) *Maintenance of Insurance.* The Borrower shall maintain, or cause to be maintained, at all times, insurance on and with respect to its Properties with responsible and reputable insurance companies; *provided, however,* that the Borrower may maintain self-insurance general liability on its Properties not covered by the public entity property insurance program policy, for worker's compensation and vehicle liability and, with the consent of the Lender, such other self-insurance as it deems prudent. Such insurance must include casualty, liability and workers' compensation and be in amounts and with deductibles and exclusions customary and reasonable for governmental entities of similar size and with similar operations as the Borrower. The Borrower shall, upon request of the Lender, furnish evidence of such insurance to the Lender. The Borrower shall also procure and maintain at all times adequate fidelity insurance or bonds on all officers and employees handling or responsible for any Revenues or other funds of the Enterprise, such insurance or bond to be in an aggregate amount at least equal to the maximum amount of such Revenues or funds at any one time in the custody of all such officers and employees or in the amount of one million dollars (\$1,000,000), whichever is less. The insurance described above may be provided as part of any comprehensive fidelity and other insurance and not separately for the Enterprise.

(l) *Preservation of Security.* The Borrower shall take any and all actions necessary to preserve and defend the pledge of Net Revenues set forth in this Agreement.

(m) *Rates.* The Borrower shall fix, establish, maintain and collect rates and charges for electric power and energy and other services, facilities and commodities sold, furnished or supplied by the Borrower (collectively, "*generation rates*"), which shall provide the Borrower with Revenues in each Fiscal Year sufficient to pay budgeted Operating Costs and Annual Debt Service for such Fiscal Year and, to the extent not paid from other available moneys, any and all amounts the Borrower is obligated to pay or set aside from Revenues by Applicable Law or contract in such Fiscal Year. If the Borrower increases or decreases its generation rates during such Fiscal Year by more than 5% from the generation rates assumption used in the preparation of the budget, the Borrower shall provide the Lender with a twelve (12) consecutive month forecast of estimated Net Revenues (giving effect to the adjustment to the generation rates), as soon as practicable after such increase or decrease and in any event no later than ten (10) Business Days thereafter.

(n) *Budget.* The Borrower shall include in each annual budget of the Borrower all amounts reasonably anticipated to be necessary to pay all Operating Costs and Annual Debt Service at the time the budget is prepared, including debt service on all Secured Debt and Unsecured Debt, for the Fiscal Year to which such budget applies and to comply with the Financial Reserve Policy and the Fiscal Stabilization Fund Policy.

(o) *Payment of Taxes, Etc.* The Borrower shall pay and discharge, or cause to be paid and discharged, all taxes, assessments and other governmental charges which may

hereafter be lawfully imposed upon the Borrower on account of the Enterprise or any portion thereof and which, if unpaid, might impair the security of this Agreement and the Fee Agreement, but nothing herein contained will require the Borrower to pay any such tax, assessment or charge so long as it in good faith contests the validity thereof. The Borrower shall duly observe and comply with all valid material requirements of any Governmental Authority relative to the Enterprise or any part thereof.

(p) *Lockbox Security Documents and PPAs.* The Borrower shall perform and comply with all its agreements and covenants set forth in the Lockbox Security Documents and all material PPAs. The Borrower will not amend, supplement or otherwise modify (or permit any of the foregoing) any Lockbox Security Document in any manner that could reasonably be expected to expand the definition of “Collateral” set forth in the Security Agreement, change the definition of “Obligations” set forth in the Security Agreement or alter the distribution of the proceeds of Collateral set forth in Section 6.2 of the Security Agreement without, in each case, the prior written consent of the Lender, and the Borrower shall take, or cause to be taken, all such actions as may be reasonably requested by the Lender to strictly enforce the obligations of the other parties to any of the Lockbox Security Documents, as well as each of the covenants set forth therein. The Borrower shall not revoke or attempt to revoke any Direction Letter (as defined in Security Agreement) without the prior written consent of the Lender. The Borrower shall not terminate any Lockbox Security Document without the prior written consent of the Lender. The Borrower shall give prior written notice to the Lender of any proposed action referred to in this subparagraph (p).

(q) *Debt Service Coverage.* The Borrower shall not permit the Debt Service Coverage Ratio to be less than 1.10 for any fiscal quarter of the Borrower, commencing with the fiscal quarter ended September 30, 2021; provided, however, in the event the Debt Service Coverage Ratio for any fiscal quarter is less than 1.10 but the Days Liquidity on Hand for such fiscal quarter equals or exceeds 50 days, then the Borrower shall not be considered to have breached this Section 5.1(q); provided, further, however, that the Borrower may only rely on the cure contained in the preceding proviso twice during any Fiscal Year. The Borrower shall determine the Debt Service Coverage Ratio and Days Liquidity on Hand at each fiscal quarter end and shall provide the Lender with written notice thereof together with supporting calculations in reasonable detail to the Lender as soon as practicable following the end of a fiscal quarter and in any event no later than sixty (60) calendar days following the end of each of the first three fiscal quarters and one hundred twenty (120) calendar days following the end of the fourth fiscal quarter (each such notice, a “*Debt Service Coverage Ratio Notice*”).

(r) *Policies.* The Borrower shall comply with the terms of the Financial Reserve Policy and the Fiscal Stabilization Fund Policy and shall not amend or modify the Reserve Policy without the prior written consent of the Lender if such amendment or modification could reasonably be expected to result in a Material Adverse Effect. The Borrower shall deliver to the Lender copies of all amendments of and modifications to the Financial Reserve Policy and the Fiscal Stabilization Fund Policy as soon as practicable following adoption and in any event no later than ten (10) Business Days after adoption.

Section 5.2. Negative Covenants. Until the Commitment has expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full in cash and all Letters of Credit shall have expired or terminated, in each case, without any pending draw, and all LC Disbursements shall have been reimbursed in full in cash, the Borrower covenants and agrees with the Lender that it will not:

(a) *No Impairment.* Take any action that would have an adverse effect on (i) the ability of the Borrower to pay when due amounts owing to the Lender or any Participant under this Agreement or the Fee Agreement; (ii) the pledge of Net Revenues or the priority of payments from Net Revenues provided in this Agreement; or (iii) the rights or remedies of the Lender under the Basic Documents.

(b) *Merger, Disposition of Assets.* Consolidate or merge with or into any Person or sell, lease or otherwise transfer all or substantially all of its Property to any Person.

(c) *Abandon.* Take any action to abandon the Enterprise or any significant portion thereof.

(d) *Preservation of Existence, Etc.* Take any action to terminate its existence as a public agency under the Act or its rights and privileges as such an entity within the State.

(e) *Liens.* Create or suffer to exist or permit any Lien on the Revenues or the proceeds thereof other than the Liens created (i) by this Agreement, (ii) or permitted by any agreement or instrument evidencing Parity Debt or Subordinate Debt issued or incurred in accordance with the terms of this Agreement, and (iii) by the Security Agreement.

(f) *Sovereign Immunity.* To the fullest extent permitted by Applicable Law, with respect to its obligations arising under this Agreement or any other Basic Document, the Borrower irrevocably agrees that it will not assert or claim any immunity on the grounds of sovereignty or other similar grounds (including, without limitation, governmental immunity) from (i) any action, suit or other proceeding arising under or relating to this Agreement or any other Basic Document, (ii) relief by way of injunction, order for specific performance or writ of mandamus or (iii) execution or enforcement of any judgment to which it or its revenues might otherwise be entitled in any such action, suit or other proceeding, and the Borrower hereby irrevocably waives, to the fullest extent permitted by Applicable Law, with respect to itself and its revenues (irrespective of their use or intended use), all such immunity.

(g) *Enterprise.* Construct, operate or maintain any system or utility competitive with the Enterprise. The Borrower shall have in effect, or cause to have in effect, at all times an ordinance or resolution requiring all customers of the Enterprise to pay the fees, rates and charges applicable to the services and facilities furnished by the Enterprise. The Borrower shall not provide any service of the Enterprise free of charge to any Person, except (i) to the extent that any such free use is required by the terms of any existing

contract or agreement and (ii) for incidental insignificant free use so long as such free use does not prevent the Borrower from satisfying the other covenants of this Agreement.

(h) *Preservation of Existence, Etc.* Take any action to accomplish a merger of the Enterprise with any other entity or enterprise, unless and until the Borrower has provided a method for segregating the Revenues from the revenues of said other entity or enterprise in a manner that will, or shall otherwise, preserve the Lien on the Net Revenues for the payment of the Obligations and has obtained an opinion of counsel from a firm nationally recognized in the practice of municipal financing that such merger will not, in and of itself, cause the pledge of Net Revenues set forth in this Agreement to be no longer valid. If the Borrower does effect such a merger, the Borrower shall provide written notice thereof to the Lender and shall deliver a copy of the aforementioned opinion and the merger documents to the Lender.

(i) *Use of Proceeds.* Use the Letters of Credit for any purpose other than to secure the Borrower's obligations (A) under PPAs, (B) to the California Public Utilities Commission, (C) to the California Independent System Operator and (D) to Southern California Edison. Use the proceeds of any Loan, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose, in each case in violation of, or for a purpose which violates, or would be inconsistent with, Regulation T, U or X of the Board of Governors of the Federal Reserve System. Use the proceeds for any Loan for any purposes other than (i) to provide cash collateral to secure the Borrower's obligations under PPAs, (ii) to repay in whole or in part any LC Disbursement, (iii) for general corporate purposes, (iv) for capital expenditures related to the development or acquisition of new assets related to the Enterprise subject to prior written approval by the Lender, which such approval shall not be unreasonably withheld, or (v) to repay the Debt in favor of (1) the County of Los Angeles under the County of Los Angeles Funding Agreement, provided that no more than \$30,000,000 of Loan proceeds may be applied for such purpose, and (2) RCB under the RCB Credit Agreement with proceeds of the Loan made pursuant to the Initial Borrowing. For the avoidance of doubt, Loan proceeds may not be used (x) for other long-term expenditures, (y) for funding the Reserves, or (z) to make payments to Members (except to the extent provided in clause (v)(1) immediately above and except to Members as part of the operation of the Enterprise (as long as such operation of the Enterprise is available to all similarly situated Members)). For the avoidance of doubt, the Borrower will not request any Borrowing or Letter of Credit, and the Borrower shall not use, and shall cause its directors, officers, employees and agents not to use, the proceeds of any Borrowing or Letter of Credit (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (B) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

(j) *Secured Debt.*

(i) Not issue, incur or assume to exist any (A) Senior Debt or (B) any other Secured Debt other than (I) the Obligations; (II) Parity Debt described in clause (ii) below; and (III) Subordinate Debt described in clause (iii) below;

(ii) Not issue, incur or assume to exist any Parity Debt except for Debt issued or incurred in compliance with the following conditions:

(1) no Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Parity Debt;

(2) such Parity Debt does not exceed at any time any limitation set forth in the Constitution or other Laws of the State, the Joint Powers Agreement or any resolutions or ordinances adopted by the Borrower;

(3) the operating Reserve is funded in accordance with the Financial Reserve Policy immediately prior to the issuance or incurrence of such Parity Debt or will be funded in accordance with the Financial Reserve Policy after the issuance or incurrence of such Parity Debt and the application of the proceeds thereof; and

(4) delivery of a written certificate of the Borrower: (A) setting forth projected Net Revenues for the twelve consecutive month period immediately following the issuance or incurrence of such Parity Debt (in reasonable detail and with reasonable assumptions), (B) setting forth projected Annual Debt Service for the twelve consecutive month period immediately following the issuance or incurrence of such Parity Debt (inclusive of any additional Parity Debt and in reasonable detail and with reasonable assumptions), and (C) demonstrating that projected Net Revenues for the twelve consecutive month period immediately following the issuance or incurrence of such Parity Debt are expected to be at least equal to 1.30 times the projected Annual Debt Service for such period; provided, however, that for purposes of determining the projected Net Revenues for the twelve consecutive month period as set forth in the immediately foregoing clause (B) and (C), such Net Revenues may be adjusted to reflect any rates and charges that have been adopted or are expected to be generated by an approved rate action and any Net Revenues associated with the acquisition or development of power generation assets that were financed with such additional Debt;

(iii) Not issue, incur or assume to exist any Subordinate Debt except for Debt issued or incurred in compliance with the following conditions:

(1) no Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Subordinate Debt;

(2) such Subordinate Debt does not exceed at any time any limitation set forth in the Constitution or other Laws of the State, the Joint Powers Agreement or any resolutions or ordinances adopted by the Borrower;

(3) the operating Reserve is funded in accordance with the Financial Reserve Policy immediately prior to the issuance or incurrence of such Subordinate Debt or will be funded in accordance with the Financial Reserve Policy after the issuance or incurrence of such Subordinate Debt and the application of the proceeds thereof; and

(4) delivery of a written certificate of the Borrower: (A) setting forth projected Net Revenues for the twelve consecutive month period immediately following the issuance or incurrence of such Subordinate Debt (in reasonable detail and with reasonable assumptions), (B) setting forth projected Annual Debt Service for the twelve consecutive month period immediately following the issuance or incurrence of such Subordinate Debt (inclusive of any additional Subordinate Debt and in reasonable detail and with reasonable assumptions), and (C) demonstrating that projected Net Revenues for the twelve consecutive month period immediately following the issuance or incurrence of such Subordinate Debt are expected to be at least equal to 1.10 times the projected Annual Debt Service for such period; provided, however, that for purposes of determining the projected Net Revenues for the twelve consecutive month period as set forth in the foregoing clause (B) and (C), such Net Revenues may be adjusted to reflect any rates and charges that have been adopted or are expected to be generated by an approved rate action and any Net Revenues associated with the acquisition or development of power generation assets that were financed with such additional Debt; and

(iv) Not issue, incur or assume to exist any Unsecured Debt except for (A) \$30,000,000 of Debt under the County of Los Angeles Funding Agreement and (B) Unsecured Debt issued or incurred in compliance with the following conditions:

(1) no Default shall have occurred and be continuing immediately before and after the issuance or incurrence of such Unsecured Debt;

(2) such Unsecured Debt does not exceed at any time any limitation set forth in the Constitution or other Laws of the State, the Joint Powers Agreement or any resolutions or ordinances adopted by the Borrower; and

(3) the operating Reserve is funded in accordance with the Financial Reserve Policy immediately prior to the issuance or incurrence of such Unsecured Debt or will be funded in accordance with the Financial

Reserve Policy after the issuance or incurrence of such Unsecured Debt and the application of the proceeds thereof.

(k) *Available Net Revenues.* Not use Net Revenues for any purpose other than: (i) payment of Operating Costs; (ii) payment of Obligations; (iii) payment of debt service on, and fees associated with, the Debt incurred under the County of Los Angeles Funding Agreement and other Parity Debt; (iv) funding and replenishment of the Reserves; (v) so long as no Event of Default has occurred and is continuing, payment of interest on, and fees associated with, Subordinate Debt and Unsecured Debt; (vii) capital expenditures in connection with assets that will become part of the Enterprise; (viii) rebates to Enterprise customers; and (ix) any other lawful purpose that inures to the direct benefit of the Enterprise.

ARTICLE 6 DEFAULTS

Section 6.1. Events of Default ~~and Remedies.~~ If any of the following events occur, each such event will be an “*Event of Default*”:

(a) the Borrower fails to pay, or cause to be paid, as and when due, (i) any principal of or any interest on any Loan or Reimbursement Obligation or (ii) any other Obligation hereunder or under the Fee Agreement and such failure continues for three (3) Business Days.

(b) (i) any representation or warranty made by or on behalf of the Borrower in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder (including, for the avoidance of doubt, pursuant to Section 3.2(c)) that is not qualified by the concept of “materiality” shall be incorrect or untrue in any material respect when made or deemed to have been made or delivered; or (ii) any representation or warranty made by or on behalf of the Borrower in this Agreement or in any other Basic Document or in any certificate or statement delivered hereunder or thereunder that is qualified by the concept of “materiality” shall be incorrect or untrue in any respect when made or deemed to have been made or delivered;

(c) the Borrower defaults in the due performance or observance of any of the covenants set forth in Section 5.1(a) *Accounting and Reports*, 5.1(c) *Compliance with Basic Documents; Operation and Maintenance of Enterprise*, 5.1(d) *Defaults*, 5.1(g) *Notices*, 5.1(k) *Maintenance of Insurance*, 5.1(1) *Preservation of Security*, 5.1(m) *Rates*, 5.1(q) *Debt Service Coverage*, 5.1(r) *Policies* or 5.2 hereof;

(d) the Borrower defaults in the due performance or observance of any other term, covenant or agreement contained in this Agreement or any other Basic Document and such default remains unremedied for a period of thirty (30) days after the occurrence thereof;

(e) the Borrower, directly or indirectly, (i) has entered involuntarily against it an order for relief under the United States Bankruptcy Code, as amended, (ii) becomes insolvent or does not pay, or is unable to pay, or admits in writing its inability to pay, its debts generally as they become due, (iii) makes an assignment for the benefit of creditors, (iv) applies for, seeks, consents to, or acquiesces in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any substantial part of its Property, (v) institutes any proceeding seeking to have entered against it an order for relief under the United States Bankruptcy Code, as amended, to adjudicate it insolvent or seeking dissolution, winding up, liquidation, reorganization, arrangement, marshalling of assets, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fails to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (vi) takes any public agency action in furtherance of any matter described in clauses (i) through (v) above or (vii) fails to contest in good faith any appointment or proceeding described in Section 6.1(f) of this Agreement;

(f) a custodian, receiver, trustee, examiner, liquidator or similar official is appointed for the Borrower or any substantial part of its Property, or a proceeding described in Section 6.1(e)(v) is instituted against the Borrower and such proceeding continues undischarged, undismissed and unstayed for a period of thirty (30) days;

(g) a debt moratorium, debt restructuring, debt adjustment or comparable restriction is imposed on the repayment when due and payable of the principal of or interest on any Secured Debt of the Borrower by the Borrower or any Governmental Authority with appropriate jurisdiction;

(h) any material provision of this Agreement, the Joint Powers Agreement or any other Basic Document at any time for any reason ceases to be valid and binding on the Borrower as a result of any legislative or administrative action by a Governmental Authority with competent jurisdiction or is declared in a final non-appealable judgment by any court with competent jurisdiction to be null and void, invalid or unenforceable, or the validity or enforceability thereof is publicly contested by the Borrower, or the Borrower publicly contests the validity or enforceability of any obligation to pay Secured Debt, or any Authorized Representative publicly repudiates or otherwise denies in writing that it has any further liability or obligation under or with respect to any provision of this Agreement, the Joint Powers Agreement, any other Basic Document or any operative document related to Secured Debt;

(i) dissolution or termination of the existence of the Borrower;

(j) the Borrower (i) defaults on the payment of the principal of or interest on any Secured Debt beyond the period of grace, if any, provided in the instrument or agreement under which such Secured Debt was created or incurred or (ii) defaults in the observance or performance of any agreement or condition relating to any Secured Debt, including, without limitation, any Bank Agreement, or contained in any instrument or agreement evidencing, securing or relating thereto, or any other default, event of default or

similar event occurs or condition exists, the effect of which default, event of default or similar event or condition is to permit (determined without regard to whether any notice is required) any such Secured Debt to become immediately due and payable in full as the result of the acceleration, mandatory redemption or mandatory tender of such Secured Debt;

(k) any final, nonappealable judgment or judgments, writ or writs or warrant or warrants of attachment, or any similar process or processes, in an aggregate amount not less than \$2,000,000 are entered or filed against the Borrower or against any of its Property and remain unpaid, unvacated, unbonded and unstayed for a period of sixty (60) days; ~~or~~

(l) the passage of any State Law has occurred which ~~—could, upon implementation thereof, is~~ reasonably ~~be~~ expected to ~~(i) have a material adverse effect on materially impair the rights and remedies of the Lender under this Agreement or any other Basic Document, or of the ability of community choice aggregators the Borrower to continue operating within the State, (ii) have a material adverse effect on the Borrower's ability to timely pay payment perform its~~ Obligations ~~when due or (iii) result in under this Agreement, any other Basic Document to which it is a party, or any Lockbox Security Agreement to which the Borrower is a party; or~~

(m) there shall have occurred any event or any series of events that either (i) has had or is reasonably likely to have or to cause a Material Adverse Effect ~~on the enforceability or validity of this Agreement or any other Basic Document, or (ii) in the reasonable determination of the Lender, has had or is reasonably likely to have or to cause a Material Adverse Effect.~~

Section 6.2. Remedies. Upon the occurrence of any Event of Default (other than an Event of Default described in Section 6.1(e) or 6.1(f)), and at any time thereafter during the continuance of such event, the Lender may by notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate the Commitment, and thereupon the Commitment shall terminate immediately, (ii) require cash collateral for the LC Exposure in accordance with Section 2.4(h) hereof and (iii) declare all Obligations then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder and under the Fee Agreement, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any Event of Default described in Section 6.1(e) or 6.1(f), the Commitment shall automatically terminate and the principal of the Loans then outstanding, and cash collateral for the LC Exposure, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

ARTICLE 7
MISCELLANEOUS

Section 7.1. Amendments, Waivers, Etc. No amendment or waiver of any provision of this Agreement, or consent to any departure by the Borrower therefrom, will in any event be effective unless the same is in writing and signed by the Lender and an Authorized Representative of the Borrower, and then such waiver or consent is effective only in the specific instance and for the specific purpose for which given.

Section 7.2. Notices. All notices and other communications provided for hereunder must be in writing (including required copies) and sent by courier (including Federal Express, UPS or other receipted courier service), facsimile transmission or regular mail, as follows:

(a) if to the Borrower:

Clean Power Alliance
801 S. Grand Ave., Ste. 400
Los Angeles, CA 90017
Attention: David McNeil, Chief Financial Officer
Email: dmcneil@cleanpoweralliance.org

with a copy to:

Chapman & Cutler LLP
1270 Avenue of the Americas, 30th Floor
New York, NY 10020-1708
Attention: Douglas A. Bird
Telephone: (212) 655-2519
Facsimile: (646) 362-8949
Email: doug.bird@chapman.com

(b) if to the Lender:

JPMorgan Chase Bank, National Association
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: Allyson Goetschius or Janice Fong
Telephone: (212) 270-0335 or (212) 270-3762
Facsimile: (917) 849-0272
Email: allyson.l.goetschius@jpmorgan.com or
janice.r.fong@jpmorgan.com

with a copy to:

JPMorgan Chase Bank, National Association
JPM-Delaware Loan Operations

500 Stanton Christiana Road, NCC5, Floor 01
Newark, DE 19713-2107
Attention: PFG Servicing
Telephone: (302) 634-9627
Email/Fax: PFG_Servicing@jpmorgan.com

And, for compliance-related items, with a copy to:

public.finance.notices@jpmchase.com

or, as to each Person named above, at such other address or telephone or telecopy number as is designated by such Person in a written notice to the parties hereto. All such notices and other communications will, when delivered, sent by facsimile transmission or mailed, be effective when deposited with the courier, sent by facsimile transmission or mailed, respectively, addressed as aforesaid, except that Borrowing Requests and requests for LC Disbursements submitted to the Lender will not be effective until received by the Lender.

Section 7.3. Survival of Covenants; Successors and Assigns.

(a) All covenants, agreements, representations and warranties made herein and, in the certificates, delivered pursuant hereto will survive the making of any Loan, and will continue in full force and effect until all of the Obligations hereunder are paid in full in cash. Whenever in this Agreement any of the parties hereto is referred to, such reference will, subject to the last sentence of this Section, be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Agreement will inure to the benefit of the successors and assigns of the Lender. The Borrower may not transfer its rights or obligations under this Agreement without the prior written consent of the Lender. The Lender may transfer or assign some or all of its rights and obligations under this Agreement and the Fee Agreement with, so long as no Event of Default has occurred and is continuing, the prior written consent of the Borrower (which consent may not be withheld unreasonably); *provided* that the Lender shall be responsible for all costs solely relating to such transfer or assignment. This Agreement is made solely for the benefit of the Borrower and the Lender, and no other Person (including, without limitation, any PPA Counterparty) will have any right, benefit or interest under or because of the existence of this Agreement.

(b) Notwithstanding the foregoing, the Lender will be permitted to grant to one or more financial institutions (each a "*Participant*") a participation or participations in all or any part of the Lender's rights and benefits and obligations under this Agreement, the Fee Agreement, the Loans and the Letters of Credit on a participating basis but not as a party to this Agreement (a "*Participation*") without the consent of the Borrower. In the event of any such grant by the Lender of a Participation to a Participant, the Lender shall remain responsible for the performance of its obligations hereunder and under the Letters of Credit, and the Borrower may continue to deal solely and directly with the Lender in connection with the Lender's rights and obligations under this Agreement, under the Fee Agreement and under the Letters of Credit. The Borrower agrees that each Participant will, to the extent of its Participation, be entitled to the benefits of this Agreement as if such Participant were the Lender; provided that no Participant will have the right to declare, or to take actions in response to, an Event of Default under Section 6.1 hereof; and

provided, further, that the Borrower's liability to any Participant (including, without limitation, amounts payable pursuant to Sections 2.12, 2.13 and 2.14) will not in any event exceed that liability which the Borrower would owe to the Lender but for such participation.

Section 7.4. No Recourse Against Members. CPA shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement and the Fee Agreement. The Lender shall not make any claims, take any actions or assert any remedies against any Member arising solely as a result of CPA's breach of this Agreement.

Section 7.5. Liability of Lender; Indemnification.

(a) To the extent permitted by the laws of the State, the Borrower assumes all risks of the acts or omissions of the PPA Counterparties with respect to the use of the Letters of Credit or the use of proceeds thereunder; provided that this provision is not intended to and will not preclude the Borrower from pursuing such rights and remedies as it may have against the PPA Counterparties under any other agreements. Neither the Lender nor any of its respective officers, directors or employees will be liable or responsible for (i) the use of any Letter of Credit, the LC Disbursements or the Loans or the transactions contemplated hereby and by the other Basic Documents or for any acts or omissions of any PPA Counterparty, (ii) the validity, sufficiency or genuineness of any documents determined in good faith by the Lender to be valid, sufficient or genuine, even if such documents, in fact, prove to be in any or all respects invalid, fraudulent, forged or insufficient, (iii) payments by the Lender against presentation of requests for LC Disbursements or requests which the Lender in good faith has determined to be valid, sufficient or genuine and which subsequently are found not to comply with the terms of this Agreement or (iv) any other circumstances whatsoever in making or failing to make payment hereunder; provided that the Borrower is not required to indemnify the Lender for any claims, losses, liabilities, costs or expenses to the extent, but only to the extent, that a court of competent jurisdiction has determined by a final, non-appealable judgment were caused by the gross negligence or willful misconduct of the Lender.

(b) To the extent permitted by the laws of the State, the Borrower indemnifies and holds harmless the Lender from and against any and all direct, as opposed to consequential, claims, damages, losses, liabilities, costs and expenses (including specifically reasonable attorneys' fees) which the Lender may incur (or which may be claimed against the Lender by any Person whatsoever) by reason of or in connection with the execution, delivery and performance of the Basic Documents, the Letters of Credit and the transactions contemplated thereby; provided that the Borrower is not required to indemnify the Lender to the extent, but only to the extent, any such claim, damage, loss, liability, cost or expense is caused by the Lender's willful misconduct or gross negligence as determined by a final order of a court of competent jurisdiction. The Lender is expressly authorized and directed to honor any demand for payment which is made under any Letter of Credit without regard to, and without any duty on its part to inquire into the existence of, any disputes or controversies between the Borrower, any PPA Counterparty or any other Person or the respective rights, duties or liabilities of any of them or whether any facts or occurrences represented in any of the documents presented under any Letter of Credit are true and correct.

(c) To the fullest extent permitted by Applicable Law, the Borrower shall not assert, and waives, any claim against the Lender, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, any Basic Document or any agreement or instrument contemplated thereby, the transactions contemplated thereby or the use of the proceeds thereof.

(d) The obligations of the Borrower under this Section 7.5 will survive the termination of this Agreement.

Section 7.6. Expenses. Upon receipt of a written invoice, the Borrower shall promptly pay (i) the reasonable fees and expenses of counsel to the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents as set forth in the Fee Agreement, (ii) the reasonable out-of-pocket expenses of the Lender incurred in connection with the preparation, execution and delivery and administration of this Agreement, the Letters of Credit, the Fee Agreement and the other Basic Documents, (iii) the fees and disbursements of counsel to the Lender with respect to advising the Lender as to its rights and responsibilities under the Basic Documents after the occurrence of a Default or an Event of Default and (iv) all costs and expenses, if any, in connection with the administration and enforcement of the Basic Documents, including in each case the fees and disbursements of counsel to the Lender. In addition, and notwithstanding the foregoing, the Borrower agrees to pay, after the occurrence of an Event of Default, all costs and expenses (including attorneys' fees and costs of settlement) incurred by the Lender in enforcing any obligations or in collecting any payments due from the Borrower hereunder or under the Fee Agreement by reason of such Event of Default or in connection with any refinancing or restructuring of the credit arrangements provided under this Agreement in the nature of a "workout" or of any insolvency or bankruptcy proceedings. The obligations of the Borrower under this Section 7.6 will survive the termination of this Agreement.

Section 7.7. No Waiver; Conflict. Neither any failure nor any delay on the part of the Lender in exercising any right, power or privilege hereunder, nor any course of dealing with respect to any of the same, will operate as a waiver thereof or preclude any other or further exercise thereof, nor will a single or partial exercise thereof, preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. To the extent of any conflict between this Agreement and any other Basic Documents, this Agreement will control solely as between the Borrower and the Lender.

Section 7.8. Modification, Amendment Waiver, Etc. No modification, amendment or waiver of any provision of this Agreement will be effective unless the same is in writing and signed in accordance with Section 7.1 hereof.

Section 7.9. Dealings. The Lender and its affiliates may accept deposits from, extend credit to and generally engage in any kind of banking, trust or other business with the Borrower and/or any PPA Counterparty regardless of the capacity of the Lender hereunder or under any Letter of Credit.

Section 7.10. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction, and all other remaining provisions hereof will be construed to render them enforceable to the fullest extent permitted by law. The parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic or legal effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

Section 7.11. Counterparts; Integration; Effectiveness; Electronic Execution.

(a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Basic Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 3.1, this Agreement shall become effective when it shall have been executed by the Lender and when the Lender shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Basic Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 7.2), certificate, request, statement, disclosure or authorization related to this Agreement, any other Basic Document and/or the transactions contemplated hereby and/or thereby (each an “*Ancillary Document*”) that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Basic Document or such Ancillary Document, as applicable. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement, any other Basic Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Lender to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Lender has agreed to accept any Electronic Signature, the Lender shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Borrower without further verification thereof and without any obligation to review the appearance or form of any such Electronic Signature and (ii) upon the request of the Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Borrower hereby (A) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring,

enforcement of remedies, bankruptcy proceedings or litigation among the Lender and the Borrower, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Basic Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (B) agrees that the Lender may, at its option, create one or more copies of this Agreement, any other Basic Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (C) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Basic Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Basic Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (D) waives any claim against any Lender-Related Parties for any Liabilities arising solely from the Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Borrower to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 7.12. Table of Contents; Headings. The table of contents and the section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement.

Section 7.13. Entire Agreement. This Agreement and the Fee Agreement represents the final agreement between the parties hereto with respect to the subject matter hereof and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties hereto as to such subject matter.

Section 7.14. Governing Law Waiver of Jury Trial.

(a) THIS AGREEMENT SHALL BE DEEMED TO BE A CONTRACT UNDER, AND FOR ALL PURPOSES SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS; PROVIDED, THAT THE OBLIGATIONS OF THE LENDER HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PROVISIONS.

(b) To the extent permitted by Applicable Law, each of the parties hereto waives its right to a jury trial of any claim or cause of action based upon or arising out of the basic documents or any of the transactions contemplated thereby, including contract claims, tort claims, breach of duty claims, and all other common law or statutory claims. if and to the extent that the foregoing waiver of the right to a jury trial is unenforceable for any reason in such forum, each of the parties hereto consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the Judicial Referee is empowered to hear and determine all issues in such reference, whether fact or law. Each of the parties hereto represents that it has reviewed this Waiver and Consent and, following consultation with legal

counsel on such matters, knowingly and voluntarily waives its jury trial rights and consents to judicial reference. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

(c) The covenants and waivers made pursuant to this Section 7.14 are irrevocable and unmodifiable, whether in writing or orally, and are applicable to any subsequent amendments, renewals, supplements or modifications of this Agreement. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

Section 7.15. Government Regulations. The Borrower shall (a) ensure that no Person who owns a controlling interest in or otherwise controls the Borrower is or will be listed on the Specially Designated Nationals and Blocked Person List or other similar lists maintained by the Office of Foreign Assets Control (“OFAC”), the Department of the Treasury or included in any Executive Order that prohibits or limits the Lender from making any advance or extension of credit to the Borrower or from otherwise conducting business with the Borrower and (b) ensure that the proceeds of LC Disbursements under the Letters of Credit are not used to violate any of the foreign asset control regulations of OFAC or any enabling statute or Executive Order relating thereto. Further, the Borrower shall comply, and cause any of its subsidiaries to comply, with all applicable Bank Secrecy Act laws and regulations, as amended.

Section 7.16. USA PATRIOT Act. The Lender notifies the Borrower that, pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Patriot Act”), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow the Lender to identify the Borrower in accordance with the Act. The Borrower agrees to provide such documentary and other evidence of the Borrower’s identity as may be requested by the Lender at any time to enable the Lender to verify the Borrower’s identity or to comply with any Applicable Law or regulation, including, without limitation, the Patriot Act.

Section 7.17. Electronic Transmissions. Without limiting Section 7.11(b) hereof, the Borrower hereby authorizes the Lender to accept and process any amendments, transfers, assignments of proceeds, LC Disbursements, consents, waivers and all documents relating to the Letters of Credit which are sent to Lender by electronic transmission, including SWIFT, electronic mail, telex, telecopy, courier, mail or other computer generated telecommunications, and such electronic communication will have the same legal effect as if written and will be binding upon and enforceable against the Borrower. The Lender may, but shall not be obligated to, require authentication of such electronic transmission or that the Lender receives original documents prior to acting on such electronic transmission.

Section 7.18. Assignment to Federal Reserve Bank. The Lender may assign and pledge all or any portion of the obligations owing to it hereunder to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, provided that any payment in respect of such assigned obligations made by the Borrower to the Lender in accordance with the terms of this Agreement will satisfy the Borrower’s obligations

hereunder in respect of such assigned obligation to the extent of such payment. No such assignment will release the Lender from its obligations hereunder.

Section 7.19. Arm's Length Transaction. The transactions described in this Agreement are arm's length, commercial transactions between the Borrower and the Lender in which: (i) the Lender is acting solely as a principal (*i.e.*, as a lender) and for its own interest; (ii) the Lender is not acting as a municipal advisor or financial advisor to the Borrower; (iii) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the Borrower with respect to these transactions and the discussions, undertakings and procedures leading thereto (irrespective of whether the Lender or any of its Affiliates has provided other services or is currently providing other services to the Borrower on other matters); (iv) the only obligations the Lender has to the Borrower with respect to these transactions are set forth in the Basic Documents and the Letters of Credit; and (v) the Lender is not recommending that the Borrower take an action with respect to the transactions described in this Agreement and the other Basic Documents, and before taking any action with respect to the this transaction, the Borrower should discuss the information contained herein with the Borrower's own legal, accounting, tax, financial and other advisors, as the Borrower deems appropriate.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Borrower and the Lender have duly executed this Agreement as of the date first written above.

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA

By: _____
Name: Theodore Bardacke
Title: Executive Director

JPMORGAN CHASE BANK, NATIONAL
ASSOCIATION

By: _____

Name: Allyson Goetschius

Title: Executive Director

EXHIBIT A

FORM OF OPINION OF CHAPMAN & CUTLER LLP

[Opinion to address: Existence and good standing of CPA; CPA has received all consents and approvals of Governmental Authorities to act as a CCA; power and authority of CPA to (1) be a CCA, (2) execute, deliver and perform the Basic Documents and (3) own and operate the Enterprise; all consents necessary to execute, deliver and perform the Basic Documents have been obtained; execution, delivery and performance of the Basic Documents will not violate the JP Agreement or CPA's bylaws or the Act; the Basic Documents are enforceable against CPA; and the pledge of Net Revenues in the Agreement is a valid pledge.]

EXHIBIT B

FORM OF COMPLIANCE CERTIFICATE

This Compliance Certificate (this “*Certificate*”) is furnished to JPMorgan Chase Bank, National Association (including its successors and assigns, the “*Lender*”) pursuant to the Revolving Credit Agreement, dated as of September 22, 2021 (together with all amendments and supplements thereto, the “*Agreement*”), by and between the Clean Power Alliance of Southern California (including its successors and assigns, the “*Borrower*”) and the Lender. Unless otherwise defined herein, the terms used in this Certificate have the meanings assigned thereto in the Agreement.

THE UNDERSIGNED HEREBY CERTIFIES THAT:

1. I am an Authorized Representative of the Borrower;
2. I have reviewed the terms of the Agreement and I have made, or have caused to be made under my supervision, a detailed review of the transactions and conditions of the Borrower during the accounting period covered by the attached financial statements;
3. The examinations described in paragraph 2 did not disclose, and I have no knowledge of, the existence of any condition or the occurrence of any event which constitutes a Default or Event of Default during or at the end of the accounting period covered by the attached financial statements or as of the date of this Certificate, except as set forth below; and
4. The financial statements required by Section 5.1(a) of the Agreement and being furnished to you concurrently with this certificate fairly represent the consolidated financial condition of the Borrower in accordance with GAAP as of the date and for the period covered thereby.

[Describe below the exceptions, if any, to paragraph 3 by listing, in detail, the nature of the condition or event, the period during which it has existed and the action which the Borrower has taken, is taking, or proposes to take with respect to each such condition or event:

5. The Debt Service Coverage Ratio Notice is attached hereto.

[Remainder of page intentionally left blank]

The foregoing certifications and the financial statements delivered with this Certificate in support hereof, are made and delivered this ____ day of _____, 20__.

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA

By: _____
Name: _____
Title: _____

EXHIBIT C

FORM OF BORROWING REQUEST

_____, 20__

JPMorgan Chase Bank, National Association
JPM-Delaware Loan Operations
500 Stanton Christiana Road, NCC5, Floor 01
Newark, DE 19713-2107
Attention: PFG Servicing
Telephone: (302) 634-9627
Email/Fax: PFG_Servicing@jpmorgan.com

JPMorgan Chase Bank, National Association
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: Allyson Goetschius or Janice Fong
Telephone: (212) 270-0335 or (212) 270-3762
Facsimile: (917) 849-0272
Email: allyson.l.goetschius@jpmorgan.com or janice.r.fong@jpmorgan.com

Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of September 22, 2021 (together with any amendments or supplements thereto, the "*Agreement*"), by and between Clean Power Alliance of Southern California (with its successors and assigns, the "*Borrower*") and JPMorgan Chase Bank, National Association (with its successors and assigns, the "*Lender*") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.3 of the Agreement, that the Lender make a Loan under the Agreement and disburse such funds as set forth in #5 below, and in that connection sets forth below the following information relating to such Loan (the "*Proposed Loan*"):

1. The Business Day of the Proposed Loan is _____, 20__ (the "*Issuance Date*").

2. The principal amount of the Proposed Loan is \$_____, which is not greater than the Revolving Credit Exposure as of the Issuance Date set forth in 1 above. After giving effect to the Proposed Loan, the aggregate principal amount of all Loans and LC Exposure outstanding under the Agreement will not exceed the Revolving Credit Exposure as of the Issuance Date.

3. The Type of Borrowing is: [SPECIFY] [~~a Base Rate~~an ABR Borrowing] [a EurodollarSOFR Borrowing][.];[IN THE CASE OF A EURODOLLARSOFR BORROWING] and the initial Interest Period shall be for [one month][three months].]

4. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect to the Proposed Loan:

(a) The representations and warranties of the Borrower set forth in the Agreement (i) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the Issuance Date, with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality are true and correct in all respects on and as of the Issuance Date, with the same force and effect as if made on and as of such date; [and]

(b) No Default or Event of Default has occurred and is continuing [.] [; and]

[(c) The Borrower has filed the necessary notices and filings with, and provided for payment of any fee related thereto to, the California Debt Issuance Advisory Commission.] **[INCLUDE THIS CERTIFICATION IF THIS IS THE INITIAL BORROWING REQUEST AND NO LETTER OF CREDIT REQUEST HAS PREVIOUSLY BEEN MADE.]**

5. [The Proposed Loan shall be made by the Lender by wire transfer of immediately available funds in accordance with the instructions set forth below and the Borrower hereby confirms that the Lender is authorized to make said disbursements:

[Insert wire instructions and amounts]]

[OR]

5. [The Proposed Loan shall be deposited into Borrower's account at the Lender and the Borrower hereby confirms that the Lender is authorized to make said disbursements.]

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA

By: _____
Name: _____
Title: _____

EXHIBIT D-1

FORM OF LETTER OF CREDIT REQUEST

_____, 20__

JPMorgan Chase Bank, National Association
JPM-Delaware Loan Operations
500 Stanton Christiana Road, NCC5, Floor 01
Newark, DE 19713-2107
Attention: PFG Servicing
Telephone: (302) 634-9627
Email/Fax: PFG_Servicing@jpmorgan.com

JPMorgan Chase Bank, National Association
383 Madison Avenue, 3rd Floor
New York, New York 10179
Mail Code: NY1-M076
Attention: Allyson Goetschius or Janice Fong
Telephone: (212) 270-0335 or (212) 270-3762
Facsimile: (917) 849-0272
Email: allyson.l.goetschius@jpmorgan.com or janice.r.fong@jpmorgan.com

Ladies and Gentlemen:

The undersigned refers to the Revolving Credit Agreement, dated as of September 22, 2021 (together with any amendments or supplements thereto, the "*Agreement*"), by and between Clean Power Alliance of Southern California (with its successors and assigns, the "*Borrower*") and JPMorgan Chase Bank, National Association (with its successors and assigns, the "*Lender*") (the terms defined therein being used herein as therein defined) and hereby requests, pursuant to Section 2.4 of the Agreement, that the Lender issue a Letter of Credit under the Agreement, and in that connection sets forth below the following information relating to such Letter of Credit (the "*Proposed Letter of Credit*"):

1. The Business Day of the Proposed Letter of Credit is _____, 20__
(the "*Issuance Date*").

2. The principal amount of the Proposed Letter of Credit is \$_____.
After giving effect to the issuance of the Proposed Letter of Credit, the aggregate principal amount of all Loans and Letters of Credit outstanding under the Agreement will not exceed the Revolving Credit Exposure as of the Issuance Date set forth in 1 above.

3. The tenor of the Proposed Letter of Credit shall be [_____].

4. The undersigned hereby certifies that the following statements are true on the date hereof, and will be true on the Issuance Date, before and after giving effect thereto:

(a) The representations and warranties of the Borrower set forth in the Agreement (i) that are not qualified by concepts of materiality are true and correct in all material respects on and as of the Issuance Date, with the same force and effect as if made on and as of such date, and (ii) that are qualified by concepts of materiality are true and correct in all respects on and as of the Issuance Date, with the same force and effect as if made on and as of such date; [and]

(b) No Default or Event of Default has occurred and is continuing [.] [; and]

[(c) The Borrower has filed the necessary notices and filings with, and provided for payment of any fee related thereto to, the California Debt Issuance Advisory Commission.] **[INCLUDE THIS CERTIFICATION IF THIS IS THE INITIAL LETTER OF CREDIT REQUEST AND NO BORROWING REQUEST HAS PREVIOUSLY BEEN MADE.]**

5. The undersigned hereby confirms that the Borrower has submitted a Standby Letter of Credit Application in the form attached as Annex I (or any successor form provided by the Lender to the Borrower and the Lender).

CLEAN POWER ALLIANCE OF SOUTHERN
CALIFORNIA

By: _____
Name: _____
Title: _____

ANNEX I

FORM OF STANDBY LETTER OF CREDIT APPLICATION

Application and Agreement for Irrevocable
Standby Letter of Credit

J.P.Morgan

This application and the Letter of Credit issued hereunder are subject to and governed by the **CONTINUING AGREEMENT FOR COMMERCIAL & STANDBY LETTERS OF CREDIT** executed by the undersigned in favor of JPMorgan Chase Bank, N.A., as may be amended or restated from time to time (the “Agreement”).

When Transmitting this application by facsimile all pages must be transmitted.

**Questions regarding completion of this form should be directed to
GTS.Client.Services@JPMChase.com OR 800-634-1969**

For assistance in filling out this application, please place your cursor over the underlined, blue text for specific instructions/hints.

To: JPMorgan Chase Bank, N.A. and/or its subsidiaries and/or affiliates (“Issuer”).

Date:

I. Pursuant to the Terms and Conditions contained herein, please issue an IRREVOCABLE STANDBY Letter of Credit (together with any replacements, extensions or modifications, the “Credit”) and transmit it by:

☐ S.W.I.F.T. (to Advising Bank)

☐ Courier (directly to the Beneficiary)

If completing in Microsoft Word, please enter data by ‘clicking’ on the gray boxes.

<p><u>Applicant/Obligor</u> (Full name and address, jointly and severally if more than one, individually and collectively, “Applicant/Obligor”):</p> <p>[Signature lines are on last page].</p>	<p><u>Beneficiary</u> (Full name and address):</p>
<p><u>Account Party</u> (Full name and address of entity to be named in Letter of Credit if different than the above Applicant/Obligor):</p> 	<p><u>Advising Bank</u> Specify name, S.W.I.F.T./address through whom the Credit is to be transmitted to the Beneficiary. (If left blank, Issuer may, at its own discretion, transmit through one of its branches, affiliates or correspondents.):</p>

Amount: Up to an aggregate amount of If not USD, indicate currency	<u>Expiry Date:</u> Demands/claims must be presented to the counters of the nominated bank not later than
II. <u>REQUIRED FOR SANCTION SCREENING PURPOSES.</u> A brief description of the purpose of the Credit including, where applicable, a description of the merchandise, the country of origin of the merchandise, and the name of the countries where merchandise is being shipped from and to must be entered:	
III. <u>Complete only</u> if automatic extension of the expiry date is required. Credit to contain automatic extension clause with extension period of <input type="checkbox"/> one year/ <input type="checkbox"/> other (please specify). No less than calendar days non-extension notice to the beneficiary. Automatic extension final expiration date: (the date after which the Credit will no longer be subject to automatic extension).	
IV. AVAILABLE BY (indicate A, B, C or D) <input type="checkbox"/> <u>A.</u> Beneficiary's dated statement referencing JPMorgan Chase Bank, N.A. Letter of Credit Number indicating amount of demand/claim and purportedly signed by an authorized person reading as follows (Please state within the quotation marks the wording to appear on the statement to be presented): " (insert appropriate reason for drawing) " See attached sheet(s) for additional documents and/or special instructions, which form(s) an integral part of this Application. Such attachments/special instructions must be approved and signed by Applicant/Obligor. <input type="checkbox"/> <u>B.</u> Issue substantially as per the attached sheet(s) and/or special instructions, which form(s) an integral part of this Application. Such attachments/special instructions must be approved and signed by Applicant/Obligor. <input type="checkbox"/> <u>C.</u> Issue Credit in your standard format in favor of another bank (See Section VI. below). <input type="checkbox"/> <u>D.</u> Other:	
<u>DELIVERY INSTRUCTIONS/SPECIAL HANDLING (IF ANY)</u>	

☐ [MULTIPLE DRAWINGS PROHIBITED](#) (IF BLANK, MULTIPLE DRAWINGS WILL BE PERMITTED).

☐ [PARTIAL DRAWINGS PROHIBITED](#) (IF BLANK, PARTIAL DRAWINGS WILL BE PERMITTED).

☐ CREDIT IS TRANSFERABLE ONLY IN ITS ENTIRETY (ISSUER IS AUTHORIZED TO INCLUDE ITS STANDARD TRANSFER CONDITIONS AND IS AUTHORIZED TO NOMINATE A TRANSFERRING BANK, IF APPLICABLE). TRANSFER FEES/CHARGES ARE FOR THE ACCOUNT OF BENEFICIARY OR ☐ IF BOX IS CHECKED, FOR THE ACCOUNT OF THE APPLICANT/OBLIGOR.

V. The Credit, or any Credit issued by you shall be subject to the International Standby Practices 1998, International Chamber of Commerce Publication 590 ("ISP") or, ☐ if box is checked, it shall be subject to the Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 ("UCP").

VI. Complete only when another bank is to issue its guarantee or undertaking based on the issued Credit.

We understand and agree that by making this request, we shall remain liable under this Credit until Issuer is fully released in writing by such entity.

☐ (i) Please issue a Credit in your customary format (as a counter guarantee) in favor of another bank (or Issuer's affiliated office, branch or other correspondent bank) and we request that such bank issue a local guarantee, bond, standby letter of credit or other undertaking (collectively referred to as "**Undertaking**") substantially as set forth below. The term "Credit" as used in this Agreement shall also include any such Undertaking.

Details provided below:

[Type of Undertaking:](#) ☐ Bid; ☐ Performance; ☐ Advance Payment; ☐ Specify Other:

[Expiry Date](#) (at least 30 days prior to the Expiry Date on page 1):

[Beneficiary \(Full name and full street address\):](#)

Bid/contract ref no.:

Bid/contract purpose/description/name:

Conditions for Drawing:

☐ (ii) [Please request/authorize another bank to issue their Undertaking substantially in the attached format](#)

See attached sheet(s) for additional documents and/or special instructions, which form(s) an integral part of this Application. Such attachments/special instructions must be approved and signed by Applicant/Obligor.

Unless otherwise stated herein, the nominated bank (if any) is authorized to send all documents to you in one airmail or courier service, if available.

THE UNDERSIGNED HEREBY AGREES TO ALL THE TERMS AND CONDITIONS SET FORTH HEREIN INCLUDING, ALL OF WHICH HAVE BEEN READ AND UNDERSTOOD BY THE UNDERSIGNED.

(Applicant/Obligor)

(Authorized "Signature")

(Print Authorized Signor's Name)

(Title)

(Phone)

(Date)

THE FOLLOWING IS TO BE EXECUTED IF THE CREDIT IS TO BE ISSUED FOR THE ACCOUNT OF A PERSON OTHER THAN THE PERSON SIGNING ABOVE:

AUTHORIZATION AND AGREEMENT OF ADDITIONAL PARTY NAMED AS ACCOUNT PARTY

To: THE ISSUER OF THE CREDIT

We join in the above Agreement, naming us as Account Party, for the issuance of the Credit and, in consideration thereof, we irrevocably agree (i) that the above Applicant has sole right to give instructions and make agreements with respect to this Application, the Agreement, the Credit and the disposition of documents, and we have no right or claim against you, any of your affiliates or subsidiaries, or any correspondent in respect of any matter arising in connection with any of the foregoing and (ii) to be bound by the Agreement and all obligations of Applicant thereunder as if we were a party thereto. Applicant is authorized to assign or transfer to you all or any part of any security held by Applicant for our obligations arising in connection with this transaction and, upon any such assignment or transfer, you shall be vested with all powers and rights in respect of the security transferred or assigned to you and you may enforce your rights under this Agreement against us or our Property in accordance with the terms hereof.

(Account Party)

(Authorized "Signature")

(Print Authorized Signor's Name)

(Title)

(Phone)

(Date)

EXHIBIT D-2

FORM OF CONTINUING AGREEMENT FOR COMMERCIAL & STANDBY LETTERS OF CREDIT

To induce JPMorgan Chase Bank, N.A. and/or any of its subsidiaries or affiliates (individually and collectively, the “Bank”), in its sole discretion, to issue from time to time at the request of the undersigned (individually and, if more than one, collectively, the “Applicant”), one or more standby or commercial letters of credit or other independent undertakings (together with any replacement, extension or modification thereof, each a “Credit”, and collectively, “Credits”), the Applicant agrees as follows:

ARTICLE I – DEFINED TERMS; APPLICATION PROCESS

Section 1.01. Defined Terms. Unless otherwise defined herein, capitalized terms used herein have the meaning set forth in Annex A.

Section 1.02. Applications. Each request to issue a Credit hereunder (each such request, an “Application”) shall be irrevocable and in a form acceptable to the Bank. The Applicant shall be responsible for the final text of a Credit requested hereunder notwithstanding the Bank’s recommendation, assistance or drafting or the Bank’s use, non-use or refusal to use text submitted by the Applicant.

Section 1.03. Letters of Credit Issued for Affiliates. Notwithstanding that a Credit issued or outstanding hereunder supports any obligations of, or is for the account of, an Affiliate of the Applicant, or states that an Affiliate of the Applicant is the “account party,” “applicant,” “customer,” “instructing party,” or the like of or for such Credit, and without derogating from any of the Bank’s rights (whether arising by contract, at law, in equity or otherwise) against such Affiliate in respect of such Credit, the Applicant (a) shall reimburse, indemnify and compensate the Bank for such Credit (including to reimburse any and all drawings thereunder) as if such Credit had been issued solely for the account of the Applicant and (b) irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Affiliate in respect of such Credit. The Applicant hereby acknowledges that the issuance of such Credits for an Affiliate inures to the benefit of the Applicant, and that the Applicant’s business derives substantial benefits from the businesses of such Affiliate.

Section 1.04. Joint and Several Liability. If more than one Person signs this Agreement or an Application hereunder, each of them shall be jointly and severally liable hereunder and thereunder and all the terms and provisions regarding liabilities, obligations and property of such Persons shall apply to any liabilities, obligations and property of any and all of them.

ARTICLE II – PAYMENT TERMS

Section 2.01. Draw Reimbursement; Fees. For each Credit, the Applicant shall pay the Bank (a) the amount of each drawing (i) on demand, when payment is made at sight, and (ii) at least one Business Day prior thereto, when payment is to be made under a time draft (or acceptance

relating thereto) or deferred payment obligation, and (b) related commissions, fees and charges (including any third party fees incurred by the Bank), at such rates, amounts and times as the Bank and the Applicant shall mutually agree (or in the absence of such an agreement, as reasonably determined by the Bank).

Section 2.02. Interest. If any amount payable by the Applicant to the Bank hereunder is not paid when due, such overdue amount shall bear interest at a rate per annum equal to the Default Rate, calculated on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable on demand for the actual number of days elapsed (including the first day but excluding the last day).

Section 2.03. Non-USD Draw. Unless otherwise previously agreed by the Bank, if an amount drawn under any Credit is in a currency other than United States dollars, the Applicant shall reimburse the Bank, on demand, the United States dollar equivalent of such drawn amount based on the Bank's actual cost of settlement of its obligation.

Section 2.04. Debit Authorization; Payments Generally. The Applicant hereby authorizes the Bank to debit from any of Applicant's accounts maintained with the Bank any amount payable by the Applicant hereunder, including the amount of any drawing under a Credit payable pursuant to Section 2.01(a). All payments required to be made by the Applicant hereunder shall be made in immediately available funds, without setoff, recoupment or counterclaim.

Section 2.05. Increased Costs. If, as a result of any Regulatory Change, the Bank determines that the cost (including but not limited to, any reserve, special deposit, insurance charge, capital charge, liquidity requirement, Tax (imposed on letters of credit or other obligations, or its deposits, reserves, other liabilities, or capital attributable thereto but excluding Excluded Taxes) or other assessment) to the Bank of issuing or maintaining any Credit is increased, or any amount received or receivable by the Bank hereunder is reduced, or the Bank is required to make any payment in connection with any transaction contemplated hereby, then the Applicant shall pay to the Bank on demand such additional amount or amounts as the Bank determines will compensate the Bank for such increased cost, reduction or payment.

Section 2.06. Taxes.

(a) All payments to be made hereunder shall be made without setoff or counterclaim and free and clear of, and without any deduction for any Taxes, except as required by applicable law. If any Indemnified Taxes are required by applicable law to be withheld from any amounts payable to the Bank hereunder, the amounts so payable to the Bank shall be increased to the extent necessary to yield to the Bank (after payment of all Indemnified Taxes) the amounts payable hereunder and in the full amounts to be paid. If any applicable law requires the deduction or withholding of any Tax from any amounts payable to the Bank hereunder, whenever any such Tax is paid by the Applicant, as promptly as possible thereafter, the Applicant shall send to the Bank an official receipt showing payment thereof, together with such additional documentary evidence as may be reasonably required from time to time by the Bank. The Applicant shall indemnify the Bank, within ten (10) days after demand therefor, for Indemnified Taxes imposed with respect to

payments made hereunder and paid or otherwise borne by the Bank whether or not such Indemnified Taxes were correctly or legally imposed.

(b) The Applicant shall indemnify the Bank against any stamp Taxes, transfer Taxes, documentary Taxes, assessments or charges made by any governmental authority by reason of the execution and delivery of this Agreement or any other Facility Document.

ARTICLE III – OBLIGATIONS ABSOLUTE

Section 3.01. Obligations Absolute. The Applicant's obligation to reimburse any drawing under a Credit as provided in Section 2.01(a) shall be absolute, unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever, including, without limitation: (a) any lack of validity, enforceability or legal effect of any Credit or this Agreement, or any term or provision therein or herein; (b) payment against presentation of any Drawing Document that does not comply in whole or in part with the terms of the applicable Credit or which proves to be fraudulent, forged or invalid in any respect or any statement therein being untrue or inaccurate in any respect, or which is signed, issued or presented by a Person (or a transferee of such Person) purporting to be a successor or transferee of the beneficiary of such Credit; (c) the Bank being the beneficiary of any Credit; (d) the Bank or any correspondent honoring a drawing against a Drawing Document up to the amount available under any Credit even if such Drawing Document claims an amount in excess of the amount available under the Credit; (e) the existence of any claim, set-off, defense or other right that the Applicant or any other Person may have at any time against any beneficiary, any assignee of proceeds, the Bank or any other Person; (f) the Bank or any correspondent having previously paid against fraudulently signed or presented Drawing Documents (whether or not the Applicant reimbursed the Bank for such drawing); and (g) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing, that might, but for this Section, constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, the Applicant's obligations hereunder (whether against the Bank, the beneficiary or any other Person).

Section 3.02. Limitation of Liability. Subject to Section 3.03 below, neither the Bank nor any of its Related Parties shall have any liability or responsibility, and the Bank's rights and remedies against the Applicant shall not be impaired, by reason of or in connection with: (a) honor of a presentation under any Credit which on its face substantially complies with the terms of such Credit; (b) honor of a presentation of any Drawing Documents which appear on their face to have been signed, presented or issued (i) by any purported successor or transferee of any beneficiary or other party required to sign, present or issue the Drawing Documents or (ii) under a new name of the beneficiary; (c) acceptance as a draft of any written or electronic demand or request for payment under a Credit, even if nonnegotiable or not in the form of a draft, and may disregard any requirement that such draft, demand or request bear any or adequate reference to the Credit; (d) the identity or authority of any presenter or signer of any Drawing Document or the form, accuracy, genuineness, or legal effect of any presentation under any Credit or of any Drawing Documents; (e) disregard of any non-documentary conditions stated in any Credit; (f) acting upon any Instruction which it, in Good Faith, believes to have been given by a Person or entity authorized to give such Instruction; (g) any errors, omissions, interruptions or delays in transmission or delivery of any message, advice or document (regardless of how sent or transmitted) or for errors

in interpretation of technical terms or in translation; (h) any delay in giving or failing to give any notice; (i) any acts, omissions or fraud by, or the solvency of, any beneficiary, any nominated Person or any other Person; (j) any breach of contract between the beneficiary and the Applicant or any of the parties to the underlying transaction; (k) assertion or waiver of any provision of the UCP or ISP which primarily benefits an issuer of a letter of credit, including, any requirement that any Drawing Document be presented to it at a particular hour or place; (l) payment to any paying or negotiating bank (designated or permitted by the terms of the applicable Credit) claiming that it rightfully honored or is entitled to reimbursement or indemnity under the Standard Letter of Credit Practice applicable to it; or (m) acting or failing to act as required or permitted under Standard Letter of Credit Practice (or in the case of other independent undertakings or guarantees, the UN Convention).

Section 3.03. Standard of Care. Nothing in Section 3.02 shall be construed to excuse the Bank from liability to the Applicant to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Applicant to the extent permitted by applicable law) suffered by the Applicant that are caused by the Bank's failure to exercise care when determining whether Drawing Documents presented under a Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of the Bank (as finally determined by a court of competent jurisdiction) in (a) honoring a presentation that does not at least substantially comply with a Credit, (b) failing to honor a presentation that strictly complies with a Credit, or (c) retaining Drawing Documents presented under a Credit, the Bank shall be deemed to have exercised care in each such determination or action. In no event shall the Bank be deemed to have failed to act with due diligence or reasonable care if the Bank's conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement. The Applicant's aggregate remedies against the Bank and any Related Party for wrongfully honoring a presentation under any Credit or wrongfully retaining honored Drawing Documents shall in no event exceed the aggregate amount paid by the Applicant to the Bank in respect of the honored presentation in respect of such Credit under Section 2.01 above, plus interest. The Applicant shall take action to avoid and mitigate the amount of any damages claimed against the Bank or any Related Party, including by enforcing its rights in the underlying transaction. Any claim by the Applicant for damages under or in connection with this Agreement or any Credit shall be reduced by an amount equal to the sum of (i) the amount saved by the Applicant as a result of the breach or alleged wrongful conduct and (ii) the amount of the loss that would have been avoided had the Applicant mitigated damages.

Section 3.04. Non-New York Law Governed Credit. If a Credit is to be governed by a law other than that of the State of New York, the Bank shall not be liable for any Costs resulting from any act or omission by the Bank in accord with the UCP or the ISP, as applicable, and the Applicant shall indemnify the Bank for all such Costs.

Section 3.05 Notice of Objection, Etc. The Applicant shall notify the Bank of (a) any noncompliance with any Instruction, any other irregularity with respect to the text of any Credit or any amendment thereto or any claim of an unauthorized, fraudulent or otherwise improper Instruction, within one (1) Business Day of the Applicant's receipt of a copy of such Credit or amendment and (b) any objection the Applicant may have to the Bank's honor or dishonor of any

presentation under any Credit or any other action or inaction taken or proposed to be taken by the Bank under or in connection with this Agreement or any Credit, within three (3) Business Days after the Applicant receives notice of the objectionable action or inaction. The failure to so notify the Bank within said times shall discharge the Bank from any loss or liability that the Bank could have avoided or mitigated had it received such notice, to the extent that the Bank could be held liable for damages hereunder; provided, that, if the Applicant shall not provide such notice to the Bank within three (3) Business Days of the date of receipt in the case of clause (a) or within ten (10) Business Days of the date of receipt in the case of clause (b), the Bank shall have no liability whatsoever for such noncompliance, irregularity, action or inaction and the Applicant shall be precluded from raising such noncompliance, irregularity or objection as a defense or claim against the Bank. The Applicant's acceptance or retention of a Drawing Document presented under or in connection with any Credit (whether or not the document is genuine) or of any Released Merchandise shall ratify the Bank's honor of the presentation and preclude the Applicant from raising a defense, set-off or claim with respect to the Bank's honor of such Credit. The Bank shall not be required to seek any waiver of discrepancies from the Applicant or to grant any waiver of discrepancies which the Applicant approves or requests.

ARTICLE IV – REPRESENTATIONS AND WARRANTIES

The Applicant hereby represents and warrants on and as of the date hereof, and the date of each issuance, amendment, and extension of a Credit, as applicable, that:

Section 4.01. Organization; Powers. It is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization and has all necessary power and authority to enter into and perform this Agreement and the other Facility Documents.

Section 4.02. Authorization; Enforceability. It has obtained all authorizations, consents and approvals required for it to enter into and perform this Agreement and the other Facility Documents in accordance with its terms. This Agreement and each other Facility Document has been duly executed and delivered by the Applicant and constitutes the legal, valid and binding obligation of the Applicant, enforceable against it in accordance with its terms.

Section 4.03. Governmental Approvals; No Conflicts. The execution, delivery and performance of this Agreement and the other Facility Documents by the Applicant (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate any applicable law or regulation or the charter, by-laws or other organizational documents of the Applicant or any order of any Governmental Authority, and (c) will not violate or result in a default under any material agreement or arrangement to which the Applicant is a party or by which it or its properties may otherwise be bound.

Section 4.04. Financial Condition. The financial statements most recently furnished to the Bank by the Applicant fairly present the financial condition of the Applicant in accordance with generally accepted accounting principles, and there has been no material adverse change in the Applicant's business, condition (financial or otherwise) or results of operation since the date of the Applicant's most recent annual financial statements.

Section 4.05. Disclosure. No information now or hereafter furnished by the Applicant to the Bank in connection with this Agreement, any other Facility Document or any Credit is or shall be materially false or misleading when furnished.

Section 4.06. Litigation. There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Applicant, threatened against or affecting the Applicant which, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a material adverse effect on its financial condition or business or which purports to affect the validity or enforceability of this Agreement, any other Facility Document, any Credit or any transaction related to any Credit.

Section 4.07. Anti-Corruption Laws and Sanctions. The Applicant has implemented and maintains in effect policies and procedures designed to ensure compliance by the Applicant, its subsidiaries, Affiliates and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Applicant, its subsidiaries, Affiliates and their respective officers and directors and to the knowledge of the Applicant, its employees and agents, are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects and if the Applicant is organized outside of the United States of America, the Applicant further represents that it is not knowingly engaged in any activity that would reasonably be expected to result in the Applicant being designated as a Sanctioned Person. None of (a) the Applicant, any subsidiary, Affiliate, any of their respective directors, officers or employees, or (b) to the knowledge of the Applicant, any agent of the Applicant or any subsidiary or Affiliate that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Credit, use of proceeds or other transaction contemplated by this Agreement or any other Facility Documents will violate any Anti-Corruption Law or applicable Sanctions.

ARTICLE V - COVENANTS

The Applicant covenants and agrees with the Bank that:

Section 5.01. Financial Statements and Other Information. To the extent not otherwise provided to the Bank under other agreements, upon request, the Applicant will furnish to the Bank its most recent year-end, quarterly and monthly (if any), financial statements (as audited) and such other information regarding the financial condition, business affairs or operations of the Applicant as the Bank may reasonably request. Further, the Applicant acknowledges and agrees to provide the Bank additional information, records, and documentation as requested by the Bank, pursuant to the Bank's programs enacted to comply with Section 326 of the USA Patriot Act, the applicable regulations promulgated thereunder, and the Bank's Customer Identification Program and authorizes the Bank to verify information as per the USA Patriot Act Regulation.

Section 5.02. Existence; Conduct of Business. The Applicant will do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business.

Section 5.03. Compliance with Laws. The Applicant will comply with all laws, rules, regulations and orders of any Governmental Authority (including the USA Patriot Act, foreign exchange control regulations, foreign asset control regulations and other trade-related regulations) now or hereafter applicable to each Credit, the transactions underlying such Credit or Applicant's execution, delivery and performance of this Agreement and each other Facility Document.

Section 5.04. Inspection Rights. The Applicant will permit the Bank (or its representatives), upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

Section 5.05. Payment of Taxes. The Applicant will pay all Taxes required to have been paid by it when due, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, and (b) the Applicant has set aside on its books and records adequate reserves with respect thereto in accordance with generally accepted accounting principles.

Section 5.06. Insurance. The Applicant will cause all Released Merchandise to be insured against theft, fire and such other risks usually insured against in connection with the underlying transaction.

Section 5.07. Anti-Corruption and Sanctions. The Applicant will maintain in effect and enforce policies and procedures designed to ensure compliance by the Applicant, its subsidiaries, Affiliates and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions. The Applicant agrees that no goods or vessels used to transport goods will be the subject of any Sanctions. The Applicant will not request any Credit, and shall not use, and shall procure that its subsidiaries, Affiliates and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Credit (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, except to the extent permitted for a Person required to comply with Sanctions, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

ARTICLE VI – EVENTS OF DEFAULT

Section 6.01. Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) the Applicant shall fail to pay any Obligations when and as the same shall become due and payable;

(b) any representation or warranty made or deemed made by or on behalf of the Applicant or any Guarantor in or in connection with this Agreement or any other Facility Document, or in any Instruction, report, certificate, financial statement or other document

furnished pursuant to or in connection with this Agreement or any other Facility Document, shall prove to have been incorrect in any material respect when made or deemed made;

(c) the Applicant or any Guarantor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Facility Document;

(d) the Applicant or any Guarantor shall fail to pay when due any indebtedness (including but not limited to indebtedness for borrowed money) or any event or condition shall occur that shall result in any such indebtedness becoming due prior to its scheduled maturity or that permits (with or without the giving of notice, the lapse of time or both) the holder of such indebtedness or obligee to cause such indebtedness to become due, by acceleration or otherwise, prior to its scheduled maturity;

(e) the Applicant or any Guarantor: (i) shall generally not, or be unable to, or shall admit in writing its inability to, pay its debts as its debts become due; (ii) shall make an assignment for the benefit of creditors; (iii) shall file a petition in bankruptcy or for any relief under any law of any jurisdiction relating to reorganization, arrangement, readjustment of debt, dissolution or liquidation; (iv) shall have any such petition filed against it in which an adjudication is made or order for relief is entered or which shall remain undismissed for a period of thirty (30) days or shall consent or acquiesce thereto; or (v) shall have had a receiver, custodian or trustee appointed for all or a substantial part of its property;

(f) any Facility Document shall at any time cease to be in full force and effect or its validity or enforceability shall be disputed or contested or any lien or security interest securing the Obligations shall cease to create a valid and perfected first priority lien or security interest in the property purported to be subject thereto;

(g) there shall be commenced against the Applicant or any Guarantor any proceeding for enforcement of a money judgment, which proceeding shall not have been stayed within thirty (30) days;

(h) a Change of Control shall have occurred or, if an individual, the death of the Applicant or any Guarantor; or

(i) the Applicant or any Guarantor shall (i) merge into or consolidate with any other Person, (ii) dispose of all or substantially all of its assets (whether now owned or hereafter acquired), or (iii) liquidate or dissolve;

THEN, and in every such event (other than an event with respect to the Applicant described in clause (e) above), and at any time thereafter during the continuance of such event, the Bank may, by notice to the Applicant, take any and all of the following actions, at the same or different times: (i) declare the Obligations then outstanding to be due and payable (in whole or in part), and thereupon such Obligations shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Applicant; (ii) require that the Applicant provide cash collateral as required in Section 7.03; and (iii) exercise all other rights and remedies available to it under the Facility Documents and applicable law; and in

case of any event with respect to the Applicant described in clause (e) above, the Obligations then outstanding shall automatically become due and payable and the obligation of the Applicant to cash collateralize the aggregate undrawn amount of all outstanding Credits at such time as provided in clause (ii) above shall automatically become effective, in each case, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Applicant.

Section 6.02. Code and Other Remedies. In addition to any other rights and remedies granted to the Bank in the Facility Documents, the Bank may exercise all rights and remedies of a secured party under the New York UCC or any other applicable law. Upon and during the continuance of an Event of Default, the Applicant agrees, at the Bank's request, to assemble all Collateral and make it available to the Bank at places which the Bank shall reasonably select, whether at the premises of the Applicant or elsewhere, and the Bank shall be authorized to liquidate or sell immediately, without demand for payment, advertisement or notice to the Applicant, all of which are hereby expressly waived (except such notice as is required by applicable law and that cannot be waived, in which event such notice shall be deemed proper if mailed at least five (5) Business Days before disposition or other action) any and all Collateral (whether received pursuant to Section 7.03 hereof or otherwise) at private sale or at public auction or at brokers' board or upon any exchange or otherwise, at Bank's option, in such parcels and at such time and at such place and at such price and upon such terms and conditions as the Bank may deem proper, and to apply the net proceeds of such sale or sales, together with any balance of deposits and any sums credited by or due from the Bank to the Applicant in general account or otherwise, to the payment of any and all of the Obligations, all without prejudice to the rights of the Bank against the Applicant with respect to any and all amounts which may be or remain unpaid and if any such sale be at broker's board or public auction or upon any exchange the Bank may itself be a purchaser at such sale, free from any right of redemption, which the Applicant hereby expressly waives and releases.

Section 6.03. Bank's Appointment as Attorney-in-Fact, Etc. The Applicant hereby gives the Bank the power and right to amend or terminate, or transfer drawing rights or cure one or more discrepancies under, any Credit on behalf of the Applicant, without notice to or assent by the Applicant. The Applicant further irrevocably constitutes and appoints the Bank and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Applicant and in the name of the Applicant or in its own name, for the purpose of carrying out the terms of this Agreement and the other Facility Documents, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and the other Facility Documents and to protect, preserve or realize upon the Collateral and the Bank's security interest therein. All powers, authorizations and agencies contained in this Section 6.03 are coupled with an interest and are irrevocable until this Agreement is terminated; provided that Bank agrees that it will not exercise any rights under this Section 6.03 including under the power of attorney provided for herein unless an Event of Default shall have occurred and be continuing.

ARTICLE VII – PLEDGE AND ASSIGNMENT OF SECURITY

Section 7.01. Grant of Security. As security for the payment and performance of all Obligations, the Applicant hereby assigns and transfers to the Bank, and hereby grants to the Bank, a security interest in, all of the following property now owned or at any time hereafter acquired by the Applicant or in which the Applicant now has or at any time in the future may acquire any right, title or interest (collectively, the “Collateral”):

(a) all Deposit Accounts and Securities Accounts with any office of the Bank wherever located;

(b) all Underlying Property which has been or at any time shall be (i) received or receivable by the Applicant, the Bank or any correspondent under or in connection with each Credit, or (ii) delivered to or otherwise come into the possession, custody or control of any office of the Bank or any correspondent (which shall be deemed a collateral agent or a bailee of the Bank for the purpose of perfecting a security interest in the Underlying Property) for any purpose, whether or not for the express purpose of being used by any such entity as collateral security or for safekeeping, custody, pledge, transmission or otherwise;

(c) all present and future claims and rights of the Applicant against any beneficiary of any Credit arising in connection with such Credit or the transaction underlying such Credit; and

(d) all products and proceeds of the foregoing.

Section 7.02. Holder in Trust, Etc. To the extent the Applicant shall hold any Collateral or any proceeds of Collateral, it shall hold such Collateral in trust for the Bank. The Bank shall be deemed to have possession, custody or control of all Collateral actually in transit to or set apart for it (or any of its agents, correspondents or others acting on its behalf), it being understood that the receipt at any time by the Applicant (or any of its agents, correspondents, or others acting on its behalf), of Collateral shall not be deemed a waiver of any of the Bank's rights or powers.

Section 7.03. Cash Collateral. If at any time there shall occur and be continuing (a) any Event of Default, (b) any material adverse change in the condition (financial or otherwise), business, operations or prospects of the Applicant or any Guarantor, (c) any action for a temporary restraining order, preliminary or permanent injunction, beneficiary wrongful dishonor action or the issuance or commencement of any similar order, action or event in connection with any Credit or any Drawing Document or this Agreement, which order, action or event may apply, directly or indirectly, to the Bank or which otherwise threatens to extend or increase the Bank's contingent liability beyond the time, amount or other limit provided in such Credit or this Agreement; or (d) any other event or condition which provides a basis for the Bank in good faith to deem itself insecure, then, the Applicant shall, upon Bank's demand, deliver to the Bank, as additional security for the Obligations, cash in an amount required by the Bank.

Section 7.04. Filing of Financing Statements, Etc. The Applicant hereby authorizes the Bank to file UCC financing statements, naming the Applicant as debtor and the Bank as secured party, with respect to any or all of the Collateral hereunder. The Bank is authorized to take any

action necessary to protect its rights in the Collateral, including but not limited to issuing an LOI for the Applicant's account to induce delivery of goods underlying any commercial Credit. The Applicant will, at its own expense upon request by the Bank from time to time, sign any other instrument or document (including any security agreement, or control agreement) and take any other action the Bank may reasonably deem necessary or desirable to preserve, perfect, protect or maintain the Collateral and the priority of the Bank's security interest therein and to realize upon the Bank's rights and remedies as a secured party. For the avoidance of doubt and not in limitation of the rights of the Bank under Sections 9-104(a)(1), 9-106(a) and 8-106(e) of the New York UCC, the Applicant and the Bank (acting as a bank with respect to all Deposit Accounts and as a securities intermediary with respect to all Securities Accounts) agree that the Bank may direct disposition of the funds in any Deposit Account and may issue and follow its own entitlement orders with respect to any Securities Account, in either case, without the consent of the Applicant.

Section 7.05. Assertion of Applicant's Rights. To the extent the Bank honors a presentation for which the Bank remains unpaid, the Bank may assert rights of the Applicant and the Applicant shall cooperate with the Bank in its assertion of the Applicant's rights against the beneficiary, the beneficiary's rights against the Applicant and any other rights that the Bank may have by subordination, subrogation, reimbursement, indemnity or assignment.

Section 7.06. Certain Matters Relating to Commercial Letters of Credit.

(a) If the Bank shall agree to honor or accept Drawing Documents under a Credit on a time draft or deferred payment basis, the Applicant shall not take possession of the Drawing Documents or the Underlying Property except for the purpose of loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with such Underlying Property in a manner preliminary to its sale or exchange. An Instruction to release any such Drawing Document or Underlying Property shall be deemed a representation by the Applicant to the Bank that the Applicant seeks such release for one of said purposes. In each such case, the Applicant shall apply the proceeds of Underlying Property to the Obligations relating to the applicable Credit.

(b) The Bank's rights and liens hereunder shall continue unimpaired, and the Applicant shall be and remain obligated in accordance with the terms and provisions hereof, notwithstanding the release and/or substitution of any Underlying Property which may be held as security hereunder at any time, or of any rights or interest therein.

ARTICLE VIII - OPERATIONAL PROVISIONS RELATED TO COMMERCIAL LETTERS OF CREDIT

In the event that any commercial letter of credit is issued hereunder, the following terms shall apply:

Section 8.01. Absence of Written Instructions. In the absence of written instructions to the contrary, the Applicant agrees that (a) if the Credit authorizes drawings and/or shipments in installments and any installment is not drawn and/or shipped within the period allowed for that installment but the Applicant waives such discrepancy, the Bank is authorized to honor any

subsequent installments so long as documents for such installments are presented within the period allowed for such installments; and (b) each negotiated Credit shall expire at the counters of the nominated person even if notice of the presentation or any documents contained in the presentation is not received by the Bank until after the expiry date of the Credit or any installment thereof.

Section 8.02. Release of Documents or Claiming of Goods from the Carrier. In the event the Bank, upon the Applicant's request, agrees to deliver to the Applicant, a customs broker or any other person designated by the Applicant, any of the documents of title relating to the Credit, prior to having received payment in full of all the Obligations, the Applicant agrees to obtain possession of any goods represented by such documents within twenty-one (21) days after the date of delivery of such documents, and if the Applicant fails to do so, the Applicant agrees to return such documents or to have them returned to the Bank prior to the expiration of the twenty-one (21) day period. The Applicant further agrees to execute and deliver to the Bank receipts for such documents and the goods represented thereby identifying and describing such documents and goods. If the Applicant claims from the carrier any goods identified in the shipping documents required under the Credit, (by virtue of a steamship release, air release, letter of indemnity or any other means), with or without the assistance of the Bank, and such goods have been released to the Applicant or a customs broker or agent acting on the Applicant's behalf, the Applicant hereby authorizes the Bank to immediately, and without further inquiry and consideration, debit any account of the Applicant in an amount equal to the fair market value of such goods, that have been released, together with any out-of-pocket charges or expenses owing to the Bank.

Section 8.03.LOIs. Terms regarding steamship guarantees, releases or letters of indemnity in favor of a carrier issued by the Bank upon Instruction of the Applicant ("LOIs") are set forth in Annex B.

ARTICLE IX - OPERATIONAL PROVISIONS RELATED TO STANDBY LETTERS OF CREDIT

In the event that any standby letter of credit is issued hereunder, the following terms shall apply:

Section 9.01. Installments. If the Credit is issued subject to UCP 600, unless otherwise agreed, in the event that any installment of the Credit is not drawn within the period allowed for that installment, the Credit may continue to be available for any subsequent installments in the sole discretion of the Bank, notwithstanding Article 32 of UCP.

Section 9.02. Auto Extend Notice. If the Credit provides for automatic extension without amendment, the Applicant agrees that it will notify the Bank in writing at least thirty (30) days prior to the last day specified in the Credit by which the Bank must give notice of non-extension if the Applicant wishes the Credit not to be extended. Any decision to extend or not extend the Credit shall be in the Bank's sole discretion and judgment. The Applicant hereby acknowledges that in the event the Bank notifies the beneficiary of the Credit that it has elected not to extend the Credit and the beneficiary draws on the Credit after receiving the notice of non-extension, the Applicant acknowledges and agrees that the Applicant shall have no claim or cause of action

against the Bank or defense against payment under the Agreement for the Bank's discretionary decision to extend or not extend the Credit.

Section 9.03. Pending Expiry Notice. If a Credit's terms and conditions provide that the Bank give the beneficiary a notice of pending expiration, Applicant agrees that it will notify the Bank in writing at least thirty (30) days prior to the last day specified in the Credit by which the Bank must give such notice of the pending expiration date. In the event the Applicant fails to so notify the Bank and the Credit is extended, the Applicant's Obligations under this Agreement shall continue in effect and be binding on the Applicant with regard to the Credit as so extended.

ARTICLE X – MISCELLANEOUS

Section 10.01. Notices.

(a) Notices to the Bank provided for herein shall be sent to the address of the Bank as set forth in the applicable Credit and shall be delivered by hand, overnight courier or certified mail, return receipt requested. Notices to the Applicant provided for herein shall be sent to the address set forth in the Application unless advised otherwise in writing.

(b) The Bank may transmit a Credit and any amendment thereto by S.W.I.F.T. message and thereby bind the Applicant directly and as indemnitor to the S.W.I.F.T. rules.

(c) The Bank is authorized to accept and process any Application and any amendments, transfers, assignments of proceeds, Instructions, consents, waivers and all documents relating to a Credit or an Application which are sent by Electronic Transmission and such Electronic Transmission shall have the same legal effect as an original and shall be binding upon and enforceable against the Applicant. The Bank may, but shall not be obligated to, require authentication of such Electronic Transmission or receipt of original documents prior to acting on such Electronic Transmission. If it is a condition of a Credit that payment may be made upon receipt by the Bank of an Electronic Transmission advising negotiation, the Applicant hereby agrees to reimburse the Bank on demand for the amount indicated in such Electronic Transmission advice, and further agrees to hold the Bank harmless if the documents fail to arrive, or if, upon the arrival of the documents, the Bank should determine that the documents do not comply with the terms and conditions of such Credit.

(d) The Bank's records of the content of any Instruction shall be conclusive absent manifest error.

Section 10.02. Amendment; Waiver. Neither the Bank nor the Applicant shall be deemed to have amended or modified any term hereof, or waived any of their rights unless the Bank and the Applicant consent in writing to such amendment, modification or waiver. No such waiver, unless expressly stated therein, shall be effective as to any transaction which occurs subsequent to such waiver, nor as to any continuance of a breach after such waiver. The Bank's or the Applicant's consent to any amendment, waiver, or modification does not mean that the Bank or the Applicant shall consent or has consented to any other or subsequent Instruction to amend, modify, or waive a term of this Agreement, any other Facility Document or any Credit.

Section 10.03. Indemnification. The Applicant shall indemnify and hold harmless the Bank, and its correspondents and each of its Related Parties (each, including the Bank, an "Indemnified Person") from and against any and all Costs, arising out of, in connection with, or as a result of: (a) any Credit or any pre-advice of its issuance; (b) any transfer, sale, delivery, surrender, or endorsement of any Drawing Document at any time(s) held by any Indemnified Person in connection with any Credit; (c) any action or proceeding arising out of or in connection with any Credit or this Agreement or any other Facility Document (whether administrative, judicial or in connection with arbitration), including any action or proceeding to compel or restrain any presentation or payment under any Credit, or for the wrongful dishonor of or honoring a presentation under any Credit; (d) any independent undertakings issued by the beneficiary of any Credit (in connection with such Credit); (e) any unauthorized Instruction or error in any Electronic Transmission; (f) an adviser, confirmer or other nominated person seeking to be reimbursed, indemnified or compensated; (g) any third party seeking to enforce the rights of an applicant, beneficiary, nominated person, transferee, assignee of letter of credit proceeds or holder of an instrument or document; (h) the fraud, forgery or illegal action of parties other than the Indemnified Person; (i) the enforcement of this Agreement or any other Facility Document or any rights or remedies under or in connection with this Agreement, any other Facility Document or any Credit; (j) the Bank's performance of the obligations of a confirming institution or entity that wrongfully dishonors a confirmation; (k) Bank dishonoring any presentation upon or during the continuance of any Event of Default or for which the Applicant is unable or unwilling to make any payment to the Bank required under Section 2.01; and (l) the acts or omissions, whether rightful or wrongful, of any present or future de jure or de facto governmental or regulatory authority or cause or event beyond the control of such Indemnified Person; provided, however, that such indemnity shall not be available to any Person claiming indemnification under this Agreement or any other Facility Document to the extent that such Costs are found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of such Indemnified Person. If and to the extent that the obligations of the Applicant under this Section are unenforceable for any reason, the Applicant shall make the maximum contribution to the Costs permissible under applicable law.

Section 10.04. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Bank and the Applicant and their respective successors and assigns permitted hereby, except that the Applicant may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Bank. Nothing in this Agreement, expressed or implied, shall be construed to confer any right or benefit upon any Person (other than the parties hereto, the Indemnified Persons and their respective successors and permitted assigns). The Bank may assign or sell participations in all or a portion of its rights and obligations under this Agreement (including all or a portion of its rights and obligations under any Credit) to another entity without the prior written consent of the Applicant.

Section 10.05. Termination; Survival.

(a) This Agreement is a continuing agreement and may not be terminated by the Applicant except upon (i) thirty (30) days' prior written notice of such termination by the Applicant to the Bank at the address of the Bank set forth on the most recent Credit issued hereunder, (ii) payment of all Obligations and (iii) the expiration or cancellation of all Credits and LOIs (if any)

issued hereunder. Notwithstanding the foregoing sentence, if a Credit is issued in favor of another entity, which entity is to issue a guarantee or undertaking on Applicant's behalf in connection therewith, or is issued as support for such a guarantee, the Applicant shall remain liable with respect to such Credit until the Bank is fully released in writing by such entity.

(b) The provisions of Articles II, III, VII and Sections 10.03, 10.05, 10.10 and 10.11 shall survive and remain in full force and effect regardless of the consummation of any transactions contemplated hereby, the reimbursement or repayment of any drawings or Obligations, the expiration or termination of the Credits or LOIs or the termination of this Agreement or any provision hereof.

Section 10.06. Counterparts; Integration; Electronic Execution. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the Facility Documents constitute the entire contract and final agreement among the parties relating to the subject matter and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements of the parties. Delivery of an executed counterpart of a signature page of this Agreement or any other Facility Document that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement or such other Facility Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement and/or any other Facility Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Bank to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (a) to the extent the Bank has agreed to accept any Electronic Signature, the Bank shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Applicant (or any Guarantor) without further verification thereof and without any obligation to review the appearance or form of any such Electronic signature and (b) upon the request of the Bank, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Applicant hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement or any other Facility Document shall have the same legal effect, validity and enforceability as any paper original, (ii) agrees that the Bank may, at its option, create one or more copies of this Agreement or any other Facility Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of the Bank's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), and (iii) waives any argument, defense or right to contest the legal effect, validity or

enforceability of this Agreement or any other Facility Document based solely on the lack of paper original copies of this Agreement or such other Facility Document, respectively, including with respect to any signature pages thereto.

Section 10.07. Severability. Any provisions of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof, and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 10.08. Right of Setoff. The Applicant agrees that, if an Event of Default shall have occurred and be continuing, the Bank shall be entitled, at any time and from time to time, (a) to setoff and apply any and all deposits (general or special, time or demand, provisional or final, matured or unmatured) at any time held, and other obligations at any time owing, by the Bank to or for the credit or the account of the Applicant, against any and all of the Obligations, and (b) to advance funds to the Applicant under any line of credit (committed or uncommitted) made available to the Applicant by the Bank and to apply such funds against any and all of the Obligations, irrespective of, in the case of both (a) and (b), whether or not the Bank shall have made any demand under this Agreement or any other Facility Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of the Bank different from the branch or office that is holding such deposit, obligated on such indebtedness or extending such credit line, as applicable. The rights of the Bank under this Section are in addition to other rights and remedies (including other rights of setoff) that the Bank may have. The Bank agrees to notify the Applicant promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 10.09. Foreign Currency Indemnity. The Applicant's obligation to make payments in any currency (the "Contract Currency") shall not be discharged or satisfied by any tender, or any recovery pursuant to any judgment or otherwise, that is expressed in or converted into any currency other than the Contract Currency, except to the extent that such tender or recovery results in the actual receipt by the Bank at its designated office of the full amount of the Contract Currency specified to be payable hereunder. The Applicant's obligation to make payments in the Contract Currency shall be enforceable as an alternative or additional cause of action to the extent that such actual receipt is less than the full amount of the Contract Currency specified to be payable hereunder, and shall not be affected by judgment being obtained for other sums due hereunder. The Applicant shall indemnify the Bank for any shortfall in such actual receipt.

Section 10.10. Governing Law; Jurisdiction; Consent to Service of Process; Etc.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to principles of conflict of laws. The UCP and the ISP are incorporated by reference into this Agreement provided, however, that to the extent permitted by applicable law, this Agreement shall prevail in case of a conflict between this Agreement, the New York UCC, the UCP, ISP and/or Standard Letter of Credit Practice and the UCP shall prevail in case of conflict between the UCP and the New York UCC or other Standard Letter of Credit Practice, if the Credit is governed by the UCP and the ISP shall prevail in case of a conflict between

the ISP and the New York UCC and other Standard Letter of Credit Practice if the Credit is a standby Credit governed by the ISP.

(b) The Applicant consents to the nonexclusive jurisdiction and venue of the federal courts located in the Borough of Manhattan, City of New York (or New York state courts sitting in the Borough of Manhattan in the event that the federal court lacks subject matter jurisdiction) and any appellate court from any thereof in any action or proceeding arising out of or relating to this Agreement, any other Facility Document, any Instruction or any Credit; provided that, a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(c) Service of process in any legal action or proceeding arising out of or in connection with this Agreement, any other Facility Document, any Instruction or any Credit may be made upon the Applicant by mailing a copy of the summons to the Applicant either at the address set forth in the applicable Application or at the Applicant's last address appearing in the Bank's records. In addition, if the Applicant is organized in a jurisdiction outside the United States of America, service of process by the Bank in connection with any dispute shall be binding on the Applicant if sent to the Process Agent (as defined below) by registered mail at the address specified below. The Applicant hereby irrevocably appoints CT Corporation (the "Process Agent"), presently located at 28 Liberty Street, New York, New York 10005 as its agent to receive on its behalf and behalf of its property service of copies of the summons and complaint and any other process which may be served in any such action or proceeding. Such service may be made by mailing or delivering a copy of such process to the Applicant in care of the Process Agent at its address and the Applicant hereby irrevocably authorizes and directs the Process Agent to accept such service on its behalf. Nothing herein shall affect the right of the Bank to serve legal process in any other manner permitted by law or affect the right of the Bank to bring any action or proceeding against the Applicant or its property in the courts of any other jurisdiction.

(d) No legal action or proceeding arising out of or in connection with this Agreement, any Facility Document, any Instruction or any Credit may be brought by the Applicant against the Bank (i) except in a state or federal court located in the Borough of Manhattan, City of New York, State of New York and (ii) unless commenced within one (1) year after (x) the expiration date of the applicable Credit or (y) the alleged breach shall have purportedly occurred, whichever is earlier.

Section 10.11. WAIVER OF JURY TRIAL. THE APPLICANT HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO JURY TRIAL IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER FACILITY DOCUMENT, ANY INSTRUCTION, ANY CREDIT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY).

Section 10.12. Disclosure. The Bank may disseminate information relating to the Applicant, this Agreement and any Credit (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors, and third parties (including any correspondent bank) selected by any of the foregoing, wherever situated, for confidential use

in connection with Bank's performance, administration or enforcement of this Agreement or any other Facility Document (including in connection with the provision of any service and for data processing, statistical and risk analysis purposes); (b) to the extent requested by any Governmental Authority; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) in connection with the exercise of any remedies hereunder or under any other Facility Document or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder or under any other Facility Document, (e) subject to an agreement containing customary confidentiality provisions, to any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under this Agreement or any Credit; (f) with the consent of the Applicant or (g) to the extent such information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Bank on a non-confidential basis from a source other than the Applicant.

Section 10.13. Waiver of Immunity. The Applicant acknowledges that this Agreement and each Credit is entered into (or will be entered into) for commercial purposes. To the extent that the Applicant may now or hereafter be entitled, in any jurisdiction in which judicial proceedings may at any time be commenced with respect to this Agreement, any other Facility Document or any Credit, to claim for itself or its revenues or properties any immunity from the jurisdiction of any court or from legal process (whether from service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and to the extent that in any such jurisdiction there may be attributed to the Applicant any such immunity (whether or not claimed), the Applicant hereby irrevocably agrees not to claim, and hereby waives, such immunity in respect of its obligations under this Agreement, any other Facility Document or any Credit.

Section 10.14. Interest Rate Limitation. In no case shall the interest which may be charged by the Bank hereunder exceed the maximum amount which the Bank may charge or collect under the law applicable to it.

Section 10.15. Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

IN WITNESS WHEREOF, the Applicant has caused this Agreement to be duly executed and delivered by its authorized officer as of the day and year written below.

APPLICANT

By: _____

Name:

Title:

Date:

Without limiting the terms above, the Applicant hereby authorizes the Bank to debit Applicant's account no. unless the Applicant shall have agreed in writing to other payment arrangements with the Bank for the amount of each drawing and/or the Bank's commissions and charges.

ANNEX A - DEFINITIONS

The following terms shall have the following meanings:

“Affiliate” means, with respect to a specific Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under the common Control with the Person specified.

“Agreement” means this Continuing Agreement for Commercial and Standby Letters of Credit, including the Annexes hereto, as it may be amended, supplemented, or otherwise modified from time to time.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Applicant or any of its subsidiaries or Affiliates from time to time concerning or relating to bribery or corruption.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City, New York are authorized or required by law to remain closed.

“Change of Control” means the acquisition of direct or indirect Control of the Applicant or any Guarantor by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the SEC thereunder as in effect on the date hereof).

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the arrangement or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Costs” means any and all claims, suits, judgments, costs, losses, fines, penalties, damages, liabilities, and expenses, including expert witness fees and legal fees, charges and disbursements of any counsel for any Indemnified Person.

“Default Rate” means a rate per annum equal to 2% above the Prime Rate.

“Deposit Account” has the meaning set forth in the New York UCC.

“Drawing Document” means any draft, demand or claim for payment under any Credit or other document presented for purposes of drawing under a Credit.

“Electronic Signature” means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

“Electronic Transmission” means any electronic transmission using SWIFT, electronic mail, facsimile, any other computer generated telecommunications, or any electronic platform as agreed by the Bank from time to time.

“Excluded Taxes” means any (i) Taxes imposed on or measured by net income (however denominated), franchise taxes or branch profit taxes, in each case imposed by the jurisdiction in which the Bank is organized or in which its applicable office issuing any Credit hereunder is located, and (ii) U.S. Federal withholding taxes imposed under Sections 1471 through 1474 of the Internal Revenue Code of 1986, as amended, (the “Code”) as of the date hereof (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreement entered into pursuant to Section 1471(b)(1) of the Code.

“Facility Document” means this Agreement and any other agreement entered into in connection herewith by the Applicant or any Guarantor with or in favor of the Bank, including any Application but excluding any Credit.

“Good Faith” means honesty in fact in the conduct or transaction concerned.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantor” means any Person that has guaranteed or provided credit support for all or part of the Obligations.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Instruction” means each Application, any inquiries, communications and instructions (in any form, whether oral, telephonic, written, electronic mail or transmission or facsimile) regarding a Credit.

“ISP” means, with respect to any Credit, International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) and any subsequent revision thereof adhered to by the Bank on the date such Credit is issued.

“New York UCC” means the Uniform Commercial Code as from time to time in effect in the State of New York.

“Obligations” means all obligations and liabilities of the Applicant to the Bank under any Facility Document or otherwise with respect to any and all Credits and LOIs issued hereunder (if any), whether matured or unmatured, absolute or contingent, now existing or hereafter incurred. Without limiting the foregoing, the Obligations include (a) the obligation to pay interest, commissions, charges, expenses, fees, indemnities and other amounts payable by the Applicant

under any Facility Document and (b) the obligation of the Applicant to reimburse any amount in respect of any of the foregoing that the Bank may elect to pay or advance on behalf of the Applicant.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, governmental authority or other entity.

“Prime Rate” means the rate of interest last quoted by The Wall Street Journal as the “Prime Rate” in the U.S. or if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the “bank prime loan” rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Bank) or any similar release by the Federal Reserve Board (as determined by the Bank). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

“Regulatory Change” means any change after the date hereof in United States federal, state or foreign laws or regulations (including Regulation D of the Board of Governors of the Federal Reserve System) or the adoption or making after such date of any interpretations, directives or requests applying to a class of banks including the Bank of or under any United States federal or state, or any foreign, laws or regulations (whether or not having the force of law) by any court or governmental or monetary authority charged with the interpretation or administration thereof; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith or in the implementation thereof and (y) all requests, rules, guidelines or directives promulgated by Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall, in each case, be deemed to be a “Regulatory Change”, regardless of the date enacted, adopted, issued, or implemented.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.

“Released Merchandise” means, with respect to a Credit or LOI, all Underlying Property released (including pursuant to a forwarders cargo receipt or by any other means whatsoever) or consigned to the Applicant or any Person designated by the Applicant in connection with such Credit or LOI.

“Sanctioned Country” means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, by the United Nations Security Council, the

European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of any Sanctions.

"Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) if the Applicant is organized outside of the United States of America the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority.

"Securities Account" has the meaning set forth in the New York UCC.

"Standard Letter of Credit Practice" means, for the Bank, any domestic or foreign law or letter of credit practices applicable in the city in which the Bank issued the applicable Credit or for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Credit, as the case may be. Such practices shall be (i) of banks that regularly issue Credits in the particular city and (ii) required or permitted under the UCP or the ISP, as chosen in the applicable Credit.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees, value added tax or any other goods and services, use or sales tax or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"UCP" means, with respect to any Credit, Uniform Customs and Practice for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 and any subsequent revision thereof adhered to by the Bank on the date such Credit is issued.

"UN Convention" means the United Nations Convention on Independent Guarantees and Standby Letters of Credit.

"Underlying Property" means all property of any kind whatsoever (now existing or hereafter acquired) referred to, or relating to, an applicable Credit including, without limitation, any and all right, title and interest of the Applicant in any goods, equipment, inventory, money, documents, letters of credit, warehouse receipts, instruments, securities, security entitlements, financial assets, investment property, precious and base metals, chattel paper, electronic chattel paper, accounts, commercial tort claims, deposit accounts, general intangibles (including any claims for breach of contract, breach of warranty claims and any insurance policies and proceeds), letter of credit rights, choses in action and the proceeds of any and all thereof (including any and all of the aforesaid referred to in any Credit or the Drawing Documents relating thereto).

ANNEX B – TERMS APPLICABLE TO THE ISSUANCE OF LOIs

If the Bank issues an LOI or endorses a bill of lading at the instruction of the Applicant or otherwise pursuant hereto, the Applicant agrees as follows:

(a) Except as otherwise set forth in this Annex B or expressly set forth elsewhere in this Agreement, an LOI shall be deemed issued by the Bank subject to the same terms and conditions set forth herein for Credits, including, without limitation, payment obligations, indemnification provisions and limitations of liability benefiting the Bank and other Indemnified Persons.

(b) The Applicant shall be liable for payments made under any LOI on demand and otherwise subject to Article 2 of the Agreement. The Bank shall have the right in its sole discretion and without notice to or approval of the Applicant, to pay, settle or adjust any claim or demand made against or upon the Bank in connection therewith without inquiry or determination, on the Bank's part, of the circumstances, merits or validity of any claim or demand.

(c) The Applicant shall take whatever steps are necessary to obtain the shipping documents concerning the Released Merchandise. Upon Applicant's receipt of such shipping documents, the Applicant shall deliver them to the carrier, duly endorsed by all parties whose endorsement is required by the carrier, and obtain from the carrier and deliver to the Bank, the LOI and a release of the Bank's liability to the carrier.

(d) The Bank may make payments against any drawing under the Credit related to an LOI, whether or not the drawing shall comply with the terms and conditions of such Credit, without any liability whatsoever to the Bank. The Applicant expressly acknowledges that the Applicant may be required to reimburse the Bank for payments made by the Bank under both the LOI and such Credit with respect to the same Released Merchandise.

(e) The Applicant shall account by delivering to the Bank, immediately upon the receipt thereof by the Applicant, the proceeds of the sale of the Released Merchandise or the documents related thereto in whatever form received (with Applicant's endorsement where necessary) to be applied by the Bank to the payment of any drawing under the Credit. If any proceeds shall be notes, accounts, acceptances, or in any form other than cash, they shall not be applied by the Bank until paid in cash. The Bank shall have the option at any time to sell or discount these items and so apply the net proceeds, conditionally upon final payment of these items.

(f) The Applicant shall pay all charges in connection with the Released Merchandise and shall at all times hold it separate and apart from the property of the Applicant and shall definitively show such separation in all its records and entries.

(g) The Applicant shall at all times keep the Released Merchandise fully insured at Applicant's expense in favor of, and to the satisfaction of, the Bank against loss by fire, theft, and any other risk to which it may be subject. The Applicant shall deposit the insurance policies with the Bank upon its demand. If for any reason any of such policies fail to provide for payment of the loss thereunder to the Bank as its interest may appear, the Applicant hereby (i) assigns and

makes the loss payable under any of such policies payable to the Bank as its interest may appear, (ii) assigns to the Bank all of the avails and proceeds of any and all of such policies, and (iii) agrees to accept such avails and proceeds in trust for the Bank and to forthwith deliver the same to the Bank in the exact form received (with the endorsement of the Applicant where necessary).

(h) The Bank shall have no responsibility for the existence, quantity, quality, condition, value or delivery of any Released Merchandise or the correctness, validity or genuineness of the documents purporting to represent Released Merchandise.

EXHIBIT E
ACCOUNT CONTROL AGREEMENT

EXHIBIT F

INTERCREDITOR AND COLLATERAL AGENCY AGREEMENT

EXHIBIT G
SECURITY AGREEMENT