Staff Summary Report

MEETING DATE:	May 15 2017
AGENDA ITEM:	*Approval of Amendment #3 for the City of Aztec / Guzman Energy Purchase Power Agreement*
AGENDA TITLE:	Purchase Power Contract Amendment #3
ACTION REQUESTED BY:	Ken George, Electric Director, Joshua Ray, City Manager.
ACTION REQUESTED:	Approval of Amendment #3 for the City of Aztec / Guzman Energy Purchase Power Agreement.
SUMMARY BY:	Ken George

PROJECT DESCRIPTION / FACTS (Leading Department)

Under the current purchase power agreement (PPA) the City pays Guzman Energy .0495 cents per Kilowatt hour (KWH) for power delivered to the Shiprock substation. This price includes the payment for constructing the 1 megawatt solar farm located south of the City's wastewater treatment plant. City Staff has been working with Guzman Energy to lower our cost of purchase power. Guzman has offered the City of Aztec an amended contract with a purchase power price of .04442 cents per KWH if the City pays a down payment of two million dollars ($2,000,000.00) towards purchase power. Advantages of the new agreement for the City will allow opportunity for the City to purchase more power from Western Area Power (WAPA) in western replacement power sales (WRP). WRP is offered monthly and of late has been as low as .017/KWH. I estimate over the term of the Guzman PPA the City could save between $250,000.00 to as much as $800,000.00 in purchase power cost. Guzman has agreed to give a Deed of Trust to the City for the Solar Farm as security for the $2,000,000.00 paid up front. I estimate the sales for the power produced by the Solar Farm to be about $180,000.00 per year or $1,080,000.00 over the remainder of the Guzman purchase power contract. The City purchases approximately 43,200,000 KWH per year. WAPA could provide as much as 19,600,000 KWH/ Yr at a less cost than the Guzman .04442 under the new agreement. (KBG)

TECHNICAL INPUT (Supporting Departments)

PROCUREMENT INPUT (If applicable, Purchasing)

FISCAL INPUT (If applicable, Finance Department)

SUPPORT DOCUMENTS: See attached MOU and specifications

DEPARTMENT'S RECOMMENDED MOTION: Approve Amendment ## to the Power Sales Agreement between Guzman Energy LLC and the City of Aztec

Execution Version

AMENDED AND RESTATED POWER SALES AGREEMENT

BY AND BETWEEN

GUZMAN ENERGY LLC

AND

CITY OF AZTEC

DATED AS OF MAY ____, 2017

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POWER SALES AGREEMENT

THIS AMENDED AND RESTATED POWER SALES AGREEMENT, dated as of the Effective Date, is entered into by and between Guzman and Aztec.

RECITALS

WHEREAS, Aztec owns and operates a municipal electric system that supplies electric power and energy at retail rates to the inhabitants of Aztec and to users located in service areas adjacent to its municipal corporate boundaries.

WHEREAS, Guzman is an energy market participant that provides energy services to its clients.

WHEREAS, Aztec issued a 2015 Request for Proposals for Wholesale Power Supply (RFP #2015-0502), to which Guzman submitted a response.

WHEREAS, Guzman and Aztec entered into the Original Power Sales Agreement dated December 21, 2015, as amended, pursuant to which Aztec purchases and takes from Guzman, and Guzman sells and provides to Aztec, the full requirements of its electric power needs to serve its residents on the terms and conditions contained in this Agreement.

WHEREAS, in addition to the energy, capacity and environmental attributes sold by Guzman hereunder, Guzman owns and operates a solar powered electric energy generating project, that delivers electric energy produced thereby to Aztec;

WHEREAS, Aztec has the right to assume ownership of the project from Guzman, on the terms and conditions contained in this Agreement; and

WHEREAS, Aztec wishes to make a Pre-Payment in exchange for certain benefits associated with the Delivered Rate, the Aztec WRP allocations and repayment of the Loan.

TERMS OF AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and the recitals which are incorporated herein by reference, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS; INTERPRETATION

1.1 Definitions.

a. "Affiliate" means, with respect to any 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.

b. "Agreement" means this Amended and Restated Power Sales Agreement, including all exhibits attached hereto.

c. "AHP" means Available Hydro Power as defined in the WAPA Agreement.

d. "Applicable Solar Program" means any federal or state program which may give financial incentives or benefits for solar developments like the Project.

e. "Aztec" means the City of Aztec, a municipality located in the State of New Mexico.

f. "Aztec Additional Generation" means the additional generation owned or acquired by Aztec, or from which Aztec has the right to purchase energy, generated by an approximately one (1) MW municipal solid waste, garbage, rubbish, refuse, sludge, yard waste, and medical waste burning facility.

g. "Aztec Emergency Condition" means the total or partial failure of any facilities owned or operated by Aztec, or any of its transmission providers, including any entity with which Aztec has a wheeling or similar arrangement for the transmission of energy, if such condition endangers, or threatens imminently to endanger, the health, safety or welfare of people, or to damage property.

h. "Aztec's Full Requirements" means the totality of the firm electricity and capacity requirements required by Aztec, net of any WAPA Allocation as set forth in Exhibit B, including delivery and balance of hourly capacity and energy and including Ancillary Services 1 through 6 from WAPA.

i. "Aztec's Imbalance Charges" means any and all energy imbalance penalties and other charges or costs that may be charged to Aztec by a transmission provider or balancing authority pursuant to the NITS Agreement as a result of any discrepancy or difference between the Purchased Energy delivered to Aztec and Aztec's Full Requirements.

j. "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it which is not dismissed within ninety (90) days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

k. "CDP" means Customer Displacement Power as defined in the WAPA Agreement.

l. "Commercial Operation Date" means the date upon which the Project achieved commercial operation, which the Parties agree occurred as of July 1, 2016.

m. "Contract Year" means a period of 365 days (or 366 days in the case of a leap year) following the Commercial Operation Date, and each anniversary thereof.

n. "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 ownership of voting securities or in its capacity as sole or managing member, by contract or otherwise. The term "Control" when used as a verb in the referenced clauses shall have a correlative meaning.

o. "CROD" means Contract Rate of Delivery, as defined in the WAPA Agreement.

p. "Deed of Trust" means the Deed of Trust, Security Agreement and Fixture Filing, the form of which is substantially set forth in Exhibit H.

q. "Default Rate" means the lower of (i) 200 basis points over the then-current U.S. prime rate, as listed in the Money Rates Section of the *Wall Street Journal* on the first day of the month in which such interest was calculated, and (ii) the maximum lawful rate. Except as otherwise expressly provided in this Agreement, interest shall be calculated on a monthly basis.

r. "Defaulting Party" means a Party that is in default under this Agreement.

s. "Delivered Rate" means $0.04442 per kilowatt-hour of Purchased Energy, as may be adjusted pursuant to Section 3.7, based on the Purchased Energy measured at the applicable metering point for such energy.

t. "Design Capacity" means 1.272.24kW (DC) / 972 kW(AC).

u. "Designated Scheduling Agent" means each of (i) the Person designated by Guzman to handle operational issues related to the delivery of the Purchased Energy under this Agreement, such as scheduling, (ii) the Person designated by Guzman to serve as Aztec's WAPA scheduling agent, and (iii) the Person designated by Guzman to schedule transmission under the NITS Agreement and the FEUS Transmission Agreement. Guzman may change either Designated Scheduling Agent at any time upon thirty (30) days prior written notice to Aztec, which notice shall include all relevant contact information for the new Designated Scheduling Agent and the effective date of such change.

v. "Liens" has the meaning set forth in Section 4.7.

w. "Effective Date" means May ___, 2017, which is the date upon which (a) both Parties have executed and delivered this Agreement and (b) each of the conditions set forth in Section 3.2(a) through (g) have been achieved to the reasonable satisfaction of Aztec.

x. "Environmental Attributes" means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Purchased Energy or the Project, as applicable, and its displacement of

conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes and the Applicable Solar Program.

y. "Escrow Account" means an account established on terms and conditions reasonably acceptable to Aztec for purpose of effectuating the Pre-Payment in accordance with this Agreement.

z. "Escrow Agent" means the escrow agent identified in the Deed of Trust, or such other party as the Parties may mutually agree to use for purposes of effectuating the Pre-Payment in accordance with this Agreement.

aa. "Event of Default" means an uncured default as set forth in Section 12.1.

bb. "Expiration Date" means the last day of the Term, as it may be extended in accordance with this Agreement.

cc. "FEUS Transmission Agreement" means the transmission service agreement to be entered into by and between Aztec and Farmington Electric Utility System, including any replacement agreement thereto.

dd. "Force Majeure Event" means any cause, activity, event, condition or circumstance (1) beyond the reasonable control of the Party affected, (2) not the result of acts or omissions by the Party affect, which (3) prevents the performance by such Party hereunder, including:

i. natural phenomena, including flood, earthquake, storm, drought, fire, lightning strikes, pestilence, epidemic, or catastrophe; and

ii. act of God, war, riot, civil disturbance or disobedience, strike, labor dispute, labor disturbance, shortage of labor or material, sabotage, restraint by court order or public authority.

Notwithstanding the foregoing, a Force Majeure Event will not include any cause, activity, event, condition or circumstance resulting from a failure to exercise due care on the part of the Party asserting the existence of Force Majeure Event, provided that such Party shall in no case be obligated to settle strikes or other labor disturbances.

ee. "Governmental Authority" means any federal, provincial, state, county, municipal or local government and any political subdivision thereof, or any other governmental, quasi-governmental, executive, legislative, administrative, regulatory, judicial, public or statutory department, body, instrumentality, agency, ministry, court, commission, bureau, board, or other governmental authority having jurisdiction over the Project or any of the Parties.

ff. "Guzman" means Guzman Aztec Sun LLC, a Delaware limited liability company, which is a subsidiary of Guzman Energy.

gg. "Guzman Energy" means Guzman Energy LLC, a Florida limited liability company.

hh. "Guaranteed Output" means the amount of electric energy guaranteed to be generated by the Project during the Term as set forth in Exhibit G.

ii. "Indemnitees" means, with respect to Aztec, Aztec's commissioners, officers, agents, employees, advisors, and authorized representatives, and with respect to Guzman, its officers, directors, agents, employees, advisors, and authorized representatives.

jj. "Installer" means Conergy, or such other person designated by Guzman and reasonably accepted by Aztec to install the Project on the Premises.

kk. "Interest Rate" means the lower of (i) 200 basis points over the then-current U.S. prime rate, as listed in the Money Rates Section of the *Wall Street Journal* on the first day of the month in which such interest was calculated, and (ii) the maximum lawful rate. Except as otherwise expressly provided in this Agreement, interest shall be calculated on a monthly basis.

ll. "kW" means kilo-watt.

mm. "Land Registry" means the office where real estate records for the Premises are customarily filed.

nn. "Lender" means Open Energy Group 1 LLC, a Delaware limited liability company.

oo. "Loan" means the Construction Loan Agreement by and among Guzman, Guzman Energy and Lender, which Guzman, Guzman Energy and Lender entered into to provide financing to the Project and the Term Loan Agreement entered into by and among Guzman Energy, Guzman and Open Energy Group 1 LLC and the related financing documents.

pp. "Metering Equipment" means metering equipment that is either the property of Aztec, or that Aztec has a contractual right to use or rely on, in either case in accordance with the NITS Agreement.

qq. "NITS Agreement" means the service agreement for Network Integration Transmission Service between Aztec and WAPA, including any replacement agreement.

rr. "Non-Defaulting Party" means the Party that is not the Defaulting Party under this Agreement.

ss. "Operations Period" means the period commencing on the date after the Commercial Operation Date and continuing until the earlier to occur of (i) the transfer of ownership of the Project to Aztec, and (ii) the expiration or termination of this Agreement.

tt. "Original Power Sales Agreement" means the Power Sales Agreement entered into between Guzman and Aztec dated December 21, 2015, as amended twice as of June 20, 2016.

uu. "Party" means each of Guzman and Aztec, and "Parties" means Guzman and Aztec.

vv. "Person" shall mean any natural person, corporation, general partnership, limited partnership, limited liability company, proprietorship, joint venture, unincorporated organization, other business organization, trust, union, or association.

ww. "Pre-Payment" shall have the meaning set forth in Section 3.2.

xx. "Point of Delivery" means (i) with respect to the Purchased Energy, the Shiprock substation, the San Juan substation, the Four Corners substation, in each case so long as delivery to such substation is permitted under the NITS Agreement, and (ii) with respect to the Solar Energy, the metering point at the Project.

yy. "Project" means the 1,272.24 kW (DC) ground-mounted solar photovoltaic energy system, consisting of the photovoltaic panels and all associated equipment, installed on the Premises at the Design Capacity.

zz. "Project Purchase Agreement" means the Amended and Restated Project Purchase Agreement, substantially in the form set forth in Exhibit E hereto.

aaa. "Premises" means the real property described on Exhibit D attached hereto.

bbb. "Purchased Energy" means all of the electric power and energy associated with Aztec's Full Requirements, as measured at the Metering Equipment, that are in excess of (i) the power and energy that Aztec purchases from WAPA pursuant to the WAPA Agreement, as evidenced by the historical allocation set forth in Exhibit B, (ii) the power and energy generated and delivered to Aztec by the Project, and (iii) the power and energy generated and delivered to Aztec by the Aztec Additional Generation.

ccc. "Service Interruption" means any partial or total interruption or outage:

i. in the delivery of Purchased Energy or Solar Energy by Guzman to the applicable Point of Delivery; or

ii. in the transmission and distribution of Purchased Energy or Solar Energy by Aztec from the applicable Point of Delivery to the customers of Aztec.

ddd. "SHP" means Sustainable Hydro Power as defined in the WAPA Agreement.

eee. "Solar Energy" means the energy generated by the Project (including any associated Environmental Attributes and capacity rights) following the

achievement of Commercial Operation Date thereof until Aztec takes control of the Project in accordance with the provisions of the Project Purchase Agreement.

fff. "Solar PPA" means that certain Solar Power Purchase Agreement entered into between Lender and Purchaser, as of the Effective Date.

ggg. "Tariff" means the United States Department of Energy Western Area Power Administration Open Access Transmission Service Tariff filed on April 12, 2013.

hhh. "Tax" or "Taxes" means each federal, state, county, local and other (a) net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property or leasehold tax and (b) customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

iii. "Tax Attributes" means the investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and operation of the Project or the output generated by the Project (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).

jjj. "Term" means a period of seven (7) years, subject to Section 2.1, commencing on July 1, 2016 at 12:00:00 a.m. and terminating on June 30, 2023 at 11:59:59 p.m.

kkk. "Termination Notice" means a notice to terminate this Agreement delivered by a Non-Defaulting Party following an Event of Default by the other Party.

lll. "Transfer Date" means June 30, 2023, the date upon which Aztec may elect, in its sole discretion, to take ownership of the Project.

mmm. "WAPA" means the Western Area Power Administration.

nnn. "Western RMR" means the Western Area Power Administration – Rocky Mountain Region.

ooo. "WAPA's OATT" means WAPA's Open-Access Transmission Tariff, available at: http://www.oasis.oati.com/WAPA/WAPAdocs/WAPA-Tariff-Docs.htm.

ppp. "WAPA Agreement" means that certain Contract No. 87-SLC0015 between Aztec and the United States Department of the Interior, WAPA Salt Lake City Area Integrated Projects for Firm Electric Service, dated March 13, 1969.

qqq. "WAPA Allocation" means the amount of power and energy to be supplied by WAPA to Aztec pursuant to the WAPA Agreement, as set forth in Exhibit B.

rrr. "WECC" means the Western Electricity Coordinating Council.

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

ttt. "WRP" means Western Replacement Power as defined in the WAPA Agreement.

1.2 Interpretation. In this Agreement, unless a clear contrary intention appears:

a. time is of the essence

b. the singular number includes the plural number and vice versa;

c. reference to any Person includes such Person's successors and assigns (regardless of whether such Person's successors and assigns are expressly referenced in the provision) but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

d. reference to any agreement (including this Agreement), document, act, statute, law, instrument, or tariff means such agreement, document, act, statute, law, instrument, or tariff as amended, modified, replaced or superseded and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, regardless of whether the reference to the agreement, document, act, statute, law, instrument, or tariff, expressly refers to amendments, modifications, replacements, or successors;

e. reference to any Section, or Exhibit means such Section of this Agreement, or such Exhibit to this Agreement, as the case may be;

f. "including" (and with correlative meaning "include") means including without limiting the generality of any description succeeding such term, regardless of whether words such as "without limitation" are expressly included in the applicable provision;

g. relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding" and "through" means "through and including"; and

h. the term "or" is not exclusive, regardless of whether "and/or" is used in the applicable provision.

2. TERM.

2.1 Term of the Agreement. This Agreement shall be binding and effective as of the Effective Date. The Term shall continue until the Expiration Date, unless terminated earlier in accordance with the terms of Section 11 of this Agreement, or extended under this Section 2.1. The Parties shall have the right, but neither Party shall have the obligation, to mutually agree to extend the Term for up to two (2) additional years at a revised Delivered Rate to be mutually agreed upon by the Parties.

2.2 Expiration and Termination. Upon termination of this Agreement for any reason prior to the Expiration Date, or upon the expiration of this Agreement as of the Expiration Date, this Agreement will no longer be effective, subject, however, to the following provisions:

a. Any payment obligation incurred by Aztec prior to such termination or expiration shall survive until payment is received by Guzman in full, with interest as provided herein.

b. Any other fixed or accrued obligation incurred by either Party prior to such termination or expiration, and all obligations hereunder with respect to indemnification and confidentiality, shall survive until the obligation is fully discharged.

c. Termination by either Party shall not constitute a waiver of, and shall not otherwise prejudice, the terminating Party's right to claim and recover damages for any default of the other Party under this Agreement, including a default that gave rise to such termination.

3. PURCHASE AND SALE.

3.1 Purchase and Sale. Subject to the terms and conditions of this Agreement, throughout the Term, Aztec will purchase, and Guzman will sell, the Purchased Energy, and Aztec will receive from the Project the Solar Energy.

a. Guzman shall pay or cause to be paid all Taxes on or with respect to the Purchased Energy and the Solar Energy or the transaction arising before or at the applicable Point of Delivery. Aztec shall pay or cause to be paid all Taxes on or with respect to such Purchased Energy and Solar Energy or the transaction from (but excluding) the applicable Point of Delivery. If Guzman is required by law to remit or pay Taxes that are the responsibility of Aztec hereunder, Aztec shall promptly reimburse Guzman for such Taxes. If Aztec is required by law to remit or pay Taxes that are Guzman's responsibility hereunder, Aztec may deduct such amounts from payments to Guzman hereunder; if Aztec elects not to deduct such amounts from Guzman's payments, Guzman shall promptly reimburse Aztec for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under law. A Party that is exempt at any time and for any reason from one or more Taxes shall bear the risk that such exemption shall be lost or the benefit of such execution be reduced.

b. Guzman shall be responsible for ensuring that the Purchased Energy is designated as a Network Resource under the NITS Agreement.

c. Aztec shall be responsible for any costs associated with regulatory compliance, as applicable, including greenhouse gas standards, carbon taxes and renewable portfolio standard compliance.

3.2 Pre-Payment. As of the Effective Date, Aztec shall make a onetime payment in the amount of $2,000,000 for 44,943,820.88 kWh of Purchased Energy at the Delivered Rate

(the "***Pre-Payment***"), which amount shall be held in the Escrow Account which shall repay all outstanding principal and interest remaining under the Loan. As of the Effective Date, Guzman shall have delivered, or caused the Lender to deliver, to the Escrow Agent each of the following:

a. a construction lien close out package that includes: (i) a sworn statement by Guzman describing all subcontractors and materialmen who provided more than $2,500 of work or materials on the Project, and attesting that the general contractor has paid all subcontractors and materialmen who provided more than $2,500 of work or materials on the Project, , and (ii) final lien waivers from all subcontractors and materialmen who provided more than $2,500 of work on the Project.

b. a pay-off letter from Lender and original security interest and Lien releases from Lender necessary to pay-off and satisfy in full all of Guzman's obligations with respect to the Loan and to have all security interests and other Liens on the Project and its assets released;

c. evidence that all UCC-3 termination statements were filed by Lender upon delivery of the Pre-Payment to Lender with respect to each of the unexpired UCC-1 financing statements relating to the Project and its assets, and an accompanying search of the relevant Secretary of State and real property records to confirm the absence of un-terminated UCCs and other liens;

d. the Deed of Trust that secures the performance by Guzman of all of its payment and performance obligations under this Agreement by Guzman, or any successors in interest of Guzman, including any amounts or damages owed by Guzman to Aztec under this Agreement, by establishing a valid and perfected first lien and priority security interest of Aztec in the Project (including all fee interests and real and personal property rights and interests of Guzman), which Deed of Trust shall be in full force and effect, and which shall be recorded and filed in San Juan County, New Mexico;

e. appropriately completed UCC-1 financing statements, naming Aztec as the secured party, in form appropriate for filing in San Juan County, New Mexico as may be necessary to perfect the security interests purported to be granted under the Deed of Trust, covering the Project and its assets; and

f.

g. evidence reasonably satisfactory to Aztec that the Solar PPA has been terminated.

3.3 No Requirement for Renewable Sources. Nothing in this Agreement shall require that the Purchased Energy be from any renewable or similarly designated source, be generated by any particular method, or be deemed to have any specified Environmental Attributes.

3.4 Requests for Forecast Information. Aztec shall deliver to Guzman such information as may be reasonably requested by Guzman from time to time to permit a reasonably accurate forecast of Aztec's demand for power and energy. Aztec will give Guzman as much notice as reasonably practical of Aztec's seasonal changes to SHP, AHP or WRP, as provided under the WAPA Agreement. Aztec shall provide Guzman with not less than one hundred eighty (180) days' prior written notice if Aztec's Full Requirements will exceed fifty percent (50%) of Aztec's projected load forecast as set forth in Exhibit A.

3.5 WAPA Allocation. Aztec shall have the right, but not the obligation, to purchase the maximum CROD permitted pursuant to the WAPA Agreement. Aztec shall notify Guzman of changes in the WAPA Allocation, including any changes provided by WAPA to the AHP and SHP and any changes to the WRP elected by Aztec by no later than the 10th day of the month preceding the month during which Aztec changes its WRP election. If Aztec elects not to purchase the maximum CROD permitted pursuant to the WAPA Agreement, Guzman shall supply such energy as Purchased Energy as may be required to satisfy the Aztec Full Requirements at the Delivered Rate. Aztec shall not elect to purchase any CDP without the prior approval of Guzman.

3.6 Point of Delivery. Guzman will deliver and sell to Aztec, and Aztec will receive and purchase from Guzman, the Purchased Energy, and Guzman will deliver to Aztec, and Aztec will receive from Guzman, the Solar Energy, in each case at the applicable Point of Delivery. As between the Parties, Guzman shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Purchased Energy and Solar Energy prior to the applicable Point of Delivery, and Aztec shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby), of the Purchased Energy and the Solar Energy at and from the Point of Delivery. Guzman represents and warrants that it will deliver all Purchased Energy and Solar Energy to Aztec free and clear of all liens, claims or encumbrances created by any Person. Title to and risk of loss as to all Purchased Energy and Solar Energy shall pass from Guzman to Aztec at the applicable Point of Delivery.

3.7 Delivered Rate. Aztec shall pay to Guzman the Delivered Rate for the Purchased Energy, which Delivered Rate shall be without escalation throughout the Term.

3.8 Excess Energy Needs. In the event that Aztec's Full Requirements exceed fifty percent (50%) of Aztec's projected load forecast as set forth in Exhibit A, the Parties may elect to mutually agree upon a reprice of the Delivered Rate. Guzman shall provide advanced written notice, and in no event less than one hundred eighty (180) days' prior written notice, that Aztec is approaching such an amount of excess. Aztec shall have the right to meet excess needs from the Aztec Additional Generation as provided hereunder.

3.9 Costs of Transmission and Scheduling.

a. Guzman will arrange and pay the costs of, and will otherwise be responsible for, the transmission and delivery of the Purchased Energy to and at the applicable Point of Delivery. Guzman will schedule or arrange for scheduling services with appropriate transmission providers to deliver the Purchased Energy to the Point of Delivery, in accordance with WECC scheduling conventions.

b. Guzman will be responsible for Aztec's Imbalance Charges.

c. Aztec will arrange and pay the costs of, and will otherwise be responsible for, the transmission and distribution of the Purchased Energy from the applicable Point of Delivery to its customers. Aztec will be responsible for the distribution of the Solar Energy from the applicable Point of Delivery to its customers.

d. Aztec will be responsible for all transmission and ancillary service agreements, including the NITS Agreement and the FEUS Transmission Agreement, and shall be responsible for costs required to receive the Purchased Energy from the applicable Point of Delivery and to deliver such Purchased Energy to its own facilities.

e. Aztec will be responsible for the costs incurred under the NITS Agreement and the FEUS Transmission Agreement in connection with the real-time provision of losses associated with the Purchased Energy.

f. Guzman shall be responsible for obtaining "Operating Reserve — Spinning" and "Operating Reserve – Supplement" services (each as defined in the Tariff) pursuant to a Confirmation Agreement between Western RMR in accordance with the Western States Power Pool Agreement by and between Western RMR and Guzman, the costs of which shall be borne by Aztec as set forth in Section 6.2.

3.10 Metering Equipment.

a. Purchased Energy will be measured and determined by means of Metering Equipment installed by WAPA in accordance with the NITS Agreement.

b. At any time during the Term, Guzman may, as permitted pursuant to the NITS Agreement, at its sole expense, inspect the Metering Equipment using a mutually acceptable independent inspection contractor. If the Metering Equipment is found to be outside a ±1 percent margin of error, Aztec will, at its sole cost and expense, cause WAPA to bring the Metering Equipment within such margin of error. Thereafter, proper correction shall be made of readings made since the previous date upon which such Metering Equipment was tested, or from the time that it can be ascertained the meter was in error, but in no case shall readings be adjusted for a period of more than twelve months immediately preceding the discovery of the error. If any Metering Equipment shall fail to register for any period, the electric power and energy delivered during such period for all purposes hereunder shall be as reasonably estimated by the Parties, in good faith, based upon the best available information in accordance with prudent utility practice.

c. Aztec will be responsible for all facilities and equipment from and after the Point of Delivery for the Purchased Energy and the Solar Energy, and any facilities required for the proper reception of such Purchased Energy and Solar Energy, and the transformation of such capacity and energy from the voltage at which it is delivered to the applicable Point of Delivery.

d. Solar Energy will be measured and determined by means of metering equipment to be constructed on the Premises. At any time during the Term, Aztec may at its sole expense, inspect such metering equipment using a mutually acceptable independent inspection contractor. If such metering equipment is found to be outside a ±1 percent margin of error, Guzman will, at its cost and expense, bring such metering equipment within such margin of error. Thereafter, proper correction shall be made of readings made since the previous date upon which such metering equipment was tested, or from the time that it can be ascertained the meter was in error, but in no case shall readings be adjusted for a period of more than twelve months immediately preceding the discovery of the error. If any metering equipment shall fail to register for any period, the electric power and energy delivered during such period for all purposes hereunder shall be as reasonably estimated by the Parties, in good faith, based upon the best available information in accordance with prudent utility practice.

3.11 Performance Security; Further Assurances.

a. Guzman has delivered to Aztec (i) one or more letters of credit issued by qualified issuers reasonably acceptable to, and in a form reasonably acceptable to, Aztec, or (ii) cash (to be held in an escrow account pursuant to an escrow agreement with an issuer reasonably acceptable to Aztec in form and substance reasonably satisfactory to Aztec, or a combination of the two, in the aggregate amount of Seventy-five Thousand Dollars ($75,000), which guarantee Guzman's delivery obligations under this Agreement. Seller shall maintain such security throughout the Term and such security shall be replenished within thirty (30) days of any draw made by Aztec hereunder.

b. In addition to the performance security set forth in Section 3.11(a), each Party shall have the right, subject to applicable laws, to review the relevant financial records of the other Party, including the balance sheets of Guzman, on a bi-annual basis. If, at any time during the Term following such a review, a Party reasonably believes that there is a potential risk of non-performance or insolvency by the other Party, such reviewing Party shall have the right, in addition to any other rights or remedies hereunder to request financial assurance from the other Party in the form of a letter of credit or cash to be held in escrow. If Guzman has entered into an agreement with a tax equity investor for the Project, then, in addition to the performance security provided by Guzman under Section 3.2(a), Aztec may demand the following additional security, which, by the tenth (10th) of January of the following Contract Year, Guzman shall furnish to Aztec as follows:

Contract Year	Guaranteed Output (MWh)	Expected Total Purchased Energy (MWh)	Solar Project Premium Revenue (@ $7/MWh)	Average Cost of Solar Project Energy ($/MWh)	Avrage Cost of Solar Project Energy Net of Purchased Energy Price ($42.42/MWh)	Total Cost of Solar Project Premium Net of Purchased Energy Price ($)	Cummulative Additional Performance Security ($)	Due Date for Posting of Security
1	1867	36,684	$ 256,788	$ 137.54	$ 95.12	$ 177,590	$ 180,000	1/10/2017
2	1829	37,446	$ 262,122	$ 143.31	$ 100.89	$ 184,536	$ 360,000	1/10/2018
3	1820	38,184	$ 267,288	$ 146.86	$ 104.44	$ 190,084	$ 550,000	1/10/2019
4	1811	38,935	$ 272,545	$ 150.49	$ 108.07	$ 195,722	$ 750,000	1/10/2020
5	1802	39,699	$ 277,893	$ 154.21	$ 111.79	$ 201,452	$ 950,000	1/10/2021
6	1793	40,473	$ 283,311	$ 158.01	$ 115.59	$ 207,252	$ 1,160,000	1/10/2022
7	1784	41,260	$ 288,820	$ 161.89	$ 119.47	$ 213,143	$ 1,370,000	1/10/2023

3.12 Creation of RTO. If, at any time during the Term, a regional transmission organization is established, the Parties will negotiate in good faith to address changes in the allocation of responsibility for, and the costs and expenses associated with, the provision of ancillary services for the Purchased Energy.

4. SOLAR PROJECT; ADDITIONAL GENERATION

4.1 Construction of the Project. Guzman is responsible for the design, engineering, development, construction, operation and management of the Project until such time as Aztec exercises its right to purchase the Project hereunder.

4.2 Project Construction, Operation and Maintenance.

a. Guzman shall operate and maintain the Project so as to keep it in good condition and repair, in compliance with all applicable laws and in accordance with the prudent industry practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at Guzman's sole expense. Except for emergency situations or unplanned outages, Guzman shall cause the work to be performed between the hours of 7:00 am and 7:00 pm, Monday through Saturday, in a manner that minimizes interference with Aztec and any of its facilities.

b. Aztec will provide security for the Project to the extent of its normal security procedures, practices, and policies that apply to all Aztec premises. Aztec will advise Guzman as soon as possible following observing any damage to the Project. Upon request by Guzman, such as Guzman receiving data indicating irregularities or interruptions in the operation of the Project, Aztec shall, as quickly as reasonably practicable, send a person to observe the condition of the Project and report back to Guzman on such observations.

c. Guzman may shut down the Project at any time in order to perform emergency repairs required to prevent damage to property or injury to people. At other times, Guzman shall give Aztec as much notice of the shutdown as may be reasonable in the circumstances. Notwithstanding the foregoing, Guzman shall remain responsible for delivery of any shortfall up to the amount of the Guaranteed Output following any such shutdown of the Project.

d. Aztec may shut down the Project at any time in order to take emergency action as Aztec determines in its sole discretion may be required to prevent damage to property or injury to people. Aztec shall give Guzman as much notice of the shutdown as may be reasonable in the circumstances.

4.3 Access to Premises. Aztec hereby grants Guzman and its designees (including Installer, and persons responsible for implementing the Applicable Solar Program) access to the Premises, for the Term, at reasonable times and upon reasonable notice, for the purposes of designing, installing, inspecting, operating, maintaining, repairing and (if there is a termination of this Agreement following an Event of Default by Aztec) removing the Project, and any other purpose set forth in this Agreement, and otherwise in accordance with the provisions of this Agreement.

4.4 Recordation of Rights. The Parties have executed and recorded with the appropriate Land Registry an easement as of the Commercial Operation Date documenting the Access Rights granted by Aztec to Guzman in this Agreement. If the Term is extended as permitted under Section 2.1, the Parties shall record an amended easement with the appropriate Land Registry at Guzman's cost and expense.

4.5 Interconnection of Project. Aztec shall be responsible for arranging the interconnection of the Project with Aztec's municipal utility system.

4.6 Ownership of Project; Attributes.

a. Guzman shall receive all payments available under any Applicable Solar Program. Aztec shall provide reasonable assistance to Guzman in providing information for such applications and other documents necessary for Guzman to receive such payments.

b. Until such time as Aztec takes ownership of the Project pursuant to Section 4.9, Guzman shall be the owner of any Tax Attributes that may arise as a result of its ownership of the Project and shall be entitled to transfer such Tax Attributes to any person. Aztec shall provide reasonable assistance to Guzman in preparing all documents necessary for Guzman to receive such Tax Attributes, and if Aztec is deemed to be the owner of any such Tax Attributes, Aztec shall assign the same (or the proceeds thereof) to Guzman. Guzman shall be entitled to enter into any agreements necessary in order to transfer the Tax Attributes of the Project, so long as such agreements terminate upon the Closing as defined in the Project Purchase Agreement.

c. Aztec shall at all times be the owner of any Environmental Attributes which may arise as a result of the generation by the Project of energy and capacity. Guzman shall establish an account with WREGIS for the deposit of any Environmental Attributes produced by the Project. Guzman shall deposit such attributes quarterly and will provide Aztec with a summary of the WREGIS account which shall include the total attributes generated that quarter, deposited attributes as of such summary, and the mark-to-market valuation of such attributes at the time the summary is generated. Guzman shall provide reasonable assistance to Aztec in

preparing all documents necessary for Aztec to receive such Environmental Attributes, and if Guzman is deemed to be the owner of any such Environmental Attributes, Guzman shall assign the same (or the proceeds thereof) to Aztec.

d. Until such time as Aztec takes ownership of the Project pursuant to Section 4.9, Guzman shall be the legal and beneficial owner of the Project. While owned by Guzman, the Project shall be personal property and shall not attach to or be deemed a part of, or fixture to, the Premises. The Project shall at all times while owned by Guzman retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Aztec shall place all persons having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the Project and the legal status or classification of the Project as personal property. Guzman shall make any necessary filings to disclaim the Project as a fixture of its respective Premises in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Guzman.

4.7 Liens. Except as set forth in Section 3.2, and to the extent permitted by applicable law, neither Party shall directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by Governmental Authorities for taxes on or with respect to the interests of the other in the Premises, or the Project, and in the rights of access to the Premises granted hereunder (collectively, "Liens").

4.8 Guaranteed Output. The Project shall generate not less than the amount of MWh set forth in Exhibit G. In the event that, in any Contract Year during the Term the Project generates less than the Guaranteed Output amount, Aztec may require, in its sole discretion, that (a) Guzman make-up any shortfall of delivery of Solar Energy by increasing the amount of Purchased Energy it provides and (b) cause the Installer to perform its warranty obligations as outlined in Exhibit C to enable the Project to generate the Guaranteed Output.

4.9 Transfer of Project. As of the Transfer Date, if Aztec elects, in its sole discretion, to take ownership of the Project (a) Guzman shall prepare and deliver to Aztec a set of records on the operation and maintenance history of the Project, including a summary of any known defects, (b) the Closing shall occur as set defined in, and set forth under, the Project Purchase Agreement, and (c) the Parties shall exchange an assignment and assumption agreement and a bill of sale conveying the Project assets, including each of the components thereof, associated warranties, spare parts and any relevant contracts and permits, to Aztec. Following the transfer of the Project to Aztec pursuant to the Project Purchase Agreement, Guzman shall be under no further obligation to operate or maintain the Project. Notwithstanding the foregoing, if Guzman fails to perform its obligations hereunder and an Event of Default by Guzman occurs, Aztec shall have the right, in addition to any other rights or remedies available to it and at no additional cost to Aztec, to step in and take ownership of the Project from Guzman prior to the Transfer Date. If Aztec steps in to take title to and ownership of the Project prior to the Transfer Date, Guzman shall cooperate to comply with the provisions of Section 4.9(a) and to convey,

transfer and assign the Project assets to Aztec pursuant to the Project Purchase Agreement.

4.10 Insurance. Guzman shall maintain the insurance coverage set forth in Exhibit F in full force and effect throughout the Term. Such insurance policy shall be written on an occurrence basis and Guzman shall be the only insured interest. All insurance maintained hereunder shall be maintained with companies rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide.

4.11 No Interference with Project. Aztec, or any lessee, grantee or licensee of Aztec, shall not erect any structures on, or make other modifications to, or plantings on, the Premises that will interfere with the construction, operation or maintenance of, or solar access of, the Project. If applicable laws and existing easements do not ensure that structures or plantings on adjoining property will not interfere with the solar access for the Project, then Aztec and Guzman shall work together to obtain from owners of adjoining properties any easements reasonably necessary to protect the solar access of the Project. Such easements shall run for the benefit of Aztec.

5. FORCE MAJEURE.

Neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

6. BILLING AND PAYMENT.

6.1 Invoices. Guzman shall invoice Aztec for the amount of Purchased Energy that is purchased and sold during each calendar month on or about the tenth day of each calendar month during the Term. Each invoice shall include for the month most recently ended: (a) the amount of Purchased Energy, (b) the WAPA Allocation, (c) the amount of Solar Energy generated and accepted by Aztec (for informational purposes only), and (d) the amount of Aztec Additional Generation received by Aztec (for information purposes only). The invoice shall state the amount of the payment due for the Purchased Energy, and the amount to be credited to Aztec for the most recent Aztec Imbalance Charge in accordance with Section 6.2, and other information related to the calculation of the payment due to Guzman during such billing period as may be requested in writing. All invoices will be sent to Aztec, addressed as follows (electronic invoices are preferred):

c/o City of Aztec
Attn: Accounts Payable
201 West Chaco Street
Aztec, NM 87410

or

acctspayable@aztecnm.gov and
kgeorge@aztecnm.gov

All payments under this Agreement shall be due and payable in full by check or wire transfer of immediately available funds, as designated by Guzman, within thirty (30) days after receipt by Aztec of such invoice.

6.2 Adjustments for Aztec Imbalance Charges; Spinning Reserve Service and Supplemental Reserve Service. Guzman shall be responsible, in accordance with Section 3.9(b), for Aztec's Imbalance Charges, as reported under the NITS Agreement and as defined as "Energy Imbalance" under the Tariff. Aztec shall provide the latest invoice for ancillary services from WAPA under the NITS Agreement, including Energy Imbalance charges, to Guzman. Guzman shall reimburse Aztec an amount equal to (a) the amount charged for such Energy Imbalance services, minus (b) the costs incurred by Guzman for "Operating Reserve — Spinning" and Operating Reserve – Supplement" services under the Confirmation Agreement.

6.3 Payment Disputes. Undisputed amounts not paid when due shall accrue interest from (and including) the due date to (but excluding) the date of payment at the Interest Rate. If Aztec, in good faith, disputes any amount due pursuant to an invoice or statement rendered to it by Guzman pursuant to this Agreement, Aztec will notify Guzman in writing of the specific basis for the dispute, and Aztec shall pay the undisputed portion on or before the date such payment is due. If any amount disputed by Aztec is determined to be due to Guzman, or to be refunded to Aztec, or if the Parties otherwise resolve the dispute, the amount due shall be paid within ten (10) Business Days after such determination or resolution, along with interest accrued at the Interest Rate from (and including) the original date such payment was due to (but excluding) the date paid.

6.4 Records. Each Party shall keep and maintain all records as may be necessary or useful in performing or verifying any calculations made pursuant to this Agreement, or in verifying such Party's performance hereunder in accordance with the New Mexico Public Records Act, NMSA 1978, Section 14-2-1 et seq.

6.5 Audits. Each Party, through its employees, authorized agents and/or professional advisors, shall have the right, at its sole expense and upon reasonable advance notice to the other Party, during normal business hours of the other Party, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of energy delivered at the Delivery Point. If any statement is found to be inaccurate, a corrected statement shall be issued and any

amount due hereunder will be promptly paid and shall bear interest calculated at the Interest Rate from (and including) the date of the overpayment or underpayment to (but excluding) the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless a Party asserts its challenge to the accuracy of such payment or statement within one year after the date of such statement or payment.

7. AZTEC ADDITIONAL GENERATION.

7.1 Aztec Additional Generation. Aztec has the right to develop, construct, own, or contract for the use of, the Aztec Additional Generation, which shall not exceed one (1) MW (ac), which shall be operated as follows:

a. Aztec shall use reasonable efforts to coordinate the dispatch of the Aztec Additional Generation in a manner that provides maximum cost efficiency to both Parties.

b. During any Aztec Emergency Conditions in accordance with Section 7.4; or

c. During Service Interruptions, in accordance with Section 8.

7.2 Scheduling Procedures. The Parties, in conjunction with the appropriate dispatchers, schedulers, or scheduling agents, including the applicable Designated Scheduling Agent, have established a scheduling committee that shall, within thirty (30) days thereafter, develop specific written procedures for the scheduling of the Purchased Energy and the Aztec Additional Generation, if any.

7.3 Pre-Scheduling. Except as provided in Section 7.4, Aztec shall pre-schedule all of its generation capacity with the applicable Designated Scheduling Agent not later than 2:00 p.m. MPT (Mountain Prevailing Time) two days prior to the day on which Aztec has (a) been directed by Guzman or the applicable Designated Scheduling Agent to generate or (b) scheduled routine testing or maintenance that will require running either or both generation units. Each scheduling of generation capacity shall include the specific time or times at which Aztec plans to start and stop its generation and the capacity (in megawatts) that Guzman (or the applicable Designated Scheduling Agent) has directed Aztec to generate during each hour of generation, or with respect to testing and maintenance, the capacity (in megawatts) anticipated to be generated. By way of example, if Guzman (or the applicable Designated Scheduling Agent) has directed Aztec to generate before 10:00 a.m. MPT on a Friday, Aztec must notify the applicable Designated Scheduling Agent by 2:00 p.m. MPT on the immediately preceding Wednesday.

7.4 Startup During Aztec Emergency Condition. Aztec may operate the Aztec Additional Generation as necessitated by any Aztec Emergency Condition; provided, however, that in such event Aztec shall notify Guzman and the applicable Designated Scheduling Agent as soon as possible after it determines to take such action and in no event later than thirty (30) minutes after taking such action. The applicable Designated Scheduling Agent will thereafter be responsible for contacting appropriate transmission providers in order for

the transmission provider(s) to make appropriate changes in its transmission system. Aztec will thereafter coordinate with Guzman and the applicable Designated Scheduling Agent to determine the generation capacity for each hour until the Aztec Emergency Condition no longer exists and normal system operation is restored.

8. SERVICE INTERRUPTIONS.

If a Service Interruption occurs, regardless of its origin or cause and regardless of fault, the Parties will notify each other and confer as soon as reasonably practicable after such occurrence. The Parties will share all material, pertinent information they may have or may acquire with respect to the Service Interruption and all related matters. The Parties will provide reasonable cooperation to one another. The Party whose performance is interrupted by such Service Interruption shall use commercially reasonable efforts to restore, or cause the restoration of, service. During any Service Interruption, Aztec may operate the Aztec Additional Generation units as needed in accordance with Section 7.4 as if the Service Interruption was an Aztec Emergency Condition.

9. OWNERSHIP OF PROJECT.

As of the Effective Date and until such time as Aztec exercises its option to purchase the Project in accordance with the Agreement and the Project Purchase Agreement, Project Company (and its successors and permitted assigns) shall be the owner of the Project and any references to Guzman as Seller in connection with the Project shall be deemed references to the Project Company. In no event will Seller take any action, or fail to take any action, that could result in an adverse impact on Aztec's ability to purchase the Project in accordance with the Agreement the Project Purchase Agreement.

10. INDEMNITY; LIMITATIONS OF LIABILITY.

10.1 Indemnity.

a. Guzman undertakes and agrees to indemnify and hold harmless Aztec, and its Indemnitees and, at the option of that indemnified Party, to defend such Indemnitees from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, claims by any Governmental Authority, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including that Party's employees and agents, or third persons, or damage or destruction to any property of a Party or third persons, in any manner arising by reason of any breach of this Agreement, any failure of any representation, warranty or guarantee to be true in all material respects, any losses or claims in connection with the Lender or the Loan the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of that Party, or any of that Party's officers, agents, employees, or subcontractors of any tier.

b. Aztec undertakes and agrees to indemnify and hold harmless Guzman, and its Indemnitees and, at the option of that indemnified Party, to defend such Indemnitees from and against any and all suits and causes of action, claims,

charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever, for death, bodily injury or personal injury to any person, including that Party's employees and agents, or third persons, or damage or destruction to any property of a Party or third persons, in any manner arising by reason of any breach of this Agreement, any failure of any representation, warranty or guarantee to be true in all material respects, the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement on the part of that Party, or any of that Party's officers, agents, employees, or subcontractors. The described indemnification by Aztec of Guzman shall be effective only to the extent governed and permitted by Federal and New Mexico law, specifically including but not limited to the New Mexico Tort Claims Act (Sections 41-4-1 through 41-4-27, NMSA 1978, 2013 Ed.), and to the extent and limits of Aztec's municipal insurance coverage with and through the New Mexico Risk Management Division (NMRMD). The above limitations are pursuant to and incorporated in Section 10.5 of this Agreement as set out below.

c. Guzman undertakes and agrees to indemnify and hold harmless Aztec, and its Indemnitees and, at the option of Aztec, to defend Aztec and such Indemnitees from and against any and all Losses arising in connection with any Liens or other claims against Aztec, all or any component of the Project or the underlying real property owned by Aztec.

10.2 Damage to Project. So long as Guzman owns the Project, in the event of any damage or destruction of the Project or any part thereof, the Project or such part thereof shall be diligently repaired, replaced or reconstructed by Guzman so that the Project or such part thereof shall be restored to substantially the same general condition and use as existed prior to such damage or destruction, unless a different condition or use is approved by Aztec. Proceeds of Insurance with respect to such damage or destruction maintained as provided in this Agreement shall be applied to the payment for such repair, replacement or reconstruction of the damage or destruction.

10.3 NO WARRANTIES. NEITHER PARTY MAKES ANY WARRANTY EXCEPT AS SET FORTH HEREIN. WITHOUT LIMITING THE FOREGOING, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED.

10.4 NO CONSEQUENTIAL DAMAGES. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

10.5 SOVEREIGN IMMUNITY OF AZTEC. NO PROVISION OF THIS AGREEMENT SHALL BE CONSTRUED OR APPLIED, WHETHER DIRECTLY OR BY IMPLICATION, TO WAIVE, REDUCE OR LIMIT AZTEC'S RIGHTS, PRIVILEGES OR IMMUNITIES AS A POLITICAL SUBDIVISION OF THE STATE OF NEW MEXICO OR OTHER FORM OF PUBLIC OR GOVERNMENT ENTITY, INCLUDING WITHOUT LIMITATION ANY RIGHT, PRIVILEGE OR IMMUNITY

ARISING UNDER THE NEW MEXICO TORT CLAIMS ACT. THIS SECTION SHALL TAKE PRECEDENCE OVER ANY INCONSISTENT OR CONTRADICTORY PROVISION IN THIS AGREEMENT. HOWEVER, AZTEC IS NOT IMMUNE FROM LIABILITY FOR BREACH OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN IN THIS AGREEMENT.

11. REPRESENTATIONS AND WARRANTIES; COVENANTS.

11.1 Representations and Warranties. As of the Effective Date, each Party hereby represents and warrants to the other Party as follows:

a. it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation or establishment;

b. it has all regulatory authorizations necessary for it legally to perform its obligations under this Agreement, including obtaining the approval of any governmental agency, such as (if necessary) the New Mexico Department of Finance and Administration; the representative or representatives executing this Agreement on behalf of such Party are duly authorized by such Party to execute and deliver this Agreement; and the signature or signatures made on behalf of such Party at the end of this Agreement are sufficient legally to bind such Party to all the terms and conditions of this Agreement;

c. the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

d. this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any equitable defenses.

e. it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

f. there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

g. no Event of Default, or occurrence that with the passing of time or giving of notice or both would become an Event of Default, with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement; and

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

11.2 Guzman Representations and Warranties; Covenants.

a. Guzman represents and warrants that it constructed the Project in accordance with the construction schedule and other requirements set forth in Exhibit C, applicable laws and applicable permits.

b. Guzman covenants as follows:

i. it shall own, operate and maintain the Project in accordance with applicable laws and permits, and consistent with prudent industry practices;

ii. the Project shall generate the Guaranteed Output.

c. Guzman represents and warrants that the execution, delivery and performance of the Deed of Trust are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

12. GUZMAN REPRESENTS AND WARRANTS THAT THE DEED OF TRUST AND EACH OTHER DOCUMENT EXECUTED AND DELIVERED IN ACCORDANCE WITH THIS AGREEMENT CONSTITUTES ITS LEGALLY VALID AND BINDING OBLIGATION ENFORCEABLE AGAINST IT IN ACCORDANCE WITH ITS TERMS; SUBJECT TO ANY EQUITABLE DEFENSES. EVENTS OF DEFAULT; REMEDIES.

12.1 Events of Default. The following occurrences shall constitute Events of Default:

a. Failure by a Party to make any payment required hereunder when due if such failure is not remedied within ten (10) business days after receipt by the Defaulting Party of written notice of such failure; provided, that the payment in question is not the subject of a good faith dispute pursuant to Section 6.3.

b. Unexcused failure by a Party to perform any other material obligation hereunder, and such failure is not remedied within thirty (30) days after receipt by the Defaulting Party of written notice of such failure; provided, that so long as a Defaulting Party has initiated and is diligently attempting to effect a cure, the Defaulting Party's cure period shall extend for an additional thirty (30) days or such longer period as is reasonably necessary to effect such cure.

c. Any representation or warranty made by a Party pursuant to Section 10 shall have been false in any material respect when made that, if capable of being remedied, is not remedied within ten (10) days after receipt by the Defaulting Party of written notice of such falsity; provided, that so long as a Party has initiated and is diligently attempting to effect a cure, the Party's cure period shall extend for an additional thirty (30) days.

d. A Party is or becomes Bankrupt.

e. A Party assigns this Agreement in violation of Section 14.11.

f. A default shall have occurred and be continuing under the Deed of Trust, or Aztec shall not have or shall cease to have a valid and perfected lien in the Project and/or any of its assets under the Deed of Trust, or Guzman or any other Person shall contest the validity, priority, or enforceability of the Deed of Trust or any provision thereof in writing or deny that it has any further liability thereunder.

12.2 Remedies. If an Event of Default occurs with respect to a Defaulting Party, then in addition to any other remedies available to the Non-Defaulting Party under this Agreement, the Deed of Trust or at law or in equity, the Non-Defaulting Party may give the Defaulting Party a Termination Notice, which shall designate the date upon which this Agreement shall be terminated by the Defaulting Party. Interest on any overdue, unpaid amounts as of such date shall accrue at the Default Rate from (and including) the date of the Termination Notice to (but excluding) the date actually paid.

13. NOTICES.

13.1 Means of Notice. Other than as set forth in Section 6.1, a written notice or other communication concerning this Agreement shall be effective upon receipt or refusal of delivery if given in writing and delivered by hand, overnight courier, registered or certified mail (with return receipt requested or proof of delivery) or facsimile (with receipt confirmed), properly addressed or directed as set forth in the next subsection.

13.2 Notice Addresses. A notice or communication is properly directed for purposes of this Section 13 when it is directed or addressed to the following addresses:

Guzman:

Guzman Energy LLC
Attn: Jeffrey Heit
1125 17th Street Suite 740
Denver, Colorado
Telephone 720.778.2001
Facsimile 720.778.2035
Email: jheit@guzmanenergy.com

Aztec: City of Aztec
Attn: Electric Director

Electric Operations Center
402 S. Light Plant Rd.
Aztec, NM 87410
Telephone 505.334.7667
Facsimile 505.334.7684
Email: kgeorge@aztecnm.gov

13.3 Changes to Notice Addresses. Either Party may change any portion of its contact information above by giving written notice of such change to the other Party.

14. MISCELLANEOUS.

14.1 Entirety. This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof. Any representation, inducement, promise or agreement that is not expressly set forth or incorporated by reference in this Agreement shall be of no force or effect.

14.2 Choice of Law**.** This Agreement shall be governed, construed and interpreted in accordance with the laws of the state of New Mexico, without regard to principles of conflicts of law.

14.3 Dispute Resolution.

a. In the event of a dispute, within ten (10) days following the delivered date of a written request by either Party, (i) each Party shall appoint a representative, and (ii) the Parties' representatives shall meet, negotiate and attempt in good faith to resolve the dispute quickly, informally and inexpensively. If the Parties' representatives cannot resolve the dispute within thirty (30) days after commencement of negotiations, within ten (10) days following any request by either Party at any time thereafter, each Party's representative (a) shall independently prepare a written summary of the dispute describing the issues and claims, (b) shall exchange its summary with the summary of the dispute prepared by the other Party's representative, and (c) shall submit a copy of both summaries to a senior officer of each Party with authority to irrevocably bind the Party to a resolution of the dispute. Within ten (10) business days after receipt of the dispute summaries, the senior officers for both Parties shall negotiate in good faith to resolve the dispute. If the senior offices Parties are unable to resolve the dispute within fourteen (14) days following receipt of the dispute summaries, the Parties shall submit their dispute to binding arbitration and shall otherwise conform to the requirements set forth below.

b. Arbitration as set forth herein shall be effected by a panel of three (3) arbitrators in accordance with the provisions of this Section 14.3(b) and in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the arbitration; provided, however, that notwithstanding any provisions of such rules, the Parties shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration in accordance with the Federal Rules of Evidence. Judgment upon the award rendered by the

arbitrators may be entered in any court having jurisdiction. The arbitrators shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein.

c. Any Party desiring arbitration shall serve on the other Party and the Denver, Colorado Office of the American Arbitration Association, in accordance with the Commercial Arbitration Rules, its Notice of Intent to Arbitrate, which shall be filed in writing concurrently with the American Arbitration Association, and shall be accompanied by the name of an arbitrator suggested by the Party serving the notice. The Party served with the notice shall advise the other Party in writing of the name of its suggested arbitrator within ten (10) days after receipt of such notice. Within twenty (20) days after the notice has been made, the two arbitrators shall choose a third arbitrator who shall act as chairperson of the arbitral proceedings. If the two arbitrators chosen by the Parties do not agree upon a third arbitrator within twenty (20) days after the filing of the notice, then, upon the application of either Party, the third arbitrator shall be selected in accordance with the Commercial Arbitration Rules. The arbitration proceedings provided hereunder are hereby declared to be self-executing, and it shall not be necessary to petition a court to compel arbitration. All arbitration proceedings shall be held in San Juan County, New Mexico. The Parties shall bear their own costs associated with any required travel to and from such location. The arbitrator shall make a determination within three (3) months after the dispute is submitted for arbitration.

d. Notwithstanding the existence of a dispute, and until the expert or arbitrator, as applicable, renders a decision, each Party shall be obligated to fulfill its obligations and continue its performance in accordance with the terms hereof. Any payment due or payable by either Party to the other Party shall not be withheld on account of the occurrence or continuance of any expert resolution or arbitration proceedings. Neither Party shall make any public statements with respect to any disputes hereunder without the prior consent of the other Party unless compelled to do so in connection with the arbitration, or by a governmental or regulatory authority having jurisdiction over such Party or such dispute.

14.4 Headings; Exhibits. The headings used for the Sections and articles herein are for convenience and reference purposes only, and shall in no way affect the meaning or interpretation of the provisions of this Agreement. Any and all exhibits referred to in this Agreement are, by such reference, incorporated in and made a part of this Agreement for all purposes.

14.5 Amendments. This Agreement shall not be altered or amended except by an instrument in writing executed by authorized officers of the Parties.

14.6 Further Assurances. The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at

all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

14.7 Relationship of the Parties. This Agreement shall not be interpreted or construed to (a) create an association, joint venture or partnership between the Parties or impose any partnership obligation or liability on either Party, (b) create any agency relationship between the Parties or impose any fiduciary duty of any kind on either Party, (c) create a trust or impose any trust obligations of any kind on either Party, or (d) constitute a lease of property of any kind. Other than as expressly set forth herein, neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of, or otherwise bind, the other Party.

14.8 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

14.9 Confidentiality. Neither Party shall disclose (other than to such Party's employees, lenders, investors, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except (a) in order to comply with any applicable law, regulation or any exchange, control area or independent system operator rule, including the New Mexico Inspection of Public Records Act, NMSA 1978, Section 14-2-1 et seq., or (b) in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation, without the need to post bond.

14.10 Non-Waiver. Any waiver at any time by any Party of its rights with respect to a default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not waive any subsequent default or any other matter. Any delay, short of the statutory period of limitation, in asserting or enforcing any right hereunder shall not waive such right. The assertion or enforcement of any right hereunder at any time shall be without prejudice to the subsequent assertion or enforcement of the same right or any other right.

14.11 Assignment; No Third Party Beneficiaries.

a. Neither Party shall assign this Agreement, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns.

b. The obligations of Guzman or Aztec hereunder, as applicable, will be binding upon any future purchaser, lessee, owner or operator of the facilities, assets or business comprising such Party's electric system.

c. No provision hereof is intended to confer or shall confer a legal right or other benefit upon any person who is not a Party. No provision hereof is intended to create or shall create a legal duty or obligation to any person who is not a Party.

14.12 Joint Preparation. This Agreement was prepared jointly by the Parties, each Party having had access to advice of its own counsel, and not by either Party to the exclusion of the other Party, and shall not be construed against one Party or the other as a result of the manner in which this Agreement was prepared, negotiated or executed.

14.13 Severability. If any of the terms, covenants or conditions of this Agreement shall be held invalid or unenforceable in whole or in part, the effectiveness and enforceability of the remainder of this Agreement shall not be affected thereby.

14.14 Counterparts. This Agreement may be executed in counterparts, all of which, taken together, shall have the same effect as though all signers had executed one and the same document.

Signature Page Follows

IN WITNESS WHEREOF, the Parties have caused this Amended and Restated Power Sales Agreement to be executed, effective as of the Effective Date.

GUZMAN ENERGY LLC

By:_____
Title:_____

CITY OF AZTEC

By:_____
Title:_____

Attested by:_____
Name:_____
Date:_____

EXHIBIT A
LOAD FORECAST

(Net of WAPA Allocation & Solar Generation)

City of Aztec Demand Requirements (Net of Federal Hydro Allocation) Forecast (MW)											
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
January	4.68	4.79	4.90	5.01	5.12	5.24	5.36	5.47	5.60	5.72	5.84
February	4.48	4.59	4.70	4.81	4.92	5.03	5.14	5.26	5.38	5.50	5.62
March	3.97	4.07	4.17	4.27	4.37	4.48	4.58	4.69	4.80	4.91	5.02
April	4.53	4.62	4.72	4.82	4.92	5.02	5.13	5.23	5.34	5.45	5.56
May	5.29	5.40	5.51	5.62	5.74	5.85	5.97	6.08	6.20	6.33	6.45
June	6.40	6.52	6.65	6.77	6.90	7.04	7.17	7.31	7.44	7.58	7.73
July	7.19	7.32	7.46	7.60	7.74	7.89	8.04	8.18	8.34	8.49	8.64
August	7.24	7.37	7.51	7.65	7.80	7.94	8.09	8.24	8.39	8.55	8.70
September	6.20	6.32	6.44	6.57	6.69	6.82	6.95	7.09	7.22	7.36	7.50
October	3.70	3.79	3.89	3.98	4.08	4.18	4.28	4.39	4.49	4.60	4.70
November	4.15	4.25	4.35	4.45	4.56	4.67	4.77	4.88	5.00	5.11	5.23
December	5.17	5.29	5.40	5.52	5.65	5.77	5.89	6.02	6.15	6.28	6.41
Annual Peak	7.24	7.37	7.51	7.65	7.80	7.94	8.09	8.24	8.39	8.55	8.70

City of Aztec Energy Requirements (Net of Federal Hydro Allocation) Forecast (MWh)											
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
January	3,172	3,238	3,304	3,371	3,439	3,508	3,579	3,650	3,722	3,795	3,870
February	2,708	2,769	2,829	2,889	2,945	3,011	3,074	3,137	3,198	3,268	3,334
March	2,671	2,730	2,789	2,849	2,910	2,971	3,034	3,098	3,162	3,228	3,293
April	2,872	2,927	2,983	3,039	3,096	3,154	3,213	3,273	3,334	3,395	3,458
May	2,932	2,988	3,045	3,103	3,161	3,220	3,281	3,342	3,404	3,466	3,530
June	3,164	3,224	3,284	3,346	3,408	3,471	3,535	3,600	3,666	3,733	3,801
July	3,890	3,961	4,032	4,104	4,178	4,252	4,328	4,405	4,483	4,563	4,643
August	3,640	3,707	3,774	3,842	3,913	3,983	4,055	4,127	4,201	4,275	4,351
September	3,264	3,325	3,386	3,448	3,512	3,576	3,641	3,706	3,773	3,841	3,910
October	2,482	2,536	2,592	2,649	2,707	2,765	2,825	2,884	2,945	3,007	3,071
November	2,570	2,627	2,684	2,742	2,800	2,860	2,920	2,982	3,043	3,107	3,171
December	3,257	3,323	3,390	3,459	3,529	3,598	3,670	3,743	3,816	3,891	3,967
Annual Total	36,623	37,357	38,093	38,840	39,598	40,369	41,153	41,947	42,749	43,569	44,398

City of Aztec Demand Requirements (Net of Federal Hydro Allocation) Forecast Increased 50% (MW)											
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
January	7.02	7.19	7.35	7.52	7.68	7.86	8.04	8.21	8.40	8.58	8.76
February	6.72	6.89	7.05	7.22	7.38	7.55	7.71	7.89	8.07	8.25	8.43
March	5.96	6.11	6.26	6.41	6.56	6.72	6.87	7.04	7.20	7.37	7.53
April	6.80	6.93	7.08	7.23	7.38	7.53	7.70	7.85	8.01	8.18	8.34
May	7.94	8.10	8.27	8.43	8.61	8.78	8.96	9.12	9.30	9.50	9.68
June	9.60	9.78	9.98	10.16	10.35	10.56	10.76	10.97	11.16	11.37	11.60
July	10.79	10.98	11.19	11.40	11.61	11.84	12.06	12.27	12.51	12.74	12.96
August	10.86	11.06	11.27	11.48	11.70	11.91	12.14	12.36	12.59	12.83	13.05
September	9.30	9.48	9.66	9.86	10.04	10.23	10.43	10.64	10.83	11.04	11.25
October	5.55	5.69	5.84	5.97	6.12	6.27	6.42	6.59	6.74	6.90	7.05
November	6.23	6.38	6.53	6.68	6.84	7.01	7.16	7.32	7.50	7.67	7.85
December	7.76	7.94	8.10	8.28	8.48	8.66	8.84	9.03	9.23	9.42	9.62
Annual Peak	10.86	11.06	11.27	11.48	11.70	11.91	12.14	12.36	12.59	12.83	13.05

City of Aztec Energy Requirements (Net of Federal Hydro Allocation) Forecast Increased 50% (MWh)											
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026
January	4,759	4,857	4,956	5,056	5,159	5,262	5,368	5,475	5,584	5,693	5,805
February	4,062	4,154	4,243	4,333	4,418	4,517	4,611	4,706	4,798	4,902	5,000
March	4,007	4,096	4,184	4,274	4,365	4,457	4,551	4,647	4,742	4,841	4,940
April	4,308	4,391	4,475	4,559	4,644	4,731	4,819	4,909	5,001	5,092	5,187
May	4,397	4,482	4,567	4,654	4,741	4,830	4,922	5,013	5,106	5,199	5,295
June	4,746	4,837	4,927	5,018	5,111	5,206	5,302	5,400	5,499	5,599	5,701
July	5,835	5,941	6,048	6,156	6,267	6,378	6,493	6,608	6,725	6,844	6,964
August	5,461	5,561	5,662	5,764	5,869	5,974	6,082	6,190	6,301	6,413	6,527
September	4,896	4,988	5,079	5,172	5,268	5,363	5,461	5,560	5,660	5,762	5,865
October	3,722	3,805	3,888	3,974	4,060	4,147	4,237	4,327	4,418	4,511	4,606
November	3,856	3,941	4,026	4,112	4,201	4,290	4,380	4,472	4,565	4,661	4,756
December	4,885	4,985	5,085	5,188	5,293	5,397	5,505	5,614	5,725	5,837	5,950
Annual Total	54,934	56,036	57,140	58,260	59,397	60,553	61,730	62,920	64,123	65,353	66,597

EXHIBIT B
WAPA ALLOCATION APRIL 2015 – MARCH 2016

Summer Season Attachment to Exhibit A - Monthly Capacity and Energy Table

Aztec, NM (City of) **Year: 2015**
Contract No. 87-SLC-0015

CAPACITY (KW)

	CROD	SHP	AHP	Minimum*	CDP**
April	1,896	922	922	359	N/A
May	1,896	905	905	465	N/A
June	1,896	937	937	454	N/A
July	1,896	1,078	1,078	620	N/A
August	1,896	1,039	1,039	425	N/A
September	1,896	900	900	431	N/A

ENERGY (KWH)

	SHP	AHP	WRP On Peak (kWh)	WRP Off Peak (kWh)	WRP Total (Not to Exceed)
April	557,814	557,814			(807,306)
May	530,996	530,996			(879,628)
June	545,554	545,554			(819,566)
July	652,060	652,060			(758,564)
August	606,853	606,853			(803,771)
September	550,651	550,651			(814,469)

*__Minimum Capacity__ is the minimum to be scheduled in any hour. The minimum is calculated monthly, based on anticipated generation and water release patterns.
*Minimum Capacity allocations for April, May, June, July, August, and September are estimates and may be subject to change.
__CDP Capacity__ available is the difference between **SHP/AHP Capacity and the **CROD** in any hour.

Winter Season Attachment to Exhibit A - Monthly Capacity and Energy Table

Aztec, NM (City of) **Year: 2015-2016**
Contract No. 87-SLC-0015

CAPACITY (KW)

	CROD	SHP	AHP	Minimum*	CDP**
October	2,584	1,375	1,375	423	N/A
November	2,584	1,443	1,443	451	N/A
December	2,584	1,618	1,618	542	N/A
January	2,584	1,608	1,608	523	N/A
February	2,584	1,585	1,585	523	N/A
March	2,584	1,418	1,418	446	N/A

ENERGY (KWH)

	SHP	AHP	WRP On Peak (kWh)	WRP Off Peak (kWh)	WRP Total (Not to Exceed)
October	745,540	745,540			(1,176,956)
November	744,007	744,007			(1,116,473)
December	884,993	884,993			(1,037,503)
January	780,020	780,020			(1,142,476)
February	776,955	776,955			(1,021,509)
March	728,803	728,803			(1,193,693)

*Minimum Capacity is the minimum to be scheduled in any hour. The minimum is calculated monthly, based on anticipated generation and water release patterns.
*Minimum Capacity allocations for October, November, December, January, February, and March are estimates and may be subject to change.
**CDP Capacity available is the difference between SHP/AHP Capacity and the CROD in any hour.

EXHIBIT C
PROJECT DESIGN CAPACITY; PROJECT ATTRIBUTES

1. City of Aztec Solar Proposal from Conergy dated November 30, 2015 – see attached

2. Astronergy Limited Warranty for Crystalline PV Modules, effective from January 1, 2015 – see attached.

3. SunGrow Standard Warranty Contract (rev. JUNE 2015) – see attached.

EXHIBIT D
PREMISES

A portion of the lands described in the Correction Warranty Deed to Glen W. Swire and Mamie Swire, under Trust Agreement dated June 29, 1977, recorded December 5, 1977 in Book 802, page 454 in the office of the County Clerk, San Juan County, New Mexico, lying in Sections Eight (8) and Seventeen (17), Township Thirty (30) North, Range Eleven (11) West, N.M.P.M., San Juan County, New Mexico, further described as follows:

BEGINNING at the West Sixteenth Corner common to said Sections 8 and 17, from which the Miller Engineers aluminum capped monument set in 1994 for the section corner common to Sections 7, 8, 17 and 18, Township 30 North, Range 11 West, N.M.P.M., bears North 89°55'11" West, 1045.40 feet;

THENCE along the West aliquot line of the Southeast Quarter of the Northwest Quarter (SE1/4NW1/4) of said Section 8, North 00°40'18" East, 169.01 feet to the South property corner of the Quitclaim Deed to Lewis C. Townsend and Bobbie D. Townsend, UTA dated July 28, 1997 in book 1246, page 836 recorded September 30, 1997 in the office of said county clerk, monumented by a 5/8" rebar with cap marked 7922;

THENCE along the South line of the lands described in said Book 1246, page 836, North 60°06'08" East, 453.43 feet to the Southerst corner of the lands described in the Warranty Deed to Kevin N. Townsend and Margie Townsend recorded April 15, 1986 in Book 1042, page 320;

THENCE along the boundary lines of the lands described in said Book 1042, page 320 the following courses:

1) North 55°59'37" East, 67.82 feet;
2) North 20°25'08" East 98.08 feet;
3) North 07°01'08" East, 116.14 feet;

THENCE along the boundary line of the lands described in said Book 1246, page 836, North 00°28'09" West, 30.41 feet a point on the boundary line of River West Subdivision No. 1 recorded May 26, 1978 in Map File R-27 in the office of said county clerk;

THENCE along the boundary line of said River West Subdivision No. 1, North 72°05'48" East, 486.44 feet to a point on the boundary line of Harris Brown Subdivision recorded July 12, 1957 in Map File H-5 in the office of said County Clerk;

THENCE along the boundary of said Harris Brown Subdivision the following courses;

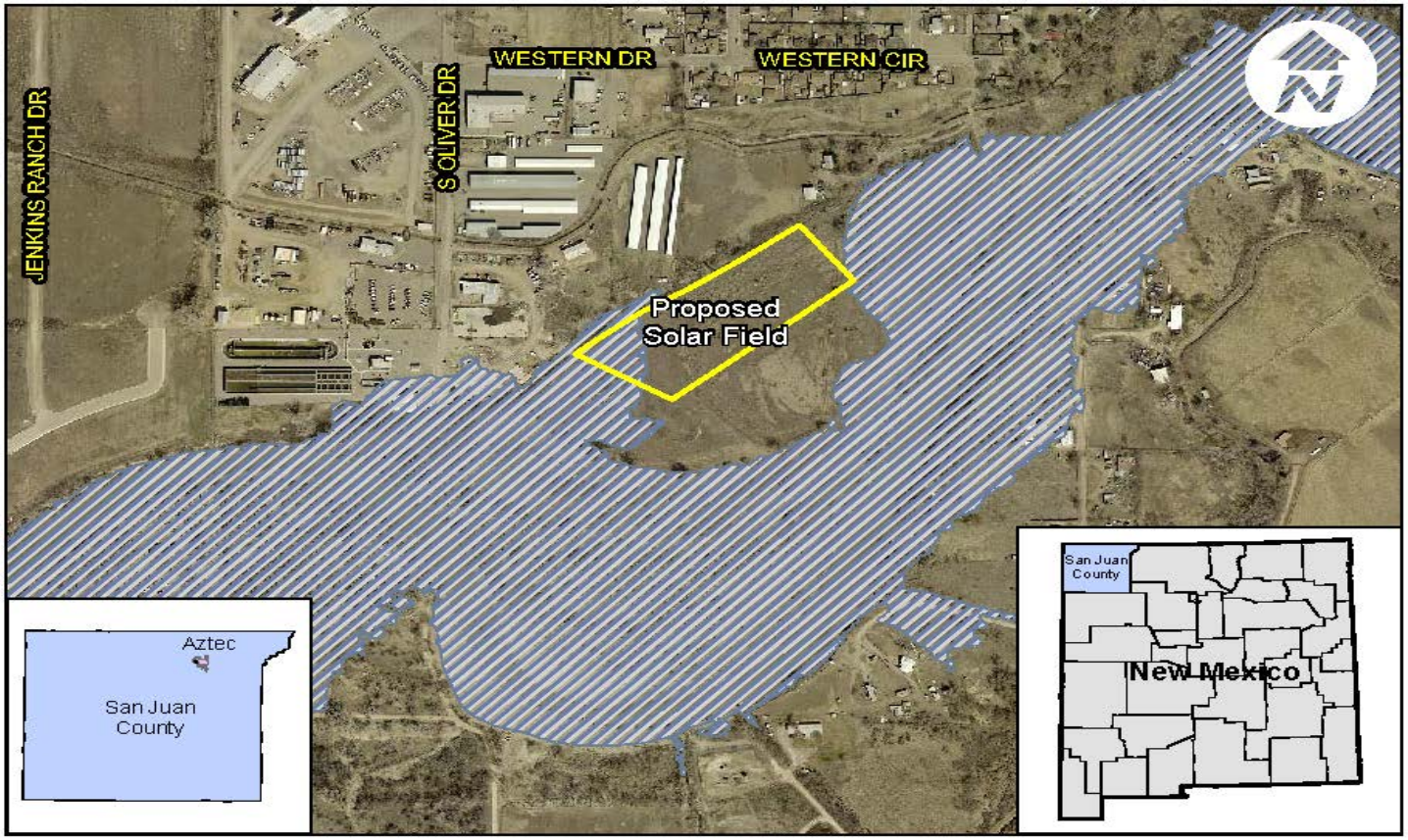
1) South 00°21'07" West, 47.85 feet;
2) North 41°53'31" East, 386.50 feet;

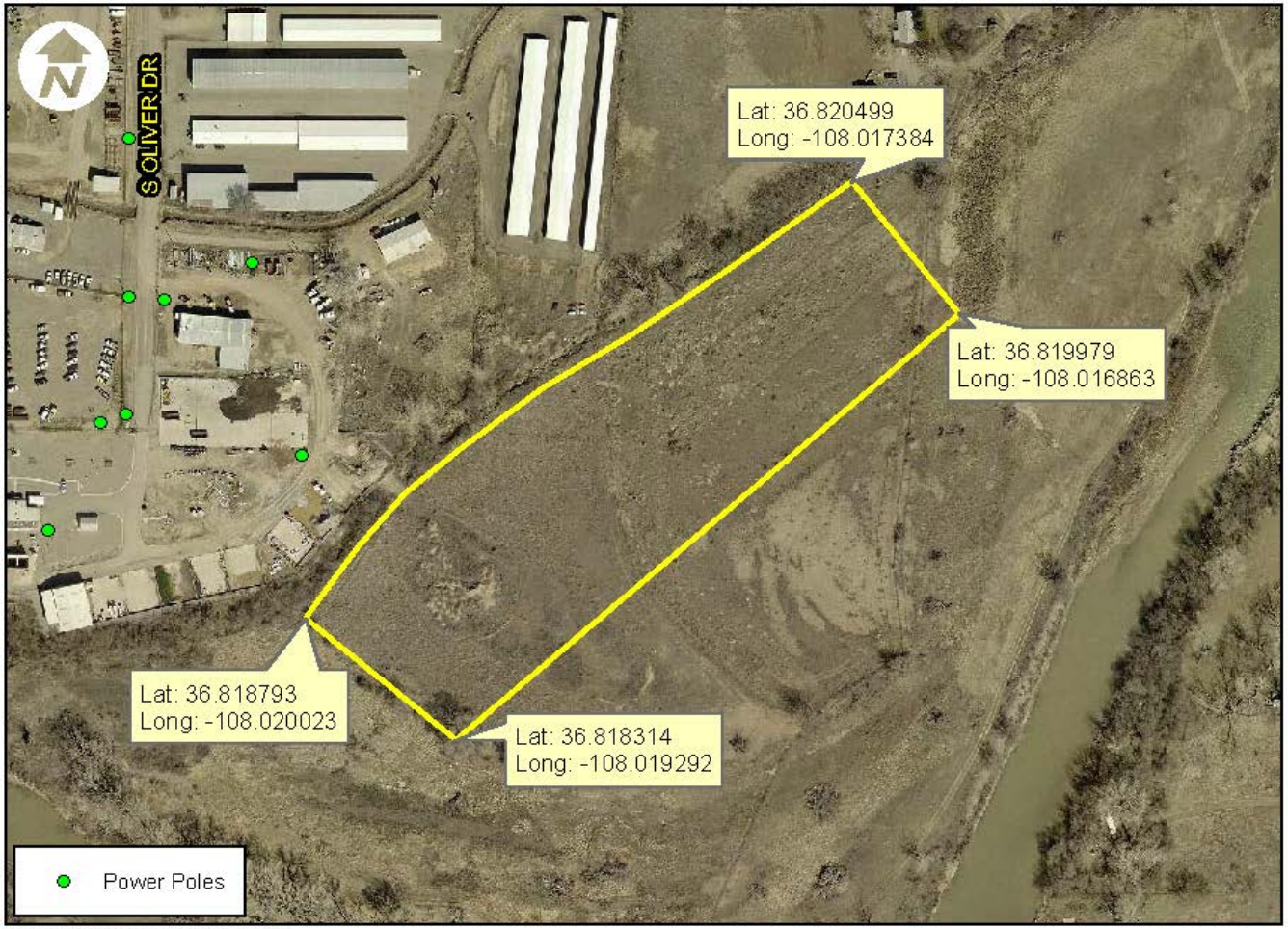
THENCE along the boundary line of the lands described in the Quitclaim Deed to Clora Lawson and or Artresia Lawson recorded February 9, 2005 in Book 1403, page 929 in the office of said county clerk, South 00°27'05" West, 435.01 feet to a point on the centerline of the San Juan River and the land described in the Warranty Deed to Frank R. Martinez and Darla Martinez recorded October 12, 1988 in Book 1094, page 99;

THENCE along the centerline of said river and the boundary lines of the lands described in said Book 1094, page 99 the following courses:

1) South 42°20'28" West, 8.83 feet;
2) South 34°14'38" West, 225.29 feet;

3) South 28°01'22" West, 311.21 feet;
4) South 33°20'43" West, 189.89 feet to a point on the section line common to said Sections 8 and 17;
THENCE along said common section line North 89°55'11" West 89.80 feet to a point on the Northerly bank of said San Juan River;
THENCE along the Northerly bank of said San Juan River the following courses:
1) South 22°01'47" West 971.64 feet;
2) South 40°07'16" West, 230.76 feet;
3) South 45°54'46" West 157.20 feet;
4) South 82°40'00" West 148.44 feet to the beginning of a curve;
5) Along said curve to the right having a radius of 325.00 feet through a central angle of 48°01'00" for an arc length of 272.37 feet and having a chord that bears North 73°19'30" West 264.46 feet;
6) North 49°19'00" West 292.61 feet;
7) North 26°49'24" West 212.01 feet to the beginning of a curve;
8) Along said curve to the left having a radius of 650.00 feet through a central angle of 57°31'09" for an arc length of 652.53 feet and having a chord that bears North 55°34'59" West 625.48 feet to a point on the South boundary line of the lands described in the Warranty Deed to Town of Aztec recorded June 29, 1972 in Book 706, page 438 in the office of said county clerk;
THENCE along the boundary line of the lands described in said Book 706, page 438 the following courses:
1) North 73°44'38" East 287.99 feet;
2) North 80°46'20" East 220.31 feet;
3) North 70°43'43" East 195.96 feet;
4) North 41°38'46" East 262.93 feet;
5) North 00°01'53" East 20.44 feet to a point on the common section line to said Sections 8 and 17, from which the Miller Engineers, Inc. aluminum capped monument set in 1994 for the section corner common to said Sections 7, 8, 17 and 18 bears North 89°55'11" West, 1045.40 feet;
THENCE along said common section line South 89°55'11" East, 262.96 feet to the point of beginning.


WESTERN DR
WESTERN CIR
JENKINS RANCH DR
S OLIVER DR
Proposed
Solar Field
Aztec
San Juan
County
San Juan
County
New Mexico



Location of Proposed Solar Field.

EXHIBIT E
FORM OF PROJECT PURCHASE AGREEMENT; BILL OF SALE

[see attached]

EXHIBIT F
INSURANCE REQUIREMENTS

SOLAR PROJECT CONSTRUCTION

Guzman Energy LLC and their subcontractor(s) shall carry and maintain insurance in the following amounts:

General Liability - $1,000,000 CSL (Combined Single Limits)
Auto Liability - $1,000,000 CSL (Combined Single Limits)
Workers Compensation – Statutory limits pursuant to the New Mexico Workers Compensation Act.

The certificate shall specifically provide that the coverage afforded under the policy or policies will not be cancelled or be materially changed until prior written notice has been given to the City. Guzman Energy LLC shall furnish a certificate of insurance showing that the City is additionally insured prior to commencing work.

The City of Aztec shall carry and maintain insurance in the following amounts:

General Liability - $1,000,000 CSL (Combined Single Limits)
Auto Liability - $1,000,000 CSL (Combined Single Limits)
Workers Compensation – Statutory limits pursuant to the New Mexico Workers Compensation Act.

The certificate shall specifically provide that the coverage afforded under the policy or policies will not be cancelled or be materially changed until prior written notice has been given to Guzman Energy LLC. The City shall furnish a certificate of insurance showing that Guzman Energy LLC is additionally insured.

SOLAR PROJECT COVERAGE UNTIL TRANSFER OF OWNERSHIP TO AZTEC

In addition to above described coverages, upon completion and Commercial Operation Date, Guzman Energy LLC will provide documentation of:

Replacement coverage on the solar facility through 6/30/2023
Flood insurance, Zone A

City will be identified as additional insured.

The City of Aztec shall carry and maintain insurance in the following amounts:

General Liability - $1,000,000 CSL (Combined Single Limits)
Auto Liability - $1,000,000 CSL (Combined Single Limits)
Workers Compensation – Statutory limits pursuant to the New Mexico Workers Compensation Act.

The certificate shall specifically provide that the coverage afforded under the policy or policies will not be cancelled or be materially changed until prior written notice has been given to Guzman Energy LLC. The City shall furnish a certificate of insurance showing that Guzman Energy LLC is additionally insured.

EXHIBIT G
GUARANTEED OUTPUT

The guaranteed output is approximately 80% of the expected output from Solar Project, with degradation calculated to occur at a rate equal to 2% during the first Contract Year, and .5% in each subsequent Contract Year, as follows:

Contract Year	Guaranteed Output
1	1,867 MWh
2	1,829 MWh
3	1,820 MWh
4	1,811 MWh
5	1,802 MWh
6	1,793 MWh
7	1,784 MWh

EXHIBIT H
DEED OF TRUST

9640960_11

AMENDED AND RESTATED
SOLAR PROJECT PURCHASE AGREEMENT

This Amended and Restated Solar Project Purchase Agreement ("Agreement") dated as of [____] ("Effective Date") is by and between Guzman Aztec Sun LLC, a Delaware limited liability company, and its affiliates, successors and assigns ("Guzman"), and City of Aztec, a municipality located in New Mexico ("Aztec"). Guzman and Aztec are sometimes referred to in this Agreement individually as a "Party" and, collectively, as the "Parties," in each case as the context may require.

RECITALS

WHEREAS, Aztec issued a 2015 Request for Proposals for Wholesale Power Supply (RFP #2015-0502), to which Guzman submitted a response.

WHEREAS, the Parties entered into an Amended and Restated Solar Power Purchase Agreement dated as of May ___, 2017, pursuant to which the Parties agreed to Aztec's option to accept transfer of the Assets in accordance with the terms and conditions set forth herein.

WHEREAS, Guzman desires to transfer to Aztec, and Aztec desires to accept from Guzman, all of Guzman's right, title and interest in certain Assets (defined below) associated with a one (1) MW solar powered electric energy generating facility (the "Project"), upon the terms and subject to the conditions set forth in this Agreement.

TERMS OF AGREEMENT

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1.
DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions.

(a) "Action" means any action, suit, investigation, proceeding, condemnation, or audit by or before any court or other Governmental Authority or any arbitration proceeding.

(b) "Affiliate" means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such Person. For the purposes of this definition, "control" (including with correlative meanings, the terms "controlling," "controlled by" and "under common control with"), as applied to any Person, means the possession, directly or indirectly through one or more intermediaries, of the power to either (i) elect a majority of the directors (or Persons with equivalent management power) of such Person, or (ii) direct or cause the direction of the management or policies of such Person, whether

through the ownership of securities or partnership, membership or other ownership interests, by contract, by operation of law or otherwise.

(c) "Agreement" has the meaning set forth in the Preamble, as same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

(d) "Applicable Law" means all: (i) constitutions, statutes, laws, by-laws, rules, judgments, orders, decrees, regulations, or governmental restrictions in effect from time to time and made or issued by any Governmental Authority; (ii) any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing set forth in clause (i) by, any Governmental Authority, in each such case having the effect or force of law, and (iii) the requirements of all permits, licenses or codes, in the case of each of clauses (i), (ii) and (iii), binding on the Parties or any of the Assets.

(e) "Assets" has the meaning set for in Section 2.1.

(f) "Assignment and Assumption Agreement" has the meaning set forth in Section 10.2.4.

(g) "Assumed Liabilities" has the meaning set forth in Section 2.2.

(h) "Audit" has the meaning set forth in Section 4.17.1.

(i) "Aztec" has the meaning set forth in the Preamble.

(j) "Bill of Sale" has the meaning set forth in Section 10.2.3.

(k) "Business Day" means a day other than Saturday, Sunday or any day on which banks located in the State of New Mexico are authorized or obligated to close.

(l) "CERCLA" has the meaning set forth in the definition of "Environmental Law."

(m) "Closing" means the consummation of the transactions contemplated by Article 10.

(n) "Closing Date" has the meaning set forth in Section 10.1.

(o) "Code" means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

(p) "Consent" means any consent, approval or authorization of, notice to, or designation, registration, declaration or filing with, any Person other than a Governmental Authority.

(q) "Contracts" has the meaning set forth in Section 2.1.2.

(r) "Dollars" or "$" means or denotes United States dollars.

(s) "Effective Date" has the meaning set forth in the Preamble.

(t) "Environmental Law" means all Applicable Laws relating to (i) environmental matters, (ii) the control of any pollutant, or protection of the air, water, or land, (iii) solid, gaseous or liquid waste generation, handling, treatment, storage, disposal or transportation, (iv) exposure to hazardous, toxic or other harmful substances, and (v) the protection and enhancement of the environment. Environmental Laws shall include the Clean Air Act, 42 U.S.C. § 7401 et seq. (CAA), the Clean Water Act, 33 U.S.C. § 1251 et seq. (CWA), the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., the Endangered Species Act, 16 U.S.C. § 1531 et seq., the Resource Conservation Recovery Act, 42 U.S.C. §6901 et seq. (RCRA), the Safe Drinking Water Act. 42 U.S.C. § 300f et seq., the Comprehensive Environmental Response, Compensation, and Liability Act as amended by the Superfund Amendments and Reauthorization Act, 32 U.S.C. § 9601 et seq. (CERCLA), the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. (TSCA), and the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq., and any state or local laws implementing or substantially equivalent to the foregoing federal requirements. ***[Discuss]***

(u) "Excluded Liabilities" has the meaning set forth in Section 2.3.

(v) "Governmental Approval" means any consent or approval required by any Governmental Authority.

(w) "Governmental Authority" means any federal, provincial, state, county, municipal or local government and any political subdivision thereof, or any other governmental, quasi-governmental, executive, legislative, administrative, regulatory, judicial, public or statutory department, body, instrumentality, agency, ministry, court, commission, bureau, board, or other governmental authority having jurisdiction over the Project or any of the Parties.

(x) "Guzman" has the meaning set forth in the Preamble.

(y) "Hazardous Materials" means any chemicals, materials, substances, or items in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste materials, raw materials, chemicals, finished products, by-products, or any other materials or articles, which are listed or regulated as hazardous, toxic or dangerous or as waste or a contaminant, or are otherwise listed or regulated, or for which liability or standards of care are imposed, under any Environmental Law, including petroleum products, asbestos, PCBs, coal combustion by-products, urea formaldehyde foam insulation, lead-containing paints or coatings, and any substances included in the definition of "hazardous debris," "hazardous substances," "hazardous materials," "hazardous wastes,"

"toxic substances," "pollutants," "contaminants" or words of similar import, under any Environmental Laws.

(z) "Knowledge of Aztec" or words of similar import, means the actual knowledge of [•].

(aa) "Knowledge of Guzman" or words of similar import, means, with respect to Guzman, the actual knowledge of [•].

(bb) "Liabilities" or "Liability" means all indebtedness, obligations and other liabilities of a Person, whether direct or indirect, known or unknown, absolute or contingent, accrued, fixed or otherwise, or whether due or to become due.

(cc) "Lien" means any lien, security interest, charge, claim, mortgage, deed of trust, option, warrant, purchase right, or other encumbrance.

(dd) "Loss" or "Losses" means any and all claims, Liabilities, losses, causes of action, fines, penalties, litigation, lawsuits, administrative proceedings, administrative investigations, costs, and expenses, including reasonable attorneys' fees, court costs, and other costs of suit.

(ee) "Other Documents" has the meaning set forth in Section 2.1.3.

(ff) "Party" or "Parties" has the meaning set forth in the Preamble.

(gg) "Permits" means, collectively, all currently-effective registrations, licenses, permits, authorizations, consents, approvals, grants, franchises, rulings, certifications, variances, orders, judgments, decrees and similar rights and privileges granted by any Governmental Authority under any provision of Applicable Law.

(hh) "Permitted Liens" means with respect to the Project Site (a) liens for current Taxes not yet due, (b) minor imperfections of title, if any, none of which is substantial in amount, materially detracts from the value or impairs the use of the property subject thereto in connection with the Project, (c) zoning laws, building codes and other like unrecorded land use restrictions imposed by any Governmental Authority and applicable to the Project Site under Applicable Law, and (d) any encumbrances existing by virtue of the lease agreement set forth in Schedule 2.1.3.

(ii) "Person" means any natural person, corporation, limited partnership, general partnership, joint stock company, joint venture, association, company, limited liability company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

(jj) "Personal Property" has the meaning set forth in Section 2.1.1.

(kk) "Pre-Closing Tax Period" means any tax period (or portion thereof) ending before the Closing Date.

(ll) "Project" has the meaning set forth in the Recitals.

(mm) "Project Permits" has the meaning set forth in Section 2.1.4.

(nn) "Project Site" means the real property described on Schedule 2.1.1.

(oo) "Purchase Price" has the meaning set forth in Section 3.1.

(pp) "Release" means any release, spill, emission, leaking, pumping, emptying, dumping, injection, abandonment, deposit, disposal, discharge, dispersal, leaching, or migration of Hazardous Materials (including the abandonment or discarding of Hazardous Materials in barrels, drums, or other containers) into or within the environment, including the migration of Hazardous Materials into, under, on, or through soil, subsurface strata, surface water, groundwater, drinking water supply, any sediments associated with any water bodies, or any other environmental medium, regardless of where such migration originates.

(qq) "Remediation" means any or all of the following activities to the extent they relate to or arise from the presence of Hazardous Materials in the soil or groundwater or both, or in above-ground or underground structures, equipment, fixtures or personal property, at the Project: (i) performing any activities that are remedial or removal actions under CERCLA, or result in response costs as defined under CERCLA, including monitoring, investigation, cleanup, containment, remediation, removal, mitigation, response or restoration work; (ii) obtaining any Permits or Consents necessary to conduct any such work; (iii) preparing and implementing any plans or studies for such work; (iv) obtaining a written notice from all Governmental Authorities with jurisdiction over the Project Site under Environmental Laws that no material additional work is required by such Governmental Authority; and (v) any other activities required by a Governmental Authority under Applicable Law to address the presence of Hazardous Materials.

(rr) "Representatives" means, with respect to a Party, its Affiliates and each of its and its Affiliates' directors, officers, partners, members, employees, agents, counsel, accountants, advisors, consultants, successors and assigns, in each case with respect to the transactions contemplated by this Agreement.

(ss) "Required Approval" has the meaning set forth in Section 6.2.1.

(tt) "Tax" or "Taxes" means all taxes, charges, fees, levies or other assessments, including all net income, gross income, gross receipts, excise, stamp, real or personal property, ad valorem, withholding, social security, unemployment, use, license, occupation, net worth, payroll, franchise, severance, transfer, recording, employment, premium, windfall profits, environmental, customs duties, capital stock, transfer, profits, sales, uses, registration, value added, alternative or add-on

minimum, estimated or other taxes, assessments, special assessments or charges imposed by any Governmental Authority (including any amounts paid in lieu of any such taxes) and any interest, penalties or additions to tax attributable thereto.

(uu) "Tax Return" means any returns, declarations, reports, bills, claims for refund, information returns (including where permitted or required, any consolidated, combined or unitary returns) or other documents (including any related or supporting schedules, statements or information) filed or required to be filed in connection with the determination, assessment or collection of any Taxes or in connection with the administration of any statutes, laws, rules, regulations, orders or awards of any Governmental Authorities relating to any Taxes.

(vv) "Transaction Documents" means this Agreement and the documents, agreements or instruments required to be delivered at the Closing, including the Bill of Sale and the Assignment and Assumption Agreement.

1.2 Rules of Interpretation. In this Agreement, unless expressly provided otherwise:

(a) words of any gender include each other gender;

(b) the words "herein," "hereunder" and "hereof" refer to the provisions of this Agreement and a reference to a recital, Article, Section, subsection or paragraph of this Agreement or any other agreement is a reference to a recital, Article, Section, subsection or paragraph of this Agreement or other agreement in which it is used unless otherwise stated;

(c) words using singular or plural number also include the plural or singular number, respectively;

(d) references to this Agreement includes any schedule hereto;

(e) a reference to this Agreement, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this Agreement or such other agreement, instrument or provision, as the case may be;

(f) a reference to a statute or other law (including any Applicable Law) or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, law or provision;

(g) "including" means "including, but not limited to," and other forms of the verb "to include" are to be interpreted similarly;

(h) references to "or" shall be deemed to be disjunctive but not necessarily exclusive, (*i.e.*, unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or");

(i) if the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day; and

(j) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings.

ARTICLE 2.
PURCHASE AND SALE

2.1 Purchase and Sale. On the terms and subject to the conditions contained in this Agreement, at the Closing, Aztec shall receive and assume from Guzman, and Guzman shall convey, assign, transfer and deliver to Aztec, free and clear of any Liens (except for Permitted Liens) all of Guzman's rights, title and interests in and to the following assets (collectively, "Assets"):

2.1.1 Personal Property and Improvements. All personal property improvements of Guzman, constructed and installed on the Project Site ("Personal Property");

2.1.2 Contracts. Each of the contracts and agreements identified on Schedule 2.1.2 ("Contracts");

2.1.3 Surveys, Reports and Studies. All environmental and other surveys and reports and data, and all information or materials owned by Guzman and relating primarily to, or necessary for, the Project, including, without limitation, as identified on Schedule 2.1.3 ("Other Documents"); and

2.1.4 Permits. Any Permits owned or controlled by Guzman or any of its Affiliates that are used in, relate primarily to, or are necessary for the Project, including, without limitation, those listed on Schedule 2.1.4 and all application materials (but excluding emails and other written correspondence) in the possession of Guzman ("Project Permits").

2.2 Assumed Liabilities. Aztec shall assume, effective immediately after the Closing the duties, obligations and liabilities of Guzman arising under any Contract and with respect to the other Assets, in each case solely to the extent arising and relating to periods after the Closing (collectively, "Assumed Liabilities").

2.3 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall be construed to impose on Aztec, and Aztec shall not assume or be obligated to pay, perform or otherwise discharge any liabilities or obligations of Guzman other than the Assumed Liabilities, including, without limitation, the following liabilities (collectively, the "Excluded Liabilities"), all of which are hereby expressly retained by Guzman and Guzman shall discharge and perform the Excluded Liabilities when and as they become due and payable:

2.3.1 any and all liabilities or obligations relating to or arising out of the ownership of the Assets arising or accruing on or prior to the Closing or relating in whole or in part to

periods prior to Closing, including all debt and all accounts payables or other current liabilities and obligations; and

2.3.2 subject to Section 6.3, all liabilities and obligations for Taxes imposed with respect to the Assets or the Project for any period (or portions thereof) through the date prior to the Closing Date.

ARTICLE 3.
PURCHASE PRICE

The Parties agree that consideration for the Assets to be paid by Aztec shall be determined by Aztec, in its sole discretion, and at the time Aztec exercises its rights to purchase the Project, it may take into account market conditions, demand for energy and renewable energy credits and alternatives to the Project, including new solar facilities, and any other obligations under the Power Sales Agreement with Guzman (such amount, the "Purchase Price").

ARTICLE 4.
REPRESENTATIONS AND WARRANTIES OF GUZMAN

Guzman hereby represents and warrants to Aztec as follows as of the Effective Date and as of the Closing Date:

4.1 Organization, Existence and Authority. Guzman is a limited liability company, validly existing and in good standing under the laws of the State of Florida and has all requisite power and authority to conduct its business as it is now being conducted. Guzman has all requisite power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents, and to consummate the transactions contemplated hereby and thereby.

4.2 Execution, Delivery and Enforceability. The execution, delivery and performance of this Agreement and the other Transaction Documents have been duly and validly authorized by all necessary limited liability company action by Guzman. This Agreement has been, and at the Closing the other Transaction Documents shall be, duly executed and delivered by Guzman. This Agreement and each of the other Transaction Documents constitutes (or will constitute when executed by Guzman) a legal, valid and binding obligation of Guzman, enforceable against it in accordance with its respective terms, except as such enforcement may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other similar Applicable Laws of general application from time to time in effect that affect creditors' rights generally and (ii) general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

4.3 No Violation. None of the execution and delivery of this Agreement or any of the other Transaction Documents executed by Guzman, the performance or compliance with any provision hereof or thereof, or the consummation of the transactions contemplated hereby or thereby will (i) violate, conflict with, result in a breach of, or constitute a default under any provisions of the governing documents of Guzman, (ii) violate, conflict with, result in a breach of, or constitute a default under any agreement to which Guzman is a party as of the Effective Date, or (iii) result in the creation or imposition of any Lien on any of the Assets, or a breach of, or constitute a default

under any of the Assets by Guzman, or, to the Knowledge of Guzman, any other party, or, to the Knowledge of Guzman, give to any other Persons any rights of termination, amendment, acceleration, modification or cancellation of any of the Assets.

4.4 No Consents. Other than the consent and approval set forth on Schedule 4.4, which will be obtained by Aztec following the Closing, no other consent or approval of, filing with, or notice to, any Person is required to be obtained or made in connection with Guzman's execution, delivery and performance of this Agreement or the other Transaction Documents, or the consummation of the transactions contemplated hereby or thereby, which, if not obtained or made, will prevent or impair Guzman from performing its obligations hereunder or thereunder.

4.5 No Governmental Approvals. Other than the Governmental Approvals set forth on Schedule 4.5, no other Governmental Approval on the part of Guzman is required in connection with the execution, delivery and performance of this Agreement or the other Transaction Documents or the consummation of the transactions contemplated hereby or thereby.

4.6 Compliance with Laws. Except as relates to Environmental Laws, compliance with which is exclusively and solely governed by Section 4.15 hereof, Guzman has complied in all material respects with all Applicable Laws relating to the Assets or by which any of the Assets are bound or subject. Guzman has not received any written notice or written allegation of a violation of law from any Governmental Authority.

4.7 Permits.

4.7.1 Schedule 2.1.3 is a complete and accurate list of all Permits currently held by Guzman or any of its Affiliates in respect of the development of the Project, true and correct copies of which have been provided to Aztec.

4.7.2 Except as set forth in Schedule 4.7.2, and except as relates to compliance with Environmental Laws which is exclusively and solely governed by Section 4.15 hereof, Guzman has not received written notice of violation or noncompliance from any Governmental Authority or any written notice or claim asserting or alleging that any Permit listed in Schedule 2.1.3 (i) is not in full force and effect, or (ii) is subject to any legal proceeding or unsatisfied condition that (a) is not reasonably expected to be satisfied, or (b) if not satisfied, could be reasonably expected to cause a material modification or revocation of any Permit.

4.8 Litigation. Except as set forth in Schedule 4.8, there is no litigation or proceeding affecting or relating to the Assets pending or, to the Knowledge of Guzman, threatened against Guzman. There is no claim or governmental investigation affecting or relating to the Assets pending or, to the Knowledge of Guzman, threatened against Guzman.

4.9 Zoning and Condemnation. There are no pending or, to the Knowledge of Guzman, threatened proceedings or governmental actions to modify the zoning classification of, or to condemn or take by power of eminent domain or to classify as a landmark or otherwise impose any similar restraint or restriction on, all or any part of the Assets.

4.10 Brokerage Fees and Commissions. Neither Guzman nor any of its Affiliates has incurred any obligation or entered into any agreement for any investment banking, brokerage or finder's fee or other similar commission or fee in respect of the transactions contemplated by this Agreement for which Aztec could incur any liability.

4.11 Bankruptcy. Guzman is a solvent entity. Guzman has not filed any voluntary petition in bankruptcy or been adjudicated bankrupt or insolvent, filed any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any bankruptcy, insolvency or other debtor relief law, or sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any substantial part of its respective properties. No court of competent jurisdiction has entered an order, judgment or decree approving a petition filed against Guzman seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any bankruptcy, insolvency, or other debtor relief law, and no other liquidator has been appointed for Guzman or all or any substantial part of either of their properties. No proceedings or actions of the types described in this Section 4.11 are being contemplated by Guzman or, to the Knowledge of Guzman, are threatened against Guzman.

4.12 Title to Assets. Except as set forth on Schedule 4.12, Guzman holds (ii) good and indefeasible title to the other Assets free and clear of all Liens.

4.13 Contracts.

4.13.1 Guzman has provided Aztec with, or access to, true, correct and complete copies of the Contracts set forth in Schedule 2.1.2. Each Contract constitutes the legal, valid, binding and enforceable obligation of Guzman except as may be limited by (i) bankruptcy, insolvency, reorganization, moratorium and other similar laws of general application affecting the rights and remedies of creditors, and (ii) general principles of equity (regardless of whether such enforcement is considered in a proceeding in equity or at law). Each Contract is in full force and effect.

4.13.2 Except as set forth on Schedule 2.1.2, Guzman has not entered into any material agreement, contract, instrument, license or franchise of any kind related to the Project.

4.13.3 None of the Contracts has been modified, supplemented, amended or terminated by Guzman, in any such case whether orally or in writing, except as set forth on Schedule 4.13.3.

4.13.4 Except as set forth on Schedule 4.13.4, no default or event of default of Guzman (or to the Knowledge of Guzman, any other party), actual or inchoate, has occurred and is continuing under any Contract, and no Person has alleged or asserted any such default or event of default by any other party thereto, and, to the Knowledge of Guzman, no default or event of default, actual or inchoate, will arise under any Contract upon or as a result of the assignment of such Contract to Aztec.

4.14 Other Documents. Schedule 2.1.3 is a complete and accurate list of the Other Documents.

4.15 Environmental Legal Compliance. Except as set forth on Schedule 4.15:

4.15.1 All of the Assets and all uses and conditions of the Assets and, to the Knowledge of Guzman, the Project Site, have been and are in material compliance with all Environmental Laws. There are no pending claims, demands, actions, administrative proceedings, lawsuits or investigations against or in respect of the Project Site or the Assets and there are no threatened claims, demands, actions, administrative proceedings, lawsuits or investigations against or in respect of the Project Site or the Assets under any Environmental Law or that would reasonably be expected to result in any liability or obligation of Aztec under any Environmental Law. Neither Guzman, nor any of its Affiliates, nor anyone acting on their behalf, has received written notice of any such claims, demands, actions, proceedings, lawsuits or investigations. Neither Guzman, nor any of its Affiliates has entered into any consent decree, order or other similar agreement related to the Assets;

4.15.2 Neither the Assets nor, to the Knowledge of Guzman, the Project Site, is the subject of any administrative or judicial actions, complaints, suits, proceedings or investigations pursuant to any Environmental Law;

4.15.3 To the Knowledge of Guzman, there has been no Release on the Project Site that, under any Environmental Law, (i) imposes or could reasonably be expected to impose on Aztec a liability for fines or penalties for non-compliance with Environmental Law, or for the performance or reimbursement of the costs of removal, Remediation, or other cleanup, or liability for or obligation to reimburse damages to natural resources; (ii) has had or could reasonably be expected to have a material adverse effect on the value of the Assets; or (iii) could reasonably be expected to result in the imposition of a Lien on the Assets;

4.15.4 To the Knowledge of Guzman, no Lien in favor of any Person imposed under Environmental Law relating to or in connection with any claim under an Environmental Law has been filed or has been attached to the Assets and no response action or other Remediation by any Governmental Authority has taken place that could form the basis for such a Lien under an Environmental Law; and

4.15.5 Guzman has provided to Aztec complete and accurate copies of any environmental investigation, study, audit, test, review and other analysis conducted for Guzman in connection with the Project.

4.16 No Third Party Options. Guzman has not granted to any Person other than Aztec any options, commitments, or rights to acquire Guzman's right, title or interest in or to the Assets or any direct or indirect interest in Guzman except those set forth in Schedule 2.1.2.

4.17 Taxes.

Except as disclosed in Schedule 4.17:

4.17.1 Guzman has timely paid all Taxes pertaining to the Assets when due and payable in compliance with Applicable Law. There are no Liens for Taxes upon any of the

Assets, whether as the result of any failure to pay such Taxes, any failure to file Tax Returns or otherwise, and no Action has been initiated with regard to Taxes or Tax Returns (each an "Audit") of Guzman relating to the Assets, and Guzman has not received any written (or, to Guzman's Knowledge, oral) notice that any such Audit is pending or threatened, that could result in a Lien on any of the Assets;

4.17.2 Guzman is not a foreign person within the meaning of Section 1445 of the Code;

4.18 Operation and Maintenance. Guzman has operated and maintained the Project in accordance with the Contracts, the Permits, applicable laws and prudent industry practices.

4.19 Disclosure. Guzman does not own any assets pertaining to the Project other than those that are included in the definition of "Assets." Guzman has disclosed to Aztec all material information relating to the Assets and the information provided contains no material false statement or misrepresentation.

ARTICLE 5.
REPRESENTATIONS AND WARRANTIES OF AZTEC

Aztec hereby represents and warrants to Guzman as follows as of the date hereof and as of the Closing Date:

5.1 Organization, Existence and Authority. Aztec is a municipality located in the State of New Mexico and has all requisite power and authority to carry on its business as now being conducted. Aztec has all requisite power and authority to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party, and to consummate the transactions contemplated hereby and thereby, including to own the Assets.

5.2 Execution, Delivery and Enforceability. The execution, delivery and performance of this Agreement and the other Transaction Documents to which Aztec is a party have been duly and validly authorized by all necessary action by Aztec. This Agreement has been, and at the Closing shall be, duly executed and delivered by Aztec. This Agreement and each of the other Transaction Documents to which Aztec is a party constitutes (or when executed by Aztec will constitute) a legal, valid and binding obligation of Aztec, enforceable against it in accordance with its respective terms, except as such enforcement may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws of general application from time to time in effect that affect creditors' rights generally and (ii) general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law).

5.3 No Violation. Neither the execution and delivery of this Agreement or any of the other Transaction Documents executed by Aztec, the performance or compliance with any provision hereof or thereof, or the consummation of the transactions contemplated hereby or thereby will result in (i) a violation or breach of the governing documents of Aztec, (ii) a violation or breach of, or a default under any agreement to which Aztec is a party as of the Effective Date hereof.

5.4 Litigation. There is no Action pending against or, to the Knowledge of Aztec, threatened against Aztec or involving Aztec with respect to any of the transactions contemplated by this Agreement.

5.5 Bankruptcy. There are no bankruptcy, reorganization, or insolvency proceedings pending against, being contemplated by or, to the Knowledge of Aztec, threatened against Aztec.

ARTICLE 6.
CERTAIN COVENANTS

6.1 Actions by Parties; Further Assurances. Subject to the terms and conditions of this Agreement, Guzman and Aztec each agree that from time to time after the Closing Date, (i) each Party shall, and shall cause its Affiliates to, execute and deliver such other documents and instruments, provide such materials and information and take such other actions as may reasonably be necessary, to the extent permitted by Applicable Law, to cause the Assets to be transferred to Aztec, and (ii) upon the reasonable request of any Party and at no material cost to or expense of such other Party or its Affiliates, such Party will, and will cause its Affiliates to, execute and deliver such other documents and instruments, and take such other actions as may reasonably be necessary, proper or advisable, (A) to evidence the conveyance by Guzman or its Affiliates to Aztec of any and all right, title and interest that Guzman or any of its Affiliates holds in and to the Assets, (B) to assist the other Party being fully constituted with such rights, in each case to the extent consistent with the Parties' representations, warranties and covenants set forth in this Agreement, and (C) otherwise to consummate the transactions contemplated hereby and to carry out the provisions (or cause its respective Affiliates to take) such other action, as may be reasonably necessary to carry out the purposes and intents of this Agreement.

6.2 Required Approval; Notice. After the Closing:

6.2.1 Guzman shall cooperate with Aztec as it uses commercially reasonable efforts to obtain the consent and approval listed in Schedule 4.4 ("Required Approval"). Aztec will be responsible for any costs it incurs associated with its efforts to obtain the Required Approval.

6.2.2 Aztec will notify promptly all relevant Governmental Authorities and all third Persons to whom notice must otherwise be given of the change in ownership of the Project and the Assets resulting from the transactions contemplated herein, in each case to the extent Aztec is required to do so by Applicable Laws or the agreements to which the Consents relate, and upon Guzman's request shall give Guzman a summary of such efforts.

6.3 Tax Matters.

6.3.1 Taxes. Guzman is responsible for paying all taxes and assessments, including excise taxes, ad valorem taxes and any other federal, state, or local taxes or assessments attributable to ownership of the Assets for the period up to the Closing Date. Aztec is responsible for paying all taxes and assessments, including excise taxes, ad valorem taxes and any other federal, state, or local taxes and assessments attributable to the ownership

or operation of the Assets on and after the Closing Date. Guzman will pay any excise taxes, sales taxes or any other federal, state or local taxes and assessments attributable to the transfer of title to the Assets at the Closing. Guzman shall be responsible for any and all capital gains taxes or any similar taxes associated with the transaction contemplated under this Agreement.

6.3.2 Additional Taxes and Tax Refunds. Guzman shall be responsible for any Taxes that relate to a Pre-Closing Tax Period but are assessed after the Closing Date. As between Aztec and Guzman, Guzman will be entitled to any refunds or credits of Taxes relating to the Project and the Assets for the period prior to the Closing Date. Aztec will promptly notify and forward to Guzman the amounts of any such refunds or credits to Guzman within sixty (60) days after receipt thereof.

6.4 Duty to Notify. Prior to the Closing Date or earlier termination of this Agreement, each Party shall promptly notify the other Parties of any actions, events or circumstances that could reasonably be expected to have a material adverse effect on a Party, the Project, or the Assets, or to result in a breach by a Party of its covenants in this Article 6 or its representations and warranties in Article 4 or Article 5, as applicable.

6.5 Fulfillment of Conditions. Guzman and Aztec shall each take all commercially reasonable steps necessary or desirable, and proceed diligently and in good faith, to satisfy each condition to the obligations of Aztec and Guzman, respectively, contained in this Agreement.

ARTICLE 7.
CONDITIONS PRECEDENT TO THE OBLIGATIONS OF AZTEC

The obligations of Aztec hereunder to purchase the Assets are subject to the fulfillment, at or before Closing, of each of the following conditions (all or any of which may be waived in whole or in part by Aztec in its sole discretion):

7.1 Bring-Down of Guzman's Representations and Warranties. The representations and warranties made by Guzman in this Agreement shall be true and correct in all material respects as of the Closing Date (except for any of such representations and warranties that are qualified by materiality which shall be true in all respects) as though such representations and warranties were made on and as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date.

7.2 Performance at Closing. Guzman shall have duly performed in all material respects all of the covenants and undertakings to be performed by Guzman on or prior to the Closing pursuant to the Agreement, and a duly authorized officer of Guzman shall have delivered to Aztec a certificate dated as of the Closing Date certifying the fulfillment of this condition and the condition set forth in Section 7.1.

7.3 Litigation. No action or proceeding shall have been instituted or threatened and no Applicable Law imposed or revised by any Governmental Authority whatsoever against the Guzman or the Assets which seeks to (or will have the effect to) materially impair, restrain,

prohibit or invalidate the transactions contemplated by this Agreement or the other Transaction Documents.

7.4 Transaction Documents. Guzman shall have executed the Transaction Documents.

7.5 Consents and Approvals. Other than the Required Approval, all Consents and approvals of Governmental Authorities and other Persons required for the consummation of any of the transactions contemplated by this Agreement or the other Transaction Documents shall have been obtained and shall be in full force and effect.

ARTICLE 8.
CONDITIONS PRECEDENT TO THE OBLIGATIONS OF GUZMAN

The obligations of Guzman hereunder to sell the Assets are subject to the fulfillment, at or before Closing, of each of the following conditions (all or any of which may be waived in whole or in part by Guzman in its sole discretion):

8.1 Bring-Down of Aztec's Representations and Warranties. The representations and warranties made by Aztec in this Agreement shall be true and correct in all material respects as of the Closing Date (except for any of such representations and warranties that are qualified by materiality which shall be true in all respects) as though such representations and warranties were made on and as of the Closing Date, except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date.

8.2 Performance at Closing. Aztec shall have duly performed in all material respects all of the covenants and undertakings to be performed by it on or prior to the Closing pursuant to the Agreement, and a duly authorized officer of Aztec shall have delivered to Guzman a certificate dated as of the Closing Date certifying the fulfillment of this condition and the condition set forth in Section 8.1.

8.3 Litigation. No action or proceeding shall have been instituted or threatened and no Applicable Law imposed or revised by any Governmental Authority whatsoever against the Aztec which seeks to (or will have the effect to) materially impair, restrain, prohibit or invalidate the transactions contemplated by this Agreement or the other Transaction Documents.

8.4 Transaction Documents. Aztec shall have executed the Transaction Documents.

8.5 Purchase Price Payment. Aztec shall have deposited with the Title Company, the Purchase Price, as adjusted for any prorations and allocation of Closing costs as provided herein.

ARTICLE 9.
DUE DILIGENCE DOCUMENTATION

9.1 Due Diligence Documentation. Guzman has provided to Aztec copies of all documents, data and reports in Guzman's possession or under Guzman's control relating to the Assets, including without limitation, copies of the Contracts.

ARTICLE 10.
CLOSING

10.1 Closing. The Closing shall be held at no later than [•], on a date mutually agreed upon by the Parties, or on such other date or at such other time or place as Guzman and Aztec may agree in writing; provided, however, that Guzman and Aztec intend that the Closing shall be deemed to be effective, and the transactions contemplated by this Agreement shall be deemed to occur simultaneously (unless otherwise provided herein), on the date on which the Closing actually occurs ("Closing Date"). Upon Closing, Aztec shall take sole ownership and possession of the Assets.

10.2 Guzman's Closing Deliveries. At or prior to the Closing Guzman shall:

10.2.1 Deliver a duly executed and acknowledged form of bill of sale to effect a transfer of the Personal Property to Aztec into escrow in the form attached hereto as Exhibit B ("Bill of Sale");

10.2.2 Deliver two duly executed original counterparts of the assignment of Guzman's interest in the Contracts, the Project Permits and the Other Documents in the form attached to this Agreement as Exhibit A ("Assignment and Assumption Agreement");

10.2.3 Deliver documentation adequately evidencing all actions required to be taken on behalf of Guzman to authorize Guzman's execution and delivery of this Agreement and each of the other Transaction Documents and instruments to be executed and delivered by Guzman in connection herewith and the consummation of the transactions contemplated hereby;

10.2.4 Execute and deliver to Aztec a certificate from a duly authorized officer of Guzman as described in Section 7.2;

10.2.5 Execute and deliver a certificate, dated as of the Closing Date, which satisfies the requirements set forth in Treasury Regulation Section 1.1445-2, attesting that Guzman is not a "foreign person" for U.S. federal income tax purposes ("FIRPTA Certificate");

10.2.6 Deliver to Aztec originals (if available) of each of the Contracts;

10.2.7 Deliver any other documents or instruments reasonably required to consummate the transactions contemplated hereunder.

10.3 Aztec's Closing Deliveries. At or prior to the Closing, Aztec shall:

10.3.1 Deliver the Purchase Price;

10.3.2 Deliver two duly Aztec executed original counterparts of the Assignment and Assumption Agreement into escrow;

10.3.3 Execute and deliver to Guzman a certificate from a duly authorized officer of Aztec as described in Section 8.2; and

10.3.4 Deliver any other documents or instruments reasonably required by Title Company to consummate the transactions contemplated hereunder.

ARTICLE 11.
INDEMNIFICATION

11.1 Indemnification.

11.1.1 By Guzman of Aztec. Subject to the other terms and limitations in this Agreement, Guzman hereby agrees to defend, indemnify and hold harmless Aztec, from and against any and all Losses asserted against or incurred by Aztec (i) for any material breach of Guzman's representations or warranties made in this Agreement (ii) brought against Aztec, or all or any component of the Project by any Governmental Authority, and (iii) for any material breach of the covenants or obligations of Guzman under this Agreement; provided, however, that the foregoing indemnity shall not apply to Losses caused by the gross negligence or willful misconduct of Aztec.

11.1.2 By Aztec of Guzman. Subject to the other terms and limitations in this Agreement, Aztec hereby agrees to defend, indemnify and hold harmless Guzman, from and against any and all Losses asserted against or incurred by Guzman (i) for any material breach of Aztec's representations or warranties made in this Agreement, and (ii) for any material breach of the covenants or obligations of Aztec under this Agreement; provided, however, that the foregoing indemnity shall not apply to Losses caused by the gross negligence or willful misconduct of Guzman.

11.2 Survival and Time Limitation. After the Closing, any assertion by Aztec that Guzman is liable to Aztec for indemnification under the terms of this Agreement or otherwise in connection with the transactions contemplated in this Agreement must be made in writing and must be given to Guzman prior to the date that is one (1) year after the Closing Date, except for (i) indemnification for breach of Guzman's representations in Sections 4.12 and 4.16, which shall survive indefinitely following the Closing, (ii) indemnification for a material breach of Guzman's representations in Sections 4.1, 4.2, 4.3, 4.4, 4.6 or 4.15, which shall survive for the limitations period provided under Applicable Law, and (iii) indemnification for material breach of Guzman's representations in Section 4.17 and Guzman's other covenants and obligations under this Agreement related to Taxes, which must be made in writing and must be given to Guzman on or prior to the date that is ninety (90) days after the date on which the applicable statute of limitations expires with respect to the matters covered thereby.

11.3 Sole and Exclusive Remedy. From and after the Closing, except as otherwise provided in Section 6.3 with regard to liability for Taxes, the indemnification provisions of this Article 11 shall be the sole and exclusive remedy for any breach hereunder.

ARTICLE 12.
TERMINATION

12.1 Termination. This Agreement may be terminated at any time prior to Closing as follows:

(a) by Aztec if there has been a material breach by Guzman of any representation, warranty, covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 7.1 or 7.2;

(b) by Guzman if there has been a material breach by Aztec of any representation, warranty, covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 8.1 or 8.2;

(c) by Aztec or Guzman if a Governmental Authority shall have issued an order or taken any other Action, in either case, having the effect of restraining, enjoining or otherwise prohibiting, or attempting to restrain, enjoin or otherwise prohibit, the transactions contemplated by this Agreement and such order or other Action shall have become final and non-appealable; provided, however, that the Party seeking to terminate this Agreement pursuant to this Section 13.1 shall have used reasonable efforts to prevent the entry of and to remove such order or other Action.

12.2 Effect of Termination. If this Agreement is validly terminated pursuant to Section 12.1, this Agreement will forthwith become null and void, and there will be no liability or obligation on the part of Guzman or Aztec in respect of this Agreement, except that the applicable portions of this Section 12.2, and the entirety of Article 11, Article 13, and Article 14 will continue to apply following any termination; provided, however, that nothing in this Section 12.2 shall release any Party from liability for any breach of this Agreement by such Party prior to the termination of this Agreement (and any attempted termination by the breaching Party shall be void).

ARTICLE 13.
NOTICES

13.1 Requirements for Notices and Other Communications. Except as otherwise expressly provided in this Agreement, whenever this Agreement requires that a notice be given by one Party to the other Party, or a Party's action requires the approval or consent of the other Party, then:

13.1.1 Each such notice shall be given in writing and each such consent or approval shall be provided in writing; and

13.1.2 Each such notice, consent or approval shall be marked for the attention of the relevant Person as follows:

If delivered to Guzman:

Guzman Aztec Sun LLC
Attn: Jeffrey Heit
1125 17th Street Suite 740
Denver, Colorado
Telephone 720.778.2001
Facsimile 720.778.2035
Email: jheit@guzmanenergy.com

If delivered to Aztec:

City of Aztec
Electric Director
Electric Operaitons Center
402 S. Light Plant Road
Aztec, NM 87410
Telephone 505.334.7667
Facsimile 505.334.7684
Email: kgeorge@aztecnm.gov

Each such notice, consent or approval shall be (i) delivered personally, (ii) sent by facsimile communication to the fax number of the addressee which is specified in Section 13.1.2, (iii) sent by nationally recognized overnight courier or delivery service, or (iv) sent by registered mail, return receipt requested.

13.2 Changes in Notice Details. A Party may at any time, by notice given to the other Parties, designate a different Person, address or facsimile number for the purpose of this Article 13, which change will be effective on the fifth (5th) Business Day after each Party's receipt of such notice.

13.3 When Notice Is Effective. All notices, requests, demands, approvals and other communications which are required to be given, or may be given, from one Party to the other Parties under this Agreement shall be deemed to have been duly given, received and effective:

13.3.1 If personally delivered, on the date of delivery;

13.3.2 In the case of a notice sent by facsimile communication, on the day of actual receipt if a Business Day and received prior to 4:30 p.m. at the place of receipt, or if not so received, on the next Business Day at the place of receipt;

13.3.3 In the case of a notice sent by mail, on the second (2nd) Business Day following deposit of the notice in the U.S. mail addressed as set forth above; and

13.3.4 The first Business Day in the place of receipt immediately following the day it is sent, if properly sent for next day delivery to a domestic address by a nationally recognized overnight courier or delivery service.

13.3.5 In the case of a notice sent by email, if such email is followed by delivery of notice by means of one of the other methods expressly permitted pursuant to Article 13, on the date notice is deemed effective pursuant to such other permitted method for delivering notice.

ARTICLE 14.
MISCELLANEOUS

14.1 Severability. Any provision of this Agreement that shall be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In the event any such provision of this Agreement is so held invalid, the Parties shall, within seven (7) days of such holding, commence to renegotiate in good faith new provisions to restore this Agreement as nearly as possible to its original intent and effect. To the extent permitted by Applicable Law, the Parties hereby waive any provision of law that renders any provision of this Agreement prohibited or unenforceable in any respect.

14.2 Amendment. Except as provided herein, no amendment or variation of the provisions of this Agreement shall be binding upon the Parties hereto unless evidenced in a writing which indicates that such writing is intended to amend the terms of this Agreement and is signed by duly authorized officers of each Party. The Parties agree that this Agreement shall not be amended in any manner by any course of dealing among the Parties.

14.3 Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party. Notwithstanding anything to the contrary in this Agreement, Guzman may, without the consent of Aztec, (a) transfer or assign all or substantially all of its rights and obligations hereunder to an affiliate or successor or (b) collaterally assign to its lenders, in connection with a financing of the Project, all or any part of Guzman's rights or obligations hereunder. Aztec agrees to provide acknowledgements, consents, or certifications reasonably requested by Guzman's lenders in conjunction with such financing. Guzman shall inform Aztec of any such transfers or assignments

14.4 No Waiver. No delay or forbearance by a Party in exercising any right or remedy accruing to such Party upon the occurrence of any breach or default by any other Party under this Agreement shall impair any such right or remedy of such Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver on the part of any Party of any provision or condition of this Agreement must be in writing signed by the Party to be bound by such waiver and shall be effective only to the extent specifically set forth in such writing and shall not limit or affect any rights with respect to any other or future circumstance.

14.5 No Third-Party Beneficiaries. This Agreement is for the sole and exclusive benefit of the Parties and shall not create a third party beneficiary relationship with, or cause of action in favor of, any third party, except a Person entitled to indemnification by a Party under this Agreement.

14.6 Headings, Captions. All indexes, titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning, content or scope of this Agreement.

14.7 Relationship Between Parties. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship, franchise or partnership between the Parties or to impose any such obligation or liability upon a Party. No Party shall have any right, power or authority to enter into any agreement or undertaking for, act as or be an agent or representative of, or otherwise to bind any other Party.

14.8 Entire Agreement. This Agreement constitutes the entire agreement of the Parties in connection with the matters included in this Agreement and all previous agreements, understandings and negotiations (whether written or oral) on those subject matters are hereby superseded and shall have no further effect after the Closing Date. The exhibits attached hereto are hereby incorporated into and form a part of this Agreement. If any term or condition, express or implied, of any exhibit conflicts or is at variance with any term or condition in the body of this Agreement, the term or condition in the body of this Agreement shall control and prevail.

14.9 Counterparts. This Agreement may be executed in one or more counterparts and the counterparts taken together shall constitute one and the same agreement.

14.10 Fees and Expenses. Except as otherwise expressly provided in this Agreement, all fees and expenses, including fees and expenses of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such fee or expense, whether or not the Closing shall have occurred.

14.11 Decision Making by Parties. Except where this Agreement expressly provides for a different standard, whenever this Agreement provides for a determination, decision, permission, consent or approval of a Party, the Party shall make such determination, decision, grant or withholding of permission, consent or approval in a commercially reasonable manner and without unreasonable delay. Any denial of an approval, permission, decision, determination or consent required to be made in a commercially reasonable manner shall include in reasonable detail the reason for such denial or aspect of the request that was not acceptable.

14.12 Choice of Law. This Agreement shall be governed, construed and interpreted in accordance with the laws of the state of New Mexico, without regard to principles of conflicts of law.

14.13 Attorneys' Fees. The prevailing Party in any legal proceeding brought under or to enforce this Agreement shall be entitled to recover court costs and reasonable attorneys' fees from the non-prevailing Party.

14.14 Public Announcements. At all times, Guzman or Aztec will not issue or make any press releases or similar public announcements concerning the transactions contemplated hereby without first consulting with each other.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as of the date first set forth above.

GUZMAN AZTEC SUN LLC

By:_____
Title:_____

CITY OF AZTEC

By:_____
Title:_____

Attested by:_____
Name:_____
Date:_____

EXHIBIT A

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement") is made and entered into as of this [__] day of _____ ("Effective Date"), by and between Guzman Aztec Sun LLC, a Florida limited liability company ("Guzman") in favor of City of Aztec, a municipality located in New Mexico ("Aztec").

RECITALS

A. The Parties have entered into that certain Amended and Restated Solar Project Purchase Agreement dated [____] ("Purchase Agreement"), providing for the sale and transfer by Guzman to Aztec of all of the assets relating to Guzman's development, construction, operation and management of a one (1) MW solar power electric generating facility, consisting of the photovoltaic panels and all associated equipment, to be installed on the Premises in accordance with Exhibit C of the Amended and Restated Power Sales Agreement by and between Guzman and Aztec ("Project"). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Purchase Agreement.

B. Pursuant to the Purchase Agreement, Guzman agreed to sell, convey, assign, transfer and deliver to Aztec, free and clear of any Liens (except for Permitted Liens) on the Closing Date all of Guzman's rights, title and interests in and to the Assets.

C. Guzman wishes to assign to Aztec all of its right, title and interest in and to that the Contracts, and Aztec wishes to assume all of Guzman's right, title and interest in and to the Contracts and the obligations thereunder to the extent arising from and after the Effective Date.

D. Guzman wishes to assign to Aztec all of its right, title and interest in and to, all environmental, archeological, cultural, historical and other surveys and reports and data, all land surveys, title search results, and all information or materials owned by Guzman and relating primarily to, or necessary for, the Project, including, without limitation, as identified on Schedule 2.1.3 of the Purchase Agreement ("Other Documents"), and Aztec wishes to assume all of Guzman's right, title and interest in and to the Other Documents and the obligations thereunder to the extent arising from and after the Effective Date.

E. Guzman wishes to assign to Aztec any Permits owned or controlled by Guzman or any of its Affiliates that are used in, relate primarily to, or are necessary for the Project, including, without limitation, those listed on Schedule 2.1.4 of the Purchase Agreement and all application materials (but excluding emails and other written correspondence) in the possession of Guzman ("Permits"), and Aztec wishes to assume all of Guzman's right, title and interest in and to the Permits and the obligations thereunder to the extent arising from and after the Effective Date.

AGREEMENT

NOW THEREFORE in consideration of the mutual covenants contained herein and in the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which

are hereby acknowledged, Guzman and Aztec agree as follows:

1. Assignment of Contracts. Effective as of the Effective Date, (i) Guzman hereby assigns to Aztec all of its right, title and interest in and to the Contracts, and (ii) Aztec hereby assumes all of Guzman's right, title and interest in and to the Contracts and the obligations thereunder to the extent arising from and after the Effective Date.

2. Assignment of Other Documents. Effective as of the Effective Date, (i) Guzman hereby assigns to Aztec all of its right, title and interest in and to the Other Documents, and (ii) Aztec hereby assumes all of Guzman's right, title and interest in and to the Other Documents and the obligations thereunder to the extent arising from and after the Effective Date.

3. Assignment of Permits. Effective as of the Effective Date, (i) Guzman hereby assigns to Aztec all of its right, title and interest in and to the Permits, and (ii) Aztec hereby assumes all of Guzman's right, title and interest in and to the Permits and the obligations thereunder to the extent arising from and after the Effective Date.

4. Assumed Liabilities. In connection with the sale, transfer, assignment, conveyance and delivery of the Assets by Guzman to Aztec as provided in Section 2.2 of the Purchase Agreement, Aztec shall assume solely the Assumed Liabilities.

5. Further Cooperation. From time to time, at Aztec's or Guzman's request, whether on or after the date hereof and without further consideration, Guzman or Aztec, as applicable, shall execute and deliver to the other, or cause to be executed and delivered to the other, such further instruments of assignment, conveyance, and transfer as may be reasonably necessary to assign, convey and transfer the aforementioned liabilities and obligations.

6. Miscellaneous.

a. No Conflict with Agreement. This Agreement is intended to evidence the consummation of the transactions contemplated by the Purchase Agreement. This Agreement is in all respects subject to the provisions of the Purchase Agreement and is not intended in any way to supersede, limit or qualify any provision of the Purchase Agreement. If there is any conflict between this Agreement and the Purchase Agreement, the provisions of the Purchase Agreement shall control.

b. Interpretation. Capitalized terms used but not defined herein shall have the meanings given to them in the Purchase Agreement.

c. Governing Law. The construction and performance of this Agreement shall be governed by the Law of the State of New Mexico without regard to its principles of conflicts of law.

d. Counterparts. This Agreement may be executed in one or more counterparts (including by facsimile), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

e. Electronic Mail Delivery. This Agreement may be executed and delivered by

electronic mail (.pdf) transmission, and delivery of an executed copy by electronic mail (.pdf) transmission shall be deemed to constitute delivery of a duly executed original Agreement.

f. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of the Aztec and Guzman and their respective successors and permitted assigns.

Signature page to follow

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered effective as of the Effective Date.

GUZMAN AZTEC SUN LLC

By:_____
Title:_____

CITY OF AZTEC

By:_____
Title:_____

Attested by:_____
Name:_____
Date:_____

EXHIBIT B

FORM OF BILL OF SALE

BILL OF SALE

This Bill of Sale is delivered in accordance with and subject to the terms and conditions of that certain Asset Purchase Agreement ("Purchase Agreement") dated as of [•], 2015, by Guzman Aztec Sun LLC, a Florida limited liability company ("Guzman") in favor of City of Aztec, a municipality located in New Mexico ("Aztec"). All capitalized terms used but not defined herein shall have the meanings assigned to them in the Purchase Agreement.

Guzman, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby sell, convey, transfer, assign and deliver to Aztec, and Aztec hereby accepts, acquires and purchases all right, title and interest in and to, the Personal Property, including, without limitation, the one (1) MW solar power electric generating facility, consisting of the photovoltaic panels and all associated equipment located on the Project Site.

The Parties hereto agree that this Bill of Sale is subject to the terms and conditions of the Purchase Agreement and that the provisions contained in the Purchase Agreement are incorporated herein by reference and constitute an integral part of this Bill of Sale.

The Parties hereto hereby agree to sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done or made, upon reasonable request of the other Party hereto, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably required for the purpose of or in connection with acquiring or more effectually vesting in Aztec or evidencing the vesting in Aztec of all of right, title and interest in and to the Personal Property.

IN WITNESS WHEREOF, the undersigned has caused this Bill of Sale to be duly executed as of [•], 2015.

GUZMAN AZTEC SUN LLC

By:_____
Title:_____

SCHEDULES

[to be filled in at time of execution]

8148941_10.doc

After recording return to:
Ashley K. Wald, Esq.
Holland & Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202

DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING (this "**Deed of Trust**") is made as of May ____, 2017 by Guzman Aztec Sun LLC, a Delaware limited liability company ("**Grantor**"), whose address is 1125 17th Street Suite 740, Denver, Colorado, 80202 to [First American Title Insurance Company] (hereinafter referred to as "**Trustee**"), for the use and benefit of City of Aztec, a municipality located in the State of New Mexico (hereinafter referred to as "**City**," which designation shall include successors and assigns), as beneficiary, whose address is 402 S. Light Plant Rd., Aztec, NM, 87410.

RECITALS

A. Guzman Energy LLC and City entered into an Amended and Restated Power Sales Agreement dated as of the May __, 2017 (the "**PPA**"), which provides for various payment and performance obligations from the Grantor (as owner of the Property, defined below) to the City.

B. The PPA requires that Grantor secure the payment and performance of Grantor's PPA obligations pursuant to the terms of this Deed of Trust.

IN CONSIDERATION of the City entering into the PPA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby irrevocably grants, bargains, sells, conveys and assigns unto the Trustee IN TRUST, WITH POWER OF SALE:

A. All of Grantor's easement and access rights to the real property situated in the County of San Juan, State of New Mexico and more fully described in **Exhibit A** attached hereto and made a part hereof (the "**Land**");

B. TOGETHER WITH all right, title, and interest of Grantor in and to all and all buildings and other improvements now or hereafter located on the Land, including, but not limited to, all structures, improvements, foundation pads, towers, turbines, solar arrays, solar panels, transmission or distribution lines, substations and other power generating equipment, rail spurs, dams, reservoirs, water, sanitary and storm sewers, drainage, electricity, steam, gas, telecommunication, microwave, telephone and other utility facilities, parking areas, roads, driveways, walks and other site improvements of every kind and description now or hereafter erected or placed on the Land, and all building materials, building equipment and fixtures of every kind and nature located on the Land or, attached to, contained in or used in any such buildings and other improvements, and all appurtenances and additions thereto and betterments, substitutions and replacements thereof (all hereinafter referred to as the "**Improvements**"), and all right, title, and interest of Grantor, now owned or hereafter acquired, in and to any and all strips and gores of land, and in, to, and under the land within the streets, sidewalks, and alleys adjoining the Land, and in and

to all and singular the tenements, hereditaments, privileges, easements, shared facilities, rights-of-way and rights used in connection with or as a means of access to any portion of the Land, franchises, rights, appendages, and appurtenances belonging or in any way appertaining to the Land;

D. TOGETHER WITH all rents, accounts, accounts receivable, issues, royalties, profits, revenues, incomes, and other benefits of and from the Land and any other property subject to the lien of this Deed of Trust, and that portion of any and all bank accounts and similar accounts containing any of the foregoing, and all of the estate, right, title, and interest of every nature whatsoever of Grantor in and to the same and every part and parcel thereof;

E. TOGETHER WITH any and all awards or payments, including interest thereon, and the right to receive the same, which may be made with respect to the Land as a result of (a) the exercise of the right of eminent domain; (b) the alteration of the grade of any street; or (c) any other injury to or decrease in the value of the property described above, to the extent of all amounts which may be secured by this Deed of Trust at the date of receipt of any such award or payment by City, and of the reasonable attorneys' fees, costs, and disbursements incurred by City in connection with the collection of such award or payment, and Grantor shall execute and deliver from time to time such further instruments as may be requested by City to confirm such assignment to City of any such award or payment;

F. TOGETHER WITH all equipment now or hereafter owned or purported to be owned by Grantor and used or useful in connection with the Land, regardless of whether located on the Land or located elsewhere including, without limitation, all rights of Grantor under any lease to equipment and fixtures and other items of personal property at any time, together with all additions thereto, and all renewals, alterations, substitutions, and replacements;

G. TOGETHER WITH all rights of Grantor to all plans and specifications, designs, drawings and other matters prepared in connection with the foregoing, and all rights of Grantor under any contracts executed by Grantor with any provider of goods or services for or in connection with any development, construction, operation, maintenance or services performed or to be performed in connection with the Land or the Improvements, including, without limitation, the corresponding interconnection agreement and any construction contracts and management contracts;

H. TOGETHER WITH all existing and future general intangibles directly relating to the development or use of the Land or the Improvements, including but not limited to all governmental permits relating to construction on the Land, all existing and future names under or by which the Land or the Improvements may at any time be operated or known, all rights to carry on business under any such names or any variant thereof;

I. TOGETHER WITH all right, title, and interest of Grantor in and to any bank accounts, security deposits, and any and all other amounts held as security under any leases or subleases now or hereafter outstanding on the Land (such leases and subleases are hereinafter referred to as the "**Leases**"); and

J. TOGETHER WITH all and singular the privileges and appurtenances thereunto belonging (the Land, Improvements, personal property, interests, privileges, and appurtenances

described in **Paragraph A** through **Paragraph L** hereof being hereinafter referred to as the "**Property**"), and WARRANTS THE EASEMENT TITLE TO THE LAND with the non-monetary encumbrances presented in writing to City prior to the date hereof, with mortgage covenants, upon the "statutory mortgage condition" for the breach of which it is subject to foreclosure as provided by law, provided, however, that to the extent that the statutory mortgage condition as defined in NMSA 1978, §47-1-41 is in conflict with the terms of the PPA, the terms of the PPA shall prevail in all instances.

TO HAVE AND TO HOLD the same, IN TRUST, for the purpose of securing:

ARTICLE 1

1 OBLIGATIONS SECURED

1.1 The payment and performance of all payment and performance obligations under the PPA (the "**Obligations**"); and

1.2 The payment of all sums expended or advanced by City pursuant to the terms of this Deed of Trust, or any other instrument now in existence or hereafter executed in connection with this Deed of Trust.

ARTICLE 2

2 COVENANTS OF GRANTOR

2.1 Performance of Obligations. Grantor shall pay and perform each Obligation under the PPA when due, subject to notice and cure periods set forth in the PPA.

2.2 Payment of Taxes and Assessments. Grantor shall pay before they become delinquent all taxes, special assessments, water and sewer rents or assessments, and all other charges imposed by law upon or against the Property (the "**Impositions**").

2.3 Preservation of Lien Priority.

(a) The lien of this Deed of Trust is and shall be maintained as a valid first priority lien on the Property. Grantor shall not, directly or indirectly, create or suffer or permit to be created or to stand against all or any part of the Property or against the rents, issues, profits, or income therefrom, any lien or charge prior to, subordinate to, or on a parity with the lien of this Deed of Trust. However, nothing in this Deed of Trust shall require Grantor to pay any Impositions prior to the time they become due and payable or require Grantor to pay any Imposition so long as Grantor contests the amount, applicability, or validity in good faith by appropriate proceedings promptly initiated and diligently conducted if: (i) such nonpayment will not result in a forfeiture or impairment of the priority of the lien of this Deed of Trust; and (ii) Grantor has posted security with City in a form and in an amount satisfactory to City which City shall use in its sole discretion to protect the priority of the lien of this Deed of Trust. Grantor shall keep and maintain the Property free from all liens of persons supplying labor and materials entering into the construction, modification, or repair of the

Improvements. If any such lien is recorded against the Property, Grantor shall post a bond, as provided by statute, or discharge the same of record within thirty (30) days after such lien is recorded. Grantor shall not do, or permit to be done, or omit to do, or permit the omission of, any act or thing, the doing of which or the omission of which would impair the security of this Deed of Trust or would constitute grounds for the termination by any lessee or sublessee of any Lease.

(b) All property of every kind acquired by Grantor after the date hereof which, by the terms hereof, is required or intended to be subjected to the lien of this Deed of Trust shall, immediately upon its acquisition and without any further conveyance, assignment, or transfer, become subject to the lien of this Deed of Trust. Nevertheless, Grantor shall do all such further acts, and execute, acknowledge, and deliver all such further conveyances, mortgages, security agreements, and assurances as City may reasonably require in order to confirm the lien of this Deed of Trust on the Property, and Grantor shall pay all fees for filing or recording such instruments.

2.4 Insurance. Grantor shall maintain the insurance coverages as set forth in the PPA, the provisions of which are incorporated into this Deed of Trust.

2.5 Casualty. Grantor shall promptly give written notice to City of fire or other casualty to the Property. Regardless of the amount of any damage or destruction and whether or not the insurance proceeds, if any, are sufficient for the purpose, Grantor shall, at its sole cost and expense, restore, repair, replace, rebuild, or alter such Property as nearly as possible to its value, condition, and character immediately prior to such damage or destruction, or make such changes or alterations as City approves in writing. Unless Grantor is in default under this instrument, all insurance money paid to City on account of such damage or destruction, less the reasonable cost, fees, and expenses, if any, incurred in connection with adjustment of the loss, shall be applied to payment of the costs of such restoration, repair, replacement, rebuilding, or alteration, including the cost of temporary repairs or of the protection of the Property pending the completion of permanent restoration, repair, replacement, rebuilding, or alteration (hereinafter collectively referred to as the "**Restoration**"). If Grantor is in default under this instrument, City may elect, in City's sole discretion, to apply the award or proceeds (net of costs of collection) to the reduction of the Obligations, whether due or not, in lieu of applying the proceeds to the cost of Restoration. If the insurance proceeds are applied to the payment of the costs of the Restoration, City may make such payments from time to time as such Restoration progresses in the manner and pursuant to whatever terms and conditions City deems reasonable.

2.6 Condemnation. If all or any part of the Property is taken in condemnation proceedings or by exercise of any right of eminent domain, or by conveyance in lieu of condemnation (hereinafter collectively called "**Proceedings**"), Grantor and City shall have the right to participate in any Proceedings at Grantor's expense, including reasonable attorneys' fees, notwithstanding any provisions in any other documents now in existence or hereafter executed. Any resulting award or proceeds shall be deposited with City and distributed in the manner set forth in this **Section 2.6**. The parties agree to execute any and all further documents that may be required in order to facilitate collection of any award or awards and the making of any such deposit. If title to the whole or materially all of the Property is taken in condemnation proceedings or by agreement between Grantor and City and those authorized to exercise such right, City shall apply such award or proceeds first to payment of the reasonable costs of their collection, including reasonable attorneys'

fees, second to payment of the Obligations, whether due or not, and third to Grantor. "**Materially all of the Property**" shall be deemed to have been taken if the portion of the Property not so taken cannot be repaired or reconstructed so as to constitute a complete and operable solar facility as contemplated by the PPA. If title to less than the whole or materially all of the Property is taken, City shall hold and apply all of the award or proceeds first to the payment of the reasonable costs of their collection, including reasonable attorneys' fees, and then unless Grantor is in default under this instrument, to the payment of the cost of demolition, repair, and restoration, substantially in the same manner and subject to the same conditions as those provided in **Section 2.5** (pertaining to damage or destruction with respect to insurance proceeds and other moneys). If Grantor is in default under this instrument, City may elect, in City's sole discretion, to apply the award or proceeds (net of the costs of collection) to the reduction of the Obligations, whether due or not, in lieu of applying the proceeds to award or proceeds to the cost of demolition, repair, and restoration pursuant to the proceeding sentence. If City elects to apply such award or proceeds to the cost of the demolition, repair, and restoration, and if any balance remains after payment of the cost of such demolition, repair, and restoration, City shall apply such balance toward reduction of the Obligations, whether due or not. If the costs of such demolition, repairs, and restoration exceed the net amount collected by City, Grantor shall pay the deficiency upon demand.

2.7 Maintenance of Property. Grantor shall not commit any waste on the Property or take any actions that might invalidate any insurance carried on the Property. Grantor at its sole cost and expense shall maintain the Property and the landscaping, sidewalks, curbs, and vaults adjoining the Improvements in good condition and make all necessary repairs, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen. No improvements may be removed, demolished, or materially altered without the prior written consent of City, which consent shall not be unreasonably withheld or delayed. All repairs shall be equal in quality and class to the original work. No personal property used in connection with the Property in which City has a security interest may be removed from the Property, unless it is immediately replaced by similar property of at least equivalent value on which City will immediately have a valid first lien and security interest.

2.8 Compliance. Grantor shall comply promptly with all present and future laws, statutes, ordinances, orders, rules, regulations, restrictions, and requirements of all federal, state, and municipal governments, courts, departments, commissions, boards, and officers, any national or local Board of Fire Underwriters, or any other body exercising similar functions, foreseen or unforeseen, ordinary or extraordinary, which may be applicable to the Property, the landscaping, sidewalks, curbs, and vaults adjoining the Property, or to the use or manner of use of the Property whether or not such law, statute, ordinance, order, rule, regulation, restriction, or requirement necessitates structural changes or improvements, or the removal of any encroachments or projections, ornamental, structural, or otherwise, onto or over the streets adjacent to the Property, or onto or over property contiguous or adjacent thereto, and including without limitation all zoning, building code, environmental protection and equal employment opportunity laws, statutes, ordinances, orders, rules, regulations, restrictions, and requirements. Grantor and the use of the Property shall comply with all conditions, covenants, restrictions, easements, rights of way, licenses and other agreements or instruments affecting the Property.

2.9 Cost of Defending Title to Property. If City is made a party to any action affecting this Deed of Trust or the title to the Property, City may at its option defend such action. Furthermore, in the event of any actions or proceedings affecting this Deed of Trust or title to the Property, City may, at its option, elect to participate or join in any such actions or proceedings. If City elects to so defend or participate, all court costs and reasonable expenses, including attorneys' fees and costs of evidence of title to the Property, shall become part of the Obligations and be secured by this Deed of Trust.

2.10 Due on Sale or Transfer; Acceleration. It shall be a default of the terms of this Deed of Trust, if Grantor without the prior written consent of City:

(a) voluntarily or involuntarily sells, assigns, transfers, leases for a period of more than five (5) years, leases with option to purchase, disposes of, or encumbers, or agrees to sell, assign, transfer, lease for a period of more than five (5) years, lease with option to purchase, dispose of, or further encumber, all or any portion of or any interest in the Property, including, but not limited to, any development rights, air rights, or similar rights;

(b) changes or alters, or allows to be changed or altered, in any way whatsoever the effective direct or indirect control of the Property by Grantor that existed as of the date of this Deed of Trust;

(c) merges or consolidates with any other entity or converts to any other entity; or

(d) is divested of title to all or part of the Property in any manner, whether voluntarily or involuntarily.

2.11 Waiver of Right to Marshall Assets. Grantor, for itself and for all persons hereafter claiming through or under it or who may at any time hereafter become holders of liens junior to the lien of this Deed of Trust, hereby expressly waives and releases all rights to have the Property and any other property now or hereafter constituting security for the Obligations marshalled upon any foreclosure of the lien of this Deed of Trust. City shall have the right to order the Trustee to sell the Property as a whole or in separate parcels.

2.12 Zoning and Private Covenants. Grantor shall not initiate, join in, or consent to any change in any zoning ordinance or classification, any private restrictive covenant, or any other public or private restriction limiting or denying the uses of all or any part of the Property without City's prior written consent, nor shall Grantor consent to or permit the Property to be included in any special district with the authority to tax or assess the Property. If the use of all or any part of the Property is or becomes a nonconforming use under applicable zoning provisions, Grantor shall not cause or permit such use to be discontinued or abandoned without City's prior written consent.

2.13 Alterations. Without City's prior written consent or without as contemplated and permitted by the PPA, which consent shall not be unreasonably withheld or delayed, Grantor shall not engage in any major construction, addition, alteration, expansion, or extension of the Improvements or any other improvements on the Property, or consent to or permit any such construction, addition, alteration, expansion, or extension.

2.14 Further Acts. Grantor shall do and perform all acts necessary to keep valid and effective the charges and lien hereof, to carry into effect its objective and purposes, and to protect the beneficiary of the Obligations. Promptly upon request by City, Grantor shall execute, acknowledge, and deliver to City such other and further instruments as in the reasonable opinion of City may be necessary to correct and defect, error, or omission which may be discovered in any of the PPA or otherwise effect the intent of this Deed of Trust.

2.15 Environmental Requirements. Without limiting the generality of **Section 2.8** above, Grantor shall keep the Property in material compliance with all Environmental Requirements. The term "**Environmental Requirements**" as used herein shall mean all applicable federal, state and local laws and regulations relating to pollution control, environmental contamination, environmental safety and hydrocarbons, including, but not limited to:

(a) All laws and regulations governing the generation, use, collection, treatment, storage, transportation, recovery, removal, discharge or disposal of Hazardous Materials and all laws and regulations with regard to recordkeeping, notification and reporting requirements respecting Hazardous Materials. The term "**Hazardous Materials**" as used herein shall mean:

(i) materials defined as "hazardous substances," "hazardous wastes," "hazardous constituents" or "solid wastes" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§9601-9657, and any amendments thereto and regulations thereunder;

(ii) materials defined as "hazardous wastes" under the Resource Conservation and Recovery Act, 42 U.S.C.§§ 6901-6987, and any amendments thereto and regulations thereunder; and

(iii) all other materials and substances which are now or hereafter prohibited or controlled under any federal, state or local laws and regulations relating to pollution control and environmental contamination.

(b) All laws and regulations governing the generation, treatment, storage, discharge or disposal of wastewaters as provided for under the Federal Clean Water Act, as amended, 33 U.S.C. §§1251-1376, and any amendments thereto and regulations thereunder.

(c) All laws and regulations governing the generation, treatment, emission or discharge of atmospheric pollutants as provided for under the Federal Clean Air Act, as amended, 42 U.S.C. §§7401-7642, and any amendments thereto and regulations thereunder.

(d) All laws and regulations relating to Asbestos. The term "**Asbestos**," as used herein, shall mean actinolite, amostite, anthopyhllite, chrysotile, crocidolite and tremolite, and also any waste which contains commercial asbestos including asbestos mill tailings, control device asbestos waste, friable asbestos waste material, and bags or containers that previously contained commercial asbestos, as set out in the Code of Federal Regulations, 40 Protection of Environment, Revised July 1, 1981.

(e) All laws and regulations governing the collection, treatment, handling, disposal, discharge, storage, transportation, or removal of polychlorinated byphenyls (PCB's), chlorofluorocarbons, and any "new" chemicals as provided for under the Federal Toxic Substances and Control Act, 15 U.S.C. §§2601-2629, and any amendments thereto and regulations thereunder.

Grantor shall remediate and remove, to a level reasonably satisfactory to City, any contamination from Hazardous Materials at the Property existing from time to time, including, without limitation, any contamination of the air, soil, groundwater or surface waters associated with or adjacent to the Property. Grantor shall keep the Property free of any lien imposed pursuant to any of the Environmental Requirements and shall pay immediately when due the costs of remedying Hazardous Material contamination or releases and the costs of complying with any of the Environmental Requirements. Grantor shall notify City within seventy-two hours of any release of Hazardous Materials at the Property that could form a basis for any claim, demand or action by any party. In the event that Grantor fails to discharge any of its obligations pursuant to this **Section 2.16**, City may take whatever action it deems necessary or advisable to free the Property from any Hazardous Materials or comply with the Environmental Requirements (in which case Grantor shall give City and its agents and its employees access to the Project to respond to such conditions relating to Hazardous Materials). The cost of any such action shall be added to the Obligations secured by the Deed of Trust. City shall have the right to conduct an environmental audit of the Property at any time at which City reasonably believes such audit to be advisable, and Grantor shall cooperate in the conduct of and pay for such environmental audit.

2.16 Indemnification. Grantor agrees to indemnify, defend, protect and hold City harmless against any and all losses, costs, damages, liabilities, expenses (including attorneys' fees and expenses), obligations, fines, penalties, judgments, and charges that City may sustain as a result of or in connection with:

(a) the failure by Grantor, or any of Grantor's tenants or predecessors in title to the Property, to perform any of its, or their, obligations pursuant to any of the Environmental Requirements;

(b) the breach of any of the warranties and representations contained in **Article 3** or of any of the representations or covenants contained in **Article 4** of this Deed of Trust; or

(c) the presence on or in, or the escape, seepage, leakage, spillage, discharge, emission, discharging or release from the Property (including any building, structure, or equipment thereon) of any Hazardous Materials.

The indemnification contained in this **Section 2.16** shall be a full recourse obligation of Grantor for which Grantor shall have joint and several personal liability notwithstanding any exculpation on or exculpation from liability contained herein or in the PPA. The indemnification contained in this **Section 2.16** shall survive payment of the Obligations and performance of all other obligations under this Deed of Trust and the PPA.

ARTICLE 3

3 REPRESENTATIONS AND WARRANTIES

3.1 No Violation. Grantor covenants, represents and warrants that the PPA and this Deed of Trust, and the performance or observance by Grantor of any of the matters or things in the PPA and this Deed of Trust do not provide for or contravene any covenant in any indenture or agreement affecting Grantor. There is and shall be no violation of or default with respect to any term or provision of any mortgage, deed of trust, indenture, contract, agreement, or instrument applicable to Grantor or the Property, or by which Grantor or the Property is bound, and the execution, delivery, performance of and compliance with the PPA shall not result in any such violation or be in conflict with or constitute a default under any such term or provision, or result in the creation of any lien, charge, or encumbrance on any of the properties or assets of Grantor other than the lien of this Deed of Trust.

3.2 Taxes Paid. Grantor has filed all tax returns and reports required by law. Grantor has paid (or established adequate reserves for the payment of) all taxes, assessments, contributions, fees, and other governmental charges (other than those which are currently being or may hereafter be contested in good faith in accordance with the provisions of **Section 2.3(a)**) upon Grantor or upon its properties or assets or income which are due and payable have been and will be paid. No tax liens have been filed against any assets of Grantor.

3.3 Pending Action. Except as otherwise disclosed by Grantor to City in writing, there exists no material litigation or governmental proceeding pending or threatened against Grantor, or any guarantors which, if adversely determined, could have a material adverse effect on the financial condition of Grantor.

3.4 Binding Obligation; No Conflict. Grantor covenants and warrants that the PPA and this Deed of Trust are legal, valid and enforceable obligations of Grantor in accordance with their respective terms. The consummation of the transaction contemplated by the PPA will not conflict with or result in a breach of any law or any regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign. Grantor is not in violation or in default of any applicable law or regulation which materially affects the business, properties, condition (financial or otherwise) or operation of Grantor. Grantor is not in violation or in default of any order, writ, injunction, demand or decree of any court, or any indenture, agreement or other instrument under which any of them or the Property is bound or may be bound, violation or default of which might have an adverse effect on the business, properties, condition (financial or otherwise) or operations of Grantor or might result in the acceleration of the Obligations.

3.5 Access. The Property is and will be contiguous to streets or roads or highways to be adequately completed and maintained, and vehicular and pedestrian access from the Property is and will be permitted to any such streets or roads or highways.

3.6 Condemnation. To the best of Grantor's knowledge, no condemnation or eminent domain proceeding has been commenced or threatened against the Property. Grantor has not received a notice regarding any such proceedings.

3.7 Title to Properties. Grantor has good and marketable fee title to the Property, subject to no lien of any kind except as referred to in the PPA.

3.8 Environmental Compliance. The Property currently complies with, and will continue to comply with, all of the Environmental Requirements, except as otherwise disclosed to City in writing at the time of this Deed of Trust.

3.9 Environmental Proceedings and Investigations. The Property is not subject to any judicial or administrative proceeding alleging the violation of any of the Environmental Requirements. The Property is not the subject of a federal or state investigation regarding Asbestos or evaluating whether any remedial action is needed to respond to a release of any hazardous or toxic waste, substance or constituent, or other substance into the environment.

3.10 Use of the Property. The Property is in a clean and safe condition, in compliance with law, free of Asbestos and all other Hazardous Materials, except as otherwise disclosed to City in writing at the time of this Deed of Trust. Except for the incidental use of solvents, gasoline, motor oils, fluids and similar substances in the ordinary course of any motor vehicle sales or service business conducted on the Property, no Asbestos or Hazardous Materials have been or are placed, held, located, generated, treated, stored or disposed of on, under or at the Property, or any part thereof, and the Property has never been used as a disposal or storage site for any Hazardous Material. No underground storage tanks or surface impoundments are or have been located on the Property.

3.11 Environmental Liens. No lien in favor of any governmental entity for any liability under any of the Environmental Requirements, or damages arising from or costs incurred by such governmental entity in response to Asbestos or to a release of a hazardous or toxic waste, substance or constituent, or other substance into the environment has been filed against or attached to the Property.

ARTICLE 4

4 ASSIGNMENT OF RENTS AND LEASES

4.1 Assignment of Rents. As additional security for the payment of the Obligations, Grantor hereby assigns, transfers, and sets over to City: (i) the rents, profits, and income derived from the Property including all prepaid rent and security deposits (the "**Rents**"); (ii) the Leases, all guaranties of any lessee's obligations under the Leases, and any modifications or renewals of the Leases and such guaranties; (iii) any award or other payment to which Grantor may become entitled with respect to the Lease as a result of or pursuant to any bankruptcy, insolvency or reorganization or similar proceedings involving the tenants under the Lease; and (iv) all payments made by or on behalf of any tenant of any part of the Property in lieu of Rent.

4.2 License to Collect. Grantor reserves and City grants to Grantor a license to collect the Rents. If an Event of Default occurs, City may terminate such license without regard to the adequacy of its security hereunder and without notice to or demand upon Grantor, and shall thereafter have full

and complete right and authority to demand, collect, receive, and receipt for the Rents, to take possession of the Property without having a receiver appointed, to rent and manage the Property from time to time, and to apply the net proceeds of the Rents to the Obligations until all delinquencies, advances, and the Obligations are satisfied in full or until City obtains title to the Property through foreclosure or otherwise. Grantor hereby irrevocably authorizes and directs the lessees under the Leases, upon receipt of notice from City that an Event of Default has occurred, to pay thereafter all Rents directly to City. Upon the occurrence of an Event of Default, City or the recipient of a trustee's deed (issued by the Trustee after the Trustee's sale) may enforce its rights to the Rents by any appropriate civil suit or proceeding.

4.3 Mortgagee in Possession. Neither the foregoing assignment of Rents to City nor the exercise by City of any of its rights or remedies hereunder shall be deemed to make City a "mortgagee-in-possession" or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part of the Property, unless and until City, in person or by agent, obtains title to the Property. The appointment of a receiver for the Property by any court at the request of City or by agreement with Grantor, or the entering into possession of the Property by such receiver, shall not be deemed to make City a mortgagee-in-possession or otherwise responsible or liable in any manner with respect to the Property or the use, occupancy, enjoyment or operation of all or any part of the Property.

4.4 Further Assignments. Grantor shall not execute any further assignment of the Rents or suffer or permit any such assignment to occur by operation of law. Grantor shall at any time or from time to time, upon request of City, transfer and assign to City in such form as may be satisfactory to City, Grantor's interest in the Rents or in any Lease, subject to and upon the condition, however, that prior to the occurrence of any Event of Default hereunder Grantor shall have a license to collect and receive all Rents under such Leases as set forth in this **Section 4.4**.

4.5 Representations and Covenants Regarding the Leases. Grantor covenants, represents and warrants that, (a) Grantor has full right and title to assign its interest in the Leases and the Rents; (b) the Leases are or when executed will be valid, in full force and effect, and have not been modified or amended except as stated herein; (c) there is no outstanding assignment or pledge of Grantor's interest in the Leases or of the Rents; (d) no Rents have been or will hereafter be collected more than one month in advance; (e) the interest of all lessees under the Leases is and will be as lessee only, with no options to purchase or rights of first refusal; (f) each Lease shall provide for the attornment of the lessee thereunder to any person succeeding to Grantor's interest as the result of any foreclosure or transfer in lieu of foreclosure hereunder, said provision to be in form and substance approved by City; and (g) City shall be deemed to be the creditor of each lessee with respect to any assignments for the benefit of creditors and any bankruptcy, arrangement, reorganization, insolvency, dissolution, receivership or other debtor-relief proceedings affecting such lessee (without obligation on the part of City, however, to file timely claims in such proceedings or otherwise pursue creditor's rights therein).

ARTICLE 5

5 EVENTS OF DEFAULT

Each of the following shall constitute an Event of Default ("**Event of Default**") hereunder.

5.1 PPA Event of Default. Any "Event of Default" as defined in the PPA shall have occurred.

5.2 Monetary Breach. Grantor fails to pay any amount payable pursuant to the terms of the PPA or this Deed of Trust, which is not cured within ten (10) business days after receipt of written notice of such failure such payment is due.

5.3 Non-Monetary Breach. Grantor fails to perform any other material obligation under this Deed of Trust, and such failure is not remedied within thirty (30) days after receipt by Grantor of written notice of such failure; provided, that so long as a Grantor has initiated and is diligently attempting to effect a cure, the Grantor's cure period shall extend for an additional thirty (30) days or such longer period as is reasonably necessary to effect such cure.

5.4 Voluntary Insolvency. Grantor becomes Bankrupt (as defined in the PPA).

5.5 Receiver. Any court takes possession of any part of the property of, or assumes control over the affairs or operations of, or a receiver is appointed for the property of, Grantor.

5.6 False Representations. Any representation or warranty made by Grantor pursuant to this Deed of Trust shall have been false in any material respect when made that, if capable of being remedied, is not remedied within ten (10) days after receipt by the Grantor of written notice of such falsity; provided, that so long as Grantor has initiated and is diligently attempting to effect a cure, the Grantor's cure period shall extend for an additional thirty (30) days.

ARTICLE 6

6 REMEDIES

City shall have the following rights and remedies:

6.1 Acceleration.

(a) Time is of the essence hereof. Upon the occurrence of any Event of Default described in **Section 5.4**, **Section 5.5** or **Section 5.7** of this Deed of Trust, to the extent permitted by law, the entire payment portion of the Obligations then outstanding (if not then due and payable), and accrued and unpaid interest thereon, and all other sums or payments required hereunder shall be and become immediately due and payable, and the Obligations shall thereafter bear interest at the Default Rate from the due date until paid and payment of such default interest shall be secured by this Deed of Trust.

(b) Upon the occurrence of any Event of Default other than those described in **Section 5.4**, **Section 5.5** or **Section 5.7** of this Deed of Trust, to the extent permitted by law, City may declare the entire amount of the payment portion of the Obligations then outstanding (if not then due and payable), and all other sums or payments required thereunder, to be due and payable immediately, and shall thereupon become and be immediately due and payable, and the Obligations shall thereafter bear interest at the Default Rate from the due date until paid and payment of such default interest shall be secured by this Deed of Trust.

6.2 Power of Sale.

(a) Upon the occurrence of any Event of Default, City is authorized and empowered, without further notice, to file with the Trustee, a notice demanding the Trustee to sell the Property under the power of sale conferred hereunder in the manner authorized by law. As required by law, the Trustee shall give notice of the Trustee's sale.

(b) After the lapse of such time as may then be required by law following the notice of Trustee's sale, the Trustee, without demand by City, shall sell the Property on the date and at the time and place designated in the notice of Trustee's sale in the manner prescribed by law. Upon receipt of payment of the price bid, the Trustee shall execute and deliver the Trustee's Deed to the purchaser. The conveyance shall be without right of redemption, and clear of the interests of junior encumbrancers in the Property whose interests have been effectively foreclosed by the proceeding. The recitals in the Trustee's Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Grantor, the Trustee, or City, may purchase at such sale. The purchaser at the Trustee's sale shall be entitled to immediate possession of the Property against Grantor.

(c) After deducting all costs, fees, and expenses of the Trustee and of this Trust, including, without limitation, costs of exercising the power of sale and of sale, including the payment of fees to the Trustee, evidence of title in connection with sale, appraisal fees, property inspection fees, and reasonable attorneys' fees, the Trustee shall apply the proceeds of sale to payment of: all sums then secured hereby and all other sums due under the terms hereof, with accrued interest; and the remainder, if any, to the person or persons legally entitled thereto, or Trustee, in Trustee's discretion, may deposit the balance of such proceeds with the Clerk of the District Court of the County wherein the Property is located, or in connection with a separate interpleader action as authorized by law. Upon deposit of the balance of the proceeds, the Trustee shall be discharged from all responsibility for acts performed in good faith as provided in the Deed of Trust Act, and the Clerk shall hold the proceeds subject to the order of the District Court upon the application, by separate civil action if necessary, of any interested party.

6.3 Judicial Action. Upon the occurrence of any Event of Default, in the alternative to foreclosure by a Trustee's sale, City may bring an action in any court of competent jurisdiction to foreclose this Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property, or to enforce any of the covenants and agreements hereof or of the PPA. In such event, the election to declare the unpaid balance immediately due and payable may be made in the complaint.

6.4 City's Right to Cure Grantor's Default. If Grantor fails to pay any sum due hereunder prior to delinquency, whether for taxes, insurance premiums, or other charges, City may elect, but shall not be obligated, to pay all or part of such items. Grantor shall repay immediately and without demand all funds so advanced by City with interest thereon from the date of such payments until repaid at the Default Rate, and all of such advances and the interest thereon shall become part of the Obligations and shall be secured by this Deed of Trust.

6.5 Receiver. Upon the occurrence of any Event of Default, City shall have the right, with the irrevocable consent of Grantor hereby given and evidenced by the execution of this Deed of Trust, to obtain appointment of a receiver by any court of competent jurisdiction upon notice to Grantor, Grantor's Registered Agent or Grantor's legal counsel, which receiver shall be authorized and empowered to enter upon and take possession of the Property, including all personal property used upon or in connection with the Property and all bank accounts containing funds associated with the Property, to let the Property, to manage the Property, to receive all the Rents due or to become due, and apply the Rents after payment of all necessary charges and expenses to reduction of the Obligations. City's right to have a receiver appointed pursuant to this **Section 6.5** is a contractual right where City is specifically provided with the right to appoint a receiver. Grantor hereby assigns the Rents to City as additional security for the Obligations, together with the Leases and all other documents evidencing the Rents, bank accounts, and any and all deposits held as security under the Lease. At the option of City, the receiver shall accomplish such entry and taking possession of the Property by actual entry and possession or by notice to Grantor. The receiver so appointed by a court of competent jurisdiction shall be empowered to issue receiver's certificates for funds advanced by City for the purpose of protecting the value of the Property as security for the Obligations. The amounts evidenced by receiver's certificates shall bear interest at the Default Rate and may be added to the cost of redemption if the Property is redeemed.

6.6 Attorneys' Fees. If this Deed of Trust is foreclosed by the Trustee, the Trustee shall allow a reasonable amount of attorneys' fees for services rendered in the supervision of the foreclosure proceedings as a part of City's cost of foreclosure. If the foreclosure proceedings are made through court proceedings, City's attorneys' fees in an amount determined by the court to be reasonable shall be taxed by the court as a part of the cost of such foreclosure proceedings.

6.7 Deficiency Judgments and Other Remedies. To the extent permitted by law, an action may be maintained by City to recover a deficiency judgment of any balance due hereunder, and City shall retain the right to pursue all other legal and equitable remedies for the collection of the Obligations which it is owed, it being expressly understood and agreed that all rights and remedies of City are cumulative and may be exercised in any order.

6.8 Cumulative Remedies. Each right, power, and remedy herein conferred upon City or the Trustee is cumulative of every other right or remedy of City or the Trustee, whether conferred herein or by law, and may be enforced concurrently.

ARTICLE 7

7 MISCELLANEOUS

7.1 Waiver. Failure by City to insist upon the strict performance of any covenant, agreement, term, or condition of this Deed of Trust or to exercise any right or remedy consequent upon a breach thereof shall not constitute a waiver of any such breach or of such covenant, agreement, term, or condition. No covenant, agreement, term or condition in this Deed of Trust and no breach thereof, may be waived, altered, or modified except by a written instrument executed by City. The waiver of any breach shall not affect or alter this Deed of Trust, but each and every covenant, agreement, term, and condition of this Deed of Trust shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

7.2 Notices. All notices, demands, and requests given or required to be given hereunder shall be in writing and shall be deemed to have been properly given when delivered in person or by overnight or similar courier service (or delivery has been refused), or sent by telecopier or three (3) days after having been deposited in any post office, branch post office, or mail depository regularly maintained by the U.S. Postal Service and sent by U.S. registered or certified mail, postage prepaid, addressed as follows:

Guzman: Guzman Aztec Sun LLC
c/o Guzman Energy LLC
Attn: Jeffrey Heit
1125 17th Street Suite 740
Denver, Colorado 80202
Telephone 720.778.2001
Facsimile 720.778.2035
Email: jheit@guzmanenergy.com

Aztec: City of Aztec
Attn: Electric Director
Electric Operations Center
402 S. Light Plant Rd.
Aztec, NM 87410
Telephone 505.334.7667
Facsimile 505.334.7684
Email: kgeorge@aztecnm.gov

or addressed to each respective party at such other address as such party may hereafter furnish to the other parties in writing. Notice given by counsel to a party shall be deemed to be notice from such party.

7.3 Inspection of Property. City and its authorized representatives may enter and inspect all portions of the Property upon reasonable notice and at all reasonable times (subject to the rights of lessees and other occupants of the Property).

7.4 Deed of Trust as Security Agreement, Financing Statement and Fixture Filing. This Deed of Trust shall cover the Improvements, all other Property affixed to the Land described herein, and all articles of personal property and all materials delivered to the Property for incorporation or use in any construction being conducted thereon and owned by Grantor, together with all proceeds thereof (which to the fullest extent permitted by law shall be deemed fixtures and a part of the real property), and this Deed of Trust constitutes a fixture filing and is intended when recorded to operate as a fixture filing under the New Mexico Uniform Commercial Code. If any Property covered by this Deed of Trust consists of equipment, goods, inventory, permits, rights in action, accounts, accounts receivable, general intangibles, contract rights, foundation pads, towers, turbines, solar arrays, solar panels, transmission or distribution lines, substations and other power generating equipment, rail spurs, dams, reservoirs, water, sanitary and storm sewers, drainage, electricity, steam, gas, telecommunication, microwave, telephone and other utility facilities, parking areas, roads, driveways, walks and other site improvements, or other personal property covered by the Uniform Commercial Code, this Deed of Trust constitutes a security agreement and financing statement and is intended when recorded to create a perfected security interest in such property in favor of City, Grantor hereby granting a security interest in the foregoing. This Deed of Trust shall be self-operative with respect to such property, but the Grantor shall execute and deliver on demand such security agreements, financing statements, and other instruments as City may request in order to impose the lien hereof more specifically upon any of such property and to pay all recording and/or filing fees associated therewith. If the lien of this Deed of Trust on any property is subject to a prior security agreement covering such property, then if any Event of Default occurs, Grantor hereby assigns to City all its right, title, and interest in and to all deposits thereon, together with the benefit of any payments now or hereafter made thereon. For purposes of treating this Deed of Trust as a security agreement and financing statement, City shall be deemed to be the secured party and Grantor shall be deemed to be the debtor. Upon the occurrence of any Event of Default under this Deed of Trust, City shall have all the rights and remedies of a secured party under the New Mexico Uniform Commercial Code or otherwise provided by law or by this Deed of Trust.

7.5 Successor Trustee. City may appoint a successor Trustee in the manner prescribed by law. A successor Trustee herein shall, without conveyance from the predecessor Trustee, succeed to all the predecessor's title, estate, rights, powers, and duties. The Trustee may resign by mailing or delivering notice thereof to City and Grantor, which resignation shall be effective upon the appointment of a successor trustee.

7.6 Effect of Foreclosure on Insurance Claims. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Property in extinguishment of the Obligations, all right, title, and interest of Grantor in and to any insurance policies then in force shall pass to the purchaser or grantee. If, prior to any such transfer of title, any claim under any hazard insurance policy had not been paid and distributed in accordance with the terms of this Deed of Trust and any such claim is paid after any such transfer of title, then, to the extent the Obligations was not fully discharged in conjunction with such transfer of title, the insurance proceeds so paid shall be the property of City and shall be paid to City, and Grantor hereby assigns, transfers, and sets over to City all of its right, title, and interest in and to said sum. The balance, if any, shall belong to Grantor as its interests may appear. Notwithstanding the above, Grantor shall retain an interest in the insurance policies above described during any redemption period.

7.7 Severability of Clauses. If any term, covenant, condition, or provision of the PPA and this Deed of Trust is held to be invalid, illegal, or unenforceable, the PPA and this Deed of Trust shall be construed without such provision.

7.8 Writing Required. No waiver, change, amendment, modification, cancellation, or discharge of any provision of this Deed of Trust, or any part hereof, will be valid unless in writing and signed by the parties hereto.

7.9 Binding Effect. This Deed of Trust shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

7.10 Applicable Law. This Deed of Trust shall be governed by the laws of the State of New Mexico.

7.11 Joint and Several Liability. The obligations of Grantor, if more than one, under this Deed of Trust shall be joint and several.

7.12 New Mexico Specific Provisions. In the event of a conflict between the provisions of this **Section 7.13** and the other provisions in this Deed of Trust, the provisions of this **Section 7.13** shall in all instances prevail and control.

(a) Maximum Amount Secured. THE MAXIMUM AMOUNT SECURED BY THE LIEN OF THIS DEED OF TRUST IS FOUR MILLION DOLLARS ($4,000,000). This statement of the maximum amount secured by the lien of this Deed of Trust is made to comply with NMSA 1978, §48-7-9, as amended from time to time, and shall not in any way imply that City is obligated to make any future advances to Grantor at any time. The maximum amount secured by the lien of this Deed of Trust may be advanced and repaid and again advanced from time to time, in the sole and absolute discretion of City. This statement of the maximum amount secured limits, as provided in NMSA 1978, §48-7-9, as amended from time to time, only the total amount that may be, at any one time, outstanding and secured on the provisions in this Deed of Trust.

(b) Redemption Period. IF THE PROPERTY IS SOLD AT A FORECLOSURE SALE FOLLOWING A COURT-ORDERED JUDICIAL FORECLOSURE OR AT A TRUSTEE'S SALE AT PUBLIC AUCTION UNDER THE POWER OF SALE, THE REDEMPTION PERIOD AFTER THE SALE WILL BE ONE (1) MONTH INSTEAD OF NINE (9) MONTHS.

(c) Limitations on Indemnity in New Mexico. To the extent, if at all, but only to the extent, that NMSA 1978, §56-7-2 (2003), as amended from time to time, is applicable to this instrument or any indemnification agreements herein, or agreement to indemnify any party (an "**Indemnitee**") given in this instrument, regardless of whether such undertaking or agreement to indemnify makes reference to this or any other limitation provision, this instrument does not purport to indemnify such Indemnitee against loss or liability for damages arising from: (i) the sole or concurrent negligence of such Indemnitee or the agents or employees of such Indemnitee; (ii) the sole or concurrent negligence of an independent contractor who is directly responsible to such Indemnitee; or (iii) an accident that occurs in operations carried on at the direction or under the supervision of such Indemnitee, an employee or representative of such Indemnitee or in accordance

with methods and means specified by such Indemnitee or the employees or representatives of such Indemnitee. In addition, to the extent, if at all, but only to the extent, that NMSA 1978, § 56-7-1 (2005), as amended from time to time, is applicable to this instrument or any indemnification agreements herein, or agreement to indemnify any Indemnitee or additional insured, as the case may be, given in this instrument, regardless of whether such undertaking or agreement to indemnify makes reference to this or any other limitation provision, this instrument does not purport to indemnify such Indemnitee or additional insured, as the case may be, against liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the Indemnitee or additional insured, as the case may be, its officers, employees or agents, and shall be further modified, if required by the provisions of NMSA (1978) § 56-7-1(B) (2005), as amended from time to time.

(d) Freedom to Choose Insurance Company. Grantor hereby acknowledges that it has been informed by an authorized representative on behalf of City that, although Grantor may be required by City, as lender, to purchase insurance to cover the Property that is being used as security for the Obligations, Grantor may, subject to complying the requirements of this instrument, purchase that insurance from the insurance company or agent of Grantor's choice, and cannot be required by City, as a condition of the conveyance of loan, to purchase or renew any policy of insurance covering the Property through any particular insurance company, agent, solicitor, or broker. Grantor hereby acknowledges receipt of a true copy of this notice which constitutes the Freedom to Choose Insurance Company and Insurance Professional Notice required by applicable provisions of law, as of the date of this instrument.

(e) Trust Real Estate. Grantor represents and warrants to City and Trustee that (i) all of the Property qualifies as and is "trust real estate" as defined in NMSA 1978, §48-10-3(H), and (ii) none of the Property constitutes: (1) real estate used by the Grantor for farming operations, including farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry or livestock, and production of poultry or livestock products in an unmanufactured state; or (2) oil and other liquid hydrocarbons, or gas, including casinghead gas, condensates and other gaseous petroleum substances, or coal or other minerals in, on or under real estate, including patented and unpatented mining claims, unless such minerals have not been severed from and are included with the surface estate.

(f) Deed of Trust Act. This Deed of Trust is a "deed of trust" as defined in the New Mexico Deed of Trust Act, NMSA 1978, §48-10-1, *et seq*., and entitled to the rights and remedies set forth in the New Mexico Deed of Trust Act as well as otherwise under applicable New Mexico law.

(g) Successor Trustee. In addition to the provisions of **Section 7.5**, in any substitution of the Trustee by the City, a Notice of Substitution of Trustee in the form set forth in NMSA 1978, §48-10-7(C) shall be executed and acknowledged by the City, recorded with the office of the County Clerk of the county in which the Land is located, and written notice of the same shall be sent by registered or certified mail to the Grantor, Trustee and successor Trustee.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, this Deed of Trust, Security Agreement and Fixture Filing has been executed by Grantor as of the day and year first above written.

GRANTOR:

GUZMAN AZTEC SUN LLC

By:_____
Name:_____
Title:_____

STATE OF _____)
) ss.
County of _____)

The foregoing Deed of Trust, Security Agreement and Fixture Filing was acknowledged before me this ____ day of _____, 2017 by _____ as the _____ of Guzman Aztec Sun LLC, a Delaware limited liability company.

WITNESS my hand and official seal.

My commission expires:

_____

(SEAL) Notary Public

EXHIBIT A TO
DEED OF TRUST, ASSIGNMENT OF RENTS AND LEASES, SECURITY AGREEMENT, FINANCING STATEMENT AND FIXTURE FILING

(Legal Description)

See attached.

A portion of the lands described in the Correction Warranty Deed to Glen W. Swire and Mamie Swire, under Trust Agreement dated June 29, 1977, recorded December 5, 1977 in Book 802, page 454 in the office of the County Clerk, San Juan County, New Mexico, lying in Sections Eight (8) and Seventeen (17), Township Thirty (30) North, Range Eleven (11) West, N.M.P.M., San Juan County, New Mexico, further described as follows:

BEGINNING at the West Sixteenth Corner common to said Sections 8 and 17, from which the Miller Engineers aluminum capped monument set in 1994 for the section corner common to Sections 7, 8, 17 and 18, Township 30 North, Range 11 West, N.M.P.M., bears North 89°55'11" West, 1045.40 feet;

THENCE along the West aliquot line of the Southeast Quarter of the Northwest Quarter (SE1/4NW1/4) of said Section 8, North 00°40'18" East, 169.01 feet to the South property corner of the Quitclaim Deed to Lewis C. Townsend and Bobbie D. Townsend, UTA dated July 28, 1997 in book 1246, page 836 recorded September 30, 1997 in the office of said county clerk, monumented by a 5/8" rebar with cap marked 7922;

THENCE along the South line of the lands described in said Book 1246, page 836, North 60°06'08" East, 453.43 feet to the Southerst corner of the lands described in the Warranty Deed to Kevin N. Townsend and Margie Townsend recorded April 15, 1986 in Book 1042, page 320;

THENCE along the boundary lines of the lands described in said Book 1042, page 320 the following courses:

1) North 55°59'37" East, 67.82 feet;
2) North 20°25'08" East 98.08 feet;
3) North 07°01'08" East, 116.14 feet;

THENCE along the boundary line of the lands described in said Book 1246, page 836, North 00°28'09" West, 30.41 feet a point on the boundary line of River West Subdivision No. 1 recorded May 26, 1978 in Map File R-27 in the office of said county clerk;

THENCE along the boundary line of said River West Subdivision No. 1, North 72°05'48" East, 486.44 feet to a point on the boundary line of Harris Brown Subdivision recorded July 12, 1957 in Map File H-5 in the office of said County Clerk;

THENCE along the boundary of said Harris Brown Subdivision the following courses;

1) South 00°21'07" West, 47.85 feet;
2) North 41°53'31" East, 386.50 feet;

THENCE along the boundary line of the lands described in the Quitclaim Deed to Clora Lawson and or Artresia Lawson recorded February 9, 2005 in Book 1403, page 929 in the office of said county clerk, South 00°27'05" West, 435.01 feet to a point on the centerline of the San Juan River and the land described in the Warranty Deed to Frank R. Martinez and Darla Martinez recorded October 12, 1988 in Book 1094, page 99;

THENCE along the centerline of said river and the boundary lines of the lands described in said Book 1094, page 99 the following courses:

1) South 42°20'28" West, 8.83 feet;
2) South 34°14'38" West, 225.29 feet;

3) South 28°01'22" West, 311.21 feet;
4) South 33°20'43" West, 189.89 feet to a point on the section line common to said Sections 8 and 17;
THENCE along said common section line North 89°55'11" West 89.80 feet to a point on the Northerly bank of said San Juan River;
THENCE along the Northerly bank of said San Juan River the following courses:
1) South 22°01'47" West 971.64 feet;
2) South 40°07'16" West, 230.76 feet;
3) South 45°54'46" West 157.20 feet;
4) South 82°40'00" West 148.44 feet to the beginning of a curve;
5) Along said curve to the right having a radius of 325.00 feet through a central angle of 48°01'00" for an arc length of 272.37 feet and having a chord that bears North 73°19'30" West 264.46 feet;
6) North 49°19'00" West 292.61 feet;
7) North 26°49'24" West 212.01 feet to the beginning of a curve;
8) Along said curve to the left having a radius of 650.00 feet through a central angle of 57°31'09" for an arc length of 652.53 feet and having a chord that bears North 55°34'59" West 625.48 feet to a point on the South boundary line of the lands described in the Warranty Deed to Town of Aztec recorded June 29, 1972 in Book 706, page 438 in the office of said county clerk;
THENCE along the boundary line of the lands described in said Book 706, page 438 the following courses:
1) North 73°44'38" East 287.99 feet;
2) North 80°46'20" East 220.31 feet;
3) North 70°43'43" East 195.96 feet;
4) North 41°38'46" East 262.93 feet;
5) North 00°01'53" East 20.44 feet to a point on the common section line to said Sections 8 and 17, from which the Miller Engineers, Inc. aluminum capped monument set in 1994 for the section corner common to said Sections 7, 8, 17 and 18 bears North 89°55'11" West, 1045.40 feet;
THENCE along said common section line South 89°55'11" East, 262.96 feet to the point of beginning.