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Certain right, title and interest of Lessor in and to this Lease Agreement has been assigned to and is subject to a security interest in favor of BNY Western Trust Company, a California banking corporation, as Bond Trustee. To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Lease may be created through the transfer or possession of any counterpart other than the original executed counterpart, as provided in Section 19.6 hereof.

DOCKET 06-AFC-3
DATE JUL 31 2006
RECD. AUG 1 2006

LEASE AGREEMENT

dated as of

April 1, 1999

between

San Diego Unified Port District,
as Lessor

and

Duke Energy South Bay, LLC,
as Lessee

South Bay Power Plant
Chula Vista, California

1950

1951

1952

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LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease"), dated as of April 1, 1999, is made between the San Diego Unified Port District, a public corporation organized and existing as a port district pursuant to Appendix 1 of the Harbor and Navigation Code of the State of California ("Lessor"), and Duke Energy South Bay, LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Lessee").

WITNESSETH:

WHEREAS, Lessor owns (i) that certain power generation facility and related equipment located in Chula Vista, California known as the South Bay Power Plant and more fully described on Schedule A hereto (the "Facility") and (ii) that certain parcel of land described on Schedule B hereto on which the Facility is located (including, without limitation, certain easements and rights of way relating thereto) (such parcel of land (including such easements and rights of way), is hereinafter referred to as the "South Bay Land," a portion of which is the "Facility Site," which is described on Schedule C (the Facility Site, together with the Facility, collectively, the "Leased Property")); and

WHEREAS, Lessee desires to lease the Leased Property from Lessor and Lessor is willing to lease the Leased Property to Lessee on the terms and conditions set forth herein.

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

ARTICLE 1 DEFINITIONS

For the purposes hereof, capitalized terms used herein and not otherwise defined shall have the meanings assigned to them in, and this Lease (including capitalized terms defined herein) shall be interpreted in accordance with, Appendix A to this Lease, including the Rules of Interpretation set forth therein.

ARTICLE 2 LEASE OF LEASED PROPERTY

2.1 Lease of the Facility. Lessor, upon the terms and conditions of this Lease, hereby leases the Facility to Lessee, and Lessee hereby leases the Facility from Lessor, for a period commencing on the Effective Date (the "Lease Commencement Date") and ending on the date (the "Basic Lease Term Expiration Date") falling three (3) months (such three (3) month period, the "Additional Lease Period") after the latest to occur of (a) the date of the payment in full and retirement of the Bonds (the "Bond Payment Date"), (b) the termination by the ISO of (and the failure by ISO to subsequently reinstate) those must-run obligations imposed

by ISO under the Must-Run Contract in respect of the Facility and (c) the last day of the Primary Term (such period, including the Additional Lease Period, the "Basic Lease Term"); provided, however, that the obligation of Lessee to pay Supplemental Rent shall survive the expiration of the Basic Lease Term to the extent such Supplemental Rent is attributable to events, conditions or circumstances arising prior to the expiration of the Basic Lease Term.

2.2 Lease of Facility Site. Subject to the access and other rights of Lessee under Sections 18.1 and 18.4, Lessor, upon the terms and conditions of this Lease, hereby leases the Facility Site to Lessee, and Lessee hereby leases the Facility Site from Lessor, for a period (such period, the "Lease Term") commencing on the Lease Commencement Date and ending on the later to occur of (a) the Basic Lease Term Expiration Date and (b) the date on which the final renewal period in respect of Lessee's Renewal Option under Section 18.1(b) terminates; provided, however, that the obligation of Lessee to pay Supplemental Rent shall survive the expiration of the Lease Term to the extent such Supplemental Rent is attributable to events, conditions or circumstances arising prior to the expiration of the Lease Term.

2.3 No Merger. There shall be no merger of this Lease nor of the leasehold estate created hereby with any other estate in the Facility, any Component thereof or the Facility Site by reason of the fact that the same Person may acquire or own such estates, directly or indirectly.

2.4 Enforcement of Warranties. Effective as of the Lease Commencement Date, so long as no Lease Event of Default has occurred and is continuing, Lessor hereby assigns to Lessee, until the Lessor Possession Date, all of Lessor's claims and rights, if any, under (including the right to receive any payments made pursuant thereto) any and all warranties of, and other claims against, dealers, manufacturers, vendors, suppliers, installers, contractors or subcontractors (each a "Vendor") relating to the Leased Property. Lessor hereby authorizes Lessee (directly or through agents), at Lessee's expense, to assert for Lessor's account, during the Lease Term, all of Lessor's rights (if any) under any applicable warranty and any other claims that Lessee or Lessor may have against any Vendor with respect to the Facility or any part thereof and Lessor agrees to cooperate, at Lessee's expense, with Lessee in asserting such rights.

2.5 Contract and Permit Rights. Effective as of the Lease Commencement Date, Lessor and Lessee shall enter into the Contract and Permit Rights Assignment and the Assignment of Related Agreements, pursuant to which, among other things, Lessor shall assign to Lessee for the periods specified therein all of Lessor's right, title and interest in, to and under the Contract and Permit Rights and the Related Agreement Rights, respectively, including, without limitation, the right to own and utilize the SDG&E Offsets, in connection with the operation of the Facility.

**ARTICLE 3
RENT**

3.1 Basic Rent.

(a) **Basic Rent During Bond Financing Period.** Lessee shall pay to Lessor rent ("Basic Rent") with respect to the Leased Property as described in this Section 3.1. On each Basic Rent Payment Date during the period of the Lease Term commencing on the Lease Commencement Date and ending on the Bond Payment Date (such portion of the Lease Term referred to herein as the "Bond Financing Period"), Lessee shall pay Basic Rent to Lessor, in accordance with Section 3.3, (i) with respect to the lease of the Facility (such portion of Basic Rent referred to herein as "Facility Rent") in an amount equal to the amount set forth opposite such Basic Rent Payment Date in Schedule D hereto under the column entitled "Facility Rent", and (ii) for the lease of the Facility Site (such portion of Basic Rent referred to herein as "Site Rent") in an amount equal to the amount set forth opposite such Basic Rent Payment Date in Schedule D hereto under the column entitled "Site Rent," provided, however, that the amounts of Basic Rent payable pursuant to clauses (i) and (ii) above shall be reduced by any interest earnings then on deposit in the Debt Service Fund under the Bond Indenture available to pay principal of and interest on the Bonds on the next Interest Payment Date or Principal Payment Date (as such terms are defined in the Bond Indenture), as applicable.

(b) **Basic Rent After Bond Financing Period.**

(i) **Prior to Basic Lease Term Expiration Date.** On each Basic Rent Payment Date during the period commencing on the day after the Bond Payment Date and ending on the Basic Lease Term Expiration Date, Lessee shall pay Basic Rent to Lessor, in accordance with Section 3.3, (A) attributable to Facility Rent, in an amount equal to the Fair Market Rental Value of the Facility, and (B) attributable to the Site Rent, in an amount equal to the Fair Market Rental Value of the Facility Site; provided, however, that, in the case of each of clauses (A) and (B) above, Lessee shall not be obligated to pay any Basic Rent for the Additional Lease Period.

(ii) **After Basic Lease Term Expiration Date.** On each Basic Rent Payment Date during the period commencing on the day after the Basic Lease Term Expiration Date and ending upon the expiration of the Lease Term, Lessee shall pay Basic Rent with respect to the Facility Site to Lessor, in accordance with Section 3.3, in an amount to be mutually agreed upon by Lessor and Lessee.

3.2 Supplemental Rent. Except as set forth in the next sentence, Lessee shall pay to Lessor for its own account in accordance with Section 3.3, or to any other Person entitled thereto, as provided herein or in any other Transaction Document, any and all Supplemental Rent promptly as the same shall become due and payable (or, where no due date is specified, on demand). Without limiting the foregoing, Lessee shall pay Supplemental Rent by paying directly to Lessor, Issuer or Bond Trustee, as the case may be, in connection with the transactions

contemplated under this Lease and the Bond Financing Agreements, the reasonable out-of-pocket administrative expenses incurred by each such Person in connection with such transactions; provided, however, that in no event shall Lessee be obligated to pay, or otherwise be liable for, any such costs or expenses of Lessor, Issuer or Bond Trustee to the extent relating to, arising out of or in connection with any Bond Financing Default which is not caused by a Lease Event of Default.

3.3 Method and Place of Payment.

(a) During the Bond Financing Period. During the Bond Financing Period, (i) each payment of Basic Rent, and each payment of Supplemental Rent that constitutes Supplemental Rent under clause "(i)" of the definition of "Supplemental Rent" otherwise payable to Lessor, shall be paid by Lessee to Bond Trustee for the benefit of Lessor and Issuer pursuant to the payment instructions set forth in Schedule H hereto and shall be made in immediately available funds, on or before 2:00 p.m., New York City time, on the scheduled date on which such payment shall be due; (ii) each payment of Supplemental Rent that constitutes Supplemental Rent under clause "(ii)" of the definition of "Supplemental Rent" shall be paid by Lessee to Issuer, Bond Trustee or the Person entitled thereto, as the case may be, and shall be made in immediately available funds, on the scheduled date on which such payment shall be due, pursuant to payment instructions from such Person; and (iii) each payment of Supplemental Rent that constitutes Supplemental Rent under clause "(iii)" of the definition of "Supplemental Rent" shall be paid by Lessee to the Person entitled thereto, and shall be made in immediately available funds, on the scheduled date on which such payment shall be due, pursuant to payment instructions from such Person. Bond Trustee may, from time to time, change the payment instructions referred to in clause (i) above upon at least five (5) Business Days' prior written notice to each of Lessor and Lessee.

(b) After the Bond Financing Period. After the end of the Bond Financing Period, (i) each payment of Basic Rent, and each payment of Supplemental Rent otherwise payable to Lessor, shall be paid by Lessee to Lessor in immediately available funds to such place or account as specified in writing by Lessor to Lessee, on or before 2:00 p.m., New York City time, on the scheduled date on which such payment shall be due and (ii) each payment of Supplemental Rent other than as provided in clause (i) of this Section 3.3(b) shall be paid by Lessee to the Person entitled thereto, and shall be made in immediately available funds, on the scheduled date on which such payment shall be due, pursuant to payment instructions from such Person.

3.4 Late Payment. If any Rent shall not be paid when due, Lessee shall pay on demand, but in any event on each Basic Rent Payment Date to the extent of the accrual thereof, to Lessor or the Person entitled thereto (or, in the case of Supplemental Rent, to Lessor for its own account in accordance with Section 3.3 or to the Person entitled thereto), as Supplemental Rent, interest on such overdue amount from and including the due date thereof to but excluding the date of payment thereof (unless payment is made after 2:00 p.m., New York City time, in which event such amount shall be deemed paid on the next Business Day) at the Default Rate.

3.5 Net Lease; No Setoff; Etc. This Lease is a net lease. Notwithstanding any other provision of this Lease, but subject to Section 3.6 (relating to certain claims), during the Bond Financing Period, the obligation of Lessee to pay Rent hereunder shall be absolute and unconditional and shall not be affected by any circumstance of any character, including, without limitation: (a) counterclaim, setoff, deduction, defense, abatement, suspension, deferment, diminution or reduction; (b) any defect in the condition, design, quality or fitness for use of the Leased Property or any part thereof or interest therein; (c) any damage to, removal, abandonment, salvage, loss, scrapping or destruction of or any requisition or taking of the Leased Property or any part thereof or interest therein; (d) any restriction, prevention, interruption or curtailment of or interference with any use, operation or possession of the Leased Property or any part thereof or interest therein; (e) any defect in, or any Lien on, title to the Leased Property or any part thereof or interest therein; (f) any change, waiver, extension, indulgence or other action or omission in respect of any obligation or liability of Lessee, Lessor, any Financing Party or SDG&E; (g) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to Lessee, Lessor, any Financing Party, SDG&E or any other Person, or any action taken with respect to this Lease by any trustee or receiver of any Person mentioned above, or by any court; (h) any claim that Lessee has or might have against any Person, including Lessor, any Financing Party or SDG&E (but shall not constitute a waiver of any such claim); (i) any failure on the part of Lessor, any Financing Party or SDG&E to perform or comply with any of the terms hereof or of any other agreement; (j) any invalidity or unenforceability or disaffirmance of this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements or the Lease Guaranty, or any provision hereof or thereof, whether against or by Lessee, Guarantor or otherwise; or (k) any other occurrence whatsoever, whether similar or dissimilar to the foregoing, whether or not Lessee shall have notice or knowledge of any of the foregoing. If this Lease shall be terminated in whole or in part for any reason whatsoever Lessee shall, except as expressly provided herein, nonetheless pay to Lessor or the Person entitled thereto (or, in the case of Supplemental Rent, to Lessor for its own account or to the Person entitled to such Supplemental Rent) an amount equal to each Rent payment at the time and in the manner that such payment would have become due and payable under the terms of this Lease if it had not been terminated in whole or in part. Nothing contained in this Section 3.5 shall be construed as (a) a guaranty of (i) the value (including residual value) of the Facility upon termination of the Lease Term or (ii) payment of the Bonds, or (b) a prohibition of assertion of any Claim against any Vendor or any third party contractor with respect to the Leased Property.

3.6 No Waiver of Lessee Claims. Without in any way limiting the unconditional nature of Lessee's obligations hereunder as and to the extent set forth in the second sentence of Section 3.5, Lessee shall not be precluded from or be construed to waive or otherwise limit or restrict Lessee's right to assert or pursue in one or more separate actions any Claim, right or remedy available to Lessee under this Lease or any other agreement, at law or in equity.

3.7 Payments of Rent on Non-Business Days. Notwithstanding anything to the contrary contained herein, if any date on which a payment of Rent becomes due and payable is not a Business Day, then such payment shall automatically be due and payable on the immediately preceding Business Day.

3.8 Sufficiency of Rent. Notwithstanding any other provision of this Lease, during the Bond Financing Period (a) the amount of Basic Rent due and payable on each Basic Rent Payment Date shall be at least equal to the greater of (i) the aggregate amount of all sums then payable in respect of the principal of and interest on the Bonds (less any amounts described in the proviso to Section 3.1(a)) and (ii) the amount of Basic Rent otherwise payable pursuant to this Lease, and (b) each payment of the Stipulated Loss Value payable at any time shall in no event be less (when added to all other amounts required to be paid by Lessee under this Lease in respect of any Event of Loss or other termination of this Lease) than an amount sufficient, as of the date of payment, to pay the outstanding principal and interest under the Bonds in full.

3.9 Adjustment of Rent and Other Factors.

(a) **Events of Adjustment.** In the event that the Debt Service under the Bond Financing Agreements shall be reduced by any redemption of the Bonds permitted or otherwise contemplated under the Bond Indenture (which redemption was funded with funds, other than Basic Rent, provided by Lessee or Guarantor), (i) the Basic Rent as set forth in Schedule D shall be amended so that the revised Basic Rent for each Basic Rent Payment Date, when aggregated with the other revised payments of Basic Rent for Debt Service, equals the reduced aggregate amount of scheduled payments of principal and interest on the Bonds after giving effect to such event, any such reduction in Basic Rent to be allocated between Facility Rent and Site Rent in proportion to the relative amounts thereof prior to such adjustment, and (ii) the Stipulated Loss Values set forth in Schedule E hereto for periods after such event shall be amended so that the revised Stipulated Loss Values for each Stipulated Loss Value Payment Date equals the total outstanding amounts due on the Bonds (including any accrued and unpaid interest thereon to the date of redemption) as of such date after giving effect to such event.

(b) **Further Assurances.** At the time any adjustment is made to Basic Rent or Stipulated Loss Value pursuant to this Section 3.9, the parties shall enter into a supplement to this Lease to reflect such adjustment and to enter into such other amendments and supplements and do such further acts as may be reasonably requested by the other party in order to effectuate such adjustment; provided that such adjustment shall become effective without regard to the date on which such supplement to this Lease is executed and delivered.

**ARTICLE 4
LESSEE COVENANTS**

4.1 Existence and Conduct of Business. Except as otherwise expressly permitted under this Lease, Lessee shall (a) maintain and preserve its legal existence as a limited liability company in good standing under the laws of its state of formation and its qualification to do business in the State of California, (b) conduct its business and operations in accordance with all Applicable Laws and Applicable Permits, and (c) not engage in any business other than that contemplated by the Transaction Documents.

4.2 Payment of Taxes. Lessee shall pay and discharge all Taxes imposed upon the Leased Property or upon Lessee or any of its properties, in each case prior to the date on which penalties attach thereto; provided, however, that no such Tax need be paid which is

being contested in good faith and by appropriate proceedings, as long as (i) adequate reserves, as determined in accordance with GAAP, shall have been established by the Lessee, and (ii) such proceedings shall not involve any significant danger of the sale, forfeiture or loss of any Leased Property, title thereto or any interest therein.

4.3 **Limitations on Liens.** Lessee has no right to, and shall not, directly or indirectly, create, incur, assume or suffer to exist any Liens on or with respect to all or any part of the Leased Property, any asset included therein, any of Lessee's interest therein, or in this Lease, other than Permitted Liens, and Lessee promptly, at its own expense, shall take such actions as may be necessary duly to discharge any such Lien. The covenants and agreements of Lessee under this Section 4.3 shall remain in full force and effect for the period after the expiration of the Lease Term during which Lessee performs its obligations under Section 18.1.

4.4 **Further Assurances.** Lessee shall, at Lessor's cost and expense (which cost and expense Lessor agrees shall not be reimbursable hereunder, whether as Supplemental Rent or otherwise), take, execute, acknowledge and deliver all such further acts, documents and assurances as Lessor reasonably may request from time to time in order to carry out more effectively the intent and purposes of this Lease and the other Transaction Documents and the transactions contemplated hereby and thereby. Without limiting the generality of the foregoing, Lessee and Lessor acknowledge and agree that, upon the expiration of the Lease Term, the Facility Site shall belong to Lessor free and clear of all Liens created by Lessee of the type described in clauses (a), (h) and (i) of the definition of Permitted Liens. Lessee and Lessor shall take all action necessary or desirable to effect the intent of the preceding sentence.

4.5 **Certain Drainage Matters.** Lessee shall comply with the provisions of Section 2.8 of the Easement and Covenant Agreement with respect to the drainage matters set forth therein.

ARTICLE 5 RIGHT TO PERFORM FOR OTHER PARTY

If Lessee or Lessor shall fail to make any payment required hereunder or shall fail to perform or comply with any of its other agreements contained herein, following ten (10) Business Days' written notice by one party to the defaulting party, the non-defaulting party may, but shall not be obligated to, make such payment or perform or comply with such agreement, to the extent such performance or compliance does not involve the entering onto or the possession of all or any portion of the Leased Property, and the reasonable amount of such payment and the amount of all costs and expenses (including reasonable attorneys' and other professionals' fees and expenses) incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Default Rate, shall be payable by the defaulting party upon demand.

**ARTICLE 6
LESSOR COVENANTS**

6.1 **Quiet Enjoyment.** Lessor covenants and agrees that, during the Lease Term, unless a Lease Event of Default shall have occurred and be continuing, neither Lessor nor any Person claiming by, through or under Lessor shall interfere with or disturb Lessee's use, possession and quiet enjoyment of the Leased Property and/or any Contract and Permit Rights or rights under the Related Agreement Rights, or any thereof.

6.2 **Discharge of Liens.** During the Lease Term, Lessor shall not directly or indirectly create, assume, permit or suffer to exist, and shall, at its cost and expense, promptly take such action as may be necessary duly to discharge all Lessor's Liens on the Leased Property or any Contract and Permit Right or Related Agreement, or any portion of any thereof.

6.3 **Financing and Other Documents.** During the Lease Term, Lessor shall not, without the prior written consent of Lessee (which consent shall not be unreasonably withheld or delayed so long as the subject matter of such consent does not or could not impact the interests of Lessee (whether economic or otherwise) in the Project or result in any increased risk or expense to Lessee), consent to or exercise any amendment, modification, supplement, waiver, election, prepayment, termination or remedy, in each case with respect to the Asset Sale Agreement or the Bond Financing Agreements, except under the Asset Sale Agreement to the extent not relating in any manner to the Leased Property and not having any effect on the rights and obligations of Lessee hereunder, the business of Lessee, or the performance of Lessee's obligations hereunder. Lessor shall (a) provide written notice to Lessee (together with relevant drafts) of the request for or proposal of any such amendment, modification, supplement, waiver, election, prepayment, termination or remedy promptly upon Lessor's obtaining Actual Knowledge thereof, (b) in the event Lessee consents to any such action pursuant to this Section 6.3, provide Lessee with final copies of any document or instrument evidencing the same, (c) provide to Lessee, promptly upon receipt, copies of all written notices and other communications received by Lessor under any of the foregoing documents, and (d) provide to Lessee, promptly after reasonable written request therefor, any other non-confidential information or documents within the control of Lessor with respect to the transactions contemplated hereby.

6.4 **Change in Regulatory Status.** During the Lease Term, Lessor shall not (a) take or fail to take any action which action or failure could reasonably be expected to cause the Facility to lose its status as an Exempt Wholesale Generator or (b) take, cause or permit to occur any action which would result in the cessation of the Exempt Wholesale Generator status of the Facility for any period of time. Immediately upon any breach by Lessor of any covenant, agreement or condition set forth in this Section 6.4, Lessor shall, at its sole cost and expense, (A) take such action as may be required to restore the Exempt Wholesale Generator status of the Facility, or (B) take such other action as may be necessary or reasonably requested by Lessee to prevent Lessee from being adversely affected as a result of the cessation of the Exempt Wholesale Generator status of the Facility. Notwithstanding any other provision of this Section 6.4, Lessor shall not be required to pursue any actions designed to influence any legislative or administrative activity with respect to the requirements for Exempt Wholesale Generator status in general, or

any change in law with respect thereto, except directly in relation solely to the particular situation of the Facility.

6.5 Event of Eminent Domain.

(a) **Notice.** Subject to Section 6.5(b) below, if an Event of Eminent Domain shall be threatened or occur, Lessor shall, (i) promptly upon discovery or receipt of notice of any such threat or occurrence, provide written notice thereof to Lessee, (ii) not, without the prior written consent of Lessee, compromise or settle, or cause, permit or accept the compromise or settlement of, any claim against any Governmental Authority, and (iii) direct all Eminent Domain Proceeds in accordance with Section 9.3.

(b) **Certain Events of Eminent Domain.** Notwithstanding Section 6.5(a) above, Lessor and Lessee agree that it is the intent of the parties hereto that Lessor shall not initiate, cause or consent to any Event of Eminent Domain. In the event that Lessor breaches the terms of the agreement set forth in the preceding sentence, then Lessor and Lessee irrevocably agree that the fair market value of the property subject to the Event of Eminent Domain shall be an amount which is not less than 150 percent of all Bonds outstanding under the Bond Indenture on the date on which Lessee receives notice of such Event of Eminent Domain. All Eminent Domain Proceeds paid pursuant to this Section 6.5(b) shall be paid to Lessee.

6.6 **Further Assurances.** Lessor shall, at Lessee's cost and expense, take, execute, acknowledge and deliver all such further acts, documents and assurances as Lessee reasonably may request from time to time in order to carry out more effectively the intent and purposes of this Lease and the other Transaction Documents and the transactions contemplated hereby and thereby. Without in any way limiting the generality of the foregoing, Lessor shall provide Lessee with (a) assistance, cooperation and support with respect to permit applications, governmental hearings and community relations, obtaining easements and entering into agreements which must be entered into with Lessor, and effecting any necessary filings or registrations; and (b) any non-privileged, non-confidential information or approvals which must be obtained from Lessor to carry out the intent and purposes of this Lease.

6.7 **Assignment.** Subject to the rights and remedies of Lessor under Article 13 hereof, except for the pledge and assignment contemplated under Sections 3.2 and 3.4 of the Loan Agreement, Lessor shall not, during the Lease Term, assign all or any part of its rights hereunder to any Person without the prior written consent of Lessee.

6.8 **Certain Drainage Matters.** Lessor shall comply with the provisions of Section 2.8 of the Easement and Covenant Agreement with respect to the drainage matters set forth therein.

**ARTICLE 7
DISCLAIMER OF WARRANTIES**

The representations and warranties of Lessor expressly set forth in this Lease, or in any other Transaction Document, are in lieu of all other warranties of Lessor, and Lessee agrees that except for the representations and warranties referred to above, the Leased Property is being leased on an "AS IS" basis and in "WITH ALL FAULTS" condition, and, without limiting the generality of the foregoing, LESSOR MAKES NO WRITTEN OR ORAL REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE FITNESS, MERCHANTABILITY, OR SUITABILITY OF THE LEASED PROPERTY FOR ANY PARTICULAR PURPOSE OR THE OPERATION OF THE FACILITY BY LESSEE. Nothing contained in this Article 7 shall be construed as a waiver of any warranty or other claim against any Vendor or other third party contractor with respect to the Leased Property. The representations and warranties of Lessee expressly set forth in this Lease, in any other Transaction Document or in any other agreement to which Lessor and Lessee are parties, are in lieu of all other warranties of Lessee with respect to the subject matter hereof.

**ARTICLE 8
OPERATION AND MAINTENANCE; USE; INSPECTION;
MODIFICATIONS; IDENTIFICATION**

8.1 **Operation and Maintenance.** Lessee shall, at its sole cost and expense, operate and maintain the Leased Property, or cause the same to be operated and maintained, in accordance with, but only to the extent required by, Prudent Utility Practices, all Applicable Permits, all Applicable Laws, and all applicable requirements of this Lease; provided, however, that Lessee shall not be obligated to comply with any Governmental Rule or Governmental Action (a) whose application or validity is being contested diligently and in good faith by appropriate proceedings, or (b) compliance with which shall have been excused or exempted by a nonconforming use permit, waiver, extension or forbearance exempting it from such Governmental Rule or Governmental Action.

8.2 **Location and Use.** Lessee shall use the Facility solely in the conduct of its business, solely for the purposes for which it was designed and solely by qualified personnel and the Facility shall at all times be and remain in the exclusive possession and control of Lessee and its agents at the Facility Site, in each case to the extent required by Prudent Utility Practices, Applicable Permits and Applicable Law; provided, that Lessee may deliver possession of any part or portion of the Facility to any Vendor designated by Lessee, for purposes of realizing the benefits of any warranty or in order to comply with the obligations of Lessee under this Article 8, but the rights of any such party in possession of such part or portion of the Facility shall be subject and subordinate to the terms of this Lease, including without limitation, the right of Lessor to take possession of the Facility pursuant to Section 13.1 hereof.

8.3 **Inspection.** Lessor and its authorized agents, at their respective expense and risk, may inspect the Leased Property and the books and records of Lessee relating thereto and, subject to Lessee's reasonable confidentiality requirements, make copies thereof, in accordance with and upon reasonable prior notice to Lessee during normal business hours, provided that the reasonable costs of any such inspection conducted during any period when a Lease Event of Default exists shall be at Lessee's sole cost and expense. Any inspections by Lessor of the Leased Property shall be conducted in a manner that does not interfere with Lessee's business or operation or maintenance of the Facility and shall be subject to Lessee's reasonable security and safety precautions.

8.4 **Required Modifications.** Lessee shall, at its sole cost and expense, make all Modifications as may be required from time to time to meet the requirements of Section 8.1 or to maintain the insurance coverage required by Section 10.1 (subject to the qualifications set forth in such sections). Lessee shall cause all such Modifications to be completed in a good and workmanlike manner, in accordance with Prudent Utility Practices, Applicable Permits and Applicable Law, with reasonable dispatch and in a manner (to the extent practicable) in order to maintain the insurance coverage required by Section 10.1.

8.5 **Optional Modifications.** Lessee may, from time to time, make structural additions, modifications or improvements to the Leased Property or any part hereof, provided such actions do not have a material and adverse safety effect with respect to the Leased Property, and are consistent with Prudent Utility Practices, Applicable Permits and Applicable Law.

8.6 **Title to Modifications.** Subject to the terms and conditions of Section 18.1 (including with respect to the Purchase and Renewal Option), (a) title to each Non-Severable Modification shall immediately vest in Lessor, and (b) title to any Severable Modification shall immediately vest in Lessee and not in Lessor. Lessee shall not place a Lien upon any Severable Modifications owned by Lessee, other than a Permitted Lien.

8.7 **Identification.** At all times, commencing thirty (30) days after the Lease Commencement Date until the Basic Lease Term Expiration Date, Lessee shall maintain on the Facility conspicuous markings including the inscription "CERTAIN EQUIPMENT CONTAINED WITHIN IS THE PROPERTY OF SAN DIEGO UNIFIED PORT DISTRICT, AS LESSOR". Additionally, Lessee shall maintain any equipment markings as from time to time may be required by Applicable Law or otherwise reasonably deemed necessary or advisable by Lessor in order to protect the title of Lessor to the Facility and each Component thereof, and the rights of Lessor therein, in each case on or before the transfer of title therein to Lessee in the event it exercises the Purchase and Renewal Option pursuant to Section 18.1(b).

ARTICLE 9 EVENTS OF LOSS

9.1 **Notice of Damage or Loss.** In the event that an Event of Loss shall occur or any material part of the Leased Property shall suffer destruction, damage, loss or Event of Eminent Domain for any reason whatsoever (and such occurrence does not constitute an Event of Loss), or Lessee receives any Notice of Eminent Domain with respect to the Leased Property,

such fact shall promptly, but in no event more than seven (7) Business Days after Lessee shall have Actual Knowledge of the occurrence of such event, be reported by Lessee to Lessor in writing, including the description of the circumstances surrounding such Event of Loss, destruction, damage, loss or Event of Eminent Domain.

9.2 **Continuation of Lease.**

(a) **No Event of Loss.** In the event of damage to, or the occurrence of an Event of Eminent Domain with respect to, the Leased Property or any material part thereof, which in either case does not constitute an Event of Loss, then (i) this Lease shall continue, and each and every obligation of Lessee hereunder shall remain in full force and effect, and (ii) Lessee shall proceed with the repair or replacement of such damage or affected portion of the Leased Property to the extent necessary (as determined by Lessee in its sole discretion) to meet its obligations under the Must-Run Contract.

(b) **Event of Loss.** In the event of an Event of Loss, then (i) the obligation of Lessee to pay Rent hereunder shall continue in full force and effect until the Bond Payment Date and (ii) all obligations of Lessee under this Lease, other than those obligations relating to the payment of Rent as provided in clause (i) above as well as those obligations set forth in Article 10 (to the extent that Lessee has an insurable interest in, or insurable liabilities with respect to, the Leased Property or any portion thereof), Article 16 and Article 18, shall terminate, effective as of the date upon which Lessee delivers notice to Lessor of such Event of Loss in accordance with Section 9.1. On the day following the Bond Payment Date, the surviving obligation of Lessee set forth in clause (i) above shall cease to be in effect and this Lease shall terminate, other than for Lessee's obligations set forth in Article 10 (to the extent that Lessee has an insurable interest in, or insurable liabilities with respect to, the Leased Property or any portion thereof), Article 16 and Article 18, which shall continue until the completion of Lessee's obligations, if any, under Article 18.

9.3 **Application of Funds.** Subject to Section 6.5(b) hereof, and so long as no Lease Event of Default has occurred and is continuing, (a) Lessee shall be entitled to all Insurance Proceeds and Eminent Domain Proceeds, and (b) if Lessor receives any Insurance Proceeds or Eminent Domain Proceeds, Lessor shall hold the same in trust, segregated from its own funds and accounts, and immediately deliver the same to Lessee, without any setoff or counterclaim whatsoever; provided, however, that, subject to Section 6.5(b), if an Event of Loss shall have occurred, then any Eminent Domain Proceeds received in connection with such Event of Loss shall be allocated between the Lessor and Lessee, respectively, in the same proportion as that used by the applicable agency, authority, instrumentality or other Governmental Authority involved in the Event of Eminent Domain giving rise to such Eminent Domain Proceeds in determining the value of that portion of the Facility Site and the Facility, respectively, which was the subject of such Event of Eminent Domain.

**ARTICLE 10
INSURANCE**

10.1 Coverage.

(a) **Required Insurance.** Lessee, at its own cost and expense, shall maintain or cause to be maintained, until the expiration or earlier termination of this Lease in accordance with the terms hereof and the completion of Lessee's End of Term Actions, if required, pursuant to Article 18, insurance meeting the standards set forth in Schedule F, provided that Lessee may self-insure (either directly or through Affiliates) to the same extent as Affiliates of Lessee self insure with respect to other comparable properties owned, leased or operated by such Affiliates in connection with which such Affiliates are required to maintain insurance coverages, or to the extent consented to by Lessor, which consent shall not be unreasonably withheld. The Lessor shall be named an additional insured under those insurance coverages referred to above relating to property insurance. The Lessor, Issuer and Bond Trustee shall each be named additional insureds under those insurance coverages referred to above relating to liability insurance (except in the case of liability insurances described in clause (a)(ii) of Schedule F, which liability insurances shall name Lessee and Lessor as additional insureds).

(b) **Rights of Lessor Upon Lessee Failure to Maintain Insurance.** If at any time the insurance required to be maintained pursuant to Section 10.1(a) shall cease to be maintained, then (without limiting the rights of Lessor, in respect of the Lease Event of Default which arises as a result of such failure) Lessor may, at its option, obtain and maintain the insurance required hereby and, in such event, Lessee shall reimburse Lessor upon demand for the cost thereof together with interest thereon at a rate per annum equal to the Default Rate.

(c) **Unavailability of Coverage.** If any insurance required to be maintained hereby, other than insurance required by law to be maintained; shall cease to be available in the commercial insurance market at a reasonable price on commercially reasonable terms and conditions, Lessee shall not be required to maintain such insurance for so long (but only so long) as such conditions exist. In any such situation, (i) Lessee shall promptly provide to Lessor a written report prepared by an independent insurance adviser of recognized national standing and reasonably acceptable to Lessor certifying that such conditions exist (and, in any case where the required amount is not so available, certifying as to the maximum amount which is so available) and explaining in detail the basis for such conclusions, and (ii) Lessee shall furnish to Lessor, within forty-five (45) days after written request by Lessor, supplemental reports reasonably acceptable to Lessor from such insurance adviser updating its prior reports and reaffirming such conclusion. In the event that the foregoing independent insurance adviser determines, in its reasonable opinion, that insurance comparable or similar to that which is required to be maintained hereunder (but unavailable as provided above) is (1) available in the commercial insurance market at a reasonable price on commercially reasonable terms and conditions and (2) appropriate, given the nature and intended use of the Leased Property, then Lessee shall obtain and maintain such comparable or similar insurance for so long (but only so long) as the conditions set forth in the first sentence of this Section 10.1(c) exist.

10.2 **Adjustment of Losses.** Losses, if any, under any insurance required to be carried under Section 10.1(a) shall, if no Lease Event of Default hereunder has occurred and is continuing, be adjusted with the insurance companies, including the filing of appropriate proceedings, by Lessee or, to the extent relating to liability insurance, in accordance with the indemnification provisions set forth in Section 16. Lessee shall give Lessor prompt notice of any loss for which Insurance Proceeds are or may be payable, shall give Lessor regular reports on the adjustment of all losses with the insurance companies, and, with respect to casualty insurance losses, shall permit Lessor to participate in the adjustment of such losses.

10.3 **Application of Insurance Proceeds.** All Insurance Proceeds arising from insurance maintained pursuant to Section 10.1(a) on account of any damage to or destruction of the Leased Property or any part thereof (in each case less the actual costs, fees and expenses incurred in the collection thereof) shall be applied in accordance with Section 9.3.

10.4 **Additional Insurance by Lessor or Lessee.** Nothing in this Article 10 shall prohibit Lessee or Lessor from maintaining, at its expense, additional insurance for its own account with respect to loss or damage to the Leased Property, or with respect to related liability or any part thereof, provided that any such additional insurance shall not provide for or result in a reduction of coverage or amounts payable under insurance required to be maintained under this Article 10 or increase the amount of any premium payable with respect to any such insurance or, in the case of any such insurance to be obtained by Lessor, conflict with or limit any insurance maintained by Lessee for purposes hereof, or otherwise. The proceeds of any such additional insurance shall be for the account of the party maintaining such insurance.

ARTICLE 11 RIGHTS BY LESSEE TO ASSIGN OR SUBLEASE

11.1 **Non-Affiliate Transfers.** Except as set forth in Section 11.2, Lessee may not assign this Lease, the Contract and Permit Rights, the Related Agreement Rights, or any part thereof, or sublease the Leased Property or any part thereof, without the prior written consent of Lessor (and SDG&E, in the case of the Related Agreement Rights), which consent shall not be unreasonably withheld or delayed. Any merger or other business combination in which Lessee is a participant, and in which it is not the surviving party, shall be considered an assignment for purposes of this Section 11.1.

11.2 **Affiliate Transfers.** Lessee may assign this Lease, the Contract and Permit Rights and/or the Related Agreement Rights and/or sublease the Leased Property, in any such case, to any Affiliate of Lessee, without the consent of Lessor, provided that (i) Lessee shall first have given written notice of such assignment or sublease to Lessor, (ii) any sublease, assignment or transfer to an Affiliate shall, in the case of a sublease or assignment, be for a term not in excess of the Lease Term and, in the case of any sublease, be subject and subordinate to the terms of this Lease, (iii) the terms of the assignment or sublease shall prohibit further subleasing or assignment except in accordance with this Article 11, (iv) any such assignment of the Lease and the Leased Property shall be accompanied by an assignment or sublease (as applicable) to the same assignee of the Contract and Permit Rights relating to the Leased Property, (v) any such

assignment or sublease shall not result in the loss of the Facility's status as an Exempt Wholesale Generator, or result in a Lease Event of Default, (vi) Guarantor shall have confirmed the continued applicability of the Lease Guaranty with respect to the obligations of Lessee or such assignee hereunder, as applicable and (vii) Lessee shall have delivered, or caused to be delivered, a letter from each of the applicable entities rating the Bonds to the effect that the assignment or sublease, as the case may be, would not, in and of itself, result in a reduction in the then-current rating of the Bonds or a withdrawal of such rating; provided, however, that nothing in this Section shall limit the obligations to obtain the consent of SDG&E with respect to the Related Agreement Rights. Any permitted assignee of Lessee's rights hereunder shall assume all of Lessee's obligations hereunder pursuant to an agreement in form and substance reasonably satisfactory to Lessor, and Lessee shall thereupon be released from any further liability hereunder if Guarantor has made the confirmation of applicability set forth in clause (vi) above.

11.3 Costs. Whether or not a proposed assignment, sublease or other transfer by Lessee pursuant to this Article 11 is consummated, Lessee shall reimburse Lessor for all of its reasonable costs and expenses, including reasonable legal fees and disbursements, relating to or arising out of any such actual or proposed assignment, sublease or other transfer by Lessee.

ARTICLE 12 LEASE EVENTS OF DEFAULT

12.1 Lease Events of Default. The term "Lease Event of Default," wherever used herein, shall mean the occurrence and continuance of any of the following events (whatever the reason for such Lease Event of Default and whether it shall be voluntary or involuntary, or come about or be effected by operation of law, or be pursuant to or in compliance with any judgment, decree or order of any court or any Governmental Rule):

(a) Failure to Make Payments. Lessee shall fail to pay (i) any Basic Rent within three (3) Business Days after such payment becomes due, (ii) any Supplemental Rent (other than Stipulated Loss Value) within three (3) Business Days after receipt by Lessee of written notice of such failure, or (iii) any Stipulated Loss Value within five (5) Business Days after the date the same becomes due.

(b) Other Covenants and Events. Lessee shall fail in any material respect to perform or observe any of its covenants or agreements set forth herein, and not otherwise specifically provided for under this Article 12, and such failure shall continue unremedied for the period specified with respect to such covenant herein or, if none is specified, for thirty (30) days after Lessee receives written notice thereof from Lessor, Issuer or Bond Trustee; provided, however, that if the breach or default cannot be remedied within such specified or thirty (30) day period despite Lessee's diligent and good faith efforts to do so, and such breach or default is capable of being cured within a longer period of time, no Lease Event of Default shall occur so long as Lessee is diligently pursuing such cure in good faith.

(c) Representations and Warranties. Any representation or warranty made by Lessee herein or by Guarantor in the Lease Guaranty shall prove to be incorrect

on or as of the date made, and as a result thereof there is or is likely to be a Material Adverse Effect, and such Material Adverse Effect (or such incorrectness which, if uncured, is likely to become a Material Adverse Effect) shall remain uncured or uncorrected for a period of thirty (30) days after Lessee receives written notice thereof from Lessor, Issuer or Bond Trustee; provided, however, that if the consequences of such incorrectness cannot be remedied within such thirty (30) day period despite Lessee's diligent and good faith efforts to do so, and the incorrectness is capable of being cured within a longer period of time, no Lease Event of Default shall occur so long as Lessee is diligently pursuing such cure in good faith.

(d) **Bankruptcy.** Either Lessee or Guarantor shall institute a voluntary case seeking liquidation or reorganization under the Bankruptcy Law (or any successor statute), or shall consent to the institution of an involuntary case thereunder against it; or Lessee or Guarantor shall file a petition, answer or consent or shall otherwise institute any similar proceeding under any other applicable federal or state law, or shall consent thereto; or Lessee or Guarantor shall apply for, or by consent or acquiescence there shall be an appointment of, a receiver, liquidator, sequestrator, trustee or other officer with similar powers, or Lessee or Guarantor shall make an assignment for the benefit of creditors; or Lessee or Guarantor shall admit in writing its inability to pay its debts generally as they become due; or if an involuntary case shall be commenced seeking the liquidation or reorganization of Lessee or Guarantor under the Bankruptcy Law (or any successor statute) or any similar proceeding shall be commenced against Lessee or Guarantor under any other applicable federal or state law and (i) the petition commencing the involuntary case is not timely controverted, (ii) the petition commencing the involuntary case is not dismissed within sixty (60) days of its filing, (iii) an interim trustee is appointed to take possession of all or a portion of the property, and/or to operate all or any part of the business of Lessee or Guarantor and such appointment is not vacated within sixty (60) days, or (iv) an order for relief shall have been issued or entered therein; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee or other officer having similar powers of Lessee or Guarantor, as the case may be, or of all or a part of its property, shall have been entered; or any other similar relief shall be granted against Lessee or Guarantor under any applicable federal or state law;

(e) **Enforceability of Lease Guaranty.** The Lease Guaranty, once executed and delivered, shall cease to be in full force and effect, or the validity thereof shall be disaffirmed by or on behalf of Guarantor.

ARTICLE 13 REMEDIES

13.1 **Remedies for Lease Event of Default.** Upon the occurrence of any Lease Event of Default and so long as the same shall be continuing, Lessor, at its option, may declare this Lease to be in default by written notice to such effect given to Lessee (provided that this Lease shall be deemed to have been declared in default without the necessity of such written notice upon the occurrence of any Lease Event of Default with respect to Lessee or Guarantor, described in Section 12.1 (d)) and Lessor may, to the extent permitted by Applicable Law and except as otherwise provided below, exercise one or more of the following remedies, as Lessor in its sole discretion shall elect:

(a) **Termination of Lease.** Lessor, by notice to Lessee, may rescind or terminate this Lease.

(b) **Surrender of Leased Property.** Whether or not this Lease has been terminated, Lessor may (i) demand that Lessee, upon the written demand of Lessor, surrender the Leased Property promptly to Lessor, in the manner and condition required by, and otherwise in accordance with the provisions of, this Lease as if the Lease Term ended on such date (provided, however, that in no event shall Lessee be required to perform any of its obligations under Section 18.1 prior to the periods and dates set forth in Section 18.1), and Lessor shall not be liable for the reimbursement of Lessee for any costs and expenses incurred by Lessee in connection therewith or (ii) enter upon the Facility Site and take immediate possession of any or all of the Leased Property, and remove all or any part of the Leased Property by summary proceedings or otherwise, all without liability to Lessee for or by reason of such entry or taking of possession, whether for restoration of damage to property caused by such taking or otherwise.

(c) **Sale.** Lessor may sell in any commercially reasonable manner all or any portion of the Leased Property, the Contract and Permit Rights (other than the SDG&E Offsets and the Additional Offsets, and other rights as set forth in the Contract and Permit Rights Assignment, to the extent that such rights are provided therein to be retained by Lessee under the circumstances specified in such agreement) and, subject to the consent and other rights of SDG&E, the Related Agreements Rights, at public or private sale, as Lessor may determine, free and clear of any rights of Lessee therein and without any duty to account to Lessee with respect to such sale or any proceeds with respect thereto (except to the extent required by paragraph (e) below if Lessor shall elect to exercise its rights thereunder), in which event Lessee's obligation to pay Basic Rent hereunder with respect to the interest sold for periods commencing after the date of such sale shall be terminated (except to the extent that Basic Rent is to be included in computations under paragraph (e) or (f) below if Lessor shall elect to exercise its rights thereunder).

(d) **Releasing.** Lessor may take possession and control of the Leased Property and hold or, subject to Section 18.1(c), lease to others all or a portion of the Facility, the Facility Site, the Contract and Permit Rights (other than the SDG&E Offsets and the Additional Offsets, and other rights as set forth in the Contract and Permit Rights Assignment, to the extent that such rights are provided therein to be retained by Lessee under the circumstances specified in such agreement) and, subject to the consent and other rights of SDG&E, the Related Agreements Rights, in any commercially reasonable manner, free and clear of any rights of Lessee and, to the extent permitted by Applicable Law, without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect to such action or inaction, except that Lessee's obligation to pay Basic Rent for periods commencing after Lessee shall have been deprived of use of all or a portion of the Leased Property pursuant to this paragraph (d) shall be reduced by the net proceeds, if any, received by Lessor from leasing all or a portion of the Leased Property, the Contract and Permit Rights (other than the SDG&E Offsets and the Additional Offsets, and other rights as set forth in the Contract and Permit Rights Assignment, to the extent that such rights are provided therein to be retained by Lessee under the circumstances specified in such agreement)

and, subject to the consent and other rights of SDG&E, the Related Agreements Rights, to any Person other than Lessee for the same periods or any portion thereof.

(e) **Liquidated Damages.** Lessor may demand, by written notice to Lessee specifying a payment date which shall be the Stipulated Loss Value Payment Date following the date which is at least ten (10) Business Days after the date of such notice, that Lessee pay to Lessor, and Lessee shall pay to Lessor on the Stipulated Loss Value Payment Date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent due after such Stipulated Loss Value Payment Date specified in such notice), any unpaid Rent accrued to but not including such Stipulated Loss Value Payment Date specified in such notice, plus (x) during the Bond Financing Period, an amount equal to Stipulated Loss Value as of such Stipulated Loss Value Payment Date, or (y) thereafter, whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice, in each case together with interest on such amount at the Default Rate from and including such Stipulated Loss Value Payment Date to but excluding the date of receipt of payment:

(i) an amount equal to the excess, if any, of aggregate Stipulated Loss Value for the Leased Property, computed as of such Stipulated Loss Value Payment Date specified in such notice, over the Fair Market Rental Value of the Leased Property during the remaining Lease Term, after discounting such Fair Market Rental Value quarterly to present value as of such Stipulated Loss Value Payment Date specified in such notice at a rate equal to the Discount Rate per annum; or

(ii) an amount equal to the excess, if any, of such aggregate Stipulated Loss Value over the Fair Market Sale Value of the Leased Property as of such Stipulated Loss Value Payment Date specified in such notice;

provided that if Lessor exercises the option specified in this Section 13.1(e) during the Bond Financing Period as a consequence of a Lease Event of Default described in Section 12.1(a), 12.1(b) or 12.1(c) (relating to payment defaults, covenant defaults and the incorrectness of representations and warranties), and Lessee fully performs its obligations set forth in this Section 13.1(e), then Lessor shall not be entitled to exercise the remedies set forth in Section 13.1(a), (b), (c), (d) or (f) (or any other comparable remedies available under law) with respect to such Lease Event of Default, and the Lease shall be reinstated and continue without regard to such Lease Event of Default, subject to the reduction in Basic Rent set forth in Section 3.9;

(f) **Liquidated Damages After Sale.** If Lessor shall have sold all of the Leased Property, as a whole or by a series of sales of portions thereof pursuant to paragraph (c) above, Lessor, in lieu of exercising its rights under paragraph (e) above with respect to the Leased Property, may, if it shall so elect, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty (in lieu of Basic Rent due for periods commencing after the next Stipulated Loss Value Payment Date following the date of such sale), any unpaid Rent accrued to but not including such Stipulated Loss Value Payment Date, plus the amount of any excess of the aggregate Stipulated Loss Value for the Leased Property, computed as of such Stipulated Loss Value Payment Date,

over the net proceeds of such sale, together with interest at the Default Rate on the amount of such Rent and such deficiency from the date of such sale until the date of actual payment;

(g) **Lease Guaranty.** Lessor may exercise any of its rights under the Lease Guaranty; or

(h) **Other Remedies.** Lessor may exercise any other right or remedy that may be available to it under Applicable Law or in equity or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof.

13.2 **No Release.** No rescission or termination of this Lease, in whole or in part, or repossession of the Facility or exercise of any remedy under Section 13.1 shall, except as specifically provided therein, relieve Lessee of any of its liabilities and obligations hereunder or relieve Guarantor of any of its liabilities or obligations under the Lease Guaranty. In addition, Lessee shall be liable, except as otherwise provided above, for any and all accrued and unpaid Rent due hereunder before, after or during the exercise of any of the foregoing remedies, including all reasonable legal fees and other reasonable costs and expenses incurred by Lessor by reason of the occurrence of any Lease Event of Default or the exercise of Lessor's remedies with respect thereto, including all such costs and expenses in placing the Leased Property in the condition required by Article 8.

13.3 **Remedies Cumulative.** To the extent permitted by Applicable Law and except as otherwise provided herein, no remedy under Section 13.1 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy provided under Section 13.1 or otherwise available to Lessor at law or in equity. Notwithstanding the foregoing or any other provision herein or under Applicable Law, Lessee shall not be liable for any special, incidental or consequential damages. No express or implied waiver by Lessor of any Lease Default or Lease Event of Default hereunder shall in any way be, or be construed to be, a waiver of any future or subsequent Lease Default or Lease Event of Default. The failure or delay of Lessor in exercising any rights granted it hereunder upon any occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies and any single or partial exercise of any particular right by Lessor shall not exhaust the same or constitute a waiver of any other right provided herein. To the extent permitted by Applicable Law, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may enable it to cancel, quit or surrender this Lease, except as otherwise provided herein, or require Lessor to sell, lease or otherwise use the Leased Property in mitigation of Lessor's damages as set forth in Section 13.1 or which may otherwise limit or modify any of Lessor's rights and remedies provided in such Section.

13.4 **Mitigation of Costs and Damages.** Lessor covenants and agrees that, notwithstanding any provision to the contrary set forth herein or in any other agreement, Lessor shall take all actions reasonably necessary to mitigate any costs or damages arising out of any default or asserted default by Lessee under this Lease, and shall offset against amounts payable by, or other obligations or liabilities of, Lessee hereunder or otherwise credit or pay to Duke Energy South Bay, LLC any receipt by Lessor of any proceeds or other benefits relating to, arising out of or in connection with such efforts by Lessor to mitigate, including (a) any proceeds

arising out of the lease or sale of the Leased Property to any Person (other than Duke Energy South Bay, LLC) or (b) any rate recovery or other benefits obtained or otherwise enjoyed by Lessor, any owner or operator of the Facility or any lessee (other than Duke Energy South Bay, LLC) attributable to any decommissioning obligation relating to the Leased Property or the assumption thereof by any Person; provided, that during the Bond Financing Period, the obligations of Lessor under this Section 13.4 shall not adversely affect the ability of Lessor to satisfy any of its obligations, or decrease the likelihood that any of such obligations would be satisfied, under the Loan Agreement or any other Bond Financing Agreement.

**ARTICLE 14
REPRESENTATIONS AND WARRANTIES
OF LESSEE**

Lessee hereby represents and warrants to Lessor, as of the Lease Commencement Date, as follows:

14.1 **Organization and Corporate Power.** Lessee (a) is a limited liability company duly formed and validly existing under the laws of, and is authorized to exercise its powers, rights and privileges and is in good standing in, the State of Delaware, (b) is duly qualified or licensed and in good standing in each other jurisdiction where such qualification or licensing is required, except for such jurisdictions where the failure to be so qualified or licensed will not materially adversely affect Lessee or its interests or activities with respect to the Leased Property or prevent the enforcement of contracts entered into by it with respect to the Leased Property, and (c) has all requisite power and authority to carry on its business as presently conducted and to own or lease and operate its properties and assets now owned or leased and operated by it and to perform the transactions on its part contemplated by the Transaction Documents.

14.2 **Authority and Enforceability.** The execution, delivery and performance of this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements and each of the other agreements contemplated hereby and thereby to which it is a party, and the consummation of the transactions contemplated hereby and thereby have been duly and effectively authorized by the board of directors of Lessee; no other act or proceeding on the part of Lessee, its directors or shareholders is necessary to authorize this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements and each of the other agreements contemplated hereby and thereby to which it is a party or the transactions contemplated hereby and thereby. This Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements and each of the other agreements contemplated hereby and thereby to which it is a party have each been duly executed and delivered by Lessee, and this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements and each of the other agreements contemplated hereby and thereby to which it is a party each constitutes a valid and binding obligation of Lessee, enforceable against Lessee, in accordance with its terms, except as it may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of

equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

14.3 **No Breach or Conflict.** Subject to the provisions of Sections 14.4(a) and 14.4(b) below regarding private party and governmental consents, and except for compliance with the requirements of HSR Act and any regulatory or licensing laws applicable to the businesses and assets represented by the Leased Property, the execution, delivery and performance by Lessee of this Lease, the Assignment of Related Agreements and the Contract and Permit Rights Assignment do not: (a) conflict with or result in a breach of any of the provisions of the Certificate of Formation, operating agreement or similar charter documents of Lessee; (b) contravene any Applicable Law or Governmental Rule or cause the suspension or revocation of any Permit presently in effect, which affects or binds Lessee or any of its material properties; or (c) conflict with or result in a breach of or default (with or without notice or lapse of time or both) under any material indenture, agreement or instrument to which Lessee is a party or by which it or any of its properties may be affected or bound. No Lease Default or Lease Event of Default has occurred and is continuing.

14.4 **Approvals.**

(a) The execution, delivery and performance by Lessee of this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements and each of the other agreements contemplated hereby and thereby to which it is a party do not require the authorization, consent or approval of any Person which is not a Governmental Authority, which authorizations, consents or approvals have not been obtained, except for approvals related to the assignment of the Assigned Contracts (as such term is defined in the Asset Sale Agreement).

(b) The execution, delivery and performance by Lessee of this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements and each of the other agreements contemplated hereby and thereby to which it is a party do not require the authorization, consent, approval, certification, license or other Governmental Action or order of, or any filing with, any court or Governmental Authority, except for permit and license transfers required under the Asset Sale Agreement, compliance with the HSR Act and approvals by the CPUC and the FERC necessary to consummate the transactions contemplated hereunder and to permit Lessee to lease the Leased Property from Lessor and to generate electricity therefrom for sale, and except as have otherwise been obtained.

14.5 **Litigation.** There are no actions, suits, claims or proceedings before any Governmental Authority pending, or to the best of Lessee's Actual Knowledge, threatened against Lessee (a) affecting the existence of Lessee or (b) which are likely to impair the validity or enforceability of, the consummation of the transactions contemplated by, or the ability of Lessee to perform its obligations under, this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements and each of the other agreements contemplated hereby and thereby to which it is a party, and Lessee is not aware of facts likely to give rise to such litigation or proceedings.

14.6 Compliance with Applicable Law, Etc. To Lessee's Actual Knowledge, Lessee is in compliance with all Applicable Laws in respect of the conduct of its business and its interests in the Leased Property, except such noncompliances as would not, in the aggregate, have a Material Adverse Effect.

**ARTICLE 15
REPRESENTATIONS AND WARRANTIES
OF LESSOR**

Lessor hereby represents and warrants to Lessee, as of the Lease Commencement Date, as follows.

15.1 Organization and Corporate Power. Lessor is a public entity duly organized and existing as a port district pursuant to Appendix 1 of the Harbor and Navigation Code, and is authorized to exercise its corporate powers, rights and privileges and is in good standing in, the State of California and has full corporate power to carry on its business as presently conducted and, subject to CEQA and State Lands Commission approval, to own or lease and operate its properties and assets now owned or leased and operated by it and to perform the transactions on its part contemplated by this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements and all other agreements contemplated hereby.

15.2 Authority and Enforceability. The execution, delivery and performance of this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements and all other agreements contemplated hereby and thereby and the consummation of the transactions contemplated hereby and thereby have been duly and effectively authorized by the board of commissioners of Lessor; no other corporate act or proceeding on the part of Lessor or its board of commissioners is necessary to authorize this Lease except as required by CEQA and the State Lands Commission, any such other agreement or the transactions contemplated hereby and thereby. This Lease has been, and each of the other agreements contemplated hereby will, as of the Lease Commencement Date, have been, duly executed and delivered by Lessor, and this Lease constitutes, and each such other agreement when executed and delivered will constitute, a valid and binding obligation of Lessor, enforceable against Lessor in accordance with its terms, except as it may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and that the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding may be brought.

15.3 No Breach or Conflict. Subject to the provisions of Sections 15.4(a) and 15.4(b) below regarding private party and governmental consents, and except for compliance with the requirements of the HSR Act, and any regulatory or licensing laws applicable to the businesses and assets represented by the Leased Property, the execution, delivery and performance by Lessor of this Lease and all other agreements contemplated hereby do not: (a) conflict with or result in a breach of any of the provisions of the charter documents of Lessor; (b) contravene any Applicable Law or cause the suspension or revocation of any Permit presently in effect, which affects or binds Lessor or any of its properties, except where such contravention, suspension or revocation

will not have a Material Adverse Effect on the Leased Property and will not affect the validity or enforceability of this Lease and the other agreements contemplated hereby or the validity of the transactions contemplated hereby and thereby; or (c) conflict with or result in a breach of or default (with or without notice or lapse of time or both) under any material agreement or instrument to which Lessor is a party or by which it or any of its properties may be affected or bound, the effect of which conflict, breach, or default, either individually or in the aggregate, would be a Material Adverse Effect on the Leased Property.

15.4 Approvals.

(a) The execution, delivery and performance by Lessor of this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements and the other agreements contemplated hereby and thereby do not require the authorization, consent or approval of any Person that is not a Governmental Authority (which authorizations, consents or approvals have not been obtained) of such a nature that the failure to obtain the same would have a Material Adverse Effect on the Leased Property substantially as they have heretofore operated.

(b) The execution, delivery and performance by Lessor of this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements and the other agreements contemplated hereby and thereby do not require the authorization, consent, approval, certification, license or other Governmental Action or order of, or any filing with, any court or Governmental Authority of such a nature that the failure to obtain the same would have a Material Adverse Effect on the Leased Property, except for compliance with the HSR Act and approvals by the CPUC, FERC and the State Lands Commission necessary to consummate the transactions contemplated hereunder and to permit Lessee to lease the Leased Property from Lessor and to generate electricity therefrom for sale, and except as have otherwise been obtained.

15.5 Litigation. There are no actions, suits, claims or proceedings pending, or to the best of Lessor's Actual Knowledge, threatened against Lessor which are likely to impair the consummation of the transactions contemplated by this Lease, and Lessor is not aware of facts likely to give rise to such litigation.

15.6 Title to Leased Property. As of the Lease Commencement Date, Lessor has (a) good and defensible title, or valid and effective leasehold rights in the case of leased property, to all tangible personal property included in the Leased Property to be leased to Lessee by Lessor, free and clear of all Liens, except for Permitted Liens; and (b) good and defensible title, or valid and effective leasehold rights in the case of leased property, to all real property included in the Leased Property to be leased to Lessee by Lessor, free and clear of all Liens, except as set forth in the Lessor Title Insurance Policy.

ARTICLE 16 GENERAL INDEMNITY

16.1 Indemnity. Lessee agrees to assume liability for, and to indemnify, defend, save and keep harmless each Indemnitee, as applicable, on an After-Tax Basis, from and against, any and all Claims that may be imposed on, incurred by or asserted against any such

Indemnitee, in any way relating to or arising out of (a) the Facility, the Facility Site, the Contract and Permit Rights, the Related Agreement Rights or any part thereof, (b) the execution, delivery, exercise of rights under, enforcement, performance and administration of this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements, or any of the transactions contemplated hereby or thereby, (c) any investigation, litigation or proceeding (including proceedings under any Bankruptcy Law) related to this Lease, the Assignment of Related Agreements or the Contract and Permit Rights Assignment, or any of the transactions contemplated hereby or thereby, (d) any pending or threatened investigation, litigation, proceeding or enforcement action, or any other action taken by any Person (including a Governmental Authority) with respect to any Legal Requirement or Permit or the actual or claimed violation of any Legal Requirement or Permit, (e) any assertion (including any resulting liability) that an action by Lessor requested by Lessee violates any Legal Requirement, (f) the lease, sublease, mortgaging, granting of a security interest in, preparation, installation, condition, transfer of title, rental, use, operation, storage, maintenance, modification, alteration, repair, assembly, sale, return, dismantling (solely to the extent expressly required pursuant to Sections 18.1 or 18.2 of this Lease), abandonment or other application or disposition of all or any part of the Leased Property or any interest therein, or (g) the operation, use or ownership by Lessee or any sublessee of any portion of the Leased Property. Nothing in this Section 16 shall be deemed to constitute a guaranty of any useful life or present or future residual value of the Leased Property or a guaranty that any amount of principal or interest on any Bond will be paid. The provisions of this Article 16 shall survive the termination of this Lease, and, except as set forth herein, shall be in addition to any other rights and remedies of any Indemnitee.

16.2 Exceptions to Indemnification Obligation. Notwithstanding Section 16.1, Lessee shall not be required to indemnify any Indemnitee for (1) any Claim in respect of any of the Leased Property to the extent attributable to acts or events which occur after Lessee has satisfied its obligations under Section 18.1 (except to the extent attributable to acts or events or liabilities or damages occurring or accruing prior thereto) and the satisfaction by Lessee of all of its obligations hereunder, (2) any Claim to the extent resulting from the willful misconduct or gross negligence of such Indemnitee, (3) any Claim to the extent resulting from a transfer by such Indemnitee of all or part of its interest in any Leased Property other than while a Lease Event of Default or Event of Loss shall have occurred and be continuing, (4) any Claim to the extent resulting from a breach or violation by such Indemnitee of any of its representations, warranties, covenants or agreements in this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements or any of the documents delivered in connection with the transactions contemplated hereunder or thereunder, or from a violation of law by such Indemnitee, in each case except (a) to the extent such breach, misrepresentation or violation is the result of the failure of Lessee to comply with its obligations under this Lease, the Assignment of Related Agreements or the Contract and Permit Rights Assignment or a breach of any of its representations and warranties hereunder or thereunder and (b) with respect to the matters described in Section 16.1(e), (5) any Claims in respect of Taxes, other than as provided in Section 4.2 hereof or as necessary to make payments on an After-Tax Basis, (6) any Claim to the extent resulting from any amendment to this Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements or any of the documents delivered in connection with the transactions contemplated hereunder or thereunder which, so long as no Lease Event of Default

existed at the time of such amendment, is not expressly consented to by Lessee (to the extent such consent is required pursuant to the terms of the applicable documents) or made at the request of Lessee, or (7) any Claim to the extent arising as a result of any Bond Financing Default which is not caused by a Lease Event of Default.

16.3 Procedures for Claims. If Lessee shall obtain knowledge of any Claim indemnified against under this Article 16, Lessee shall give prompt notice thereof to the appropriate Indemnitee or Indemnitees, and if any Indemnitee shall obtain any such knowledge, such Indemnitee shall give prompt notice thereof to Lessee, provided that failure to so notify Lessee shall not release Lessee from any of its obligations to indemnify hereunder except to the extent Lessee suffers actual prejudice or harm as a result of such failure (in which case the release shall only be to the extent of such actual prejudice or harm). With respect to any amount that Lessee is requested by an Indemnitee to pay by reason of this Article 16, such Indemnitee shall, at Lessee's expense, if so requested by Lessee and prior to any payment, submit such additional information to Lessee as Lessee may reasonably request to substantiate properly the requested payment. Any amount payable to any Indemnitee pursuant to this Article 16 shall be paid within thirty (30) days after receipt of a written demand therefor from such Indemnitee accompanied by a written statement describing in reasonable detail the Claims which are the subject of and basis for such indemnity and the computation of the amount so payable by such Indemnitee. Subject to the rights of insurers under policies of insurance maintained pursuant to Section 10.1 of this Lease, Lessee shall have the right (subject to the rights of an Indemnitee to assume and control any Claim to the extent expressly provided herein), at its sole cost and expense, to investigate, and the right in its sole discretion, upon request accompanied by an acknowledgment of its liability to indemnify for the relevant Claim to defend or compromise any Claim for which indemnification is provided under this Article 16, so long as such Claim may be severed from any other claims being pursued by an Indemnitee, and such Indemnitee shall cooperate at Lessee's expense, with all reasonable requests of Lessee in connection therewith provided that Lessee shall not admit liability on such Indemnitee's part without the consent of such Indemnitee. Lessee shall provide an Indemnitee with such information not within the control of such Indemnitee, as is in Lessee's control or is reasonably available to Lessee, which such Indemnitee may reasonably request and shall otherwise cooperate with such Indemnitee so as to enable such Indemnitee to fulfill its obligations under this paragraph. Where Lessee, or the insurers under a policy of insurance maintained by Lessee, undertake the defense of an Indemnitee with respect to a Claim, no additional legal fees or expenses of such Indemnitee in connection with the defense of such Claim shall be indemnified hereunder unless such fees or expenses were incurred at the request of Lessee or such insurers; provided, however, that Lessee shall not be entitled to assume and control the defense of any such Claim if a Lease Event of Default shall have occurred and be continuing or if, in the reasonable opinion of such Indemnitee, such Claim involves a reasonably possible imposition of any criminal liability or penalty on such Indemnitee, or a conflict of interest between such Indemnitee and Lessee or another Indemnitee, and such Indemnitee informs Lessee that such Indemnitee desires to be represented by separate counsel, in which case the reasonable fees and expenses of such separate counsel shall be borne by Lessee. Subject to the requirements of any policy of insurance, an Indemnitee may participate at its own expense in any judicial proceeding controlled by Lessee pursuant to the preceding provisions; provided, however, that such party's participation does not, in the reasonable opinion of the independent counsel appointed by Lessee or its insurers to

conduct such proceedings, interfere with such control; and such participation shall not constitute a waiver of the right to receive the indemnification provided in this Article 16. Notwithstanding anything to the contrary contained herein, Lessee shall not under any circumstances be liable for the fees and expenses of more than one counsel of the Indemnitees, except in any case specified in the proviso to the second preceding sentence of this paragraph.

16.4 **Subrogation.** To the extent that a Claim indemnified by Lessee under this Article 16 is paid in full by Lessee and/or an insurer under a policy of insurance maintained by Lessee pursuant to Section 10.1 of this Lease, Lessee and/or such insurer, as the case may be, shall, to the extent permitted by Applicable Law, be subrogated to the rights and remedies of the Indemnitee on whose behalf such Claim was paid (other than rights of such Indemnitee under insurance policies maintained at its own expense) with respect to the transaction or event giving rise to such Claim; provided, however, that Lessee shall not be entitled to exercise any such right of subrogation at any time while a Lease Event of Default has occurred and is continuing.

16.5 **Refunds.** Should an Indemnitee receive any refund, reimbursement or other payment, in whole or in part, with respect to any Claim paid by Lessee hereunder, so long as no Lease Event of Default then exists, it shall promptly pay the amount so received (but not an amount in excess of the amount Lessee or any of its insurers has paid in respect of such Claim plus interest thereon to the extent that such amount reimbursed included such interest less any Taxes required to be paid (or the amount of any reduction in any refunds, tax credits or losses of such Indemnitee) with respect to such reimbursed amount) over to Lessee, net of Indemnitee's costs. If any such refund is subsequently reduced, reversed or required to be returned by such Indemnitee, Lessee shall indemnify such Indemnitee, on an After-Tax Basis, for the amount reduced, reversed or required to be returned, as applicable.

ARTICLE 17 NOTICES

All communications and notices provided for in this Lease shall be in writing and given in person or by courier or by means of facsimile or other wire transmission, or mailed by first class mail, addressed to the respective addresses set forth in Schedule G hereto, or in each case at such other address as the Person entitled thereto shall from time to time designate by notice in writing to Lessee and Lessor, and, until the Bond Payment Date, each of the parties hereto hereby agrees to furnish Bond Trustee and Issuer directly with a copy of all communications, notices, requests, demands, certificates, financial statements and other instruments furnished by such party hereunder. All such communications and notices given in such manner shall be effective on the date of receipt (or when proffered, if receipt is refused) of such communication or notice. A copy of any notice given by facsimile or other wire transmission shall be sent to the addressee by first class mail as soon as practicable after such transmission.

ARTICLE 18
PROPERTY OBLIGATIONS

18.1 End of Term Actions.

(a) **Obligation.** Except as provided below in this Section 18.1 or pursuant to Section 19.10, Lessee shall, at its sole cost and expense except as set forth in Section 18.3 below, within a reasonable time after (but in any event no later than the first anniversary of) the Basic Lease Term Expiration Date, diligently pursue and perform the actions set forth in the remainder of this Section 18.1(a) (collectively, the "End of Term Actions"). Lessee shall decommission, dismantle and remove the Facility, and return the Facility Site to Lessor or its designee, (i) subject to compliance with its obligations respecting decommissioning pursuant to the Facility Services Agreement, free and clear of all structures, improvements, fixtures and personal property, other than those certain structures, facilities and items of equipment to which SDG&E is to retain title as more fully set forth in each of the Facilities Services Agreement and the Easement and Covenant Agreement; provided that Lessee shall be responsible for all obligations of Owner under the Facilities Services Agreement and Easement and Covenant Agreement relating to the decommissioning of the Lease Property; and provided further that notwithstanding any provision to the contrary contained herein, Lessee shall not be required to remove, or to cause the removal of or otherwise be liable for the removal or non-removal of, any foundations or structures, or any piping, wiring, construction or other materials, located at a depth which is more than four (4) feet beneath Surface Level, and (ii) free and clear of all Liens of the type described in clauses (a), (h) and (i) of the definition of Permitted Liens.

(b) **Lessor Election Not to Cause End of Term Actions.**

(i) **General.** Notwithstanding Section 18.1(a), Lessee shall not be required to, and shall not, perform the End of Term Actions if Lessor has elected, by delivery of written notice to Lessee no later than sixty (60) days prior to the Basic Lease Term Expiration Date, not to require Lessee to take such actions. In such event, Lessee shall (so long as no Lease Event of Default has occurred and is continuing) have the option to both (A) purchase from Lessor on the Basic Lease Term Expiration Date for a purchase price (the "Facility Purchase Price") of One Dollar (\$1) all of Lessor's right, title and interest in, to and under the Facility (excluding, for the avoidance of doubt, (1) the Facility Site or any portion thereof and (2) that certain property referred to in Section 18.1(a) in which SDG&E is to retain title) (the "Purchase Option") and (B) renew the Lease with respect to the Facility Site for one or more successive periods of one-year each from and after the Basic Lease Term Expiration Date, which renewal options shall be exercisable one at a time (each, a "Renewal Option"). Except as set forth in Section 18.1(b)(iii) and (iv), Lessee must exercise either (X) both the Purchase Option and the Renewal Option for the initial renewal term (the Purchase Option and the Renewal Option for the initial renewal term, collectively, the "Purchase and Renewal Option") or (Y) neither option. Lessee shall notify Lessor of Lessee's election to exercise the Purchase and Renewal Option by delivery of written notice to Lessor no later than thirty (30) days prior to the Basic Lease Term Expiration Date.

(ii) **Exercise of Purchase and Renewal Option.** In the event Lessee exercises the Purchase and Renewal Option, then the following terms shall apply:

(A) **Transfer of Facility.** Upon the payment to Lessor of the Facility Purchase Price, Lessor shall assign, transfer and convey to Lessee (or any other Person to which Lessee has assigned its interest in this Lease pursuant to Article 11) on the Basic Lease Term Expiration Date all of Lessor's right, title and interest in, to and under the Facility as provided in Section 18.1(b)(i)(A), free and clear of all Lessor Liens. In addition, Lessor shall take such additional actions with respect to such transfer as Lessee may request in accordance with Section 6.6.

(B) **Lease of Facility Site.** The Lease Term with respect to the Facility Site shall be renewed for a period of one year from and after the Basic Lease Term Expiration Date. Thereafter, Lessee shall have the right to renew the Lease Term with respect to the Facility Site for additional successive one-year periods in accordance with the terms of this Section 18.1(b)(ii)(B). All terms and conditions of this Lease (including the obligation to perform the End of Term Actions on termination of the Lease Term, as extended) shall apply during each renewal term, with Basic Rent payable in accordance with Section 3.1(b)(ii). Lessor shall notify Lessee as to whether the End of Term Actions will be required at the end of a particular one (1) year renewal term, by providing written notice thereof no later than sixty (60) days prior to the expiration of each such one (1) year renewal term. If Lessor elects to require Lessee to perform the End of Term Actions at the end of a renewal term, Lessee shall have no further right to extend the Lease Term. In such case the Lease Term shall expire at the end of the then current Lease Term and upon such expiration Lessee shall perform the End of Term Actions. If Lessor elects not to cause Lessee to perform the End of Term Actions at the end of a renewal term, then Lessee shall notify Lessor of whether it elects to exercise its next Renewal Option no later than thirty (30) days prior to the expiration of the then current renewal term. If Lessee elects not to exercise a Renewal Option, then the terms of Section 18.1(b)(iii) (including Lessor's rescission right regarding its End of Term Actions notice) shall be applicable. The procedure for the renewal of the Lease Term as set forth in this Section 18.1(b)(ii)(B) shall be repeated for each one-year renewal term until the Lease Term expires (and is not renewed).

(iii) **Non-Exercise of Purchase and Renewal Option or Subsequent Renewal Option.** In the event Lessor has made its election to avoid performance of the End of Term Actions pursuant to Section 18.1(b)(i), but Lessee has not made its election to exercise the Purchase and Renewal Option (or in the case of a subsequent renewal term, Lessee has not elected to further extend the Lease Term), the Lease Term shall terminate on the Basic Lease Term Expiration Date (or at the end of the then current renewal term, as applicable), Lessee shall not be required to perform the End of Term Actions, and, if the Facility has previously been conveyed to Lessee, Lessee shall reconvey the Facility to Lessor at the expiration of the Lease Term. Notwithstanding the preceding sentence, Lessor may, upon written notice to Lessee delivered no later than fifteen (15) days prior to the Basic Lease Term Expiration Date (or the expiration of the then current renewal term, as applicable) (A) rescind its election to avoid performance of the End of Term Actions and (B) notify Lessee that it shall require Lessee to perform the End of Term Actions. In the event Lessor delivers the notice of rescission referred to in the preceding sentence, then the Lease Term shall end on the Basic Lease Term Expiration

Date (or at the end of the then current renewal term, as applicable), Lessee shall proceed to perform the End of Term Actions, and, if Lessee has not previously acquired the Facility, Lessee shall have the option, exercisable upon written notice delivered to Lessor no later than five (5) days prior to the Basic Lease Term Expiration Date, to exercise the Purchase Option.

(iv) **Failure to Agree on Basic Rent.** Notwithstanding any term to the contrary set forth in this Section 18.1(b), in the event that Lessee has exercised the Renewal Option with respect to any renewal term in accordance with this Section 18.1(b), but Lessor and Lessee are unable to agree upon the Basic Rent with respect to such renewal term in accordance with Section 3.1(b)(ii) on or prior to the day before the commencement date of such renewal term, then (1) such exercise of the Renewal Option by Lessee shall be deemed rescinded and the Lease Term shall expire, (2) any amounts (including the Facility Purchase Price) paid by or on behalf of Lessee in connection with Lessee's exercise of the Purchase Option and such Renewal Option shall be promptly repaid in full by Lessor to Lessee; (3) Lessee shall reconvey the Facility to Lessor; and (4) Lessee shall not be required to, and shall not, perform the End of Term Actions. Lessor may, however, upon written notice to Lessee no later than fifteen (15) days after the expiration of the Lease Term pursuant to clause (1) above, (i) rescind the last notice delivered by Lessor to Lessee, pursuant to this Section 18.1(b), not to perform the End of Term Actions and (ii) notify Lessee that it shall require Lessee to perform the End of Term Actions, in which event Lessee may exercise the Purchase Option in accordance with Section 18.1(b)(ii)(A), the Lease Term shall immediately terminate and Lessee shall commence the performance of the End of Term Actions.

(c) **Consequences of Default.** For the avoidance of doubt, if Lessor has terminated this Lease by reason of the occurrence of a Lease Event of Default pursuant to Article 13, (i) if such termination occurs before the Bond Payment Date, Lessee shall have no obligation to perform the End of Term Actions if Lessor has leased or otherwise engaged a third party to operate the Facility thereafter for a term of three and one-half (3 1/2) years or longer, and (ii) if such termination has occurred on or after the Bond Payment Date, or Lessor has not leased or otherwise engaged such a third party as described in clause (i), Lessee's obligation to perform the End of Term Actions shall not arise until such time as the Lease would otherwise have expired in accordance with Section 2.1 if not for such earlier termination by reason of such Lease Event of Default.

18.2 **North Tanks.** In addition to the obligations of Lessee set forth in Section 18.1, Lessee shall, within two (2) years of the Lease Commencement Date, decommission, dismantle and remove the North Tanks; provided, however, that, notwithstanding the foregoing, Lessee shall not be required to remove, or to cause the removal of or otherwise be liable for the removal or non-removal of, any foundations or structures, or any piping, wiring, construction or other materials located at a depth which is more than four (4) feet beneath Surface Level. If Lessee does not remove the North Tanks within the two (2) year period set forth above because the ISO does not permit Lessor or Lessee to remove the North Tanks within such two (2) year period, then Lessee shall remove the North Tanks within a reasonable time after the ISO approves the removal of the North Tanks. In this case, Lessee shall have no obligation whatsoever to remediate the area under the North Tanks other than as stated in Section 3.2(ii) of the Environmental Remediation Agreement. If, however, the ISO provides its permission to remove

the North Tanks by a date that provides Lessee with a reasonably sufficient period to remove the North Tanks within the first two (2) years of the Lease Term and Lessee does not complete such removal of the North Tanks within the first two (2) years of the Lease Term Lessee shall be obligated to remediate the area under the North Tanks. Costs incurred by Lessee in connection with the decommissioning and dismantling, and, if applicable, remediation, of the North Tanks may be drawn from the Property Escrow Account. Lessee agrees that during the Lease Term and before it removes the North Tanks, Lessee will (a) use commercially reasonable efforts not to operate the North Tanks except for maintenance and inspections and as required by any Governmental Authority and (b) properly maintain and inspect the North Tanks pursuant to applicable Environmental Laws.

18.3 Property Escrow Account. Lessor and Lessee acknowledge that they have established an escrow account (the "Property Escrow Account") pursuant to the Property Escrow Agreement which, as more fully described therein, provides that (i) Lessor has caused to be funded into the Property Escrow Account the sum of \$15 million, (ii) such amount, and all earnings thereon, is to be retained in the Property Escrow Account until such time as Lessee is obligated to perform any of its decommissioning and remediation obligations under this Article 18 or under the Environmental Remediation Agreement, (iii) such funds in the Property Escrow Account (including the earnings thereof) shall be used to fund the performance of such obligations before Lessee is required to use its own funds in connection therewith, and (iv) if Lessee is no longer required to perform the End of Term Actions by reason of (A) clause (i) of Section 18.1(c) (relating to a default Lease termination followed by the arrangement of a new operator), (B) Section 18.1(b) or (C) as a result of a termination of the Lease prior to the expiration of the Lease Term pursuant to Section 19.10, then, subject to the other terms of the Property Escrow Agreement, all amounts remaining in the Property Escrow Account at that time shall thereupon be released to Lessor.

18.4 Cooperation Covenant. Notwithstanding any provision to the contrary contained in this Lease, Lessor shall fully cooperate with Lessee, shall take such actions, and shall provide such further assurances as Lessee shall reasonably request, all as reasonably necessary or appropriate, and at the expense of Lessee, in order to allow Lessee to fulfill its obligations contained in this Article 18, including (i) allowing Lessee full and complete access to the Facility Site, and (ii) cooperating with Lessee with respect to the relocation and removal of any portion of the Facility.

18.5 Rights to Removed Property. Notwithstanding any provision to the contrary contained in this Lease, but without limiting the terms of Section 18.1(b) with respect to the Purchase and Renewal Option, Lessee shall own all right, title and interest in any property removed from the Facility Site or the South Bay Land pursuant to this Article 18 and any proceeds (including salvage and similar proceeds) arising therefrom, free and clear of all Lessor Liens and Financing Party Liens.

18.6 Survival of Obligations; Etc. The obligations of Lessee under this Article 18 shall survive the termination of this Lease. Nothing in this Article 18 or in any other provision of any document delivered in connection with the transactions contemplated under this

Lease shall require any dismantling of the Facility or any portion thereof, except to the extent expressly provided in this Article 18.

ARTICLE 19 MISCELLANEOUS

19.1 **Amendments in Writing.** Subject to the provisions of the Bond Financing Agreements, neither this Lease nor any of the terms hereof may be amended, supplemented, waived or modified orally, but only by an instrument in writing signed by Lessee and Lessor.

19.2 **Survival of Agreements.** The representations, warranties, covenants and indemnities of the parties hereto provided for in this Lease, the Assignment of Related Agreements or the Contract and Permit Rights Assignment, and such parties' obligations hereunder or thereunder, shall survive the execution and delivery of this Lease, any disposition of any interest of Lessor in the Leased Property and the expiration or other termination of this Lease, and shall be and continue in effect notwithstanding any investigation made by any of such parties and the fact that compliance with any of the other terms, provisions or conditions of this Lease, the Assignment of Related Agreements or the Contract and Permit Rights Assignment shall have been waived.

19.3 **Severability of Provisions.** Any provision of this Lease which may be determined by competent authority to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability (including with respect to the transferability of any property) without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. If any provision of this Lease is prohibited or unenforceable under Applicable Law, the parties hereto shall take such commercially reasonable actions as are necessary or appropriate to effect the intent of such provision, provided that no party shall be required to undertake any such action which involves a material cost to such party or any material increase in risk to such party without its express written agreement. To the extent permitted by Applicable Law Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect.

19.4 **Governing Law.** This Lease shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed entirely within such State.

19.5 **Headings.** The division of this Lease into sections, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Lease.

19.6 **Counterpart Execution.** This Lease may be executed in any number of counterparts and by each of the parties hereto on separate counterparts, all such counterparts together constituting but one and the same instrument, with the counterpart delivered to Bond Trustee pursuant to the Bond Indenture and containing the receipt therefor executed by Bond

Trustee on the last page hereof being deemed the "Original" and all other counterparts being deemed duplicates. To the extent that this Lease constitutes chattel paper, as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction, no security interest in this Lease may be created through the transfer or possession of any counterpart other than the "Original."

19.7 **Successors and Assigns.** This Lease, including all agreements, covenants, representations and warranties, shall be binding upon and inure to the benefit of Lessor and its successors and permitted assigns and Lessee and its successors and permitted assigns, in each case, hereunder and under the Contract and Permit Rights Assignment and the Assignment of Related Agreements.

19.8 **Characterization Of Transaction.** Notwithstanding any other provision in this Lease, the Lessor and Lessee agree that (a) Lessee shall be treated as the owner of the Facility for federal, state and local income tax purposes, (b) the Basic Rent obligation of the Lessee hereunder shall be treated as indebtedness of the Lessee to the Lessor for federal, state and local income tax purposes, in an initial principal amount equal to One Hundred Fifteen Million Dollars (\$115,000,000) and bearing interest at a per annum rate of Six and Sixty-Three One-Hundredths percent (6.63%), (c) the Lessor shall be treated as the owner and lessor of the Facility Site for federal, state and local income tax purposes, and (d) neither the Lessor nor the Lessee shall take a reporting position for any U.S. federal, state or local income tax purpose that is inconsistent with such characterization and treatment.

19.9 **Time of the Essence.** Each of the parties hereto acknowledge and agree that time is of the essence in the performance of their respective obligations hereunder.

19.10 **Lessor Termination.** Notwithstanding any contrary provision of this Lease, unless Lessee has construction financing, has begun construction and is diligently pursuing construction of the RGP on the date that is the later of (x) the Bond Payment Date or (y) the date of expiration of the Primary Term, if the must-run obligations imposed by ISO in respect of the Facility have not been terminated, at any time thereafter, Lessor shall have the right, upon prior written notice to Lessee, to terminate the Lease prior to the expiration of the Lease Term; provided that any such termination shall not become effective until the Effective Termination Date (as hereinafter defined).

(a) The date of receipt by Lessee of any such termination notice shall be referred to herein as the "Termination Notice Date." If Lessor sends Lessee a termination notice pursuant to this Section 19.10, then the effective date of the termination of the Lease Term (the "Effective Termination Date") shall be that date which is the following number of days after the Termination Notice Date: (i) two hundred seventy (270) days, plus (ii) that number of days equal to the quotient obtained by dividing (A) the amount of third party out-of-pocket development costs incurred by Lessee in connection with the development of the replacement generation plant (as further described in Article 7 of the Cooperation Agreement) (the "RGP Costs") by (B) the average daily Basic Rent rate in effect under this Lease during the Bond Financing Period (the "RGP Costs Period"). Within sixty (60) days following the Termination

Notice Date, Lessee shall provide Lessor with reasonably detailed evidence supporting Lessee's RGP Costs, including Lessee's reasonable internal costs for personnel and materials.

(b) After delivery of a termination notice pursuant to this Section 19.10, the Basic Rent for the period between the Termination Notice Date and the Effective Termination Date shall be as follows: (i) for the first one hundred eighty (180) days following the Termination Notice Date, the Basic Rent shall remain at the same rental rate (prorated for any partial payment periods) as would otherwise be in effect for such period in accordance with the terms of Section 3.1(b)(i) of this Lease, and (ii) for the remainder of the period prior to the Effective Termination Date, which period shall include the Additional Lease Period and the RGP Costs Period, the Basic Rent shall be \$0. The termination of the Lease under this Section 19.10 shall not be subject to extension pursuant to any other Section of this Lease, including Section 18.1(b). If Lessee receives a notice of termination pursuant to the terms of this Section 19.10, Lessee shall not have any obligation to comply with the provisions of the End of Term Actions, and further, shall not have any obligation to perform Remediation Measures to address Existing Soils Contamination as defined in Section 1.1(f) of the Asset Sale Agreement at, on or under such portions of the South Bay Power Plant as defined in Section 1.1(q) of the Environmental Remediation Agreement which have not been decommissioned and dismantled by the Effective Termination Date. All other rights and obligations of the Lessee under the Environmental Remediation Agreement shall remain in effect, except that Lessee's environmental obligations set out in Article 3 of the Environmental Remediation Agreement will terminate and be of no effect after the second anniversary of the Effective Termination Date rather than as set out in Section 3.7 of the Environmental Remediation Agreement, except as to New Soils Contamination which has been proven to have been present as of the Effective Termination Date on or before the second anniversary of the Effective Termination Date.


[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have each caused this Lease to be duly executed as of the date first above written.

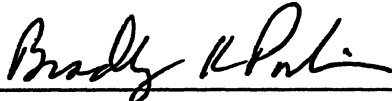
APPROVED AS TO FORM
BY PORT ATTORNEY:

San Diego Unified Port District, a public corporation organized and existing as a port district pursuant to Appendix 1 of the Harbor and Navigation Code of the State of California

By: 
Name: David R. Chapman
Its: Port Attorney

By: 
Name: Wayne Lindquist
Its: Deputy Executive Director

Duke Energy South Bay, LLC,
a Delaware limited liability company

By: 
Name: Bradley K. Porlier
Its: Vice President

DESCRIPTION OF FACILITY

The Facility, commonly known as the South Bay Power Plant, is located adjacent to San Diego Bay at 990 Bay Boulevard, Chula Vista, California 91911.

The Facility consists of four fossil-fuel steam-electric generating units and one combustion turbine. Currently, the four steam units at the Facility provide 693 MW of total generating capacity. The on-site combustion turbine at the Facility has a capacity of 13 MW, and is used for peaking purposes and to facilitate start-up of the other units at the Facility in case of system blackout.

Without limiting the foregoing, the "Facility" for purposes of this Agreement shall also include all other fixed or mobile machinery and equipment as well as similar items of tangible personal property used or useful in connection with the generation of electrical power at the Facility and located on the South Bay Land as of the Lease Commencement Date, which were conveyed to Lessor by SDG&E pursuant to the Asset Sale Agreement, including without limitation (i) vehicle refueling tanks, pumps, pipelines, fittings, tools, furniture and revenue metering equipment that are used in and necessary for the conduct of the operations of the Facility as of the Lease Commencement Date, and which are located on the South Bay Land as of the Lease Commencement Date, (ii) all property (personal or fixtures) underlying, comprising or constituting a part of any of the equipment, including transmission equipment and switchyard facilities, located on the South Bay Land as of the Lease Commencement Date, and used primarily in connection with the generation, as opposed to the transmission, of electrical power, (iii) fuel oil pipelines and related equipment used or useful in transporting fuel oil to the Facility for purposes of generation of electrical power, and (iv) all ISO meters and all equipment, water lines, mains, pipes, pumps, septic tanks and other facilities related to the firewater system, the service water system or the sanitary storage system located on the South Bay Land as of the Commencement Date. Such property described above constituting the "Facility" shall include, without limitation:

Fossil Production Plant	\$101,461,772
Furniture and Fixtures	\$288,252
Vehicles	\$167,481
Easements	\$33,177
Intangibles: Contracts and Licenses	\$1,051,164
Materials and Supplies	\$3,634,086
Fuel Oil Inventory as of Effective Date	\$2,881,106
Prepayments of Permits and Fees	\$291,712

Air Pollution Credits (SO2 Allowances)

\$191,250

\$110,000,000

The assets identified above as Materials and Supplies, Fuel Oil Inventory and Vehicles are consumables and/or are assets which the Lessee has obtained title to for state law purposes.

EXHIBIT B

DESCRIPTION OF SOUTH BAY LAND

The land referred to herein as the South Bay Land is situated in the State of California, County of San Diego and is described as follows:

Parcel No. 1

PARCELS 1 AND 2 OF PARCEL MAP NO. 18185 IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY DECEMBER 30, 1998 AS FILE NO. 1998-858614 OF OFFICIAL RECORDS.

Parcel No. 2 [Sixteen Acres]

PARCEL A:

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING PORTIONS OF QUARTER SECTIONS 170, 171 AND 172, IN RANCHO DE LA NACION, ACCORDING TO MAP THEREOF NO. 166, FILED IN THE OFFICE OF THE RECORDER OF SAID COUNTY, SAID PARCELS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL NO. 1:

ALL THAT PORTION OF THE WESTERLY 150.00 FEET OF THE EASTERLY 170.00 FEET OF SAID QUARTER SECTION 170 WHICH LIES NORTHERLY OF THAT CERTAIN COURSE DESCRIBED IN DEED DATED JUNE 12, 1956, FROM SANTA FE LAND IMPROVEMENT COMPANY TO SAN DIEGO GAS AND ELECTRIC COMPANY, RECORDED IN BOOK 6156, PAGE 587 OF OFFICIAL RECORDS OF SAN DIEGO COUNTY, AS BEING "NORTH 70°12'41" EAST 150.00 FEET".

PARCEL NO. 2:

THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF CHULA VISTA, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING PORTIONS OF QUARTER SECTIONS 171 AND 172 IN RANCHO DE LA NACION, ACCORDING TO MAP THEREOF NO. 166, FILED IN THE OFFICE OF THE RECORDER OF SAID COUNTY, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

THE EASTERLY 20.00 FEET OF THE NORTHERLY 170.00 FEET OF THE WESTERLY 150.00 FEET OF THE EASTERLY 170.00 FEET OF SAID QUARTER SECTION 171.

ALSO, THAT PORTION OF THE WESTERLY 150.00 FEET OF THE EASTERLY 170.00 FEET OF SAID QUARTER SECTION 171 LYING SOUTHERLY OF THE NORTHERLY 170.00 FEET OF SAID QUARTER SECTION 171.

ALSO, THE WESTERLY 30.00 FEET OF THE EASTERLY 70.00 FEET OF THE SOUTHERLY 150.00 FEET OF THE NORTHERLY 170.00 FEET OF SAID QUARTER SECTION 171.

ALSO, INCLUDING ANY INTEREST THE SANTA FE LAND IMPROVEMENT COMPANY, A CORPORATION, MAY HAVE IN AND TO A TRACT OF LAND 2.00 FEET BY 75.00 FEET LYING WITHIN THE NORTHERLY 20.00 FEET OF THE WESTERLY 150.00 FEET OF THE EASTERLY 170.00 FEET OF SAID QUARTER SECTION 171, ON WHICH THE BUILDING OF R. TYCE AND H. TYCE STOOD ON DECEMBER 8, 1927, SAID TRACT BEING AN EXCEPTION CONTAINED IN DEED RECORDED IN BOOK 1433, PAGE 76 OF DEED,

Parcel No. 2 (continued)

RECORDS OF SAN DIEGO COUNTY.

ALSO, THE WESTERLY 150.00 FEET OF THE EASTERLY 170.00 FEET OF SAID QUARTER SECTION 172 LYING SOUTHERLY OF THE NORTHERLY LINE OF "F" STREET, 80.00 WIDE BEING THE NORTHERLY LINE OF THE SOUTHERLY 40.00 FEET OF THE NORTHEAST QUARTER OF SAID QUARTER SECTION 172.

EXCEPTING THEREFROM THE WESTERLY 90.00 FEET OF THE EASTERLY 170.00 FEET OF THE SOUTHERLY 332.00 FEET OF SAID QUARTER SECTION 172.

Parcel No. 3 [Pipeline Easement]

A nonexclusive easement and right of way to erect, construct, reconstruct, operate, repair, replace, change the size of, maintain, demolish, remove, inspect, patrol and use an underground line of pipe for the transmission and distribution of fuel oil, natural gas or other fuel, together with all the fixtures, equipment and appurtenances necessary or convenient for the operation and maintenance thereof, in, upon, under and along the following lands (the "Pipeline Easement").

That certain strip of land 10.00 feet in width, the center line of said strip is described as follows:

Commencing at the East Quarter corner of 1/4 Section 172 of Rancho De La Nacion, according to Map thereof No. 166, filed in the Office of the County Recorder of said County of San Diego; as shown and delineated on sheet 5 of Record of Survey Map No. 9039, filed in the Office of the County Recorder of said County of San Diego; thence along the center line of "F" Street, as shown and delineated on said Record of Survey Map No. 9039, South 72° 03' 28" West (rec. South 72° 03' 22" West), 95.49 feet; thence leaving said center line, North 17° 41' 08" West, 40.00 feet to a point on the Northerly right of way line of "F" Street, said point being the TRUE POINT OF BEGINNING of the center line herein described; thence continuing North 17° 41' 08" West, 2594.52 feet; thence North 15° 58' 39" West, 397.18 feet; thence North 18° 14' 24" West, 1983.87 feet; thence North 17° 19' 17" West, 406.67 feet; thence North 70° 25' 39" East, 63.71 feet; thence North 22° 01' 58" West, 48.85 feet; thence North 17° 42' 51" West, 416.79 feet; thence South 72° 00' 34" West, 59.07 feet; thence North 17° 47' 33" West, 1068.55 feet to a point on the Southwesterly line of the A.T. & S. F. Railroad.

EXHIBIT C

DESCRIPTION OF FACILITY SITE

The land referred to herein as the Facility Site is situated in the state of California, County of San Diego and is described as follows:

Parcel No. 1

PARCEL 1 OF PARCEL MAP NO. 18185 IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY DECEMBER 30, 1998 AS FILE NO. 1998-858614 OF OFFICIAL RECORDS.

EXCEPTING THEREFROM those certain parcels described as follows:

Parcel No. 1 [ELECTRICAL SUBSTATION]

All that certain real property situated in the state of California, County of San Diego and more particularly described as follows:

Commencing at the most Northerly corner of Parcel 1 of Parcel Map No. 16887, filed June 26, 1992 at File No. 92-0400010 in the Office of the County Recorder of said County of San Diego; thence along the Northerly line thereof, South 70° 26' 27" East, 750.24 feet (rec. South 70° 26' 34" East, 750.26 feet) to the Northeast corner thereof; thence North 21° 37' 32" East, 1189.41 feet to the TRUE POINT OF BEGINNING; thence North 59° 27' 20" West, 799.99 feet; thence North 31° 28' 13" East, 10.67 feet; thence North 59° 41' 05" West, 24.55 feet; thence North 30° 30' 51" East, 278.95 feet; thence South 59° 18' 04" East, 162.85 feet; thence North 30° 15' 11" East, 180.28 feet; thence South 59° 23' 38" East, 426.19 feet; thence South 30° 42' 07" West, 179.78 feet; thence South 59° 29' 20" East, 236.41 feet; thence South 30° 27' 07" West, 239.27 feet to the TRUE POINT OF BEGINNING.

Parcel No. 2 [PARK NOTCH]

All that certain real property situated in the state of California, County of San Diego being utilized by the City of Chula Vista for park purposes pursuant to that certain license between the City of Chula Vista and SDG&E, dated March 1, 1988, as amended by 1st Amendment to License dated December 8, 1992, as further amended by 2nd Amendment to License dated February 24, 1998, as shown on the Exhibit A drawing attached hereto.

SNOW BOWL

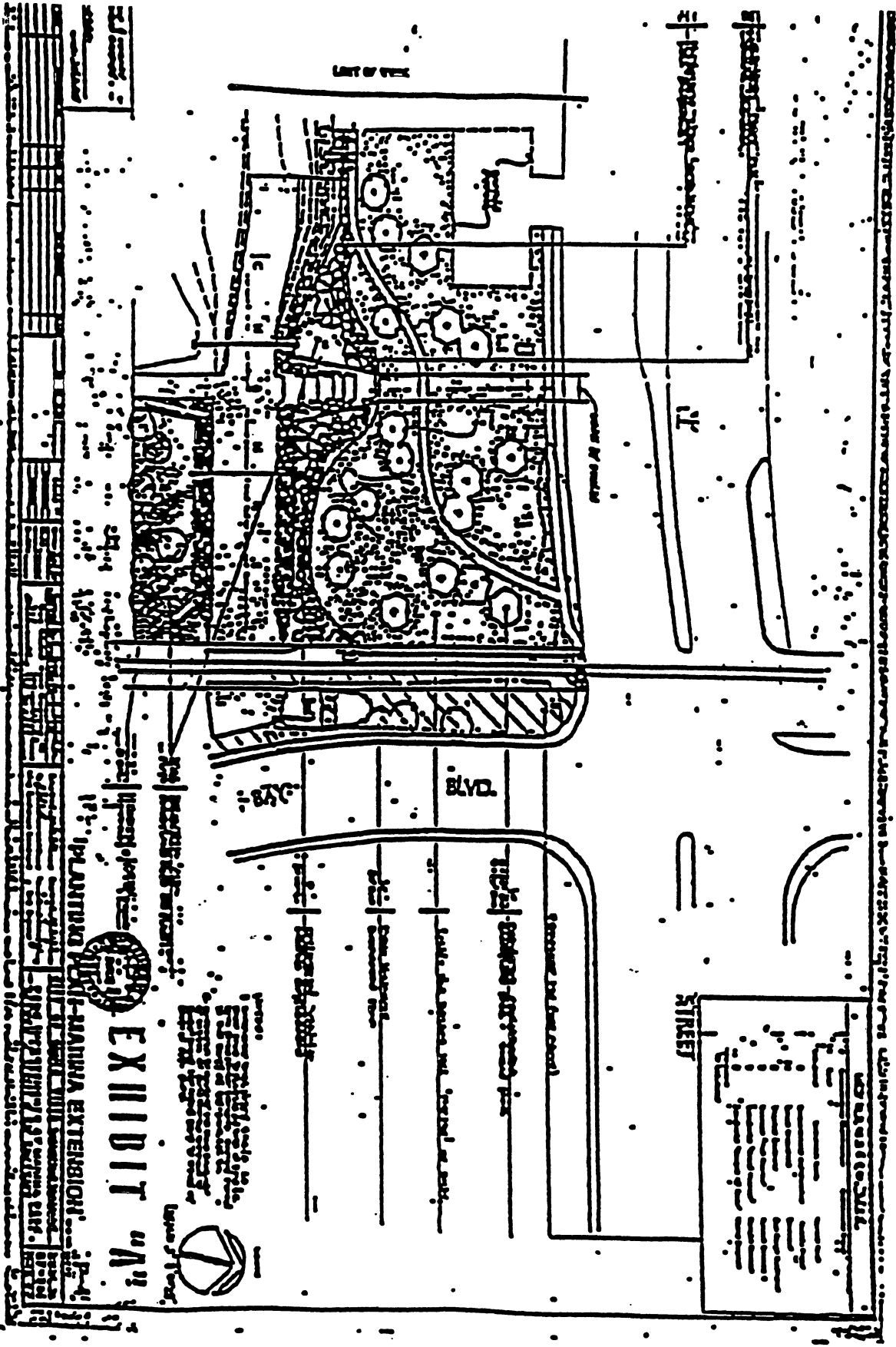


EXHIBIT "A"

MANANA EXTENSION

Schedule D to
Lease Agreement

\$115,000,000
Duke South Bay - San Diego Unified Port District Lease
Rent/Debt Service Schedule

Payment Date 1/	Debt Service				Basic Rent		
	Principal	Coupon	Interest	Debt Service	Site Rent	Facility Rent	Total Basic Rent
11/1/99	4,142,388.20	6.63%	4,002,862.50	8,145,250.70	31,500.00	8,113,750.70	8,145,250.70
5/1/00			3,674,929.83	3,674,929.83	30,000.00	3,644,929.83	3,674,929.83
11/1/00	8,164,903.58	6.63%	3,674,929.83	11,839,833.41	30,000.00	11,809,833.41	11,839,833.41
5/1/01			3,404,263.28	3,404,263.28	30,000.00	3,374,263.28	3,404,263.28
11/1/01	8,706,236.69	6.63%	3,404,263.28	12,110,499.97	30,000.00	12,080,499.97	12,110,499.97
5/1/02			3,115,651.53	3,115,651.53	30,000.00	3,085,651.53	3,115,651.53
11/1/02	9,283,460.18	6.63%	3,115,651.53	12,399,111.71	30,000.00	12,369,111.71	12,399,111.71
5/1/03			2,807,904.83	2,807,904.83	30,000.00	2,777,904.83	2,807,904.83
11/1/03	9,898,953.59	6.63%	2,807,904.83	12,706,858.42	30,000.00	12,676,858.42	12,706,858.42
5/1/04			2,479,754.51	2,479,754.51	30,000.00	2,449,754.51	2,479,754.51
11/1/04	10,555,254.21	6.63%	2,479,754.51	13,035,008.72	30,000.00	13,005,008.72	13,035,008.72
5/1/05			2,129,847.84	2,129,847.84	30,000.00	2,099,847.84	2,129,847.84
11/1/05	11,255,067.57	6.63%	2,129,847.84	13,384,915.41	30,000.00	13,354,915.41	13,384,915.41
5/1/06			1,756,742.35	1,756,742.35	30,000.00	1,726,742.35	1,756,742.35
11/1/06	12,001,278.55	6.63%	1,756,742.35	13,758,020.90	30,000.00	13,728,020.90	13,758,020.90
5/1/07			1,358,899.96	1,358,899.96	30,000.00	1,328,899.96	1,358,899.96
11/1/07	12,796,963.32	6.63%	1,358,899.96	14,155,863.28	30,000.00	14,125,863.28	14,155,863.28
5/1/08			934,680.63	934,680.63	30,000.00	904,680.63	934,680.63
11/1/08	13,645,401.98	6.63%	934,680.63	14,580,082.61	30,000.00	14,550,082.61	14,580,082.61
5/1/09			482,335.55	482,335.55	30,000.00	452,335.55	482,335.55
11/1/09	14,550,092.13	6.63%	482,335.55	15,032,427.68	30,000.00	15,002,427.68	15,032,427.68
Total	115,000,000.00		48,292,883.13	163,292,883.12	631,500.00	162,661,383.12	163,292,883.12

Note

1/ Basic Rent Payment Date is four
business days prior to the Payment Date.

Schedule E
to Lease Agreement

Stipulated Loss Value Table

Date	Outstanding Principal	Accrued Interest	Stipulated Loss Value
04/22/99			
05/01/99	115,000,000.00	190,612.50	115,190,612.50
06/01/99	115,000,000.00	825,987.50	115,825,987.50
07/01/99	115,000,000.00	1,461,362.50	116,461,362.50
08/01/99	115,000,000.00	2,096,737.50	117,096,737.50
09/01/99	115,000,000.00	2,732,112.50	117,732,112.50
10/01/99	115,000,000.00	3,367,487.50	118,367,487.50
11/01/99	115,000,000.00	4,002,862.50	119,002,862.50
12/01/99	110,857,611.80	612,488.31	111,470,100.11
01/01/2000	110,857,611.80	1,224,976.61	112,082,588.41
02/01/2000	110,857,611.80	1,837,464.92	112,695,076.72
03/01/2000	110,857,611.80	2,449,953.22	113,307,565.02
04/01/2000	110,857,611.80	3,062,441.53	113,920,053.33
05/01/2000	110,857,611.80	3,674,929.83	114,532,541.63
06/01/2000	110,857,611.80	612,488.31	111,470,100.11
07/01/2000	110,857,611.80	1,224,976.61	112,082,588.41
08/01/2000	110,857,611.80	1,837,464.92	112,695,076.72
09/01/2000	110,857,611.80	2,449,953.22	113,307,565.02
10/01/2000	110,857,611.80	3,062,441.53	113,920,053.33
11/01/2000	110,857,611.80	3,674,929.83	114,532,541.63
12/01/2000	102,692,708.22	567,377.21	103,260,085.43
01/01/2001	102,692,708.22	1,134,754.43	103,827,462.65
02/01/2001	102,692,708.22	1,702,131.64	104,394,839.86
03/01/2001	102,692,708.22	2,269,508.85	104,962,217.07
04/01/2001	102,692,708.22	2,836,886.06	105,529,594.28
05/01/2001	102,692,708.22	3,404,263.28	106,096,971.50
06/01/2001	102,692,708.22	567,377.21	103,260,085.43
07/01/2001	102,692,708.22	1,134,754.43	103,827,462.65
08/01/2001	102,692,708.22	1,702,131.64	104,394,839.86
09/01/2001	102,692,708.22	2,269,508.85	104,962,217.07
10/01/2001	102,692,708.22	2,836,886.06	105,529,594.28
11/01/2001	102,692,708.22	3,404,263.28	106,096,971.50
12/01/2001	93,986,471.53	519,275.26	94,505,746.79
01/01/2002	93,986,471.53	1,038,550.51	95,025,022.04
02/01/2002	93,986,471.53	1,557,825.77	95,544,297.30
03/01/2002	93,986,471.53	2,077,101.02	96,063,572.55
04/01/2002	93,986,471.53	2,596,376.28	96,582,847.81
05/01/2002	93,986,471.53	3,115,651.53	97,102,123.06
06/01/2002	93,986,471.53	519,275.26	94,505,746.79
07/01/2002	93,986,471.53	1,038,550.51	95,025,022.04
08/01/2002	93,986,471.53	1,557,825.77	95,544,297.30
09/01/2002	93,986,471.53	2,077,101.02	96,063,572.55
10/01/2002	93,986,471.53	2,596,376.28	96,582,847.81
11/01/2002	93,986,471.53	3,115,651.53	97,102,123.06
12/01/2002	84,703,011.35	467,984.14	85,170,995.49
01/01/2003	84,703,011.35	935,968.28	85,638,979.63

Date	Outstanding		Stipulated Loss
	Principal	Accrued Interest	Value
02/01/2003	84,703,011.35	1,403,952.41	86,106,963.76
03/01/2003	84,703,011.35	1,871,936.55	86,574,947.90
04/01/2003	84,703,011.35	2,339,920.69	87,042,932.04
05/01/2003	84,703,011.35	2,807,904.83	87,510,916.18
06/01/2003	84,703,011.35	467,984.14	85,170,995.49
07/01/2003	84,703,011.35	935,968.28	85,638,979.63
08/01/2003	84,703,011.35	1,403,952.41	86,106,963.76
09/01/2003	84,703,011.35	1,871,936.55	86,574,947.90
10/01/2003	84,703,011.35	2,339,920.69	87,042,932.04
11/01/2003	84,703,011.35	2,807,904.83	87,510,916.18
12/01/2003	74,804,057.76	413,292.42	75,217,350.18
01/01/2004	74,804,057.76	826,584.84	75,630,642.60
02/01/2004	74,804,057.76	1,239,877.26	76,043,935.02
03/01/2004	74,804,057.76	1,653,169.68	76,457,227.44
04/01/2004	74,804,057.76	2,066,462.10	76,870,519.86
05/01/2004	74,804,057.76	2,479,754.51	77,283,812.27
06/01/2004	74,804,057.76	413,292.42	75,217,350.18
07/01/2004	74,804,057.76	826,584.84	75,630,642.60
08/01/2004	74,804,057.76	1,239,877.26	76,043,935.02
09/01/2004	74,804,057.76	1,653,169.68	76,457,227.44
10/01/2004	74,804,057.76	2,066,462.10	76,870,519.86
11/01/2004	74,804,057.76	2,479,754.51	77,283,812.27
12/01/2004	64,248,803.55	354,974.64	64,603,778.19
01/01/2005	64,248,803.55	709,949.28	64,958,752.83
02/01/2005	64,248,803.55	1,064,923.92	65,313,727.47
03/01/2005	64,248,803.55	1,419,898.56	65,668,702.11
04/01/2005	64,248,803.55	1,774,873.20	66,023,676.75
05/01/2005	64,248,803.55	2,129,847.84	66,378,651.39
06/01/2005	64,248,803.55	354,974.64	64,603,778.19
07/01/2005	64,248,803.55	709,949.28	64,958,752.83
08/01/2005	64,248,803.55	1,064,923.92	65,313,727.47
09/01/2005	64,248,803.55	1,419,898.56	65,668,702.11
10/01/2005	64,248,803.55	1,774,873.20	66,023,676.75
11/01/2005	64,248,803.55	2,129,847.84	66,378,651.39
12/01/2005	52,993,735.98	292,790.39	53,286,526.37
01/01/2006	52,993,735.98	585,580.78	53,579,316.76
02/01/2006	52,993,735.98	878,371.17	53,872,107.15
03/01/2006	52,993,735.98	1,171,161.57	54,164,897.55
04/01/2006	52,993,735.98	1,463,951.96	54,457,687.94
05/01/2006	52,993,735.98	1,756,742.35	54,750,478.33
06/01/2006	52,993,735.98	292,790.39	53,286,526.37
07/01/2006	52,993,735.98	585,580.78	53,579,316.76
08/01/2006	52,993,735.98	878,371.17	53,872,107.15
09/01/2006	52,993,735.98	1,171,161.57	54,164,897.55
10/01/2006	52,993,735.98	1,463,951.96	54,457,687.94
11/01/2006	52,993,735.98	1,756,742.35	54,750,478.33
12/01/2006	40,992,457.43	226,483.33	41,218,940.76
01/01/2007	40,992,457.43	452,966.65	41,445,424.08
02/01/2007	40,992,457.43	679,449.98	41,671,907.41
03/01/2007	40,992,457.43	905,933.31	41,898,390.74
04/01/2007	40,992,457.43	1,132,416.64	42,124,874.07
05/01/2007	40,992,457.43	1,358,899.96	42,351,357.39

Date	Outstanding Principal	Accrued Interest	Stipulated Loss Value
06/01/2007	40,992,457.43	226,483.33	41,218,940.76
07/01/2007	40,992,457.43	452,966.65	41,445,424.08
08/01/2007	40,992,457.43	679,449.98	41,671,907.41
09/01/2007	40,992,457.43	905,933.31	41,898,390.74
10/01/2007	40,992,457.43	1,132,416.64	42,124,874.07
11/01/2007	40,992,457.43	1,358,899.96	42,351,357.39
12/01/2007	28,195,494.11	155,780.10	28,351,274.21
01/01/2008	28,195,494.11	311,560.21	28,507,054.32
02/01/2008	28,195,494.11	467,340.31	28,662,834.42
03/01/2008	28,195,494.11	623,120.42	28,818,614.53
04/01/2008	28,195,494.11	778,900.52	28,974,394.63
05/01/2008	28,195,494.11	934,680.63	29,130,174.74
06/01/2008	28,195,494.11	155,780.10	28,351,274.21
07/01/2008	28,195,494.11	311,560.21	28,507,054.32
08/01/2008	28,195,494.11	467,340.31	28,662,834.42
09/01/2008	28,195,494.11	623,120.42	28,818,614.53
10/01/2008	28,195,494.11	778,900.52	28,974,394.63
11/01/2008	28,195,494.11	934,680.63	29,130,174.74
12/01/2008	14,550,092.13	80,389.26	14,630,481.39
01/01/2009	14,550,092.13	160,778.52	14,710,870.65
02/01/2009	14,550,092.13	241,167.78	14,791,259.91
03/01/2009	14,550,092.13	321,557.04	14,871,649.17
04/01/2009	14,550,092.13	401,946.30	14,952,038.43
05/01/2009	14,550,092.13	482,335.55	15,032,427.68
06/01/2009	14,550,092.13	80,389.26	14,630,481.39
07/01/2009	14,550,092.13	160,778.52	14,710,870.65
08/01/2009	14,550,092.13	241,167.78	14,791,259.91
09/01/2009	14,550,092.13	321,557.04	14,871,649.17
10/01/2009	14,550,092.13	401,946.30	14,952,038.43
11/01/2009	14,550,092.13	482,335.55	15,032,427.68

REQUIRED INSURANCE

Lessee shall maintain with insurance companies rated "A-" or better (and a minimum size rating of VIII) by Best's Insurance Guide and Key Ratings, (or an equivalent rating by another nationally recognized insurance rating agency of similar standing if Best's Insurance Guide and Key Ratings shall no longer be published) or other insurance companies of recognized responsibility satisfactory to Lessor, the following insurance coverages until the expiration or earlier termination of this Lease and the completion by Lessee of the End of Term Actions in accordance with the terms hereof:

(a) **General Liability Insurance.**

(i) Comprehensive or commercial general liability insurance for the Project on an "occurrence" basis, including coverage for premises/operations, explosion, collapse and underground hazards, products/completed operations, broad form property damage, blanket contractual liability for both oral and written contracts, independent contractor's and personal injury, for Lessee and for contractors, with primary coverage limits of no less than \$1,000,000 for injuries or death to one or more persons or damage to property resulting from any one occurrence and a \$2,000,000 aggregate limit for the Project.

(ii) Lessee shall require all contractors and subcontractors to maintain comprehensive or commercial general liability coverage and name Lessee and Lessor as additional insureds.

(b) **Automobile Liability Insurance.** Automobile liability insurance, including coverage for owned, non-owned and hired automobiles with limits of no less than \$1,000,000 per accident with respect to bodily injury, property damage or death;

(c) **Employee Insurance.** Employers liability insurance in an amount not less than \$1,000,000 and workers' compensation insurance providing statutory benefits and other states' endorsement and USL&H Act coverage (if any exposure exists), covering loss resulting from injury, sickness, disability or death of the employees of Lessee or of any contractor or subcontractor performing work. Lessee shall require that all contractors and subcontractors maintain all forms or types of insurance with respect to their employees, as are required by law with statutory limits or limits of not less than \$1,000,000 per accident, \$1,000,000 for disease, and \$1,000,000 for each employee.

(d) **Property Insurance.** "All risk" property insurance coverage in the full amount of the total of all insurable costs incurred or full replacement cost, providing (i) earthquake and flood (provided, however, that earthquake and flood coverage shall be subject to an annual aggregate limit of \$50,000,000), (ii) transit coverage (including ocean cargo where ocean transit will be required) with a per occurrence limit sufficient to cover the full insurable value of any item in transit, and (iii) boiler and machinery coverage on a "comprehensive" basis

including breakdown and repair with limits not less than full replacement cost. In the event that general property insurance and boiler and machinery coverage for the Project are not written by the same carrier, each policy shall contain a joint loss agreement.

(e) **Umbrella Excess Liability Insurance.** Umbrella excess liability insurance of not less than \$10,000,000 in the aggregate. Such coverages shall be on a per occurrence basis and over and above coverage provided by the policies described in paragraphs (a), (b) and (c) above.

INFORMATION FOR NOTICES

If to Lessor:

**San Diego Unified Port District
3165 Pacific Highway
P.O. Box 488 (92112)
San Diego, CA 92101
Attention: Executive Director
Facsimile: (619) 699-5027**

with copies to:

**San Diego Unified Port District
3165 Pacific Highway
P.O. Box 488 (92112)
San Diego, CA 92101
Attention: Port Attorney
Facsimile: (619) 686-6444**

and

**Munger, Tolles & Olson LLP
355 South Grand Avenue
Suite 3500
Los Angeles, CA 90071
Attention: Jeffrey A Heintz, Esq.
Facsimile: (213) 683-9185**

If to Lessee:

**Duke Energy South Bay LLC
5400 Westheimer Court
Houston, TX 77056-5310
Attention: Vice President
Facsimile: (713) 627-6544**

with copies to:

Duke Energy South Bay LLC
1290 Embarcadero Drive
Morro Bay, CA 93443-1737
Attention: Vice President
Facsimile: (805) 595-5592

and

Thelen Reid & Priest LLP
Two Embarcadero Center, Suite 2100
San Francisco, CA 94111
Attention: Nancy L. Murray, Esq.
Facsimile: (415) 421-1068

**Schedule H
to Lease Agreement**

**PAYMENT INSTRUCTIONS DURING
BOND FINANCING PERIOD**

BK of NYC

ABA#: 021-000-018

BNF: IOC 565

Account Name: SAN DIEGO PORT-SOUTH BAY-99 DS FD

Account No.: 426901

Attention: Allen Taylor

Telephone: (213) 630-6240

DEFINITIONS

“Actual Knowledge” means (i) as it applies to Lessor, the actual knowledge of, including any written notices received by, the officer or officers having responsibility for some or all of the administration of the transactions contemplated under the Transaction Documents for Lessor, and (ii) as it applies to Lessee, the actual knowledge of, including any written notices received by, the President, any Vice President, the Treasurer or the Secretary or any other officer or senior management employee of Lessee or Lessee’s direct or indirect parent whose responsibilities include some or all of the administration of the transactions contemplated under the Lease; provided that Lessor and Lessee shall be deemed to have “actual knowledge” of any matter as to which such Person has been given notice pursuant to Article 17 of the Lease.

“Additional Lease Period” has the meaning set forth in Section 2.1.

“Additional Offsets” means in addition to the SDG&E Offsets, any additional air emission offsets arising from any improvement or modifications to the Facility made by Lessee during the Lease Term, as well as the closure of the Facility, for any reason, including as a result of the development of the RGP.

“Affiliate” shall mean, with respect to any Person, (a) each Person which, directly or indirectly, owns or controls, whether beneficially or as a trustee, guardian or other fiduciary, five percent (5%) or more of any class of equity securities of such Person, (b) each Person that controls, is controlled by or is under common control with such Person or any Affiliate of such Person or (c) each of such Person’s officers and directors. For the purpose of this definition, “control” of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise.

“After-Tax Basis” means, with respect to any payment received or accrued by any Person, the amount sufficient to hold such Person and any Affiliate thereof harmless from all Federal, state, local and foreign income taxes required to be paid with respect to the receipt or accrual of such payment and such amount, all such amounts to be computed at an assumed tax rate (regardless of such Person’s actual tax position) equal to the highest composite marginal Federal, state, local and foreign statutory income tax rate imposed under applicable law or by any applicable governmental authority in effect for the relevant period in which such payment is received (actually or constructively) or accrued and after taking into account any current deductions to which such Person and any Affiliate thereof is entitled as a result of the payment of such taxes.

“Applicable Law” means all federal, state, and local statutes, regulations, ordinances, and codes and all other rules, regulations, interpretations, orders, guidelines, directives, judgments or decrees of any Governmental Authority having jurisdiction over or having power to regulate or supervise any Person, the Facility, the Facility Site or the Project

(including Environmental Laws), which are or may be applicable to the matter or circumstance in question.

"Applicable Permit" means any Permit, including any zoning, environmental protection, pollution, sanitation, FERC, CPUC, safety, siting or building Permit, (a) that is necessary at any given time in light of the stage of development, construction or operation of the Project to construct, test, operate, maintain, repair, own or use the Leased Property as contemplated by the Lease, to sell electricity therefrom, to enter into the Lease, the Contract and Permit Rights Assignment or the Assignment of Related Agreements or to consummate any transaction contemplated thereby, or (b) that is necessary so that (i) none of Lessor, Lessee or the Financing Parties, nor any Affiliate of any of them, may be deemed by any Governmental Authority to be subject to regulation under the FPA or PUHCA or under any other federal or any state laws or regulations respecting electric utilities or heat utilities, or (ii) Lessee may not be deemed by any Governmental Authority to be subject to regulation under the FPA or PUHCA or under any state laws or regulations respecting heat utilities or the rates or the financial or organizational regulation of electric utilities, in each case, with respect to clauses (i) and (ii), as a result of the construction or operation of the Projects or the sale of electricity therefrom.

"Appraisal Procedure" means a procedure whereby an independent appraiser mutually acceptable to both Lessee and Lessor under the Lease, or if Lessee and Lessor shall be unable to agree thereon, then two independent appraisers, one chosen by Lessee and one by Lessor, shall mutually agree upon the value, period, amount or determination then the subject of an appraisal. If either Lessor or Lessee, as the case may be, shall determine that a value, period, amount or determination to be determined under the Lease cannot timely be established by mutual agreement or that an independent appraiser cannot timely be appointed by mutual agreement, such party shall appoint its appraiser and deliver a written notice thereof to the other party. Such other party shall appoint its appraiser within thirty (30) days after receipt from the other party of the foregoing written notice. If within thirty (30) days after appointment of the two appraisers, as described above, the two appraisers are unable to agree upon the value, period, amount or determination in question, a third independent appraiser shall be chosen within ten (10) days thereafter by the mutual consent of such first two appraisers or, if such first two appraisers fail to agree upon the appointment of a third appraiser within such period, such appointment shall be made, upon application by either Lessor or Lessee, by the American Arbitration Association, in San Francisco, California, or any organization successor thereto, from a panel of appraisers having familiarity with the power industry and with equipment used or operated in connection therewith and experienced in the appraisal of gas-fired power generation facilities. The decision of the third appraiser so appointed and chosen shall be given within thirty (30) days after the selection of such third appraiser. If three appraisers are so appointed and the determination of one appraiser is less than 90 percent or more than 110 percent of the average of the determination of other two appraisers, then the determination of such appraiser shall be excluded, the remaining two determinations shall be averaged and such average shall be binding and conclusive on Lessor and Lessee; otherwise the average of all three determinations shall be binding and conclusive on Lessor and Lessee. The fees and expenses of appraisers incurred in connection with any Appraisal Procedure relating to any transaction contemplated by any provision of the Lease shall, unless otherwise specifically provided, be divided equally between the Lessor and Lessee.

“Asset Sale Agreement” means the Asset Sale Agreement between Lessor and SDG&E dated as of December 11, 1998.

“Assignment of Related Agreements” means that certain Related Agreements Assignment and Assumption Agreement, dated as of the Effective Date, between Lessor and Lessee, as consented to by SDG&E.

“Assigned Property” has the meaning set forth in the Recitals to the Contract and Permit Rights Assignment.

“Bankruptcy Law” means Title 11 of the United States Code, and any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors.

“Bankruptcy Proceeding” means, as to any Person, any voluntary or involuntary proceeding, action or case resulting from a Bankruptcy Event of or by such Person.

“Basic Lease Term” has the meaning set forth in Section 2.1 of the Lease.

“Basic Lease Term Expiration Date” has the meaning set forth in Section 2.1 of the Lease.

“Basic Rent” has the meaning set forth in Section 3.1 of the Lease.

“Basic Rent Payment Date” means, (a) during the Bond Financing Period, the fourth (4th) Business Day before each of the dates set forth in Schedule D to the Lease under the column entitled “Basic Rent Payment Date” or (b) during the period commencing on the day after the Bond Payment Date until the earlier to occur of the termination or expiration of the Lease Term, the last day of each calendar quarter and the date of such termination or expiration, as the case may be.

“Bonds” means the bonds issued pursuant to the Bond Indenture.

“Bond Financing Agreements” means the Bond Indenture, the Bonds and the Loan Agreement.

“Bond Financing Default” means (i) any event of default or (ii) any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time and/or the giving of notice, would constitute an event of default, in each case under the Loan Agreement or any other Bond Financing Agreement.

“Bond Financing Period” has the meaning set forth in Section 3.1(a) of the Lease.

“Bond Holders” means each of the registered or beneficial holders of the Bonds under the Bond Indenture.

"Bond Indenture" means the Indenture between the Issuer and the Bond Trustee dated as of March 1, 1999.

"Bond Payment Date" has the meaning set forth in Section 2.1 of the Lease.

"Bond Trustee" means BNY Western Trust Company, a California banking corporation, the trustee under the Bond Indenture.

"Business Day" means any day other than a Saturday, Sunday or other day on which banks are authorized to be closed in the city in which the Bond Trustee is located or in New York, New York.

"CEQA" means the California Environmental Quality Act.

"Claims" means any and all liabilities, obligations, damages, penalties, claims, actions, suits, judgments, costs, expenses and disbursements (including legal fees and expenses and costs of investigation) of any kind and nature.

"Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code shall include any valid regulation promulgated thereunder, and any comparable provision of any future legislation amending, supplementing or superseding such section.

"Components" means, with respect to the Facility, appliances, parts, instruments, appurtenances, accessories, equipment and other property of whatever nature now or hereafter included in the Facility.

"Contract and Permit Rights" has the meaning set forth in the Recitals to the Contract and Permit Rights Assignment.

"Contract and Permit Rights Assignment" means that certain Contract and Permit Rights Assignment and Assumption Agreement between Lessor and Lessee dated as of the Effective Date.

"Cooperation Agreement" means the Cooperation Agreement between Lessor and Lessee dated as of December 11, 1998.

"CPUC" means the California Public Utilities Commission and its successors.

"Debt Service" means, for any period, all obligations for scheduled principal and interest payments under the Bond Financing Agreements for such period.

"Debt Service Fund" has the meaning set forth in the Bond Indenture.

"Default Rate" means an interest rate per annum equal to the reference rate in effect from time to time at Bank of America, N.A., plus two percent (2%), such rate to change from time to time as such reference rate changes, provided that during the Bond Financing Period,

the Default Rate shall be no lower than the rate on the Bonds in effect from time to time during the period during which the payment has not been made which gives rise to the obligation to make payments at the Default Rate, plus two percent (2%).

"Discount Rate" means a rate per annum equal to 6.5%.

"Dollars" and **"\$"** means United States dollars or such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts in the United States of America.

"Easement and Covenant Agreement" means that certain Quitclaim Deed, Easement Reservation and Covenant Agreement, date as of December 11, 1998, between SDG&E and Lessor, as assigned to Lessee.

"Effective Date" means April 22, 1999, the date of execution and delivery of the Lease and the date the Bonds are issued and delivered.

"Effective Termination Date" has the meaning set forth in Section 19.10.

"Eminent Domain Proceeds" means all amounts and proceeds (including instruments) received in respect of any Event of Eminent Domain by or for the account of Lessee or Lessor, in each case as a result of (a) the loss, theft, destruction or damage to or (b) an Event of Eminent Domain with respect to, all or any portion of the Leased Property.

"End of Term Actions" has the meaning set forth in Section 18.1 of the Lease.

"Environmental Laws" means all federal, state or local laws, statutes, common law duties, rules, regulations, ordinances and codes, together with all administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authorities, in each case relating to environmental, health, safety and land use matters.

"Environmental Remediation Agreement" means the Environmental Remediation Agreement, dated as of the date hereof, by and between Lessor and Lessee.

"Event of Eminent Domain" means any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Facility or the Facility Site by any agency, department, authority, commission, board, instrumentality or political subdivision of the State of California, the United States or another Governmental Authority having jurisdiction.

"Event of Loss" means any of the following events (a) the destruction of all or substantially all of the Facility, (b) destruction or damage to the Facility such that it is, in the good faith opinion of Lessee (as evidenced by officer's certificates of Responsible Officers of Lessee), permanently unfit for use in accordance with Prudent Utility Practices, (c) an Event of Eminent Domain affecting the Facility or Facility Site on a permanent basis or on a temporary basis for a period of at least one (1) year or which extends beyond the expiration of the Lease Term, or (d)

the receipt of insurance proceeds with respect to the Facility based upon actual or constructive total loss of the Facility; provided, however, that any of the foregoing events shall not be considered an Event of Loss if Lessee is required to rebuild the Facility under the Must-Run Contract.

“Exempt Wholesale Generator” means an “exempt wholesale generator” as defined in Section 32 of PUHCA.

“Facilities Services Agreement” means the Facilities Services Agreement between Lessor and SDG&E dated as of December 11, 1998, as partially assigned by Lessor to Lessee.

“Facility” has the meaning set forth in the Recitals to the Lease, and shall include any replacement facility built on the Facility Site to the extent required under the Lease.

“Facility Purchase Price” has the meaning set forth in Section 18.1(b)(i) of the Lease.

“Facility Rent” has the meaning set forth in Section 3.1 of the Lease.

“Facility Site” has the meaning set forth in the Recitals to the Lease.

“Fair Market Rental Value” or **“Fair Market Sale Value”** of any property or service as of any date means the cash rent or cash price that would be obtained in an arm’s-length lease or sale, respectively, between an informed and willing lessee or buyer (under no compulsion to lease or purchase) and an informed and willing lessor or seller (under no compulsion to lease or sell) of the property or services in question on an “as-is” “where is” basis except that any such determination of the Fair Market Sale Value or Fair Market Rental Value of the Leased Property (other than pursuant to Section 13.1 of the Lease) shall be determined on the basis that the Leased Property has been maintained in accordance with the requirements of the Lease. Lessor and Lessee may agree upon a determination of Fair Market Rental Value or Fair Market Sale Value, as the case may be; provided that, in the event that the Lessor and Lessee are unable to agree upon such a determination, such Fair Market Rental Value or Fair Market Sale Value shall be determined in accordance with the Appraisal Procedure.

“FASB” means the Financial Accounting Standards Board and its successors.

“FDIC” means the Federal Deposit Insurance Corporation and its successors.

“FERC” means the Federal Energy Regulatory Commission and its successors.

“Financing Party” means each of Issuer, Bond Trustee and the Bond Holders.

“Financing Party Lien” or **“Financing Party’s Lien”** shall mean any Lien on or against the Facility, the Facility Site, any Contract and Permit Rights, the Related Agreement Rights, the Project, or any portion of any thereof resulting from (a) Claims by or against a Financing Party unrelated to the transactions contemplated by the Transaction Documents,

(b) any breach of any covenant or agreement of a Financing Party set forth in any Transaction Document or (c) Taxes imposed upon a Financing Party that are not indemnified against by Lessee pursuant to the Lease.

"FPA" means the Federal Power Act, excluding Sections 1-18, 21-30, 202(c), 210, 211, 212, 213, 214, 305(c) and any necessary enforcement provision of Part III of the Act with regard to the foregoing sections.

"GAAP" means generally accepted accounting principles and practices as in effect in the United States of America from time to time, consistently applied.

"Governmental Actions" means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions, publications, notice to and declarations of or with any Governmental Authority and shall include those citing, environmental and operating permits and licenses (including, without limitation, the Applicable Permits) that are required for the use and operation of the Facility.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including any zoning authority, FERC, the CPUC, the State Lands Commission or any comparable authority) or any arbitrator with authority to bind a party at law.

"Governmental Rule" means any law, rule, regulation, ordinance, order, code interpretation, judgment, decree, directive, guidelines, policy or similar form of decision of any Governmental Authority.

"Guarantor" means Duke Capital Corporation, a Delaware corporation.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Indemnitee" means Lessor, Issuer, Bond Trustee (both in its individual capacity and as trustee), each Bond Holder, and any Affiliate of any of the foregoing, and their respective successors, assigns, shareholders, officers, directors, employees, agents and servants.

"Insurance Proceeds" means all amounts and proceeds (including instruments) received with respect to the Leased Property under insurance policies maintained by or for the account of Lessee or Lessor (other than any Insurance Proceeds received under any insurance policy described in Section 10.4 of the Lease), in each case as a result of (a) any loss, theft, destruction or damage to or in connection with, (b) any casualty, injury or similar event in connection with, or (c) a defect in title of, all or any portion of the Leased Property.

"ISO" means the California Independent System Operator or its successor.

"Issuer" means the California Maritime Infrastructure Authority.

"Lease" means that certain Lease Agreement by and between the Lessor and Lessee dated as of the Effective Date.

"Lease Commencement Date" has the meaning set forth in Section 2.1.

"Lease Default" means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time and/or giving of notice, would constitute a Lease Event of Default.

"Lease Event of Default" has the meaning set forth in Article 12 of the Lease.

"Lease Guaranty" means the guaranty by the Guarantor of the obligations of Lessee under the Lease dated as of the Effective Date.

"Lease Term" has the meaning set forth in Section 2.2 of the Lease.

"Leased Property" has the meaning set forth in the Recitals to the Lease.

"Legal Requirement" means, as to any Person, any requirement set forth in the Charter Documents, of such Person, any Governmental Rule, any requirement under a Permit, and any determination of any arbitrator, court, or Governmental Authority, in each case applicable to or binding upon such Person or any of its properties or to which such Person or any of its properties is subject.

"Lessee" means Duke Energy South Bay, LLC, a Delaware limited liability company.

"Lessor" means the San Diego Unified Port District, a public entity organized and existing as a port district pursuant to Appendix 1 of the Harbor and Navigation Code of the State of California.

"Lessor Lien" or "Lessor's Lien" shall mean any Lien on or against the Facility, the Facility Site, any Contract and Permit Rights, the Related Agreement Rights, the Project, or any portion of any thereof resulting from (a) Claims by or against Lessor unrelated to the transactions contemplated by the Lease, the Contract and Permit Rights Assignment or the Assignment of Related Agreements, (b) any breach of any covenant or agreement of Lessor set forth in the Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements or (c) Taxes imposed upon Lessor that are not indemnified against by Lessee pursuant to the Lease.

"Lessor Possession Date" means the earlier of (i) the day after the last day of the Lease Term, and (ii) the date Lessee's use and possession of the Facility is terminated in accordance with Article 13 of the Lease.

"Lessor Title Insurance Policy" means that certain policy of title insurance issued by Stewart Title Company to Lessor with respect to the Leased Property.

“Lien” on any asset means any mortgage, deed of trust, lien, pledge, charge, judgment, security interest, restrictive covenant or easement or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected or effective under applicable law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

“Loan Agreement” means that certain Loan Agreement by and between Issuer and Lessor dated as of March 1, 1999.

“Material Adverse Effect” means (x) when used with respect to the Leased Property, a quantifiable material adverse economic effect on the Leased Property and on the operation thereof, taken as a whole; (y) when used with respect to any portion of the Leased Property, (i) a quantifiable material adverse economic effect on such portion of the Leased Property and on the operation thereof, taken as a whole or (ii) a material and adverse effect upon the validity or enforceability of any Lien granted by Lessor on the Leased Property pursuant to the Bond Financing Agreements; and (z) when used with respect to an entity, such as Lessor or Lessee, a quantifiable material adverse economic effect on the business, condition (financial or otherwise) and results of operations of such entity taken as a whole (including any subsidiaries of such entity) or on the ability of such entity to consummate the transactions contemplated under the Lease or, in the case of Lessor, to perform its payment obligations under the Bond Financing Agreements.

“Modification” means any modification, alteration, addition or improvement to the Facility made after the Effective Date.

“Must-Run Contract” means the Must-Run Contract between SDG&E and the ISO, as assigned to Lessee as of the Effective Date.

“Net Proceeds” shall mean all Insurance Proceeds and Eminent Domain Proceeds.

“Non-Severable Modification” shall mean all Modifications other than a Severable Modification.

“North Tanks” shall mean those certain three above-ground oil storage tanks located on the portion of the Facility Site north of the Telegraph Canyon Creek drainage canal, including any structural or foundation materials and any underlying and imported sand or other base material used in the construction process, as the same may be saturated with petroleum product to inhibit corrosion.

“Notice of Eminent Domain” means any notice or notification on which a reasonably prudent person would rely and which would be reasonably interpreted as expressing an existing intention of taking or imposing a compulsory transfer as distinguished from a mere preliminary inquiry or proposal and shall include the service of a condemnation summons and complaint on Lessee or any Affiliate thereof or the receipt by Lessee or any such Affiliate from a condemning agency or entity of a written notice of intent to take or impose a compulsory transfer

containing a description or map of the taking or compulsory transfer reasonably defining the extent thereof.

"O&M Agreement" means Operation and Maintenance Agreement, dated as of December 11, 1998, by and between SDG&E and Lessor, as assigned to Lessee.

"Permit" means any action, approval, certificate, consent, waiver, exemption, variance, franchise, order, permit, authorization, right or license of or from a Governmental Authority.

"Permitted Liens" means (a) the rights and interests of the parties as provided in the Transaction Documents, as well as the rights of sublessees and/or assignees to the extent set forth in Article 11 of the Lease, (b) as to Lessee, Lessor Liens and Financing Party Liens, (c) Liens for any tax, assessment or other governmental charge, either secured by a bond reasonably acceptable to Lessor or not yet due or being contested in good faith and by appropriate proceedings, so long as (i) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of any Leased Property or title thereto or any interest therein, shall not interfere in any material respect with the use or disposition of any Leased Property, shall not be reasonably expected to give rise to criminal liability or unindemnified, material civil liability on the part of Lessor or any Financing Party, or (ii) a bond or other security acceptable to Lessor has been posted or provided in such manner and amount as to assure Lessor that any taxes, assessments or other charges determined to be due will be promptly paid in full when such contest is determined, (d) materialmen's, mechanics', workers', repairmen's, employees' or other like Liens arising in the ordinary course of business or in connection with the maintenance or repair of the Project, either for amounts not yet due or for amounts being contested in good faith and by appropriate proceedings, so long as (i) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of any part of the Leased Property or any title thereto or any interest therein, shall not interfere with the use or disposition of any Leased Property, and shall not be reasonably expected to give rise to criminal liability or unindemnified, material civil liability on the part of Lessor or any Financing Party or (ii) a bond or other security acceptable to Lessor has been posted or provided in such manner and amount as to assure Lessor that any amounts determined to be due will be promptly paid in full when such contest is determined, (e) Liens arising out of judgments or awards, but only so long as an appeal or proceeding for review is being prosecuted in good faith with a reasonable likelihood of success and so long as (i) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of any part of any Leased Property or any title thereto or any interest therein, shall not interfere with the use of any Leased Property, and shall not be reasonably expected to give rise to criminal liability or unindemnified, material civil liability on the part of Lessor or any Financing Party, or (ii) a bond or other security acceptable to Lessor has been posted or provided in such manner and amount as to assure Lessor that any amounts determined to be due will be promptly paid in full when such contest is determined, or are fully covered by insurance, (f) mineral rights the use and enjoyment of which do not materially interfere with the use and enjoyment of any Leased Property, (g) liens and encumbrances set forth in the Lessor Title Insurance Policy, (h) Liens, deposits or pledges to secure statutory obligations or performance of bids, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature in the ordinary course of its business, and (i) Liens incident to the ordinary course of business that are not incurred in

connection with the obtaining of any loan, advance or credit so long as such Liens (x) do not in the aggregate materially impair the use of the property or assets of Lessee or the value of such property or assets for the purposes of such business and (y) shall not involve any substantial danger of the sale, forfeiture or loss of any part of any Leased Property or any title thereto or any interest therein, shall not interfere with the use of any Leased Property, and shall not be reasonably expected to give rise to criminal liability or unindemnified, material civil liability on the part of Lessor or any Financing Party.

"Person" means any natural person, corporation, partnership, limited liability company, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

"Primary Term" shall mean that period which commences on the Effective Date and terminates on November 1, 2009.

"Project" means, collectively, the Facility, the Facility Site and the business to be conducted by Lessee with respect thereto.

"Property Escrow Account" has the meaning set forth in Section 18.3 of the Lease.

"Property Escrow Agreement" means that certain Property Escrow Agreement, dated as of the Effective Date, by and among Lessor, Lessee and the escrow agent named therein.

"Prudent Utility Practices" means those practices, methods, equipment, specifications and standards necessary to permit satisfaction of the obligations of Lessee (including safety and performance) under the Must-Run Contract, so long as such agreement remains in effect, taking into account, however, the timing, nature and extent of Lessee's decommissioning obligations as set forth in Article 18 of the Lease.

"PUHCA" means the Public Utility Holding Company Act of 1935, as amended from time to time, and all rules and regulations adopted thereunder.

"Purchase Option" has the meaning set forth in Section 18.1(b)(i) of the Lease.

"Purchase and Renewal Option" has the meaning set forth in Section 18.1(b)(i) of the Lease.

"PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended from time to time, and all rules and regulations adopted thereunder.

"Related Agreement Rights" has the meaning set forth in the Recitals to the Assignment of Related Agreements.

"Renewal Option" has the meaning set forth in Section 18.1(b)(i) of the Lease.

"Rent" means, collectively, Basic Rent and Supplemental Rent.

“Responsible Officer” shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Transaction Document, the President, or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer who in the normal performance of his or her operational responsibility would have knowledge of such matter and the requirements with respect thereto.

“RGP” means the replacement generation plant to be developed and constructed by Lessee pursuant to the terms and conditions of the Cooperation Agreement.

“RGP Costs” has the meaning set forth in Section 19.10.

“SDG&E” means San Diego Gas & Electric Company.

“SDG&E Offsets” means the air pollution control credits transferred by SDG&E to Lessor pursuant to the Asset Sale Agreement, and transferred by Lessor to Lessee pursuant to the Contract and Permit Rights Assignment.

“Severable Modification” means any Modification which can be removed from the Leased Property without (i) causing material damage to the Leased Property, or (ii) materially reducing the utility of the Facility (determined in accordance with Prudent Utility Practices) as in effect immediately before the Modification was made (taking into account any substitution or restoration of property made in connection with such removal).

“Site Rent” has the meaning set forth in Section 3.1 of the Lease.

“South Bay Land” has the meaning set forth in the Recitals to the Lease.

“State Lands Commission” means the California State Lands Commission.

“Stipulated Loss Value” means, as of any Stipulated Loss Value Payment Date, the amount set forth opposite such Stipulated Loss Value Payment Date in Schedule E to the Lease.

“Stipulated Loss Value Payment Date” means each of the dates during the Bond Financing Period specified in Schedule E to the Lease.

“Supplemental Rent” means any and all amounts, liabilities and obligations (other than Basic Rent) which Lessee assumes or agrees to pay to or on behalf of Lessor or any other Indemnitee under the Lease including (i) Stipulated Loss Value or damages for breach of any covenants, representations, warranties or agreements therein, (ii) all amounts required to be paid pursuant to the second sentence of Section 3.2 of the Lease and (iii) any indemnities.

“Surface Level” means, at any point on the Facility Site, the surface of the ground at such point (not including any berms or other features of the topography of the Facility Site in any measurement from the surface at such point).

“Tax” or “Taxes” means any taxes, impositions, fees, levies, assessments, or other charges or withholdings of any nature whatsoever (together with any related interest, penalties, fines or additions to tax), including gross or net income, capital, license, filing, recording, documentation and registration fees and sales, use, transfer, leasing, property (tangible and intangible), personal property, excise, receipts, withholding, franchise and license taxes, value-added, ad valorem, business transfer, capital gains, minimum, alternative minimum, tax preference, excess profits, accumulated earnings, net worth, and doing business taxes.

“Termination Notice Date” has the meaning set forth in Section 19.10.

“Transaction Documents” means the Lease, the Contract and Permit Rights Assignment, the Assignment of Related Agreements and the Lease Guaranty.

“Vendor” has the meaning set forth in Section 2.4 of the Lease.

RULES OF INTERPRETATION

1. All terms defined in this Appendix A, the Lease, the Lease Guaranty, the Assignment of Related Agreements or the Contract and Permit Rights Assignment in the singular form shall have comparable meanings in the plural form and vice versa.

2. The word "or" is not exclusive.

3. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule.

4. A reference to a Person includes such Person's permitted successors and permitted assigns.

5. The words "include", "includes" and "including" and words of similar import are not limiting or exclusive.

6. A reference in the Lease, the Lease Guaranty, the Assignment of Related Agreements or the Contract and Permit Rights Assignment to an Article, Section, Exhibit, Schedule, Annex, Attachment or Appendix is to the Article, Section, Exhibit, Schedule, Annex, Attachment or Appendix of such Agreement unless otherwise indicated. Exhibits, Schedules, Annexes, Attachments or Appendices to any document shall be deemed incorporated by reference in such document.

7. References to or definitions of any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) except as otherwise expressly provided, shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time.

8. The words "hereof," "herein" and "hereunder" and words of similar import when used in the Lease, the Lease Guaranty, the Assignment of Related Agreements or the Contract and Permit Rights Assignment shall refer to such agreement as a whole and not to any particular provision of such document.

9. References to or definitions of singular words include the plural and vice versa.

10. References to "days" shall mean calendar days, unless the term "Business Days" is used. References to a time of day shall mean such time in San Diego, California, unless otherwise specified.

"Responsible Officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Transaction Document, the President, or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer who in the normal performance of his or her operational responsibility would have knowledge of such matter and the requirements with respect thereto.

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1. All terms defined in this Appendix A, the Lease, the Lease Guaranty, the Assignment of Related Agreements or the Contract and Permit Rights Assignment in the singular form shall have comparable meanings in the plural form and vice versa.
2. The word "or" is not exclusive.
3. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule.
4. A reference to a Person includes such Person's permitted successors and permitted assigns.
5. The words "include", "includes" and "including" and words of similar import are not limiting or exclusive.
6. A reference in the Lease, the Lease Guaranty, the Assignment of Related Agreements or the Contract and Permit Rights Assignment to an Article, Section, Exhibit, Schedule, Annex, Attachment or Appendix is to the Article, Section, Exhibit, Schedule, Annex, Attachment or Appendix of such Agreement unless otherwise indicated. Exhibits, Schedules, Annexes, Attachments or Appendices to any document shall be deemed incorporated by reference in such document.
7. References to or definitions of any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) except as otherwise expressly provided, shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time.
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Oversize Document(s)

1. MAP(S) # _____

Document too large to scan

2. PICTURE(S) # _____

For more information contact:

California Energy Commission
Docket Unit
1516 9th Street, MS-4
Sacramento, CA 965814-5512

Telephone (916) 654-5076
docket@energy.state.ca.us



July 31, 2006

Bill Pfanner
Project Manager
California Energy Commission
System Assessment and Facility Siting Division
1516 Ninth Street, MS 15
Sacramento, CA 95814-5512

DOCKET	
06-AFC-3	
DATE	JUL 31 2006
RECD.	AUG 1 2006

Dear Mr. Pfanner:

It was a pleasure talking with you and your colleagues the other day. We will look forward to working with you through your review of the LSP South Bay, LLC Application for Certification for the South Bay Replacement Project. Pursuant to your request I am forwarding copies of the following documents:

- *Lease Agreement* between San Diego Unified Port District and Duke Energy South Bay, LLC dated April 1, 1999
- *Cooperation Agreement* between San Diego Unified Port District and Duke Energy South Bay, LLC dated December 11, 1998
- *Quitclaim Deed, Easement Reservation and Covenant Agreement* between San Diego Unified Port District and San Diego Gas & Electric Company
- *Council Agenda Statement and Memorandum of Understanding* between the City of Chula Vista and San Diego Gas & Electric Company dated October 12, 2004
- *Agenda Sheet* re: the San Diego Unified Port District's purchase of the South Bay Power Plant dated December 3, 1998
- *Information to the Board of Port Commissioners* re: the South Bay Power Plant Working Group's final report dated April 30, 2004 with the *South Bay Power Plant Working Group Final Report* dated April 16, 2004 attached

If the District can be of further assistance, please do not hesitate to call me at (619) 686-7217.

Sincerely,

Randa J. Coniglio
Area Real Estate Manager

RJC:sms

Enclosures

Document No. 193594