
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of report (Date of earliest event reported): December 19, 2018

FUELCELL ENERGY, INC.

(Exact Name of Registrant as Specified in Charter)

Delaware
(State or Other Jurisdiction of
Incorporation)

1-14204
(Commission
File Number)

06-0853042
(IRS Employer
Identification No.)

3 Great Pasture Road
Danbury, Connecticut
(Address of Principal Executive Offices)

06810
(Zip Code)

Registrant's telephone number, including area code: (203) 825-6000

Not Applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
-

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement.

Generate Lending Construction Loan Agreement

On December 21, 2018, FuelCell Energy, Inc. (the “Company”), through its indirect wholly-owned subsidiary FuelCell Energy Finance II, LLC (“FCEF II” or “Borrower”), entered into a Construction Loan Agreement (the “Agreement” or the “Generate Lending Construction Loan Agreement”) with Generate Lending, LLC (“Lender”) pursuant to which Generate Lending agreed (the “Commitment”) to make available to FCEF II a credit facility in an aggregate principal amount of up to \$100,000,000 and, subject to further Lender approval and available capital, up to \$300,000,000 if requested by the Company (the “Facility”) to fund the manufacture, construction, installation, commissioning and start-up of stationary fuel cell projects to be developed by the Company on behalf of Borrower during the Availability Period (as defined below and in the Agreement). Fuel cell projects must meet certain conditions to be determined to be “Approved Projects” under the Facility. The Facility will be comprised of multiple loans to individual Approved Projects (each, a “Working Capital Loan”). Each Working Capital Loan will be sized to the lesser of (i) 100% of the construction budget and (ii) the invested amount that allows Lender to achieve a 10% unlevered, after-tax inefficient internal rate of return. Approved Projects will be funded on a cost incurred basis. FCEF II or the Company will contribute any additional equity required to construct an Approved Project on a pari-passu basis with the Working Capital Loans. The Commitment to provide Working Capital Loans will remain in place for thirty-six months from the date of the Agreement (the “Availability Period”). Working Capital Loans borrowed during the Availability Period for Approved Projects may be outstanding until the achievement of an Approved Project’s Commercial Operation Date, to the extent that such date is after the Availability Period. Interest will accrue at 9.5% per annum, calculated on a 30/360 basis, on all outstanding principal, paid on the first business day of each month.

The maturity date for the outstanding principal amount of each Working Capital Loan will be the earlier of (a) the achievement of the Commercial Operation Date under the Engineering, Procurement and Construction (“EPC”) Agreement for such Approved Project, (b) ninety days prior to the required Commercial Operation Date under the Revenue Contract (as defined in the Agreement), or (c) upon certain defaults by Borrower. FCEF II will establish a reserve account, a construction account and a proceeds account. FCEF II and Lender will enter into depository control agreements with respect to such accounts granting to Lender a perfected, first priority security interest therein. Mandatory prepayments are required in the event of (i) material damage or destruction to an Approved Project, (ii) termination or default under an Approved Project’s Revenue Contract, (iii) a change of control, or (iv) failure to achieve Substantial Completion as defined under the EPC Agreement for such Approved Project by the required dates.

Provided that the Approved Project has been completed as of the maturity date and no defaults exist with respect to the Working Capital Loans for such Approved Project, FCEF II, as determined in its sole discretion, will have a 90-day period to either sell the Approved Project or effect a refinancing, in either case proceeds of which will be used to repay the Working Capital Loan for the Approved Project. In the case of a disposition of the Approved Project, Lender will be entitled to a “Disposition Fee,” as described below. In the case where the Working Capital Loan for the Project is refinanced, Lender will have the right to make an equity investment in the Approved Project on terms such that Lender derives an after-tax yield of no less than a 12% internal rate of return on an investment of greater than 10% of the total purchase price. Borrower and Lender will enter into an arrangement to share any returns realized in excess of the foregoing target return. In the event that Borrower does not sell or refinance an Approved Project within ninety days following the Working Capital Loan maturity date (or such other date as may be mutually agreed), then the outstanding balance of the Working Capital Loan on such Approved Project shall convert into a 100% equity ownership of the applicable project company owning such Approved Project through execution of a Membership Interest Purchase Agreement (“MIPA”) with the Lender. At that time, the Lender will own the project and Borrower will not have any repayment obligations. Included in the applicable MIPA for each Approved Project subject to this provision will be a conditional purchase price adjustment for Borrower equal to 50% of any distributions to Lender after Lender has achieved a 10% inefficient after-tax, unlevered internal rate of return. In the event that Borrower and Lender are unable to come to terms on a MIPA for any Approved Project, the Working Capital Loan for such Approved Project will be required to be repaid in full without penalty or premium.

The initial drawdown under the Facility paid at closing, on December 21, 2018, was \$10,000,000 as funding for the Company’s Bolthouse Farms 5.0 MW project in California, which is an Approved Project. The membership interests and assets of the project company developing the Bolthouse Farms project will be pledged as collateral. As additional collateral for the initial drawdown, the Company’s wholly-owned subsidiary, FuelCell Energy Finance, LLC, will pledge its interests and all assets in the project companies that are developing the three Long Island Power Authority (“LIPA”) projects in New York, totaling 39.8 MW and the two projects awarded in the Connecticut DEEP RFP, totaling 22.2 MW. The Company expects to qualify these projects as additional Approved Projects in due course under the Facility so that additional Working Capital Loans can be drawn down under the Facility for these projects.

Borrower will pay a draw down fee equal to 3% of the amount of each Working Capital Loan and certain other diligence and administration fees. Upon the sale of any Approved Project to a third party, Lender will be entitled to a disposition fee equal to 3% of the total sale price (“Disposition Fee”). At such time as Lender has made Working Capital Loans in the aggregate amount of greater than \$100,000,000 but less than \$200,000,000, the Disposition Fee is reduced to 2% and in the aggregate amount of greater than \$200,000,000 but less than \$300,000,000, the Disposition Fee is reduced to 1%.

In consideration for entering into the Agreement and providing the Facility, Lender will have an exclusive right to provide construction financing through the Facility to all of the Company's stationary fuel cell projects (excluding the Company's 2.8 MW Tulare project financed through the Company's existing NRG Energy construction loan facility and the 7.4 MW Groton Navy Sub Base project, expected to be financed through other lenders), excluding advanced technology projects including hydrogen, storage or carbon capture, unless the Company determines to make such advanced technology projects available to Lender. Lender's exclusivity is set forth in a Right to Finance Agreement, which is attached as Exhibit 10.2 to this Current Report on Form 8-K and incorporated herein by reference. Lender's exclusivity will terminate if it (i) fails to approve three submitted projects as Approved Projects; (ii) ceases to fund Approved Projects for a six month period commencing on June 30, 2019; or (iii) exercises its optional call right, discussed below. For any fuel cell project that Lender does not designate as an Approved Project to fund, exclusivity restrictions with regard to such project are no longer applicable and the Company can obtain financing elsewhere. Lender's exclusivity also does not restrict the Company from consummating corporate debt facilities. The Company may terminate the exclusivity with Lender at any time by making a cash payment to Lender equal to \$650,000.

For the initial \$10,000,000 drawdown and any additional drawdowns prior to June 30, 2019, the Company has provided an unsecured parent guaranty (the "Guaranty Agreement"). Lender has an optional call right which must be noticed during the ten day period beginning on June 20, 2019 and ending on (and including) June 30, 2019. If Lender delivers such notice, all of the Working Capital Loans, together with all accrued and unpaid interest thereon, will be due and payable in their entirety, without penalty or premium, prior to September 30, 2019. In the event that Lender issues the foregoing notice, from and after such date, Lender shall not be entitled to any Disposition Fees or have any rights with respect to any disposition or refinancing, other than with respect to the Bolthouse Farms project. Lender's exclusivity will also terminate.

The Agreement contains customary representations and warranties, affirmative and negative covenants, and events of default that entitle Lender to cause the indebtedness under the Working Capital Loans and under the Facility to become immediately due and payable. Certain events of default related to specific Approved Projects only result in the Working Capital Loan for such Approved Project becoming due and payable.

The foregoing is only a brief description of the material terms of the Generate Lending Construction Loan Agreement, the Right to Finance Agreement, and the Guaranty Agreement, does not purport to be a complete description of the rights and obligations of the parties thereunder, and is qualified in its entirety by reference to the Generate Lending Construction Loan Agreement, the Right to Finance Agreement, and the Guaranty Agreement that are filed as Exhibits 10.1, 10.2, and 10.3, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Amendment to Hercules Loan and Security Agreement

As previously disclosed, in April 2016, the Company entered into a loan and security agreement with Hercules Capital, Inc. ("Hercules") for an aggregate principal amount of up to \$25.0 million, subject to certain terms and conditions. The loan and security agreement was subsequently amended on September 5, 2017, October 27, 2017, March 28, 2018 and August 29, 2018. Principal under the loan began amortizing in fiscal 2018 until March 2018, when the Company refinanced with Hercules and drew a term loan advance of \$13.1 million under the March 28, 2018 amendment. This resulted in an aggregate amount of outstanding term loan advances of \$25.0 million as of April 30, 2018 and is the current balance as of December 21, 2018. The term loan maturity date is October 1, 2020, subject to extension upon the Company's achievement of certain performance milestones. Payments for the aggregate amount outstanding are interest-only for the initial 12-month period (through March 2019), followed by equal monthly installments of principal and interest until the term loan maturity date. Under the amended loan and security agreement, the Company is required to maintain an unrestricted cash balance of at least (a) 75% of the outstanding loan balance plus (b) the amount of accounts payable not paid within 90 days of the date payment was issued.

On December 19, 2018, to facilitate the Generate Lending Construction Loan Agreement described above, the Company and Hercules (and various affiliated entities) entered into the fifth amendment to the loan and security agreement (such amendment, the "Hercules Amendment") to (i) modify the definitions of "Permitted Investment", "Permitted Liens", "Project Companies", "Project Company Indebtedness", and "Qualified Subsidiary" to permit the creation of a new holding company, FuelCell Energy Finance II, LLC to hold the membership interests of project companies to be funded under the Facility described above and (ii) modify the definition of "Project Roundtrip Transaction" to increase the investment amount under a Project Roundtrip Transaction to \$40,000,000.

A copy of the Hercules Amendment is attached to this Current Report on Form 8-K as Exhibit 10.4 and is incorporated herein by reference. The foregoing is only a brief description of the material terms of the Hercules Amendment, does not purport to be a complete description of the rights and obligations of the parties thereunder, and is qualified in its entirety by reference to the Hercules Amendment that is filed as Exhibit 10.4 to this Current Report on Form 8-K and incorporated by reference herein. For ease of reference, the original loan and security agreement and the other amendments thereto are incorporated by reference as Exhibits 10.5, 10.6, 10.7, 10.8 and 10.9 to this Current Report on Form 8-K.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information in Item 1.01 above regarding the Generate Lending Construction Loan Agreement and the transactions contemplated thereby is incorporated into this Item 2.03 by reference. Such information is qualified in its entirety by reference to the full text of the Construction Loan Agreement, the Right to Finance Agreement, and the Guaranty Agreement, which are attached as Exhibit 10.1, Exhibit 10.2, and Exhibit 10.3, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

Item 8.01 Other Events.

On December 26, 2018, the Company issued a press release announcing the Generate Lending Construction Loan Agreement, a copy of which is attached as Exhibit 99.1 to this Current Report on Form 8-K and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.**(d) Exhibits**

Exhibit No.	Description
<u>10.1</u>	<u>Construction Loan Agreement, dated December 21, 2018, by and among FuelCell Energy Finance II, LLC and Generate Lending, LLC.</u>
<u>10.2</u>	<u>Right to Finance Agreement, dated December 21, 2018, by and between FuelCell Energy, Inc., FuelCell Energy Finance II, LLC and Generate Lending, LLC.</u>
<u>10.3</u>	<u>Guaranty Agreement, dated December 21, 2018, by FuelCell Energy, Inc. in favor of Generate Lending, LLC.</u>
<u>10.4</u>	<u>Fifth Amendment to Loan and Security Agreement, dated December 19, 2018, by and among FuelCell Energy, Inc., Versa Power Systems, Inc., Versa Power Systems Ltd., Hercules Capital, Inc. and Hercules Funding II, LLC</u>
<u>10.5</u>	<u>Loan and Security Agreement, dated April 14, 2016, among FuelCell Energy, Inc. and Hercules Capital, Inc. (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated April 14, 2016).</u>
<u>10.6</u>	<u>First Amendment to Loan and Security Agreement, dated September 5, 2017, by and among the FuelCell Energy, Inc., Versa Power Systems, Inc., Versa Power Systems Ltd., Hercules Capital, Inc. and Hercules Funding II, LLC (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated September 5, 2017).</u>
<u>10.7</u>	<u>Second Amendment to Loan and Security Agreement, dated October 27, 2017, by and among the FuelCell Energy, Inc., Versa Power Systems, Inc., Versa Power Systems Ltd., Hercules Capital, Inc. and Hercules Funding II, LLC (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated October 27, 2017).</u>
<u>10.8</u>	<u>Third Amendment to Loan and Security Agreement, dated March 28, 2018, by and among FuelCell Energy, Inc., Versa Power Systems, Inc., Versa Power Systems Ltd., Hercules Capital, Inc. and Hercules Funding II, LLC (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated March 28, 2018).</u>
<u>10.9</u>	<u>Fourth Amendment to Loan and Security Agreement, dated August 29, 2018, by and among FuelCell Energy, Inc., Versa Power Systems, Inc., Versa Power Systems Ltd., Hercules Capital, Inc. and Hercules Funding II, LLC (Incorporated herein by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K dated August 29, 2018).</u>
<u>99.1</u>	<u>Press Release issued by FuelCell Energy, Inc. on December 26, 2018.</u>

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

FUELCELL ENERGY, INC.

Date: December 26, 2018

By: /s/ Michael S. Bishop

Michael S. Bishop

Senior Vice President, Chief Financial Officer and Treasurer

CONSTRUCTION LOAN AGREEMENT

dated as of December 21, 2018

by and among

**FUELCELL ENERGY FINANCE II, LLC,
as the Borrower,**

**Certain of its Subsidiaries,
as the Project Company Guarantors,**

and

**GENERATE LENDING, LLC,
as the Lender**

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Exhibits

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THIS CONSTRUCTION LOAN AGREEMENT (together with all exhibits and schedules, as the same may be amended, restated, supplemented or otherwise modified at any time and from time to time, this “**Agreement**”) is made as of this 21st day of December, 2018, by and among **FUELCELL ENERGY FINANCE II, LLC**, a Connecticut limited liability company with its principal place of business located at 3 Great Pasture Road, Danbury, Connecticut 06810 (the “**Borrower**”), **BAKERSFIELD FUEL CELL 1, LLC**, a Delaware limited liability company (“**Bakersfield**”), **BRT FUEL CELL, LLC**, a New York limited liability company (“**BRT**”), **CR FUEL CELL, LLC**, a New York limited liability company (“**CR**”), **YAPHANK FUEL CELL PARK, LLC**, a New York limited liability company (“**Yaphank**”), **HOMESTEAD FUEL CELL 1, LLC**, a Connecticut limited liability company (“**Homestead**”), **DERBY FUEL CELL, LLC**, a Connecticut limited liability company (“**Derby**”), and collectively with Bakersfield, BRT, CR, Yaphank and Homestead, each, an “**Initial Project Company Guarantor**”, and together, the “**Initial Project Company Guarantors**”); each of the Subsidiaries of Borrower that becomes a party hereto as an “**Additional Project Company Guarantor**” (the Initial Project Company Guarantors and any such Additional Project Company Guarantors are sometimes hereinafter referred to individually as a “**Project Company Guarantor**” and collectively as the “**Project Company Guarantors**”; and collectively with the Borrower, the “**Loan Parties**” and each, a “**Loan Party**”), and **GENERATE LENDING, LLC**, a Delaware limited liability company with an office at 555 De Haro Street, Suite 300, San Francisco, CA 94107 (together with its successors and assigns, the “**Lender**”).

RECITALS:

The Borrower has requested that the Lender make available to the Borrower a construction loan facility in the aggregate original principal amount of up to Three Hundred Million Dollars (\$300,000,000), the proceeds of which shall be used by the Borrower to finance the manufacturing, construction, installation, commissioning and start-up of a series of selected stationary fuel cell power plants, as more specifically set forth herein and in every other Loan Document.

Upon the terms and subject to the conditions contained herein, the Lender is willing to make such loans to the Borrower.

ACCORDINGLY, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Loan Parties and the Lender hereby agree as follows:

SECTION 1 DEFINITIONS

1.1 Definitions. The following terms when used in this Agreement shall have the meanings assigned to them below: “**Additional Project Documents**” means, with respect to any Project, any contract, agreement or instrument relating to the acquisition, development, construction, ownership, use, testing, operation, maintenance, repair, insurance, management, or administration of such Project or the business of the applicable Project Company Guarantor or the Borrower with any other Person subsequent to the date of such Project becoming an Approved Project in accordance with the terms of this Agreement (including any contract(s), agreement(s) or instrument(s) entered into in substitution for the Project Document that has been terminated in accordance with its terms or otherwise).

“**Affiliate**” means, as to any specified Person, any other Person that directly or indirectly (through one or more intermediaries or otherwise) Controls, is Controlled by or is under common Control with such Person. The term “**Control**” (including the terms “Controlled by” and “under common Control with”) means (i) the power to vote thirty-five percent (35%) or more of the securities or other equity interests of a Person having ordinary voting power, or (ii) the possession, directly or indirectly, of any other power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, as trustee or executor, by contract or otherwise.

“**Agreement**” has the meaning given to such term in the introductory paragraph to this Agreement.

“**Anti-Corruption Laws**” shall mean all laws, rules and regulations of any jurisdiction applicable to any Loan Party or any Subsidiary of any Loan Party concerning or relating to bribery, corruption or money laundering, including, without limitation, the United States Foreign Corrupt Practices Act of 1977 (and any regulations promulgated thereunder).

“**Applicable Law**” means, with respect to any Person or Project, all international, foreign, federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes, executive orders, and administrative or judicial precedents or authorities applicable to such Person or Project, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and Approvals of, and agreements with, any Governmental Authority, in each case, whether or not having the force of law.

“**Approvals**” means any and all approvals, permits, registrations, permissions, licenses, authorizations, consents, certifications, actions, orders, waivers, exemptions, variances, franchises, filings, declarations, rulings, registrations and applications from or issued by any Governmental Authority.

“**Approved Costs**” means, with respect to any Approved Project, the Invoice Payments and all other costs associated with the development, acquisition, design and construction of such Approved Project, in each case as set forth in the Project Loan Disbursement and Construction Schedule applicable to such Approved Project.

“**Approved Customer**” means any publicly traded company, municipality or privately held company, college or university or tax-exempt entity or any other type of entity that is approved by Lender:

- (a) that is Investment Grade; and
- (b) that is organized under the laws of the United States or any state thereof or the Republic of Korea; and
- (c) that is located in any of the United States or any state thereof or the Republic of Korea; and
- (d) that the Lender is not prohibited from transacting with under any Applicable Law, or that would not cause the Lender to violate any such Applicable Law if Lender financed a Revenue Contract in accordance with the terms hereof.

“ **Approved Project** ” means an Available Project that meets all of the following criteria, as determined by the Lender in its good faith discretion:

- (a) The Project must be owned by a Project Company Guarantor (or a Project Company Guarantor must have the right to acquire the Project pursuant to the applicable EPC Contract) and such Project and such Project Company Guarantor must comply with all applicable representations, warranties and covenants set forth in this Agreement and in the other Loan Documents;
- (b) such Project will be manufactured, constructed and installed by the EPC Contractor pursuant to an EPC Contract, and will be serviced by the Servicer pursuant to an O&M Agreement, and an Independent Engineer shall have reviewed and approved the Project level assumptions relating to such EPC Contract and such O&M Agreement, or other comparable documentation reasonably acceptable to the Lender has been provided;
- (c) the Customer with respect to such Project must be an Approved Customer;
- (d) there must be a Revenue Contract associated with such Project that has been executed and delivered by each party thereto, and the term of such Revenue Contract must be at least ten (10) years or, in lieu of a Revenue Contract, there must be the right to receive payment under a Utility Tariff;
- (e) such Project must utilize FuelCell Technology that is made available to the Project Company Guarantor through the EPC Contract and O&M Agreement;
- (f) the total out of pocket costs of designing, procuring, developing and installing such Project must be at least \$5,000,000;
- (g) all requirements for Notice to Proceed under the EPC Contract to have been issued by the Borrower and applicable Project Company Guarantor to the EPC Contractor other than the receipt of any Approvals which are issued by the applicable Governmental Authority in the ordinary course and for which Borrower reasonably believes will be issued at the appropriate time, and such Notice to Proceed either shall have been obtained, or shall be reasonably expected to be obtained during the six (6) month period (or such other period as may be mutually agreed upon between Borrower and Lender) immediately following the date on which such Available Project has been submitted to the Lender for approval in accordance with Section 2.1(b) ;

(h) the Project Company Guarantor shall have obtained all Approvals required for the commencement of construction of such Project other than the receipt of any Approvals which are issued by the applicable Governmental Authority in the ordinary course and for which Borrower reasonably believes will be issued at the appropriate time;

(i) the Borrower shall have provided a Base Case Model for such Project, which Base Case Model, including all assumptions set forth therein;

(j) The Borrower shall have provided an Independent Engineer's report with respect to such Project or other documentation in form and substance reasonably acceptable to the Lender, which Independent Engineer's report or other documentation shall confirm the assumptions set forth in the Base Case Model; and

(k) The Borrower shall have delivered true, correct and complete copies of all Project Documents for such Project, and the Lender shall be satisfied with such Project Documents;

provided, that the Lender may, in its sole discretion, waive any one or more of the foregoing requirements in determining whether an Available Project constitutes an Approved Project.

" Approved Project Nominal Maturity Date " means, with respect to all Working Capital Loans attributable to any Approved Project, the earlier to occur of (i) the Substantial Completion Date for such Approved Project, and (ii) the Required Substantial Completion Date for such Approved Project.

" Approved Project Price " means, with respect to any Approved Project, the greater of (i) the EPC Contract Price, as such term is defined in the EPC Contract relating to such Approved Project, and (ii) the Working Capital Loan Amount determined for such Approved Project.

" Authorized Officer " means any of the following officers of the Parent: Chief Executive Officer & President, the Senior Vice President & Chief Financial Officer, the Senior Vice President & General Counsel or the Senior Vice President & Chief Operating Officer.

" Authorized Representative " means, in the case of the Parent, an Authorized Officer, and in the case of any Subsidiary of the Parent or any Loan Party, its sole member.

“ **Available Project** ” means any Project to be constructed or manufactured by Parent or any Affiliate of Parent and to be located in the United States of America or the Republic of Korea.

“ **Bankruptcy Code** ” means the United States Bankruptcy Reform Act of 1978 (11 U.S.C. §§101, et. seq.), as amended, and any successor statute thereto.

“ **Base Case Model** ” means the model to be used by the Borrower and the Project Company Guarantors to determine the anticipated performance of a Project, the form of which is attached hereto as Exhibit F.

“ **Borrower** ” has the meaning given to such term in the introductory paragraph to this Agreement.

“ **Business Day** ” means a weekday, other than a Saturday, Sunday or legal holiday, on which banks in California are open for the conduct of their commercial banking business.

“ **Capital Lease** ” means any lease which, in accordance with GAAP, should be capitalized on the balance sheet of the lessee.

“ **Capital Lease Obligations** ” means the aggregate amount which, in accordance with GAAP, should be reported as a liability on the balance sheet of a Person with respect to Capital Leases.

“ **Cash Equivalents** ” means, as to any Person, (a) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided, that the full faith and credit of the United States of America is pledged in support thereof) having maturities of not more than one year from the date of acquisition by such Person, (b) time deposits and certificates of deposit of any commercial bank having, or which is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, having capital, surplus and undivided profits aggregating in excess of \$500,000,000, and having maturities of not more than one year from the date of acquisition by such Person, (c) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in subsection (a) above entered into with any bank meeting the qualifications specified in subsection (b) above, (d) commercial paper issued by any issuer rated at least A-3 by S&P or at least P-3 by Moody’s or carrying an equivalent rating by a comparable nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and in each case maturing not more than one year after the date of acquisition by such Person or (e) investments in money market funds substantially all of whose assets are comprised of securities of the types described in subsections (a) through (d) above.

“ **Cash Flow** ” means, for any Project and for any period, an amount equal to (a) all revenues received in respect of such Project in cash during such period; minus, (b) all amounts required or needed for the payment of expenses paid or to be paid in respect of such Project in cash during such period, in each case determined consistent with past practice and in accordance with GAAP.

“Change of Control” means, (i) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its subsidiaries and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of such plan) shall become the “beneficial owner” (as defined in Rules 13(d)-3 and 13(d)-5 under the Exchange Act), directly or indirectly, of more than fifty percent (50%) of the outstanding voting securities of the Parent, calculated on a fully-diluted as-converted basis, (ii) at any time, any transfer directly by Parent of more than five percent (5%) of the outstanding Equity Interests of Parent to a Prohibited Holder, (iii) at any time, the Parent shall cease to own and control, beneficially and of record, all of the issued and outstanding Equity Interests of Holdco, (iv) at any time, Holdco shall cease to directly own and control, beneficially and of record, all of the issued and outstanding Equity Interests of the Borrower, or (v) at any time, the Borrower shall cease to directly own and control, beneficially and of record, all of the issued and outstanding Equity Interests of any other Loan Party, except as a result of a transaction otherwise permitted under this Agreement. Notwithstanding the foregoing, a Project Company Subsidiary may admit a tax equity investor, so long as any proceeds received from such tax equity investor prior to a Disposition of such Project Company Subsidiary or a Refinancing of the Working Capital Loans attributable to such Project Company Subsidiary are deposited into the Proceeds Account immediately upon receipt and applied to repay the Working Capital Loans, together with all accrued and unpaid interest thereon and other amounts as may be owing hereunder, at the time of such Disposition or Refinancing.

“Charges” shall have the meaning set forth in Section 3.12.12.

“Closing Date” means the date on which the initial Loan is made by the Lender to the Borrower following satisfaction of the conditions to the making of such Loan as set forth herein, as determined by the Lender in its reasonable discretion.

“Closing Date Approved Projects” means each of the Projects listed on Schedule 1.1C that meet the requirements of an “Approved Project” as of the Closing Date and for which the initial Working Capital Loans funded on the Closing Date shall be made.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute, including the rules or regulations promulgated thereunder, in each case as in effect from time to time. References to sections of the Code shall be construed to also refer to any successor sections.

“Collateral” means (i) all “Collateral”, as such term is defined in the Security Agreement; and (ii) all other assets and properties of the Borrower and the other Loan Parties that have been pledged as security for all or any portion of the Obligations.

“ **Commitment** ” means the obligation of the Lender to make Working Capital Loans to the Borrower pursuant to Section 2.1 in an aggregate original principal amount not to exceed an amount equal to Three Hundred Million Dollars (\$300,000,000).

“ **Commitment Termination Date** ” means the earlier to occur of (i) December 21, 2021, (ii) such earlier date on which the Commitment may be terminated in accordance with the terms hereof.

“ **Construction Account** ” means deposit account number 360768052 in the name of the Borrower and maintained with the Depositary Bank and subject to the springing control of, and a perfected, first priority security interest in favor of, the Lender, and into which the proceeds of each Working Capital Loan shall be deposited.

“ **Construction Budget and Schedule** ” means, for any Available Project, the scheduled Invoice Payments and Progress Milestones as referenced in Section 2.1(b).

“ **Credit File** ” means, with respect to the Customer for any Available Project in respect of which the Borrower has requested to be approved as an Approved Project, or in respect of which the Lender has made a Working Capital Loan hereunder, the following information compiled at the time of Project origination in accordance with Borrower’s customary origination procedures, as agreed to by the Lender (whose agreement shall not be unreasonably withheld):

- (i) For any publicly traded company, a credit report from Moody’s or another equivalent rating agency;
- (ii) For any municipality, a bond report from Moody’s or another equivalent rating agency;
- (iii) For any privately held company, year-end financial statements for the three most recent years for which for which such financial statements are available, which shall have been either reviewed or audited by certified public accountants; and
- (iv) For any other entity that is not described in clause (i), (ii) or (iii) above, such information as is mutually agreed upon between Borrower and Lender.

“ **Customer** ” means a counterparty to a Revenue Contract or a utility pursuant to an approved Utility Tariff.

“ **Debt** ” means, as to any Person, without duplication, (i) all indebtedness for borrowed money, including, without limitation, all indebtedness of such Person evidenced by bonds, debentures, notes and other similar instruments, (ii) all obligations of such Person to pay the deferred purchase price of property or services, other than trade payables arising in the ordinary course of business, (iii) all obligations of such Person under any conditional sale or other title retention agreement relating to property acquired by such Person, (iv) all Capital Lease Obligations of such Person, (v) all Debt of any other Person secured by a Lien on any asset of such Person, whether or not such Debt has been assumed by such Person, provided that if such Person has not assumed or become liable for the payment of such obligation, the amount of such Debt shall be limited to the lesser of (A) the principal amount of the obligations being secured and (B) the fair market value of the encumbered property, (vi) all obligations of such Person, contingent or otherwise, to purchase, redeem, retire or otherwise acquire for value any capital stock of such Person prior to the date that is ninety-one (91) days after the Maturity Date (excluding provisions requiring redemption upon a “change of control” or similar event; provided that such “change of control” or similar event results in the repayment of the Obligations (other than contingent indemnification obligations) (such capital stock, “ **Disqualified Capital Stock** ”), (vii) all Hedging Obligations of such Person, net of liabilities owed to such Person by the counterparties in respect thereof, (viii) all lease obligations associated with any Project incurred in connection with a sale leaseback transaction entered into in respect of such Project; and (ix) all Debt of any other Person guaranteed by such Person.

“**Debt Service Reserve**” shall have the meaning set forth in Section 6.15(d).

“**Default Rate**” means the Interest Rate plus five percent (5%) per annum.

“**Depository Bank**” means JPMorgan Chase Bank, N.A.

“**Disposition**” shall have the meaning set forth in Section 8.3, and “**Dispose**” means to sell, transfer, lease, assign or otherwise dispose of.

“**Dispute**” shall have the meaning set forth in Section 12.11(b).

“**Disqualified Capital Stock**” shall have the meaning set forth in the definition of “**Debt**”.

“**Dollars**” or “**\$**” means, unless otherwise qualified, dollars in lawful currency of the United States of America.

“**Eligible Assignee**” means any Person other than a natural Person that is (i) an Affiliate of the Lender or (ii) a commercial bank, insurance company, investment or mutual fund or other Person that is an “accredited investor” (as defined in Regulation D under the Securities Act) and that has been consented to in writing by the Borrower, such consent not to be unreasonably withheld, conditioned or delayed.

“**Environmental Laws**” means any and all applicable federal, state and local laws, statutes, ordinances, rules, regulations and orders of courts or Governmental Authorities, relating to pollution and protection of the environment or the release of Hazardous Materials into the environment.

“ **EPC Consent** ” means a Consent and Agreement, in the form attached hereto as Exhibit G, by and among the applicable Project Company Guarantor, the EPC Contractor and the Lender.

“ **EPC Contract** ” means, with respect to any Available Project, an Engineering, Procurement and Construction Agreement by and between the Project Company Guarantor that will own such Project and the EPC Contractor, in a form as may be acceptable to Lender, pursuant to which, among other things, the EPC Contractor shall assume the responsibility for the engineering, procurement and construction of such Project, which shall expressly include the specifications for such Project, as well as a Construction Budget and Schedule for such Project, and which shall provide that title to the applicable portion of such Project shall be transferred to such Project Company Guarantor upon each payment by such Project Company Guarantor thereunder.

“ **EPC Contract Price** ” means, for any EPC Contract, the aggregate amount payable by the Borrower and/or the applicable Project Company Guarantor to the EPC Contractor pursuant to the terms of such EPC Contract.

“ **EPC Contractor** ” means the Parent.

“ **Equity Interests** ” means, with respect to any Person, any of the shares of capital stock of (or other ownership or profit interests in) such Person, any of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, any of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and any of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ **ERISA** ” means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor statute, including the rules and regulations promulgated thereunder, in each case as in effect from time to time. References to sections of ERISA will be construed to also refer to any successor sections.

“ **Exchange Act** ” means the Securities Exchange Act of 1934, as amended.

“ **Excluded Taxes** ” means any of the following Taxes imposed on or with respect to the Lender or required to be withheld or deducted from a payment to the Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of the Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of the Lender with respect to an applicable interest in the Loans or the Commitment pursuant to a law in effect on the date on which (i) the Lender acquired such interest in the Loans or the Commitment or (ii) the Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.7, amounts with respect to such Taxes were payable either to the Lender immediately before the Lender became a party hereto or to the Lender immediately before it changed its lending office, (c) Taxes attributable to the Lender’s (or its assignee’s) failure to comply with Section 3.7(v) and (d) any U.S. federal withholding Taxes imposed under FATCA.

“ **Facility Default** ” means any of the events specified in Section 9.2 which constitutes a Facility Event of Default or which, upon the giving of notice, the lapse of time, or both pursuant to Section 9.2, would, unless cured or waived, constitute a Facility Event of Default.

“ **Facility Event of Default** ” shall have the meaning assigned thereto in Section 9.2.

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

“ **Final Acceptance** ”, with respect to any Approved Project, has the meaning set forth in the applicable EPC Contract relating to such Approved Project.

¹

“ **Flood Insurance Laws** ” shall mean, collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973), as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004, as now or hereafter in effect or any successor statute thereto and (iii) the Biggert –Waters Flood Insurance Reform Act of 2012, as now or hereafter in effect or any successor statute thereto.

“ **FuelCell Technology** ” means the technology described on Schedule 1.1A attached hereto.

“ **GAAP** ” means generally accepted accounting principles, as recognized from time to time by the Accounting Principles Board of the American Institute of Certified Public Accountants and the Financial Accounting Standards Board, consistently applied and as in effect from time to time, subject to the provisions of Section 1.2.

¹ Conform term as necessary to EPC Contract

“ **Generate Capital** ” means Generate Capital, Inc., a Delaware corporation and the sole member of the Lender.

“ **Governmental Authority** ” means any federal, state, local or foreign government or political subdivision or any court, agency, authority, department, commission, board, bureau or instrumentality thereof.

“ **Hazardous Materials** ” means substances or materials which are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants or toxic substances under any applicable Environmental Law.

“ **Hedge Transaction** ” of any Person shall mean any transaction (including an agreement with respect thereto) now existing or hereafter entered into by such Person that is a rate swap, basis swap, forward rate transaction, commodity swap, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collateral transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures.

“ **Hedging Obligations** ” of any Person shall mean any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired under (i) any and all Hedge Transactions, (ii) any and all cancellations, buy backs, reversals, terminations or assignments of any Hedge Transactions and (iii) any and all renewals, extensions and modifications of any Hedge Transactions and any and all substitutions for any Hedge Transactions.

“ **Holdco** ” means FuelCell Energy Finance, LLC, a Connecticut limited liability company, and the owner of all of the issued and outstanding Equity Interests of the Borrower.

“ **Holdco Pledge Agreement** ” means that certain Pledge Agreement, dated as of the date hereof, executed by Holdco in favor of the Lender, pursuant to which Holdco shall have pledged to the Lender a perfected, first priority security interest in all of the issued and outstanding Equity Interests of the Borrower as collateral for the Obligations.

“ **Indemnified Parties** ” shall have the meaning set forth in Section 11.1.

“ **Indemnified Taxes** ” means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“ **Independent Engineer** ” means DAI Management Consultants, Inc. or another an independent engineer designated by the Lender and reasonably acceptable to the Borrower.

“**Initial Diligence Cost Reimbursement Letter**” means that certain letter agreement regarding expense reimbursement, dated as of December 12, 2018, and entered into by and between Parent and Generate Capital.

“**Initial Projects**” means those Projects listed on Schedule 1.1D that have been identified by Borrower as Available Projects as of the Closing Date, but have not yet qualified as an “Approved Project” as of the Closing Date.

“**Intellectual Property Rights**” shall have the meaning set forth in Section 4.10.

“**Interest Rate**” means a fixed rate of nine and one half percent (9.50%) per annum.

“**Internal Rate of Return**” means, with respect to any Project, the discount rate that sets A equal to B (calculated using the XIRR function in the current Microsoft Excel version as of the date of this Agreement), where A is the present value of projected Cash Flow from such Project, and B is the present value of the projected Investment by Borrower in such Project.

“**Investment**” means any beneficial ownership of (including stock, partnership interest or other securities) any Person, or any loan, advance or capital contribution to, or other investment in, any Person.

“**Investment Grade**” means, for the following Customers, determined as of the time the applicable Available Project is submitted to the Lender for approval in accordance with Section 2.1(b):

- (i) Any publicly traded company with a corporate credit rating of Baa3 or higher by Moody’s or an equivalent rating by another nationally recognized statistical rating agency;
- (ii) Any municipality with an investment grade bond rating by Moody’s or S&P;
- (iii) Any privately held company (a) with a rating of Baa3 or higher, as determined using Moody’s RiskCalc (“**RiskCalc**”) tool based upon at least three years of audited financial statements, (b) that has annual revenue for the most recent three fiscal years of at least \$30,000,000 per year; and (c) has been in business for at least five (5) years; or
- (iv) For any other entity that is not described in clause (i), (ii) or (iii) above, such criteria as is mutually agreed upon between Borrower and Lender.

“**Invoice Payments**” shall mean the respective payment amounts and the dates on which such payments are required to be made in accordance with the terms and conditions of the applicable EPC Contract or as otherwise agreed to between Borrower and Lender. Such terms and conditions for required payments in the EPC Contract may include requirements that the EPC Contractor achieve certain milestones but any such references to a milestone in the EPC Contract shall not be treated as causing any such milestone to be a “Progress Milestone” unless specifically designated as a “Progress Milestone” in the Construction Budget and Schedule for such Approved Project.

“ **Irrevocable Payment Instruction** ” means, with respect to any Revenue Contract or Utility Tariff relating to an Approved Project, an irrevocable payment instruction, executed or to be executed by the applicable Loan Party and pursuant to which such Loan Party shall irrevocably authorize and direct the applicable counterparty under such Revenue Contract or Utility Tariff to pay all amounts payable to such Loan Party thereunder directly to a Project Revenue Account.

“ **Joinder Agreement** ” means a Joinder and Reaffirmation Agreement substantially in the form of Exhibit D.

“ **Lender** ” shall have the meaning given to such term in the introductory paragraph to this Agreement.

“ **Lien** ” means any deed of trust or mortgage lien, security interest, pledge, charge, lien or other similar encumbrance of any nature.

“ **Loan** ” means a Working Capital Loan, and “ **Loans** ” means all of such Working Capital Loans.

“ **Loan Disbursement Date** ” means any Business Day occurring on or after the Closing Date but on or prior to the Commitment Termination Date; provided that there shall not occur more than one Loan Disbursement Date in any calendar month.

“ **Loan Documents** ” means this Agreement, the Loan Note, the Security Agreement, the Holdco Pledge Agreement, the Parent Guaranty, the Right of Financing Agreement, any Real Estate Documents, each mortgage, deed of trust, and security deed, each assignment of leases and rents, each Working Capital Loan Notice, and each other document, agreement and instrument executed and delivered by the Borrower and the other Loan Parties, or any of them, or any other Person or Persons in connection with this Agreement.

“ **Loan Note** ” has the meaning given to such term in Section 2.2.

“ **Loan Parties** ” has the meaning given to such term in the introductory paragraph to this Agreement.

“ **Material Adverse Effect** ” means a material adverse effect upon (i) the business, assets, properties, liabilities, financial condition, or results of operations of the Loan Parties, taken as a whole, (ii) the ability of any Loan Party to perform its material obligations under this Agreement or any other Loan Document to which it is a party, (iii) the legality, validity, binding effect or enforceability of any Loan Document, or (iv) the ability of the Lender to enforce any rights or remedies under or in connection with any Loan Document.

“ **Material Damage** ” means, with respect to an Approved Project, any damage to the infrastructure or equipment of such Approved Project, that results, or could reasonably be expected to result, in a termination of the Revenue Contract associated with such Approved Project, or a material adverse effect on the ability of any Loan Party to perform its obligations under such Revenue Contract.

“ **Material Additional Project Document** ” means any Additional Project Document the terms of which (a) could reasonably be expected to result in a Project Material Adverse Effect or (b) could reasonably be expected to result in the payment by any Project Company Guarantor of an amount in excess of one percent (1.0%) of the EPC Contract Price for such Project Company Guarantor’s Approved Project.

“ **Material Project Documents** ” means, with respect to any Project, the Revenue Contract or Utility Tariff associated with such Project, the EPC Contract and any related Material Subcontracts associated with such Project (including the Construction Budget and Schedule for such Available Project), any interconnection agreement or other indication of interconnectability for distribution level interconnections relating to such Project, any real estate lease, license or other agreement for the real property on which such Project is to be situated, any access agreements relating to such Project, the agreements transferring the Project assets and Revenue Contract to the applicable Project Company Guarantor, all material Approvals relating to such Project, all environmental assessments and reports associated with such Project, all documentation pertaining to any environmental attributes associated with such Project, and any other agreements that are material to the acquisition, development, operation and ownership of such Project, as reasonably determined by the Borrower.

“ **Material Subcontract** ” means, with respect to any Project, any subcontract under the EPC Contract related to such Project that has a total contract amount equal or greater than five percent (5.0%) of the EPC Contract Price for such EPC Contract. For the avoidance of doubt, “Material Subcontract” will not be deemed to include any contracts (or subcontracts) between Parent and any third party for parts, components and raw materials of any kind that are utilized by Parent in connection with the manufacture of a fuel cell power plant.

“ **Maximum Rate** ” shall have the meaning set forth in Section 12.12.

“ **Membership Interest Purchase Agreement** ” means a Membership Interest Purchase Agreement by and between the Borrower and the Lender or an Affiliate of the Lender designated by the Lender, pursuant to which the Borrower shall transfer to the Lender or such Affiliate one hundred percent (100%) of the Equity Interests of a Project Company Guarantor for a purchase price equal to the sum of (i) the then outstanding principal amount of all Working Capital Loans attributable to such Project Company Guarantor and its Approved Project, plus (ii) an additional conditional amount equal to fifty percent (50%) of any distributions payable to the Lender or such Affiliate after such Lender or Affiliate has achieved a ten percent (10%) inefficient after-tax, unlevered Internal Rate of Return with respect to its interest in such Project Company Guarantor.

“**Moody’s**” means Moody’s Investors Service, Inc.

“**Mortgage**” shall mean a mortgage, deed of trust, trust deed, security deed, debenture, deed of immovable hypothec, deed to secure debt or other real estate security document delivered by any Loan Party to the Lender from time to time, in form and substance satisfactory to the Lender, as the same may be amended, amended and restated, extended, supplemented, substituted or otherwise modified from time to time.

“**Notice to Proceed**” means, with respect to any Project, the notice to proceed issued by Borrower or a Project Company Subsidiary pursuant to the terms of the EPC Contract for such Project, which notice has been reviewed and confirmed by the Independent Engineer (or confirmed through other comparable documentation in form and substance reasonably acceptable to the Lender), and which is not conditional upon the obtaining of any additional Approvals.

“**O&M Agreement**” means, with respect to any Available Project, an Administrative and O&M Services Agreement by and between the Project Company Guarantor that owns such Project and the Servicer, pursuant to which the Servicer has assumed responsibility for the operation, maintenance and administration of such Project for the benefit of such Project Company Guarantor, including without limitation, the following:

- (a) Management of the day-to-day activities of such Project, including preventive and corrective maintenance and enforcement of equipment warranties;
- (b) Procurement and maintenance of spare parts inventory and an up to date Services Manual;
- (c) Delivery to such Project Company Guarantor of data and information regarding performance of such Project, including Customer energy consumption;
- (d) Periodic reporting on maintenance and other activities with respect to such Project; and
- (e) The obligation to carry property and liability insurance as set forth in such O&M Agreement.

“**Obligations**” means all amounts owing by the Borrower and the other Loan Parties to the Lender in connection with this Agreement or any other Loan Document or otherwise with respect to the Commitment and the Loans, including without limitation, all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any insolvency, reorganization or like proceeding relating to the Loan Parties, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), all reimbursement obligations, fees, expenses, indemnification and reimbursement payments, costs and expenses (including all fees and expenses of counsel to the Lender incurred pursuant to this Agreement or any other Loan Document), whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, all obligations in respect of all other services and financial accommodations made by the Lender to the Loan Parties, or any of them, together with all renewals, extensions, modifications or refinancings of any of the foregoing.

“ **Operating Budget** ” means, for any Approved Project, a budget for the ongoing operation and maintenance of such Approved Project following achievement of Substantial Completion thereof.

“ **Original Principal Amount** ” means, with respect to any Loan, the original principal amount thereof, without regard to any principal payments thereon.

“ **Other Connection Taxes** ” means Taxes imposed as a result of a present or former connection between the Lender and the jurisdiction imposing such Tax (other than connections arising from the Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in the Loans or any Loan Document).

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

“ **Parent** ” means FuelCell Energy, Inc., a Delaware corporation and the indirect legal and beneficial owner of all of the Equity Interests of the Borrower.

“ **Parent Diligence Cost Reimbursement Letter** ” means that certain letter agreement, dated as of the date hereof, by the Parent in favor of the Lender, pursuant to which the Parent has agreed, subject to the terms and conditions set forth therein, to reimburse the Lender for its diligence costs related to Lender’s diligence of Available Projects that have been proposed to become Approved Projects.

“ **Parent Guaranty** ” means that certain Guaranty Agreement, dated as of the date hereof, by the Parent in favor of the Lender.

“ **Payment Date** ” means the first Business Day of each month.

“ **PBGC** ” means the Pension Benefit Guaranty Corporation as created under ERISA, or any successor thereto under ERISA.

“ **Permissible Capacity Payments** ” means revenues resulting from capacity payments for obligations paid to an Affiliate that is the designated market participant for the respective Independent Systems Operator.

“ **Permitted Encumbrances** ” means, as of any particular time:

- (i) Liens in favor of a governmental entity for taxes, fees, assessments or other governmental charges or levies not then delinquent or being contested in good faith and by appropriate proceedings;
- (ii) Liens arising pursuant to the Loan Documents in favor of the Lender;
- (iii) Liens in respect of property imposed by law arising in the ordinary course of business such as materialmen’s, carrier’s, mechanics’, landlord’s, warehousemen’s, and other like Liens; provided that such Liens secure only amounts not more than thirty (30) days past due or are being contested in good faith by appropriate proceedings for which adequate reserves determined in accordance with GAAP have been established (and as to which the property subject to such Lien is not yet subject to foreclosure, sale or loss on account thereof);
- (iv) Liens arising from (1) good faith deposits in connection with or to secure performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, utility market participation, performance and return-of-money bonds and other similar obligations (including Liens to secure health, safety and environmental obligations); and (2) letters of credit and bank guarantees required or requested by any Governmental Authority in connection with any contract or Law) incurred in the ordinary course of business (but in any event that do not secure obligations in respect of the payment of borrowed money);
- (v) Liens (1) of a collecting bank arising in the ordinary course of business under Section 4-208 of the Uniform Commercial Code in effect in the relevant jurisdiction covering only the items being collected upon, (2) in favor of a banking or other financial institution arising as a matter of law encumbering deposits or other funds maintained with a financial institution (including the right of set off) and which are within the general parameters customary in the banking industry, or (3) encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes;

- (vi) pledges and deposits in the ordinary course of business securing liability for reimbursement or indemnification obligations of any Loan Party (including obligations in respect of letters of credit or bank guarantees for the benefit of) to insurance carriers providing property, casualty or liability insurance to any Loan Party;
- (vii) easements, rights-of-way, restrictions, encroachments, protrusions and other similar encumbrances and other minor title defects affecting real property that do not in the aggregate materially interfere with the ordinary conduct of the business of the Loan Parties, taken as a whole and ground leases in respect of real property on which facilities owned or leased by any Loan Party are located;
- (viii) leases, subleases, non-exclusive licenses or non-exclusive sublicenses granted Customers pursuant to Project Documents in the ordinary course of business;
- (ix) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business;
- (x) statutory judgment Liens securing judgments against one or more Loan Parties that do not constitute or give rise to a Project Company Event of Default; and
- (xi) Other Liens with respect to property or assets of any Loan Party having an aggregate value at any time not to exceed \$100,000 (but in any event that do not secure obligations in respect of the payment of borrowed money).

“**Person**” means an individual, corporation, limited liability company, partnership, association, trust, business trust, joint venture, joint stock company, pool, syndicate, sole proprietorship, unincorporated organization, Governmental Authority or any other form of entity or group thereof.

“**Plan**” shall have the meaning assigned thereto in Section 4.11.

“**Proceeds Account**” means deposit account number 351536112 established by the Borrower with the Depository Bank and subject to the exclusive control of, and a perfected, first priority security interest in favor of Lender, into which each Project Company Guarantor shall direct its Customers to make all payments in respect its Approved Projects, and into which all other proceeds from any Disposition or refinancing of any Approved Project shall be deposited.

“**Progress Milestone**” means, for any Approved Project, certain material milestones relating to the development, acquisition and construction progress of such Approved Project that are designated as “Progress Milestones” in the Construction Budget and Schedule for such Approved Project.

“ **Prohibited Holder** ” means any Person that:

(a) is in violation of (i) any of the foreign assets control regulations of the United States Treasury Department (31 C.F.R., Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, (ii) Executive Order No. 13,224, 66 Fed. Reg. 49,079 (2001), issued by the President of the United States (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit or Support Terrorism) (the “ **Executive Order** ”) or (iii) any laws relating to terrorism or money laundering (collectively, “ **Anti-Terrorism Laws** ”);

(b) is any of the following: (i) a Person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (ii) a Person owned or controlled by, or acting for or on behalf of, any person that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (iii) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (iv) a Person that commits, threatens or conspires to commit or supports “terrorism” as defined in the Executive Order; or (v) a Person that is named as a “specially designated national and blocked person” on the most current list published by OFAC at its official website or any replacement website or other replacement official publication of such list;

(c) to the knowledge of any Loan Party, engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law; or

(d) has been the subject of any bankruptcy or insolvency proceeding during the immediately preceding three-year period.

“ **Project** ” means a stationary carbonate fuel cell project (either behind-the-meter or utility scale) for power generation only. For the avoidance of doubt, a “ **Project** ” shall not include hydrogen, storage or carbon capture facilities or projects except those hydrogen, storage or carbon capture projects listed on Schedule 1.1B attached hereto; provided, however, that the Parent and Borrower may, at their discretion, submit any project for consideration as an Available Project, even if such project does not otherwise satisfy the definition of a “Project” under this definition, and if such project is deemed by the Lender to constitute an Approved Project, then such project shall thereafter constitute a Project hereunder.

“ **Project Approval Certification** ” means a certification, in the form attached hereto as Exhibit I, executed by an Approved Officer and delivered to the Lender pursuant to Section 2.1(b) attached hereto.

“ **Project Company Default** ” means any of the events specified in Section 9.1 which constitutes a Project Company Event of Default or which, upon the giving of notice, the lapse of time, or both pursuant to Section 9.1, would, unless cured or waived, constitute a Project Company Event of Default.

“ **Project Company Event of Default** ” shall have the meaning assigned thereto in Section 9.1.

“ **Project Company Guarantor** ” shall have the meaning given to such term in the introductory paragraph to this Agreement.

“ **Project Documents** ” means, with respect to any Project, any contract, agreement or instrument relating to the acquisition, development, construction, ownership, development, testing, operation, maintenance, repair, insurance, management, administration or use of such Project or the business of the Project Company Guarantor that owns such Project, whether entered into by any of Borrower or the applicable Project Company Guarantor or any of their Affiliates, as any of the foregoing may be amended or modified from time to time in accordance with the terms of this Agreement.

“ **Project Loan Disbursement and Construction Schedule** ” shall have the meaning assigned thereto in Section 2.1(b).

“ **Project Material Adverse Effect** ” means, with respect to any Project Company Guarantor and related Approved Project, a material adverse effect upon (i) the business, assets, properties, liabilities, financial condition, or results of operations of such Project Company Guarantor, (ii) the ability of such Project Company Guarantor to perform its material obligations under this Agreement or any other Loan Document to which it is a party, (iii) the legality, validity, binding effect or enforceability of any Loan Document to which such Project Company Guarantor is a party, or (iv) the ability of the Lender to enforce any rights or remedies under or in connection with any Loan Document to which such Project Company Guarantor is a party.

“ **Project Revenue Account** ” means a deposit account established by a Project Company Guarantor to receive payments in respect of Revenue Contracts to which such Project Company Guarantor is a party.

“ **Real Estate** ” shall mean all real property owned or leased by any Loan Party.

“ **Real Estate Documents** ” shall mean, with respect to any Approved Project, as applicable:

(i) for any Real Estate owned or leased by the Project Company Guarantor that owns such Approved Project, in each case as reasonably required by the Lender, such mortgages, security deeds, deeds of trust, assignments of leases and rents, environmental indemnity agreements, title insurance commitments and title insurance policies, subordination and non-disturbance agreements, environmental appraisals, legal opinions, and other agreements and documents as the Lender may reasonably require to ensure that the Lender has a perfected, first priority security interest in all such Real Estate and other customary rights and protections with respect thereto as Lender may reasonably require; and

(ii) for any Real Estate with respect to which the applicable Project Company Guarantor has been granted rights pursuant to a license, usufruct, access agreement or similar arrangement, in each case as required by Lender, an estoppel agreement permitting the Lender to succeed to the rights of such Project Company Guarantor as to such Real Estate, and such other reports, documents, instruments and agreements as the Lender shall reasonably request, each in form and substance reasonably satisfactory to Lender.

“ **Refinancing** ” shall have the meaning assigned to such term in Section 2.3.

“ **Regulation U** ” means Regulation U of the Board of Governors of the Federal Reserve System of the United States, as it may be amended from time to time.

“ **Related Parties** ” and “ **Related Party** ” have the meanings assigned to such terms in Section 12.16.

“ **Required Substantial Completion Date** ”, with respect to an Approved Project, shall mean the earliest of (a) the date set forth in the EPC Contract as the “Guaranteed Substantial Completion Date”, if applicable, (b) the date that is ninety (90) days prior to the date on which such Approved Project is required to achieve Substantial Completion pursuant to the applicable Revenue Contract unless, in the reasonable discretion of Lender, Borrower has demonstrated that significant progress has been made on Project construction such that it is reasonably likely that such Approved Project will achieve Substantial Completion by the date required in such Revenue Contract; and (c) the date that is one hundred eighty (180) days after the date set forth for Substantial Completion in the Construction Budget and Schedule for such Approved Project.

“ **Reserve Account** ” means deposit account number 351536963 in the name of the Borrower and maintained with the Depositary Bank and subject to the exclusive control of, and a perfected, first priority security interest in favor of, the Lender, and in which the Debt Service Reserve for each Approved Project shall be maintained.

“ **Restricted Payment** ” means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in Borrower or any Project Company Guarantor, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests or any option, warrant or other right to acquire any such Equity Interests. For purposes of clarification, any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, defeasance, acquisition, cancellation or termination of Debt which by its terms is convertible into Equity Interests is not a “Restricted Payment”.

“ **Revenue Contract** ” means a multi-year contract for the sale of energy, capacity and/or environmental attributes, between a Project Company Guarantor and a Customer and associated with a Project, setting forth the terms and conditions pursuant to which such Project shall be installed for such Customer and the energy, capacity and/or environmental attributes shall be provided by to such Customer (or other Customers) relating to such Project.

“ **Right of Financing Agreement** ” means that certain Right of Financing Agreement, dated as of the date hereof, by and among the Lender, the Borrower and the Parent.

“ **S&P** ” means Standard & Poor’s Ratings Services Group, a division of The McGraw Hill Companies, Inc.

“ **Sanctioned Country** ” shall mean, at any time, a country, region or territory that is, or whose government is, the subject or target of any Sanctions.

“ **Sanctioned Person** ” shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated persons maintained by OFAC, the United States Department of State, the United States Security Council, the European Union or any EU member state, (b) any Person located, organized, or resident in a Sanctioned Country, or (c) any Person Controlled by any such Person described in either clause (a) or clause (b) above.

“ **Sanctions** ” shall mean economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, (b) the United Nations Security Council, the European Union or Her Majesty’s Treasury of the United Kingdom or (c) any other relevant sanctions authority.

“ **Security Agreement** ” means that certain Pledge and Security Agreement, dated as of the date hereof, executed by the Loan Parties party thereto, pursuant to which each Loan Party has granted to the Lender a security interest in the Collateral described therein to secure all Obligations of each of the Loan Parties to the Lender, as such Security Agreement may be amended, restated, supplemented or otherwise modified.

“ **Servicer** ” means the Parent.

“ **Services Manual** ” has the meaning given to it in the O&M Agreement.

“ **Solvent** ” means, with respect to any Person on a particular date, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person; (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured; (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay as such debts and liabilities mature; and (d) such Person has enough capital, consisting of cash on hand, funds available through credit facilities and/or reasonably expected to be generated by ordinary course operations, to fund the business in which it proposes to be engaged. The amount of contingent liabilities (such as litigation, guaranties and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can reasonably be expected to become an actual or matured liability.

“**Subsidiary**” means, as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding capital stock or other ownership interests having ordinary voting power to elect a majority of the board of directors or other managers of such corporation, partnership, limited liability company or other entity is at the time, directly or indirectly, owned by such Person (irrespective of whether, at the time, capital stock or other ownership interests of any other class or classes of such corporation or other entity shall have or might have voting power by reason of the happening of any contingency). Unless otherwise qualified, references to “Subsidiary” or “Subsidiaries” herein shall refer to those of a Loan Party.

“**Substantial Completion**” , with respect to any Approved Project, has the meaning set forth in the applicable EPC Contract relating to such Approved Project.

“**Substantial Completion Date**” , with respect to any Approved Project, the date on which such Approved Project has achieved Substantial Completion.

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

“**Transaction Documents**” means the Loan Documents and the Project Documents.

“**USA Patriot Act**” means the United Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)), as amended from time to time.

“**Utility Tariff**” means a tariff with a public utility acceptable to the Lender in its sole discretion.

“**Withholding Agent**” means any Loan Party or the Lender, as applicable.

“**Working Capital Loan**” has the meaning given to such term in Section 2.1(a).

“**Working Capital Loan Amount**” means, for any Approved Project for which the Borrower requests a Working Capital Loan, an amount requested by the Borrower not to exceed the lesser of (i) one hundred percent (100%) of the amount of the EPC Contract Price, as set forth in the Construction Budget and Schedule included in the EPC Contract for such Approved Project, and (ii) the invested amount that allows the Project Company Guarantor to achieve a ten percent (10%) unlevered, after-tax inefficient Internal Rate of Return; provided, however, that if the Borrower provides Lender with a binding term financing commitment for such Approved Project that ensures that funds will be available on the applicable Working Capital Loan Maturity Date in excess of the original Working Capital Loan Amount for such Approved Project, then such Working Capital Loan Amount may be increased by an amount determined in the sole discretion of the Lender.

“ **Written** ” or “ **in writing** ” means any form of written communication, including communication by means of telefacsimile, authenticated telex, telecopier, telegraph or cable.

1.2 Other General Terms. (a) Section References, Etc. Unless otherwise specified, a reference in this Agreement to a particular section, subsection, schedule or exhibit is a reference to that section, subsection, schedule or exhibit of this Agreement. Wherever from the context it appears appropriate, each term stated in either the singular or the plural will include the singular and plural.

(b) Defined Terms. Unless otherwise defined herein, all capitalized terms defined in this Agreement will have the defined meanings when used in this Agreement, the other Loan Documents or any certificate, report or other document made or delivered pursuant to this Agreement.

(c) Other References. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, restated or otherwise modified (subject to any restrictions on such amendments, supplements, restatements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person’s successors and permitted assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) any reference to any law or regulation herein shall, unless otherwise specified, refer to such law or regulation as amended, modified, supplemented, or amended and restated from time to time together with all rules, regulations and interpretations thereunder or related thereto; (v) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights; and (vi) titles of Sections in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

(d) Accounting Terms. Except as otherwise expressly provided herein, all accounting terms not specifically defined or specified herein shall have the meanings generally attributed to such terms under GAAP and all calculations shall be made in accordance with GAAP (except, with respect to unaudited financial statements, for the absence of footnotes, subject to year-end adjustments and for non-compliance with ASC 718); provided that if at any time any change in GAAP would affect the computation or any covenant or requirement set forth in any Loan Document, and if either Borrower or Lender shall so request, Loan Parties and Lender shall negotiate in good faith to amend such covenant or requirement to preserve the original intent thereof in light of such change in GAAP; provided further that, until so amended, such covenant or requirement shall continue to be computed in accordance with GAAP prior to such change therein and Loan Parties shall provide Lender financial statements and other documents requirements under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such covenant or requirement made before and after giving effect to such change in GAAP; provided further that any obligations of a Person under a lease (whether now existing or entered into in the future) that is not (or would not be) a Capital Lease Obligation under GAAP on the Closing Date shall not be treated as a Capital Lease Obligation solely as a result of the adoption of changes in GAAP.

SECTION 2
THE LOAN FACILITY.

2.1 Working Capital Loans

(a) Upon the terms and subject to the conditions contained in this Agreement, and following a request therefor from Borrower as set forth in Section 2.1(d) below, the Lender agrees to make construction loans (each such loan, a “**Working Capital Loan**”) to the Borrower from time to time on any Loan Disbursement Date designated by the Borrower prior to the Commitment Termination Date, so long as, in each case, (i) after giving effect to the making of any such requested Working Capital Loan, the outstanding principal amount of all Working Capital Loans then outstanding hereunder does not exceed the Commitment; and (ii) the principal amount of such requested Working Capital Loan is at least \$250,000. Once any Working Capital Loan has been repaid hereunder, it may not be reborrowed. Notwithstanding the foregoing, Lender shall not be required, but may elect in its sole discretion, to make any Working Capital Loans to any Available Project that is made available to Lender pursuant to Section 2.1(b) if, as a result of Lender’s making of such Working Capital Loans, the total outstanding principal balance of Working Capital Loans will exceed \$100,000,000.00. Lender represents and warrants to Borrower that (i) Lender has full corporate authorization to extend Working Capital Loans up to \$100,000,000.00 without obtaining further approvals from its governing board or equity holders and such amount will not exceed any restrictions currently applicable to Lender; and (ii) Lender has, on the Closing Date, sufficient funds, either on hand or readily available through existing commitments, to make such Working Capital Loans in an amount of up to \$100,000,000.00.

(b) Subject to the terms and conditions of the Right of Financing Agreement, the Parent and the Borrower shall make available to the Lender for financing each of the Available Projects originated, developed, installed or operated by the Parent or any Affiliate of the Parent after the date hereof as follows. Prior to requesting Working Capital Loans to finance the cost of manufacturing and installing an Available Project, Borrower shall provide to Lender a Project Approval Certification accompanied by the following information relating to such Available Project:

- (i) a description of such Available Project, including the identity of the Customer of such Available Project and a list of all Material Project Documents associated with such Available Project;
- (ii) a copy of the Revenue Contract relating to such Available Project;
- (iii) a description and summary of revenue assumptions and operating cost assumptions (to include expected operations and maintenance costs, rent (if required) and operations and maintenance reserves to be maintained in connection with such Available Project), in each case determined in accordance with the Base Case Model, all of which shall have been reviewed and confirmed by the Independent Engineer, or confirmed by other comparable documentation in form and substance reasonably acceptable to the Lender;
- (iv) a copy of the EPC Contract relating to such Available Project, all Material Subcontracts related thereto, including all warranties related to such Available Project arising under such EPC Contract and Material Subcontracts, and including the Construction Budget and Schedule for such Available Project and all plans and designs for such Available Project;
- (v) a copy of a proposed schedule (the “ **Proposed Project Loan Disbursement and Construction Schedule**.”) that shall contain the Borrowers proposal as to: (A) the requested amount of Working Capital Loans for such Available Project, which shall be determined in accordance with the Base Case Model; and which shall be consistent with the Construction Budget and Schedule; (B) the Progress Milestones for such Available Project; (C) the Invoice Payments and/or dates when each advance of Working Capital Loan (and the amount of each such advance Working Capital Loan) would be made, which shall be made in arrears on a monthly basis as amounts are paid pursuant to the applicable EPC Contract; (D) the corresponding amount of any cost that, at such time, would be funded by the Borrower from sources other than Working Capital Loans; and (E) any Invoice Payments or Progress Milestones for which confirmation of the achievement of the applicable milestone would be required by an Independent Engineer;
- (vi) a copy of the Notice to Proceed pursuant to the EPC Contract for such Available Project or if Borrower will be requesting Working Capital Loans prior to the issuance of a Notice to Proceed (in the case where a Notice to Proceed has not been issued due to Approvals that are obtainable in the ordinary course not having been issued), a certification that the Notice to Proceed for such Project is reasonably expected to be issued within six (6) months from the date of such certification;

- (vii) a list of all Approvals required for such Available Project, which list shall (x) identify all of such Approvals that have already been obtained, and (y) include a certification that any remaining required Approvals that have not yet been obtained shall be obtainable in the ordinary course of business;
- (viii) the date that such Available Project is projected to achieve Final Acceptance;
- (ix) proof that such Available Project is properly insured;
- (x) a list of material equipment for such Available Project;
- (xi) evidence of approved rebate awards, if any, associated with such Available Project;
- (xii) an Independent Engineer's report for such Available Project, or other documentation acceptable to the Lender, confirming the Base Case Model and relevant assumptions;
- (xiii) the Services Manual for such Available Project and the Operating Budget for such Available Project;
- (xiv) copies of all other Material Project Documents relating to such Available Project;
- (xv) a complete Credit File for the Customer associated with such Available Project; and
- (xvi) any other material documents associated with such Available Project as may be necessary to establish that such Available Project is an Approved Project, or that Lender may otherwise reasonably require.

Based upon the foregoing information, Lender shall determine, in its reasonable discretion, whether an Available Project constitutes an Approved Project. Lender may also perform its own due diligence on an Available Project as it may deem necessary to confirm that an Available Project may be deemed an Approved Project, and in that connection, Lender may engage third party engineers, consultants and outside legal counsel to perform such due diligence. Parent has agreed to reimburse Lender for all costs relating to any Available Project that becomes an Approved Project pursuant to the Parent Diligence Cost Reimbursement Letter. Following its receipt of a Project Approval Certification and all related information, Lender shall have three (3) Business Days to review such Project Approval Certification and related information for completeness. If Lender reasonably determines that, notwithstanding the delivery of a Project Approval Certification for an Available Project, the information provided by Borrower is incomplete, then Lender shall provide notice to Borrower identifying such missing information, and Borrower shall promptly provide the same provided that such information is reasonably available to Borrower. If Lender declines or fails to approve an Available Project within eighteen (18) Business Days following delivery of the Project Approval Certification and related information by Borrower to Lender (or following delivery of additional information provided by Borrower following Lenders' request therefor), then Parent may finance such Project with other lenders or funding partners. If an Available Project approved by the Lender is owned by the Parent or any other Person that is not a Project Company Guarantor, then either (x) such Available Project shall be transferred and assigned, free and clear of any Liens other than Permitted Encumbrances, to a Project Company Guarantor to constitute an Approved Project; or (y) all of the Equity Interests of the Person owing such Available Project must be transferred and assigned, free and clear of any Liens other than Permitted Encumbrances, to the Borrower, and such Person shall become a Project Subsidiary Guarantor in accordance with Section 6.17.

In connection with the foregoing review for an Available Project, the Lender shall review the Proposed Project Loan Disbursement and Construction Schedule provided by the Borrower for such Available Project, and during the eighteen (18) Business Day time referenced above, the Borrower and the Lender shall negotiate in good faith to agree upon a final schedule for such Available Project, setting forth the agreement of the parties as to all of the matters contained in such Proposed Project Loan Disbursement Schedule (such final schedule being a “ **Project Loan Disbursement and Construction Schedule** ”); provided, however that, notwithstanding anything to the contrary, if Lender and Borrower are unable to agree upon such Project Loan Disbursement and Construction Schedule during such eighteen (18) Business Day period, such Available Project shall be deemed not approved by Lender as an “Approved Project”.

(c) Each borrowing of a Working Capital Loan hereunder shall be made following the Borrower’s irrevocable written notice to the Lender. Such notice must be received by the Lender at least fifteen (15) Business Days prior to the requested date of borrowing (or such shorter period as may be approved by Lender in its sole discretion). The Borrower may not request more than one Working Capital Loan in any calendar month, with each borrowing of a Working Capital Loan occurring on a Loan Disbursement Date. Each Working Capital Loan shall be associated with one or more Approved Projects. The aggregate amount of the Working Capital Loan(s) (or portions thereof) for any Approved Project shall be the lesser of (x) the amount requested by the Borrower, and (y) an amount equal to the Working Capital Loan Amount determined for such Approved Project. Each notice to borrow a Working Capital Loan shall be in substantially the form of Exhibit A attached hereto (each such notice, a “ **Working Capital Loan Notice** ”), and shall: (i) specify the requested date of the borrowing, which shall be a Loan Disbursement Date; (ii) include a description of the Approved Project(s) requested to be associated with such Loan; (iii) specify the principal amount of the Working Capital Loan to be borrowed; (iv) include a summary of the Approved Costs for each Approved Project to be paid with the proceeds of such Working Capital Loan, and shall otherwise be consistent with the Project Loan Disbursement and Construction Schedule including the schedule of Invoice Payments set forth therein and reference the specific milestones, if any, that are applicable to such Invoice Payment; and (v) include such accompanying documentation and items as are required pursuant to Sections 5.2 and 5.3, as applicable. For the avoidance of doubt, the Borrower may submit an Available Project for approval in accordance with Section 2.1(b) above concurrently with the submission of Working Capital Loan Notice for such Project.

(d) Following the receipt of a Working Capital Loan Notice, the additional information required in connection therewith, and such additional information as Lender may reasonably request, and if the Lender, in its reasonable discretion, determines that such Working Capital Loan Notice and related information satisfy all requirements of this Agreement, and that all conditions to the making of the requested Loan have been satisfied, the Lender shall disburse the principal amount of the requested Working Capital Loan on the Loan Disbursement Date specified in the Working Capital Loan Notice, into the Construction Account. Without limiting Lender's authority to use its reasonable discretion in determining whether information reviewed by it pursuant to this Section 2.1(d), if the Borrower and the Lender disagree as to completion of a Working Capital Loan Notice, they shall work together to resolve such dispute. Immediately upon Lender's disbursement of a Working Capital Loan into the Construction Account, Borrower shall utilize such funds to make payments to Parent pursuant to the EPC Contract consistent with the amounts specified in the Working Capital Loan Notice.

2.2 Evidence of Loans. The Loans shall be evidenced by a master promissory note, in the form attached hereto as Exhibit B in the amount of the Commitment, executed by the Borrower in favor of the Lender and dated the Closing Date (the "Loan Note").

2.3 Repayment of Loans: Certain Put and Call Options.

(a) Accrued and unpaid interest on each Working Capital Loan shall be due and payable on each Payment Date, commencing with the first such Payment Date occurring after the disbursement of such Working Capital Loan. Any interest that accrues on any Loan after the Maturity Date for such Loan shall be payable on demand.

(b) Following the Approved Project Nominal Maturity Date applicable to the Working Capital Loans attributable to any Approved Project, the Borrower and the Lender shall cooperate to maximize the upfront and total proceeds to the Parent and Borrower arising out of the Disposition of such Approved Project or the refinancing of such Working Capital Loans (any such refinancing of an Approved Project to repay Working Capital Loans for such Approved Project, whether by provision of term financing, back leverage, tax equity or otherwise is referred to as a "Refinancing"). In that connection, the Borrower and the Lender shall openly share information required to effectively identify, negotiate, structure and transact with third parties to Dispose of such Approved Project or to consummate a Refinancing of such Working Capital Loans, in either case in accordance with this Section 2.3. Upon the consummation of any Refinancing of an Approved Project permitted hereunder, the Borrower shall transfer the Equity Interests of the applicable Project Company Guarantor to an Affiliate so that such Project Company Guarantor shall no longer be a Subsidiary of the Borrower and, in connection with the foregoing, such Project Company Guarantor shall be released from all of its obligations as a Loan Party under this Agreement and the other Loan Documents, including, without limitation, its guaranty of the Obligations pursuant to Section 10 of this Agreement. For the avoidance of doubt, subject to complying with the provisions of Section 2.3(c) and 2.3(d), Borrower has sole discretion to determine whether to Dispose of an Approved Project or consummate a Refinancing and the terms and conditions of any such Disposition or Refinancing.

(c) If the Borrower determines to Dispose of an Approved Project to a third party, then upon consummation of such Disposition, the net proceeds of such Disposition shall be deposited into the Proceeds Account, and Borrower shall repay the entire outstanding principal amount of all Working Capital Loans attributable to such Approved Project, together with all then accrued and unpaid interest thereon, and together with the Disposition Fee as provided pursuant to Section 3.1(c) hereof. Any Project Company Guarantor that is so Disposed of pursuant to this Section 2.3(c) shall, immediately upon the effectiveness of such Disposition, be released from all of its obligations as a Loan Party under this Agreement and the other Loan Documents, including without limitation its guaranty of the Obligations pursuant to Section 10 of this Agreement.

(d) If the Borrower determines to obtain Refinancing from a third party for any Approved Project, Lender shall have the exclusive right to make an equity investment in an amount of at least ten percent (10%) of the Approved Project Price for such Approved Project and, in connection therewith, be entitled to receive a return of no less than a twelve percent (12%) after-tax equity Internal Rate of Return on such investment prior to Borrower's being entitled to any distributions with respect to such Approved Project. Any such investment by Lender shall be subordinate in all respects to the rights of any third party under a Refinancing. In the event that Borrower has determined to consummate a Refinancing of any such Approved Project, Borrower shall provide written notice to Lender of such intent including a summary of the material terms of such proposed Refinancing. Lender shall have ten (10) Business Days to notify Borrower that Lender intends to exercise its rights under this Section 2.3(d) including specifying the amount of the interest (at least 10%) that Lender wishes to obtain. If Lender exercises such right, Lender shall cooperate with Borrower in connection with Borrower's efforts to close the Refinancing with the third party and execute any such agreements and documents reasonably related thereto. In connection with the closing of such Refinancing, the net proceeds of such Refinancing shall be deposited into the Proceeds Account, and Borrower shall repay the entire outstanding principal amount of all Working Capital Loans attributable to such Approved Project (less any amount that Lender elects to invest under this Section 2.3(d)), together with all then accrued and unpaid interest thereon.

(e) If the Borrower has not repaid all of the Working Capital Loans attributable to an Approved Project by a date that is the ninety (90) days after the applicable Approved Project Nominal Maturity Date (or such longer period as the Lender may agree in its sole discretion), either with a Refinancing of the Working Capital Loans attributable to an Approved Project in accordance with Section 2.3(d) above, or pursuant to a Disposition of such Approved Project in accordance with Section 2.3(c) , then the outstanding principal balance of all Working Capital Loans attributable to such Approved Project shall be converted to a one hundred percent (100%) ownership interest in all of the issued and outstanding Equity Interests of the Project Company Guarantor that owns such Approved Project. In that connection, (i) the Borrower and the Lender, or an Affiliate of the Lender designated by the Lender, on or prior to the date that is the ninety (90) days after the applicable Approved Project Nominal Maturity Date (or such longer period as the Lender may agree in its sole discretion), shall agree upon and enter into a Membership Interest Purchase Agreement, in form and substance satisfactory to the Borrower and the Lender, pursuant to which the Lender or such Affiliate shall acquire one hundred percent (100%) ownership interest in all of the issued and outstanding Equity Interests of the Project Company Guarantor in exchange for consideration set forth in the Membership Interest Purchase Agreement, and (ii) any Project Company Guarantor that is so acquired by the Lender or an Affiliate of the Lender pursuant to this Section 2.3(e) shall, immediately upon the effectiveness of such acquisition, be released from all of its obligations as a Loan Party under this Agreement and the other Loan Documents, including without limitation its guaranty of the Obligations pursuant to Section 10 of this Agreement.

(f) In the event that Lender has made an initial advance of Working Capital Loans to Borrower with regard to any Approved Project and, at any time thereafter, Lender ceases providing additional Working Capital Loans to Borrower with regard to such Approved Project as a result of the failure of the conditions set forth in Section 5.3 to be satisfied with respect to such Approved Project, and Borrower is unable to satisfy such conditions despite using its commercially reasonable best efforts to do so, Borrower may, but shall not be required to, prepay the Working Capital Loans associated with such Project, together with all then accrued and unpaid interest thereon, without premium or penalty, and upon such prepayment, the Project Company Guarantor that owns such Approved Project shall be released from all of its obligations as a Loan Party under this Agreement and the other Loan Documents, including without limitation its guaranty of the Obligations pursuant to Section 10 of this Agreement.

(g) In the event that the Borrower and the Lender have not entered into a Membership Interest Purchase Agreement with respect to an Approved Project that has not been Disposed of or Refinanced within the time period set forth in Section 2.3(e) above, Lender may, but shall not be required to, require that Borrower repay the Working Capital Loans associated with such Project, together with all then accrued and unpaid interest thereon, without premium or penalty, and upon such prepayment, such Project Company Guarantor that owns such Approved Project shall be released from all of its obligations as a Loan Party under this Agreement and the other Loan Documents, including without limitation its guaranty of the Obligations pursuant to Section 10 of this Agreement. In the event Borrower repays such Working Capital Loans associated with such Project pursuant to this Section 2.3(g), Lender shall not be entitled to any Disposition Fee on any subsequent Disposition of the Project or Project Company Guarantor by Borrower or have any rights under Section 2.3(d) with respect to any Refinancing of such Project.

(h) In the event that the Loan Parties fail to achieve any Progress Milestone with respect to any Approved Project on or prior to the date set forth for such Progress Milestone to be attained in the Construction Budget and Schedule for such Approved Project, (x) Lender may, but shall not be required to, require that Borrower repay the Working Capital Loans associated with such Project, together with all then accrued and unpaid interest thereon, without premium or penalty, and (y) Borrower may, but shall not be required to, prepay the Working Capital Loans associated with such Project, together with all then accrued and unpaid interest thereon, without premium or penalty. In the case of any prepayment under this Section 2.3(h), such Project Company Guarantor that owns such Approved Project shall be released from all of its obligations as a Loan Party under this Agreement and the other Loan Documents, including without limitation its guaranty of the Obligations pursuant to Section 10 of this Agreement. The Parent shall guaranty all payments required pursuant to this Section 2.3(h) pursuant to the Parent Guaranty. In the event Borrower repays such Working Capital Loans associated with such Project pursuant to this Section 2.3(h), Lender shall not be entitled to any Disposition Fee on any subsequent Disposition of the Project or Project Company Guarantor by Borrower or have any rights under Section 2.3(d) with respect to any Refinancing of such Project.

(i) The Lender may, in its sole discretion, issue a notice to Borrower that Lender is terminating the Commitment, and that all Working Capital Loans shall be due and payable on September 30, 2019; provided that such notice shall be issued by the Lender if at all, during the ten (10) day period beginning on June 20, 2019 and ending on (and including) June 30, 2019, and such notice may be in the form of an e-mail message or other memorandum. If the Lender delivers such notice, all of the Working Capital Loans, together with all accrued and unpaid interest thereon, shall be due and payable in its entirety, without penalty or premium. If the Lender delivers such notice, the Borrower may prepay all then outstanding the Working Capital Loans at any time prior to September 30, 2019, without penalty or premium. The obligation of the Borrower to repay the Working Capital Loans and all accrued and unpaid interest thereon as contemplated by this Section 2.3(i) shall be guaranteed by the Parent pursuant to the Parent Guaranty. In the event that Lender issues the foregoing notice, from and after such date, Lender shall not be entitled to any Disposition Fee under Section 2.3 (c) or have any rights under Section 2.3(d) with respect to any Disposition or Refinancing that occurs after such date; provided, however, the Lender shall be entitled to a Disposition Fee on any Disposition of the Bakersfield Project, regardless of when such Disposition occurs.

(j) So long as no Project Event of Default or Facility Event of Default then exists, if an Initial Project is determined in accordance to Section 2.1(b) to not constitute an Approved Project, at any time thereafter upon Borrower's written notice to Lender, and at Borrower's sole cost and expense, the Initial Project Company Guarantor that owns such Initial Project shall be released from all of its obligations as a Loan Party under this Agreement and the other Loan Documents, including without limitation its guaranty of the Obligations pursuant to Section 10 of this Agreement, and the Lender shall release its security interest in the assets and Equity Interests of such Initial Project Company Guarantor. Thereafter, Borrower shall promptly transfer the Equity Interests of such Initial Project Company Guarantor to an Affiliate so that such Initial Project Company Guarantor is no longer a Subsidiary of Borrower.

2.4 Prepayments.

(a) Mandatory Prepayments—Damage or Destruction of Approved Project. In the event, with respect to any Approved Project that has been financed in whole or in part with the proceeds of any Loan, of destruction of such Approved Project or Material Damage to such Approved Project, then in any such case, the Borrower shall, within thirty (30) days following occurrence of such event, make a prepayment of the Loan(s) relating to such Approved Project in an amount equal to that portion of the then outstanding principal amount of such Loan(s) attributable to such Project, plus all accrued and unpaid interest thereon without any other premium or penalty; provided, however, that if (i) the Borrower desires that such Approved Project be repaired or replaced, and (ii) the Revenue Contract permits sufficient time for such repair or replacement, and (iii) such Approved Project can achieve Substantial Completion by the applicable Required Substantial Completion Date, then the Borrower may repair or replace such Approved Project and no prepayment shall be required under this Section 2.4(a) in respect of such destruction or damage; provided, further, that the Lender shall be entitled to retain all insurance proceeds received in respect of such destruction or Material Damage and release the same to the Borrower for application to Approved Costs on the same terms and conditions as apply to the making of Loans in respect of such Approved Project, as applicable; and provided, further, that all such Working Capital Loans shall remain subject to prepayment in respect of any other events or circumstances that would otherwise require prepayment hereunder.

(b) Mandatory Prepayments—Prepayment, Termination or Default under Revenue Contract. In the event, in each case with respect to any Approved Project that has been financed in whole or in part with the proceeds of any Loan, that (i) the Customer for such Approved Project prepays the Revenue Contract relating to such Approved Project, (ii) the Revenue Contract relating to such Approved Project is terminated, (iii) the Customer party to the Revenue Contract related to such Approved Project becomes the subject of a case in any bankruptcy, or any reorganization, arrangement, insolvency, or liquidation proceedings, or (iv) the Customer party to the Revenue Contract related to such Project shall cease making payments thereunder for any reason, and Borrower shall reasonably believe that such payments are not likely to resume, then in any such case, the Borrower shall, within thirty (30) days following occurrence of such event, make a prepayment of the Loan(s) relating to such Approved Project in an amount equal to that portion of the then outstanding principal amount of such Loan(s) attributable to such Project, plus all accrued and unpaid interest thereon, but without any other premium or penalty.

(c) Mandatory Prepayments—Change of Control. If so required by the Lender, the Borrower shall prepay all of the Loans, and all accrued and unpaid interest thereon, plus the Disposition Fee payable pursuant to Section 3.1(c), immediately upon a Change of Control, but without any other premium or penalty.

(d) **Mandatory Prepayment—Failure to Achieve Substantial Completion**. If an Approved Project does not achieve Substantial Completion by the applicable Required Completion Date relating to such Approved Project, then the Borrower shall immediately prepay the then outstanding principal amount of all Working Capital Loans attributable to such Approved Project, together with all then accrued and unpaid interest thereon, but without any other premium or penalty.

(e) **Voluntary Prepayments**. Except as otherwise provided herein, the Borrower may not voluntarily repay any Loans hereunder without the prior written consent of the Lender, which may be granted, conditionally granted or withheld in the Lender's sole discretion.

(f) **Application of Prepayments**. Each prepayment of any Loan(s) pursuant to this Section 2.4 shall be applied in accordance with Section 6.15 hereof.

2.5 Use of Proceeds. The Borrower shall use the proceeds of each Working Capital Loan solely and exclusively to finance the manufacturing, construction, installation, commissioning and start-up of Approved Projects, and not for any other purposes.

2.6 Obligations Absolute. The obligations of the Borrower to repay the Obligations and to perform and observe the agreements and covenants contained herein are absolute and unconditional and are not subject to any defense or right of setoff, counterclaim or recoupment arising out of any breach of the Borrower or the Lender of any obligation to the Borrower, whether hereunder or otherwise, or out of indebtedness or liability at any time owing to any of the Borrower by the Lender. Unless and until the Obligations (other than contingent indemnification obligations) have been paid in full, the Borrower:

(a) will perform and observe all agreements and covenants contained in this Agreement or any documents executed in connection therewith, and

(b) will not terminate this Agreement for any cause, including, without limiting the generality of the foregoing, the occurrence of acts or circumstances that may constitute the failure of consideration, eviction or constructive eviction, destruction of the assets of the Borrower, the sale of the assets of the Borrower, the taking by eminent domain of title to or temporary use of any assets of the Borrower, commercial frustration of purpose, any change in the tax or other laws of the United States of America or the State of New York or any political subdivision thereof or any failure of Lender to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with this Agreement.

SECTION 3
FEES, INTEREST AND PAYMENTS

3.1 Fees .

(a) In consideration of the Lender's making available the credit facilities as set forth in this Agreement, the Borrower agrees to pay to the Lender a drawdown fee (the "**Drawdown Fee**") in an amount equal to three percent (3.00%) of the amount of each Working Capital Loan made hereunder. The Drawdown Fee relating to any Working Capital Loan shall be fully earned and due and payable on the date of disbursement of such Working Capital Loan, and the Borrower hereby authorizes and directs the Lender to retain the Drawdown Fee from each disbursement of Working Capital Loans hereunder. Once paid, each such Drawdown Fee shall not be subject to refund, rebate or proration for any reason.

(b) In consideration of the Lender's administration of the credit facilities pursuant to this Agreement, the Borrower agrees to pay the Lender an administrative fee (the "**Administrative Fee**") in an amount equal to \$5,000 per month, payable monthly in advance on the first Business Day of each month, commencing on the Closing Date to but excluding the Commitment Termination Date. The Administrative Fee shall be fully earned when due, and once paid, each such installment of the Administrative Fee shall not be subject to refund, rebate or proration for any reason. The Borrower hereby authorizes and directs the Lender to retain any installment of the Administrative Fee that has not been paid when due from a disbursement of Working Capital Loans hereunder.

(c) If Borrower Disposes of any Project Company Guarantor, or if any Project Company Guarantor Disposes of any Project that is then subject to an outstanding Loan, then the Borrower shall pay to the Lender a Disposition Fee (a "**Disposition Fee**") in an amount equal to three percent (3.0%) of the total purchase price for such Approved Project, including all cash and non-cash consideration included in such purchase price, paid to the Borrower or such Project Company Guarantor, as applicable, as consideration for such Disposition. The foregoing provision shall not constitute a consent to any Disposition not otherwise expressly permitted pursuant to this Agreement. At such time as the Lender has made Loans pursuant to this Agreement, (i) in an aggregate original principal amount greater than \$100,000,000.00, but less than \$200,000,000.00, the Disposition Fee set forth above for any Project Disposition thereafter shall be reduced from three percent (3.0%) to two percent (2.0%), and (ii) in an aggregate original principal amount greater than or equal to \$200,000,000.00, the Disposition Fee set forth above for any project Disposition thereafter shall be reduced from two percent (2.0%) to one percent (1.0%). For the avoidance of doubt, the Disposition Fee shall not be payable with respect to any Disposition of a Project Company Guarantor or a Project that occurs after there has been any prepayment of the applicable Loan relating to such Project Company Guarantor and Project pursuant to Section 2.4 or any other acceleration of such Loan by Lender or after any Refinancing of such Project.

3.2 Interest Rate. The outstanding principal balance of each Loan as it exists from time to time will bear interest at a fixed rate per annum equal to the Interest Rate. Interest on a Loan shall be computed on the basis of a twelve months of 30 days each. In computing interest on any Loan, the date of the making of such Loan shall be included, and the date of payment of such Loan shall be excluded.

3.3 Default Rate.

(a) Upon the occurrence and during the continuance of a Project Company Event of Default, at the sole discretion of the Lender, that portion of the Loan attributable to the Project Company Guarantor(s) and associated Approved Project(s) to which such Project Company Event of Default relates shall bear interest at the Default Rate, with such Default Rate to be effective on the first date as of which the applicable Project Company Event of Default occurs notwithstanding the fact that such Project Company Event of Default may not be reported or otherwise discovered until a subsequent date.

(b) Upon the occurrence and during the continuance of a Facility Event of Default, at the sole discretion of the Lender, the Loans shall bear interest at the Default Rate, with such Default Rate to be effective on the first date as of which the applicable Facility Event of Default occurs notwithstanding the fact that such Facility Event of Default may not be reported or otherwise discovered until a subsequent date.

3.4 Reserved.

3.5 Payments. The disbursement of each Loan hereunder and each payment of the principal of and interest on such Loan, and all other fees, charges, costs, expenses and other Obligations owed to the Lender hereunder or under any other Loan Document shall be made in United States Dollars and in immediately available funds. All payments of Loans arising out of any Disposition of an Approved Project or refinancing of an Approved Project as contemplated in Section 2.3, and all payments of Loans arising out of any mandatory prepayment pursuant to Section 2.4, shall in each case be deposited to the Proceeds Account for application in accordance with Section 6.15.

3.6 Payment on Days Other Than Business Days. Whenever any payment to be made hereunder or under the Loan Note shall be stated to be due on a day other than a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of interest to be paid on such date.

3.7 Taxes.

(i) Payments Free of Taxes. Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 3.7) the Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(ii) Payment of Other Taxes by the Loan Parties. The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Lender timely reimburse it for the payment of, any Other Taxes.

(iii) Indemnification by the Loan Parties. The Loan Parties shall jointly and severally indemnify the Lender, within 10 Business Days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.7) payable or paid by the Lender or required to be withheld or deducted from a payment to the Lender and any reasonable and documented expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by the Lender shall be conclusive absent manifest error.

(iv) Evidence of Payments. As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 3.7, such Loan Party shall deliver to the Lender the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Lender.

(v) Tax Forms. Lender, or any successor, assign, transferee or participant of Lender's interest in a Loan that is entitled to an exemption from or reduction of withholding tax (including, without limitation, any withholding tax imposed under any of Sections 1441 – 1446 of the Code, Sections 1471 – 1474 of the Code, and/or Sections 3401 – 3406 of the Code) under the law of the United States, or any state, local or foreign jurisdiction, or an applicable treaty to which such jurisdiction is a party, with respect to payments under the Loan Documents shall deliver to the Borrower, at the time or times prescribed by Applicable Law and at any times reasonably requested by the Borrower, such properly completed and executed documentation prescribed by Applicable Law or reasonably requested by the Borrower as will permit such payments to be made without withholding or at a reduced rate. In addition, Lender, if reasonably requested by the Borrower, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not Lender is subject to backup withholding or information reporting requirements. Each party providing a form or certification pursuant to this Section 3.7 agrees that if any such form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification.

(vi) Treatment of Certain Refunds. If an indemnified party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.7 (including by the payment of additional amounts pursuant to this Section 3.7), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 3.7 with respect to the Taxes giving rise to such refund), net of all documented out-of-pocket expenses (including any Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (vi) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (vi), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (vi) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(vii) Survival. Each party's obligations under this Section 3.7 shall survive any assignment by the Lender, the termination of the Commitment and the repayment, satisfaction or discharge of all obligations under any Loan Document.

SECTION 4

REPRESENTATIONS

In order to induce the Lender to enter into this Agreement, and to make the disbursements of any Loan from time to time in accordance with the terms hereof, (i) the Loan Parties represent and warrant to the Lender on the Closing Date, and (ii) at the time any Loan is requested in respect of any Project Company Guarantor and related Approved Project, the Borrower and such Project Company Guarantor represent and warrant as provided in Section 5.3(j) (which representations and warranties shall survive the execution of the Loan Documents and the making of the disbursement of each Loan on the applicable Loan Disbursement Date) is made that:

4.1 Subsidiaries and Ownership. The Parent is the sole owner, beneficially and of record, of all Equity Interests of Holdco, and Holdco is the sole owner, beneficially and of record, of all Equity Interests of Borrower. There are no options, warrants, or other rights to purchase or otherwise acquire Equity Interests of Borrower. The Borrower has no Subsidiaries, other than those Subsidiaries listed on Schedule 4.1 attached hereto and, following the Closing Date, such additional Subsidiaries that have been formed to facilitate the conduct of business in foreign jurisdictions, and which shall be described on supplements to Schedule 4.1 as delivered by Borrower in accordance with Section 6.17 hereof. All of the Subsidiaries of the Borrower are Project Company Guarantors that own, or are contemplated to own, Approved Projects.

4.2 Organization and Existence. Each Loan Party and each of their respective Subsidiaries (i) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; (ii) (a) has all requisite corporate or other power and authority and (b) all Approvals necessary to own or lease and operate its properties and to carry on its business as now being conducted and as hereafter proposed to be conducted; and (iii) is duly qualified and authorized to do business and is in good standing in each jurisdiction in which the character of its properties or the nature of its business requires such qualification or authorization; except, in each case referred to in clause (ii)(b) and clause (iii) of this Section 4.2 where failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

4.3 Authority. Each Loan Party has full corporate or company power and authority to enter into this Agreement and the other Loan Documents to which it is a party, to incur or guaranty the borrowings hereunder, to grant the security interests under the Loan Documents to which it is a party, and to incur and perform the obligations provided for herein and therein, all of which have been duly authorized by all necessary corporate or company action. Other than those that have previously been obtained, no consent or approval of stockholders or members, or consent or approval of, notice to or filing with, any Governmental Authority is required as a condition to the validity or enforceability of this Agreement or any of the other Loan Documents to which each Loan Party is a party.

4.4 Binding Agreements. This Agreement constitutes, and each other Loan Document to which any Loan Party is a party when executed and delivered pursuant hereto will constitute, the valid and legally binding obligations of each Loan Party thereto, enforceable in accordance with their respective terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

4.5 Litigation . There are no actions, suits, proceedings or investigations pending or, so far as the Authorized Officers, or any of them, know, threatened before any court or administrative agency naming any Loan Party as a party or target that could reasonably be expected, in any particular case or in the aggregate, to have a Material Adverse Effect or a Project Material Adverse Effect.

4.6 No Conflicting Agreements . There is no charter, bylaw, operating agreement, or preference stock or membership interest provision of any Loan Party and no provision of any Material Project Document, material mortgage, indenture, contract or agreement binding on any Loan Party or affecting any such Loan Party's property that would conflict in any material respects with or in any way prevent the execution, delivery or carrying out of the terms of any Loan Document to which Loan Party is a party.

4.7 Non-Contravention . The execution, delivery and performance by the Loan Parties of this Agreement and the other Loan Documents to which any Loan Party is a party require no action (other than (x) actions that have been taken, (y) consents with respect to Material Project Documents required to be obtained pursuant to Section 6.17, and (z) material Approvals as contemplated by Section 6.7) by or in respect of, and will not contravene or constitute a default under, any Material Project Document or any provision of any Applicable Law and will not result in the creation or imposition of any Lien on any asset of any Loan Party, other than Permitted Encumbrances.

4.8 Financial Condition . The audited balance sheet of the Parent and its Subsidiaries as of December 31, 2017, and the related statements of income, retained earnings and cash flows for the period then ended, and the internally prepared balance sheet of the Parent and its Subsidiaries as of August 31, 2018, and the related internally prepared statements of income, retained earnings and cash flows for the period then ended, in each case heretofore delivered to the Lender, fairly present the consolidating and consolidated financial condition of the Parent and its Subsidiaries and the consolidating and consolidated results of their operations and changes in their financial position as of the dates and for the periods referred to therein and have been prepared in accordance with GAAP. There are no material liabilities, direct or indirect, fixed or contingent of the Borrower and its Subsidiaries as of the dates of such balance sheet that are not reflected on any such balance sheet. There has been no Material Adverse Effect since December 31, 2017.

4.9 Ownership of Property . Each Loan Party has good and valid title to or valid leasehold or other possessory interests in, or other legal right to use, all land and other real estate, and on the Loan Disbursement Date of each Working Capital Loan relating to any Approved Project, has good and valid title or right to use to each such Approved Project and all other properties that comprise the Collateral, including those referred to in the financial statements referred to in Section 4.8, to the extent necessary to perform its obligations under the applicable Revenue Contract, subject only to Permitted Encumbrances. Each Loan Party enjoys full, peaceful and undisturbed possession under all leases that are material and necessary for the operation of its business or properties. All such leases are valid and subsisting and are in full force and effect, to the extent necessary, and no material default or event of default exists thereunder. No Mortgage encumbers improved real property that is located in an area that has been identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, except to the extent that the applicable Loan Party maintains flood insurance with respect to such improved real property in compliance with the requirements of Section 6.5.

4.10 Intellectual Property. Without limiting the generality of Section 4.9, each of the Loan Parties has rights to use all material franchises, licenses, copyrights, copyright applications, patents, patent rights or licenses, patent applications, trademarks, trademark rights, trade names, trade name rights, copyrights and other intellectual property rights as necessary or required for use in connection with its respective business and which the failure to have would reasonably be expected to have a Material Adverse Effect (collectively, the “**Intellectual Property Rights**”). No event has occurred which permits, or after notice or lapse of time, or both, would permit, the revocation or termination of any such material rights, and none of the Loan Parties is liable in any material respect to any Person for infringement under any Applicable Law with respect to any such rights as a result of its business operations, in each case which would reasonably be expected to have a Material Adverse Effect.

4.11 Employee Benefit Pension Plans. Each Loan Party is in compliance with all applicable provisions of the ERISA, except where the failure to be in compliance would not reasonably be expected to have a Material Adverse Effect. Neither a Reportable Event (as defined in Section 4043 of ERISA) nor a Prohibited Transaction (as defined in Section 406 of ERISA) for which there is not an applicable exemption has occurred or exists in connection with any employee benefit pension plan of any Loan Party covered by ERISA (including any plan of any member of a controlled group of corporations or entities and all trades and businesses (whether or not incorporated) under common control which, together with any such Loan Party, are treated as a single employer under Section 414 of the Code) (each, a “**Plan**”), except as would not reasonably be expected to have a Material Adverse Effect. No notice of intent to terminate any Plan has been filed, and no Plan has been terminated. No circumstances exist which could reasonably be expected to constitute grounds for the termination of any Plan by the PBGC or for the appointment of any trustee to administer a Plan, nor has the PBGC instituted any such proceedings. No circumstances exist which could reasonably be expected to constitute grounds for the imposition of a Lien in favor of any Plan pursuant to Section 302 of ERISA. No Loan Party has completely or partially withdrawn from a Multiemployer Plan (as described in Section 4001(a)(3) of ERISA), and at no time has any Loan Party contributed to or been obligated to contribute to a Multiemployer Plan. Each Loan Party has met the minimum funding requirements of ERISA with respect to each of the Plans. No Loan Party has incurred any liability to the PBGC under ERISA.

4.12 Taxes. Each of the Loan Parties has (a) filed or caused to be filed all material tax returns which are required to be filed by it (or obtained extensions for filing) pursuant to Applicable Law and (b) each of the Loan Parties has paid, or made provisions for the payment of, all taxes, assessments, fees and other governmental charges which have or may have become due pursuant to those returns or otherwise, or pursuant to any assessment received by such Loan Party, except such taxes that are being contested in good faith and by appropriate proceedings and as to which adequate reserves (determined in accordance with GAAP) have been provided, and no tax Liens other than Permitted Encumbrances have been filed against a Loan Party and, to the knowledge of each such Loan Party, no claims are being asserted against any of the Loan Parties with respect to any such taxes, fees or other charges.

4.13 Compliance with Laws. Each of the Loan Parties is in compliance with all Applicable Laws, except to the extent that any such failure to comply could not reasonably be expected to have a Material Adverse Effect or a Project Material Adverse Effect.

4.14 Approved Projects. With respect to each Approved Project for which a Working Capital Loan is being disbursed or has been requested, on the applicable Loan Disbursement Date:

(a) The Material Project Documents for each such Approved Project for which a Working Capital Loan has been requested have been duly and validly executed and delivered by the Loan Parties and Parent, as applicable, and to the knowledge of the Loan Parties, each other party thereto, are in full force and effect, and no material provisions thereof have been modified, amended or waived. Copies of all such Material Project Documents and other materials provided to Lender, including without limitation those documents and other materials delivered pursuant to Section 5.2(c), are true, correct and complete. Each such Approved Project, if acquired, constructed and operated in accordance with the applicable Material Project Documents, will comply in all material respects with all Applicable Laws, all Approvals required for such Project, and all warranty requirements of the equipment incorporated therein.

(b) The Construction Budget and Schedule for such Approved Project are based upon reasonable assumptions as to all legal and factual matters then existing and known to the Borrower that are material to the estimates set forth therein and set forth the Borrowers' reasonable and good faith estimates of the expected costs and expenses associated with the design, procurement, manufacture and construction of such Approved Project and the schedule thereof, consistent with the related EPC Contract, Revenue Contract and all other Material Project Documents related thereto. There are no material costs associated with the design, procurement, manufacture and construction of such Approved Project that are not reflected in such Construction Budget and Schedule.

(c) The Loan Parties have timely and diligently made the necessary applications for any and all rebates, subsidies, payments or performance-based incentives available from any Governmental Authority, utility or any other Person in respect of each Approved Project that it is required to have done pursuant to any Material Project Document, and have provided true, correct and complete copies of approved rebate awards related thereto to Lender.

(d) The Loan Parties are in compliance, to the extent applicable, with all requirements set forth in the Transaction Documents to maintain insurance on such Approved Projects.

(e) The Loan Parties have obtained all necessary Approvals for each Approved Project required to be obtained for such Approved Project, other than those Approvals that are not required on or prior to the dates as of which this representation and warranty is made or reaffirmed and that are routinely issued, and the Loans Parties reasonably expect that any such Approvals yet to be obtained shall be obtained as and when required in the ordinary course. All such required Approvals obtained by any Loan Party are validly issued, are in full force and effect, are free from any condition or requirement that cannot be met or that could have an adverse effect on any such Approved Project, and are not the subject of any current challenge and are not subject to any unusual or onerous conditions. Lender will be entitled, without undue expense or delay, to the benefit of each required Approval upon the exercise of its remedies under the Loan Documents.

(f) To the extent an Approved Project has been constructed and operated, such Approved Project has been constructed and operated in accordance with the applicable Material Project Documents, all Applicable Laws, all Approvals required for such Approved Project, and all warranty requirements.

(g) Each such Approved Project, and the related Material Project Documents, are owned by a Project Company Guarantor (or by the EPC Contractor, subject to the terms of the applicable Approved Project), and the related Revenue Contract, and all amounts payable thereunder except for Permissible Capacity Payments, are owned by a Project Company Guarantor, free and clear of any liens or encumbrances, other than Permitted Encumbrances.

(h) All materials and information relating to any Approved Project delivered to Lender pursuant to the terms of this Agreement are true, complete and correct in all material respects. The Loan Parties are not aware of any facts or circumstances that have not been disclosed to the Lender with respect to any Project that could reasonably be expected to affect the determination as to whether such Project constitutes an Approved Project.

4.15 Employees. None of the Loan Parties has any employees.

4.16 Investment Company Act; Public Utility Holding Company Act; Federal Power Act. None of the Loan Parties is required to register under the provisions of the Investment Company Act of 1940, as amended, and neither the entering into or performance by the Loan Parties of any of the Transaction Documents to which it is a party, violates any provisions of such Act or requires any consent, approval, or authorization of, or registration with, any Governmental Authority pursuant to any of the provisions of such Act. None of the Loan Parties is (i) a “holding company” or a “subsidiary company” of a “holding company,” as such terms are defined in the Public Utility Holding Company Act of 1935, as amended, or (ii) a “public utility,” as such term is defined in the Federal Power Act, as amended.

4.17 No Defaults. None of the Loan Parties is in default in the payment of the principal of or any interest on any Debt and none of the Loan Parties is otherwise in default under any instrument under or subject to which any Debt, and no event has occurred under the provisions of any such instrument which, with the giving of notice or the lapse of time, or both, would constitute an event of default thereunder that would permit the holder of such Debt (or trustee on behalf of such holder) to cause it to become due prior to its stated maturity.

4.18 Required Approvals. Except for Approvals that are not required on or prior to the dates as of which this representation and warranty is made or reaffirmed and that the Loan Parties reasonably expect shall be obtained as and when required in the ordinary course, all required material Approvals of any Governmental Authority or any other Person have been obtained for the execution and delivery of the Transaction Documents to which each Loan Party is a party, the performance and enforcement of the obligations of the Loan Parties thereunder, the construction, ownership, maintenance and operation of each Approved Project by each Loan Party, and the conduct by each Loan Party of its business (except, if applicable, modifications due to changes in the design, technical specifications or requirements of any such Approved Project that are permitted by the terms of this Agreement and that have been approved by the Lender in writing). All of such Approvals are in full force and effect.

4.19 No Liens. Other than Permitted Encumbrances, no Lien exists against any Project, or any other property or assets of any Loan Party.

4.20 Federal Regulations. No part of the proceeds of any Loan has been or will be used by any Loan Party for “purchasing” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under Regulation U or for any other purpose which violates the provisions of the Regulations of the Board of Governors of the Federal Reserve System. If requested by the Lender, the Loan Parties, or such Loan Party as the Lender may specify, will furnish to the Lender a statement to the foregoing effect in conformity with the requirements of Federal Reserve Form U-1 referred to in Regulation U. All proceeds of Loans have been used exclusively for purposes permitted pursuant to Section 2.5 of this Agreement.

4.21 Affiliate Debt. No Debt is owed by any Loan Party to its Affiliates, or any holders of any of its Equity Interests, officers, managers or directors, other than Debt of the type set forth in Section 8.1(d), owing pursuant to EPC Contracts or Permissible Capacity Payments.

4.22 Bank Accounts. The Loan Parties do not maintain any deposit account or other account with any bank or other depository institution, other than: (i) the Proceeds Account maintained by the Borrower, (ii) Project Revenue Accounts maintained by Project Company Guarantors, (ii) the Construction Account, and (iii) the Reserve Account.

4.23 Reserved.

4.24 Permitted Existing Debt. No Debt is owed by Borrower or any other Loan Party, other than Debt permitted by the terms of this Agreement.

4.25 Reserved.

4.26 Accuracy of Information. All written information, exhibits or reports furnished by or on behalf of any Loan Party to the Lender in connection with the negotiation of this Agreement or any of the other Transaction Documents, when taken as a whole, did not, when furnished, contain any untrue statements of a material fact or omit to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements are made (after giving effect to all supplements and updates thereto from time to time). No Loan Party has any knowledge of any fact that any Loan Party has not disclosed to the Lender in writing that could reasonably be expected to result in a Material Adverse Effect. Any projections have been prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time furnished (it being recognized that such projections are not to be viewed as facts and are subject to significant uncertainties and contingencies many of which are beyond the Borrower's control, that no assurance can be given that any particular financial projections will be realized, that actual results may differ from projected results and that such differences may be material).

4.27 Survival of Representations and Warranties, Etc. All representations and warranties set forth in this Section 4 and all representations and warranties contained in any certificate or any of the other Loan Documents (including but not limited to any such representation or warranty made in or in connection with any amendment thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement (i) shall be made or deemed to be made at and as of the Closing Date and each day on which any Loan is requested or made by the Lender hereunder (except those representations and warranties made explicitly only as of the Closing Date), (ii), shall survive the Closing Date, and (iii) shall not be waived by the execution and delivery of this Agreement, any investigation made by or on behalf of the Lender or any extension of credit hereunder.

4.28 Sanctions and Anti-Corruption Laws.

(a) None of the Loan Parties or any of their respective Subsidiaries or any of their respective directors, officers, employees, agents or Affiliates is a Sanctioned Person.

(b) The Loan Parties, their Subsidiaries and their respective directors, officers and employees and, to the knowledge of the Loan Parties, the agents of the Loan Parties and their Subsidiaries, are in compliance with applicable Anti-Corruption Laws and applicable Sanctions. The Loan Parties and their Subsidiaries have instituted and maintained policies and procedures designed to ensure continued compliance therewith.

SECTION 5
CONDITIONS TO ADVANCE OF THE LOANS

5.1 Conditions to the Making of the Initial Working Capital Loan . The obligation of the Lender to make the initial Loan hereunder is subject to the satisfaction by the Borrower (or waiver by the Lender) of each of the following conditions precedent, the satisfaction of which shall be determined by the Lender in its sole discretion, exercised in good faith:

(a) Certificates, Evidence of Organizational Action by Loan Parties, Etc. The Loan Parties shall have delivered to the Lender such closing and officer's certificates as may be requested by the Lender, along with a certified copy of each such Loan Party's articles of incorporation or organization and bylaws or operating agreement, an incumbency certificate relating to its officer(s) or managers who will be executing on its behalf the Transaction Documents to which it is a party, a certified copy of the resolutions of its board of directors, board of managers or other governing body authorizing and approving the transactions described herein (and any other papers evidencing corporate action taken by it relating to any of the Transaction Documents), and a good standing certificate (or equivalent document) related to such Loan Party as of recent date from the jurisdiction of such Loan Party's organization and each other jurisdiction in which such Loan Party is required to be qualified to conduct its business and where the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect or a Project Material Adverse Effect.

(b) Security Agreement and Loan Documents . The Security Agreement, the Holdco Pledge Agreement and such other Loan Documents as the Lender may reasonably require shall have been executed by each of the parties thereto and delivered to the Lender.

(c) Financing Statements . The Loan Parties shall have authorized the filing of Uniform Commercial Code financing statements naming each of the Loan Parties, as a debtor, and the Lender as secured party, with respect to the Collateral described in the Security Agreement (it being understood and agreed that the Loan Parties shall have authorized such filings pursuant to the Security Agreement upon the execution and delivery of the Security Agreement as required by Section 5.1(b) hereof).

(d) UCC and Federal Tax Lien Search Reports . The Loan Parties shall have delivered to the Lender Uniform Commercial Code and federal tax lien search reports acceptable to the Lender naming each Loan Party as debtor performed in each filing office in which a financing statement in favor of the Lender has been filed to perfect the security interests granted to the Lender in the Security Agreement and for each filing office otherwise specified by the Lender, which reports show only Permitted Encumbrances.

(e) Evidence of Insurance . The Loan Parties shall have delivered to the Lender evidence reasonably satisfactory to the Lender that all insurance required by the terms of this Agreement and the other Loan Documents is in full force and effect.

(f) Other Documents. The Loan Parties shall have delivered to the Lender and caused to be delivered to the Lender such other documents, agreements, information, certificates and other papers as may have been requested by the Lender.

(g) Insurance Endorsements. Lender shall have received endorsements naming the Lender as an additional insured and mortgagee or lenders loss payee, as applicable, under all insurance policies to be maintained with respect to the properties of the Loan Parties forming any part of the Collateral for the Obligations.

(h) Reserve Account, Construction Account and Proceeds Account. The Reserve Account, the Construction Account and the Proceeds Accounts shall have been established with the Depositary Bank or another financial institution acceptable to the Lender, and the Lender, the Loan Parties and the Depositary Bank or such other financial institution shall have entered into a deposit account control agreement with respect to such Reserve Account, Construction Account and Proceeds Account granting to the Lender a perfected, first priority security interest therein. Such deposit account control agreements shall provide for exclusive dominion and control by the Lender in the Reserve Account and the Proceeds Account, and springing dominion control by the Lender in the Construction Account.

(i) Hercules Amendment. The Loan Parties shall have delivered to the Lender, in form and substance reasonably satisfactory to the Lender, an amendment to Parent's existing credit facility with Hercules such that the execution of the Loan Documents will not conflict with the Hercules credit facility.

(j) Opinion of Counsel. The Lender shall have received an opinion of counsel to the Parent and the Loan Parties, in form and substance satisfactory to the Lender.

(k) [Reserved].

(l) Payment of Expenses. As a condition to the obligation of the Lender to make the initial Loan hereunder, the Loan Parties shall have paid (or shall have made arrangements to pay on the Closing Date) all of the Lender's reasonable and documented third party costs and expenses associated with the negotiation and documentation of this Agreement and the other Loan Documents and the credit facilities contemplated hereby and thereby; provided that the amount of third party transaction expenses relating to the closing of this Agreement and for which the Loan Parties shall be liable shall not exceed \$150,000, as contemplated by the Initial Diligence Cost Reimbursement Letter.

5.2 Additional Conditions to the Initial Advance of Working Capital Loans in respect of any Approved Project. The obligation of the Lender to make the initial Working Capital Loan hereunder, including the initial Loan on the Closing Date, in accordance with Section 2.1(c) is in each case subject to the satisfaction by the Borrower of each of the following additional conditions precedent, the satisfaction of which shall be determined by the Lender in its good faith discretion:

(a) Copies of Material Project Documents. Lender has received copies of all Material Project Documents for such Approved Project, all in form and substance reasonably satisfactory to the Lender.

(b) Approved Project. All requirements for the Project to which such Working Capital Loans relate to constitute an Approved Project shall have been satisfied (or waived by the Lender), including, without limitation, the requirement that Notice to Proceed has been delivered pursuant to the EPC Contract associated with such Approved Project (except in the case where such Project was approved as an Approved Project pursuant to Section 2.1(b) with Working Capital Loans to be initiated prior to the issuance of a Notice to Proceed).

(c) Additional Loan Documents. The Borrower and the Project Company Guarantor have duly executed and delivered to the Lender all Loan Documents required by the terms of this Agreement to be joined to this Agreement as a Project Company Guarantor, and the Project Company shall have granted to the Lender a perfected, first priority security interest in all of its assets and properties, and the Borrower shall have granted to the Lender a perfected, first priority security interest in all Equity Interests of such Project Company Guarantor.

(d) Consents. The Lender has received consents from counterparties to each of the Material Project Documents relating to such Approved Project (other than Material Subcontracts) that requires consent to any assignments of such Material Project Document by the counterparty thereto (including any collateral assignment to the Lender or any subsequent assignment by the Lender in respect of such collateral assignment), each duly executed and delivered to the Lender and in form and substance satisfactory to the Lender.

(e) [Reserved.]

(f) Evidence of Insurance. The Loan Parties shall have delivered to the Lender evidence reasonably satisfactory to the Lender that all insurance required by the terms of this Agreement and the other Loan Documents with respect to such new Approved Project is in full force and effect, and Lender shall have received endorsements naming the Lender as an additional insured and mortgagee or lenders loss payee, as applicable, under all insurance policies to be maintained with respect to the properties of the Loan Parties forming any part of the Collateral for the Obligations.

(g) Real Estate Matters. The Loan Parties shall have delivered to the Lender an executed collateral assignment of license agreement relating to the applicable Project Company Guarantor's access to the underlying real estate on which the Approved Project is located, together with a title insurance policy, title report or other evidence satisfactory to the Lender that such Project Company Guaranty has sufficient rights in such underlying real estate.

5.3 Additional Conditions to the Advance of Each Working Capital Loan. The obligation of the Lender to make each Working Capital Loan hereunder, including the making of the initial Loan on the Closing Date, in accordance with Section 2.1(c) is in each case subject to the satisfaction by the Borrower (or waiver by the Lender) of each of the following additional conditions precedent, the satisfaction of which shall be determined by the Lender in its good faith discretion:

(a) Working Capital Loan Notice. Lender has received a Working Capital Loan Notice, duly executed by an Authorized Representative of Borrower, requesting the making of the Working Capital Loan on the Loan Disbursement Date specified therein and in conformity with Section 2.1(c);

(b) Independent Engineer Site Visit Report. If expressly required under the Project Loan Disbursement and Construction Schedule with respect to a specific Invoice Payment or Progress Milestone, confirmation by an Independent Engineer that the requirements for such Invoice Payment or Progress Milestone, as applicable, have been met.

(c) Material Project Documents. Lender has received all Material Project Documents associated with each Approved Project to which the requested Working Capital Loan relates, and Lender shall be satisfied with the form and substance of such Material Project Documents.

(d) Invoices; Lien Waivers. Lender has received (i) copies of invoices from Parent under the EPC Contract, and from any subcontractors of Material Subcontracts, to support all payments and expenses required in connection with the applicable Invoice Payment under the EPC Contract to which such Working Capital Loan is to be applied; (ii) to the extent applicable with respect to the EPC Contract, duly executed acknowledgments of payments and an unconditional waiver and release upon progress payment to release all mechanics' and materialmen's liens from the EPC Contractor and the primary construction contractor for all work, services and materials done, previously performed or furnished for the construction of each related Approved Project; and (iii) to the extent applicable with respect to the EPC Contract, duly executed acknowledgments of payments and a conditional waiver and release upon progress payment for such work, services and materials to be paid for with the proceeds of the requested borrowing, in each case from the EPC Contractor and the primary construction contractor (and with respect to the final payment under each such contract, such lien releases shall be unconditional waivers and releases upon final payment).

(e) Completion; Sufficiency of Funds. (i) No event has occurred that could reasonably be expected to delay or prevent any Approved Project to which the requested Working Capital Loan relates from achieving Substantial Completion by the applicable Required Substantial Completion Date; and (ii) after giving effect to the making of the requested Working Capital Loan, amounts on deposit in the Construction Account and allocated to such Approved Project *plus* the amounts available for any such Approved Project under the Commitment are not less than the aggregate amount of unpaid costs and expenses required to cause Final Acceptance of any such Approved Project in accordance with the EPC Contract, including without limitation the Construction Budget and Schedule relating thereto, for any such Approved Project, and in compliance with all applicable material Approvals and all other applicable legal requirements.

(f) Construction Loan Commitment. After giving effect to the making of the requested Working Capital Loan, the aggregate outstanding amount of the Working Capital Loans is not in excess of the Commitment.

(g) Parent Financial Information. The Lender has received (i) the then most recently available month-end balance sheet for the Parent and its Subsidiaries, and (ii) the then most recently available quarterly projections of the Parent, which shall demonstrate that the Parent is then Solvent, and shall continue to be Solvent at all times through the commissioning of each Approved Project that has not yet achieved Substantial Completion.

(h) Pari Passu Equity Funding. With respect to all Approved Costs attributable to each Approved Project that have been incurred (including those Approved Costs to be reimbursed or paid with the requested Working Capital Loan), the Borrower shall have funded, from sources other than Working Capital Loans, a portion of such Approved Costs in an amount equal to (x) the sum of all Approved Costs attributable to such Approved Project minus (y) the amount of the requested Working Capital Loan, and shall have provided evidence of such funding to the Lender, and with respect to all costs associated with such Approved Project that are not Approved Costs, Borrower shall have funded all of such costs from sources other than Working Capital Loans and shall have provided evidence of such funding to the Lender.

(i) No Facility Default. No Facility Default shall have occurred and be continuing, no Facility Event of Default shall exist, and no Facility Default or Facility Event of Default would result from the making or conversion of such Loan hereunder.

(j) No Project Company Default. In each case with respect to any Project Company Guarantor and related Approved Project for which the requested Loan proceeds, or any portion thereof, are to be applied, no Project Company Default shall have occurred and be continuing, no Project Company Event of Default shall exist, and no Project Company Default or Project Company Event of Default would result from the making or conversion of such Loan hereunder.

(k) Representations and Warranties. Both immediately before and immediately after giving effect to the making of such Loan,

(i) as to all Loan Parties, the representations and warranties set forth in the following sections of this Agreement shall be true and correct in all material respects (unless any such representation or warranty is qualified as to materiality, Project Material Adverse Effect or Material Adverse Effect, in which case such representation and warranty shall be true and correct in all respects) with the same effect as though such representations and warranties had been made at the time of the making or conversion of such Loan, except to the extent that such representations and warranties relate solely to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects on the date made: Sections 4.1, 4.2, 4.3, 4.4, 4.6, 4.7, 4.8, 4.10, 4.11, 4.15, 4.16, 4.20, 4.21, 4.24, 4.26 and 4.28; and

(ii) as to any Project Company Guarantor and related Approved Project, the Approved Costs of which shall be paid or refinanced with the proceeds of the requested Loan, the representations and warranties set forth in the following sections of this Agreement shall be true and correct in all material respects (unless any such representation or warranty is qualified as to materiality, Project Material Adverse Effect or Material Adverse Effect, in which case such representation and warranty shall be true and correct in all respects) with the same effect as though such representations and warranties had been made at the time of the making or conversion of such Loan, except to the extent that such representations and warranties relate solely to an earlier date, in which case such representation and warranty shall have been true and correct in all material respects on the date made: Sections 4.5, 4.9, 4.12, 4.13, 4.14, 4.17 (as to the Borrower and such Project Company Subsidiary only) 4.18, 4.19, and 4.22 (as to the Borrower and such Project Company Subsidiary only).

(l) No Injunction, Etc. No action, proceeding, investigation, regulation or legislation shall have been instituted before any Governmental Authority to enjoin, restrain or prohibit, or to obtain substantial damages with respect to, or which is related to or arises out of, this Agreement or any of the other Loan Documents or the consummation of the transactions contemplated hereby or thereby.

(m) Notice to Proceed. The Loan Parties shall have delivered to the Lender a Notice to Proceed with respect to such Approved Project; provided, however, that delivery of such Notice to Proceed shall not be a condition to advances of Working Capital Loans in an amount not to exceed twenty percent (20%) of the aggregate amount of all Working Capital Loans proposed to be made for such Approved Project as set forth in the Project Loan Disbursement and Construction Schedule for such Approved Project.

(n) Progress Milestones. Each Progress Milestone for such Approved Project required, if any, to have been achieved in accordance with the Construction Budget and Schedule for such Approved Project at the time such Working Capital Loan has been requested shall have been achieved by the applicable date specified in such Construction Budget and Schedule; and each Progress Milestone for such Approved Project not yet required to have been achieved in accordance with the Construction Budget and Schedule for such Approved Project at the time such Working Capital Loan has been requested shall be reasonably expected to be achieved by the applicable date specified in such Construction Budget and Schedule.

Each request for a Working Capital Loan hereunder shall constitute a representation and warranty by the Borrower to the Lender that all conditions to the making or conversion of such Loan, as applicable, have been satisfied, unless such conditions have been waived in writing by Lender.

5.4 Waiver of Conditions. The making or conversion of any Loan hereunder shall not constitute an acknowledgment by the Lender that all of the conditions to the making or conversion of such Loan have been satisfied. Unless the Lender otherwise agrees in writing, if the Lender permits a condition to any Loan advance or conversion be satisfied at a later date, and the applicable Loan Party fails to satisfy such condition within the period of time, if any, specified by the Lender (or, if no such period of time is specified, within thirty (30) days after such advance is made), such failure shall, at the Lender's option, constitute a Project Company Event of Default with respect to the applicable Approved Project. To the extent that the Lender permits any condition to an advance to be satisfied at a later date as set forth above, and the failure to satisfy such condition would result in the breach of a representation and warranty set forth herein, then such breach shall not constitute a Project Company Default or a Project Company Event of Default, so long as the Loan Parties satisfy such condition within the required time period. Unless expressly agreed in writing by the Lender, any waiver of any condition precedent to the making or conversion of any Loan in one instance shall not constitute a waiver of such condition in any other instance, or obligate the Lender to waive such condition in any other instance.

5.5 Conditions to Advances for Lender's Sole Benefit. All conditions to the obligation of the Lender to make any Loan are solely and exclusively for the benefit of the Lender. No other Person shall have standing to require satisfaction of such conditions or shall be entitled to assume that the Lender will require compliance with any or all of such conditions, and no other Person, under any circumstances, shall be deemed to be a beneficiary of such conditions. In no event shall the Lender be liable to any Person, other than the applicable Loan Party, for any failure to make any Loan to which such Loan Party is entitled under this Agreement, nor shall the Lender be liable to any Person to see that the proceeds of any advance of any Loan are properly applied.

SECTION 6

AFFIRMATIVE COVENANTS

So long as the Borrower may borrow under this Agreement and until payment in full of the Obligations (other than contingent indemnification obligations in respect of which no claim has been made hereunder), the Loan Parties will:

6.1 Reports, Statements and Notices. Furnish to the Lender:

(a) as soon as available, but in no event more than forty-five (45) calendar days after the end of month, internally prepared consolidated balance sheets of the Parent and its Subsidiaries as of the end of such month, and consolidated statements of income and cash flows for the Parent and its Subsidiaries for such month and for the year to date period then ended, each in reasonable detail and in form and substance reasonably satisfactory to the Lender, prepared in accordance with GAAP and certified by an Authorized Officer of the Parent;

(b) as soon as available, but in no event more than one hundred twenty (120) calendar days after the end of each of the Loan Parties' fiscal years, a copy of the audited annual consolidated financial statements of the Parent and its Subsidiaries in reasonable detail (without a "going concern" or like qualification, exception or explanation and without any qualification or exception as to the scope of such audit) and in form and substance satisfactory to the Lender, prepared in accordance with GAAP, which financial statements shall include consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such fiscal year, consolidated statements of income and cash flows for the Borrower and its Subsidiaries for such fiscal year, and all normal and reasonable financial notes;

(c) as soon as available, but in no event more than forty-five (45) calendar days after the end of month, internally prepared consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such month, and consolidated statements of income and cash flows for the Borrower and its Subsidiaries for such month and for the year to date period then ended, each in reasonable detail and in form and substance reasonably satisfactory to the Lender, prepared in accordance with GAAP and certified by an Authorized Officer of the Parent;

(d) together with the financial statements delivered pursuant to Sections 6.1(c) above, a compliance certificate, in substantially the form attached hereto as Exhibit E, and signed by an Authorized Officer of the Parent, which provides a statement as to whether the Loan Parties are in compliance with all of the terms and conditions of this Agreement;

(e) as soon as available, but in no event more than fifteen (15) days after the end of each month, a monthly construction progress report for each Approved Project;

(f) as soon as available, but in no event more than thirty (30) days after the end of each month, a summary construction report as to the Approved Projects on a Project by Project basis, regarding construction status and other key metrics and information, as well as an accounting of (i) the amounts in the Reserve Account funded as Debt Service Reserve for each Approved Project pursuant to this Agreement, and (ii) the amounts held in the Construction Account with respect to each Approved Project, in the form attached hereto as Exhibit C, and all data shall be provided to Lender in a Microsoft compatible Import/Export format;

(g) as soon as possible, but in no event more than five (5) calendar days after any Loan Party obtains knowledge of a Facility Default, a Facility Event of Default, a Project Company Default or a Project Company Event of Default, a certificate of an Authorized Officer of the Parent, setting forth the details thereof and the action the Loan Parties have taken or propose to take with respect thereto;

(h) as soon as possible, but in no event more than five (5) calendar days after any Loan Party obtains knowledge of any event that results, or could reasonably be expected to result in, a Material Adverse Effect, a Project Material Adverse Effect or which makes any of the representations set forth in Section 4 inaccurate in any material respect, a certificate of an Authorized Officer of the Parent, setting forth the details of such event and the action the Loan parties have taken or propose to take with respect thereto; and

(i) as soon as possible, but in no event more than five (5) calendar days after any Loan Party obtains knowledge of a Change of Control, a certificate of an Authorized Officer of the Parent setting forth the details of such Change of Control;

(j) with reasonable promptness, such additional information, reports and statements concerning the Loan Parties or any of their respective businesses, properties, assets and/or liabilities as the Lender may from time to time reasonably request.

6.2 Inspections; Access to Information.

(a) Upon at least five (5) Business Days' prior written notice (or, if any Facility Event of Default or Project Facility Company of Default exists, without prior notice), permit an audit team from the Lender, any Affiliate of the Lender or any agent of the Lender to inspect and audit the Collateral and all of the Loan Parties' books, records, files and computer files relating thereto for the purpose of preparing a written report concerning the Lender's Collateral and matters relating thereto, and if any Facility Event of Default or Project Company Event of Default then exists with respect to any Loan Party that is the subject of such inspection and audit, the Loan Parties shall pay for the reasonable and documented fees and expenses for each such audit on demand. Furthermore, without expense to the Lender, the Lender, its Affiliates and agents may use any of the Loan Parties' premises during reasonable business hours and as reasonably requested by the Lender, such Affiliates and agents to conduct such Collateral audit. In addition to the foregoing, the Loan Parties shall permit the Lender and its representatives to discuss the Loan Parties' financial and business affairs with any of (i) the Chief Financial Officer, General Counsel or Vice President of Finance of the Parent, and (ii) any other officers, managers, and accountants of any of the Loan Parties made available to the Lender as needed by any officer specified in clause (i) above, in each case as the Lender and its representatives may reasonably request.

(b) Without limiting the requirements set forth in Section 6.2(a) above, the Loan Parties agree to establish and maintain an electronic portal, allowing the Lender to have real time access to certain performance data of the type and kind routinely provided to end user customers of Parent regarding each of the Revenue Contracts that is included in the Collateral and on the performance of the Approved Projects.

6.3 Taxes. Pay and discharge all material taxes, assessments, and governmental charges upon it, its income, and its properties prior to the date on which penalties are attached thereto, unless and to the extent only that (i) such taxes, assessments, and governmental charges are being contested by any Loan Party, as the case may be, in good faith and by appropriate proceedings, and (ii) each of the Loan Parties, as the case may be, have established on its books adequate reserves with respect to such tax, assessment or charge so contested in accordance with GAAP.

6.4 Payment of Obligations. Pay and discharge at or before their maturity all material indebtedness and other material obligations and liabilities of the Loan Parties, except when (i) the same may be contested by any Loan Party, as the case may be, in good faith and by appropriate proceedings, and (ii) the Loan Parties, as the case may be, have established on their books adequate reserves with respect to such indebtedness, obligation or liability in accordance with GAAP.

6.5 Insurance. (a) Keep and maintain all property material to the conduct of its business and each Approved Project in good working order and condition, ordinary wear and tear excepted; and (b) maintain insurance as required pursuant to the insurance requirements set forth in Exhibit H (including, in any event, flood insurance as described in the definition of Real Estate Documents), in the amount and on the terms and conditions specified therein and with financially sound and reputable carriers; provided that (i) all insurance shall be in form, content and amounts approved by Lender and written by an insurance company or companies licensed to do business in the jurisdiction in which such Project is located and approved by Lender and (ii) the policies for such insurance shall have attached thereto standard mortgagee clauses in favor of and permitting Lender to collect any and all proceeds payable thereunder and shall include notice of a cancellation clause in favor of Lender (providing ten (10) days' notice for nonpayment of premium and thirty (30) days' notice in all other cases). The covenant contained in this Section 6.5 shall be in addition to any covenants relating to insurance in any of the other Loan Documents.

6.6 Corporate or Company Existence. Maintain their existing form of corporate, limited liability company or partnership (or equivalent form, as applicable) existence in good standing in their respective jurisdiction of incorporation or organization, except in connection with a transaction that is otherwise permitted under Section 8.7, and maintain their qualification and authorization to do business and their good standing (or equivalent status, as applicable) in each jurisdiction in which the character of their properties or the nature of their business requires such qualification or authorization, except where the failure to be so qualified and authorized could not reasonably be expected to result in a Material Adverse Effect or a Project Material Adverse Effect.

6.7 Licenses and Approvals. Maintain all material Approvals of any Governmental Authorities and all other material licenses, authorizations, approvals and intellectual property required to construct, own and operate the businesses and properties of the Loan Parties; provided, that with respect to any Approved Project that has not yet achieved Substantial Completion, the Loan Parties shall not be deemed to be in violation of this Section 6.7 solely as a result of the failure to obtain any material Approval relating to an Approved Project, so long as such material Approval: (i) is not then required to achieve Substantial Completion for such Approved Project by the Required Substantial Completion Date; (ii) is readily available and routinely provided by the applicable Governmental Authority or other Person that will issue or provide such material Approval; (iii) is reasonably expected to be readily and timely obtained, and the issuance and enforceability of such material Approval is not subject to any conditions or contingencies that are not reasonably expected to be achieved or satisfied; and (iv) and such material Approval will have been obtained at the earlier to occur of (x) the time required so as to avoid any delay in the construction of such Approved Project that could result in a failure to achieve Substantial Completion for such Approved Project by the applicable Required Substantial Completion Date for such Approved Project, and (y) Substantial Completion for such Project.

6.8 Properties. Maintain, preserve, and protect all franchises and trade names and preserve all the remainder of its property used or useful in the conduct of its business and keep the same in good repair, working order, and condition, ordinary wear and tear excepted and from time to time make or cause to be made all needful and proper repairs, renewals, replacements, betterments, and improvements thereto so that the business carried on in connection therewith may be properly and advantageously conducted at all times, and, to the extent permitted under Section 6.2 hereof and subject to the limits set forth therein, permit the Lender and its agents to enter upon and inspect such properties during normal business hours.

6.9 Employee Benefit Pension Plans. Promptly during each year, pay contributions that in the judgment of the chief executive officer of the Loan Parties after reasonable inquiry are believed adequate to meet at least the minimum funding standards set forth in Sections 302 through 305 of ERISA with respect to each Plan of any Loan Party, if any, covered by ERISA (including any plan of any member of a controlled group of corporations and all trades and businesses (whether or not incorporated) under common control which, together with any such Loan Party, are treated as a single employer, under Section 414 of the Code); file each annual report required to be filed pursuant to Section 103 of ERISA in connection with each such Plan for each year; and notify the Lender within ten (10) days of the occurrence of a Reportable Event (as defined in Section 4043 of ERISA) that might constitute grounds for termination of any Plan by the PBGC or for the appointment by the appropriate United States District Court of a trustee to administer any such Plan.

6.10 Business Activities. Borrower shall engage solely in the business of owning and managing Project Company Guarantors. Each Project Company Guarantor shall engage solely in the business of owning, developing and operating Approved Projects.

6.11 Compliance with Environmental Laws. Comply with all Environmental Laws, except to the extent that a failure to so comply would not reasonably be expected to have a Project Material Adverse Effect.

6.12 Compliance with Other Applicable Law. Comply with all other Applicable Law and orders of any Governmental Authority having jurisdiction over it, except to the extent that a failure to so comply would not reasonably be expected to have a Material Adverse Effect or a Project Material Adverse Effect.

6.13 Development, Construction, Ownership and Operation of Projects. The Loan Parties shall acquire, develop, manufacture, construct, own, operate and maintain each Project in all material respects in compliance with all applicable Material Project Documents, all Applicable Laws, all required Approvals and all insurance and warranty requirements. The Loan Parties shall enforce their respective rights and remedies under each of the Material Project Documents, except to the extent that the Loans Parties determine, in the exercise of their reasonable discretion, that it is not in the interest of the Loan Parties to do so.

6.14 **GAAP.** Maintain its books and records in accordance with GAAP, and the Loan Parties shall not change their fiscal year end.

6.15 **Payments of Amounts Received Pursuant to Material Project Documents And in respect of Approved Projects; Reserves.**

(a) The Borrower and the applicable Project Company Guarantor will irrevocably authorize and direct, pursuant to an Irrevocable Payment Instruction, each Customer and each other Person to pay all amounts other than Permissible Capacity Payments) that are otherwise payable to any Loan Party pursuant to a Material Project Document relating to each Approved Project financed hereunder directly, via wire transfer, to a Project Revenue Account. If, notwithstanding any such authorization and direction, any such Customer or other Person shall pay such amounts directly to a Loan Party, such Loan Party shall, at its sole cost and expense, but on Lender's behalf and for Lender's account, receive such amounts in trust for the Lender as Lender's property, shall not commingle such receipts with any other property or assets of any Loan Party, and shall promptly (i) in the case of remittances paid by check, deposit all such remittances in their original form (after supplying any necessary endorsements) into such Project Revenue Account, and (ii) in the case of remittances paid by wire transfer or other electronic transfer of funds, transfers all such remittances in such Project Revenue Account. All amounts received in any Project Revenue Account, net of amounts necessary to pay operating expenses for the applicable Approved Project in the next thirty (30) days, shall be transferred to the Proceeds Account.

If required by the Lender, the Borrower and the applicable Project Company Guarantor shall cause the financial institution at which a Project Revenue Account is maintained to enter into a deposit account control agreement with respect to such Project Revenue Account, which shall provide for springing dominion and control of such Project Revenue Account in favor of the Lender. If a Facility Event of Default then exists, or if a Project Company Event of Default then exists with respect to such Project Company Guarantor, then in either case in addition to all other remedies available to it, whether under the Loan Documents or under Applicable Law, the Lender may exercise exclusive control over amounts held in the Project Revenue Account maintained by such Project Company Guarantor from time to time, and may apply such amounts toward repayment of the Obligations in such manner as it may determine in its sole discretion.

(b) The Lender shall apply amounts held in the Proceeds Account in accordance with the following priority, so long as no Facility Event of Default or Project Company Event of Default then exists:

- (i) First, to Lender, to be applied to all cost and expense reimbursements owing to the Lender pursuant to this Agreement and the other Loan Documents;
- (ii) Second, to Lender, to be applied to payments of interest due on the Loans, on each Payment Date or when otherwise required under this Agreement;
- (iii) Third, to Lender, to be applied to payments of principal due on the Loans, when required under this Agreement;
- (iv) Fourth, to Lender, to be applied to fees or any other Obligations then due and owing to the Lender under the terms of this Agreement and the other Loan Documents;
- (v) Fifth, to deposit into the Reserve Account, on each Payment Date to the extent necessary to fund or replenish the Debt Service Reserve in accordance with the requirements of this Agreement, including the requirements set forth in Section 6.15(d);
- (vi) Sixth, if so elected by Borrower, and so long as no Facility Default, Project Company Default, or Facility Event of Default or Project Company Event of Default then exists, Borrower may request any additional amounts remaining in the Proceeds Account to be paid in accordance with the written instructions of the Borrower.

If, notwithstanding the requirements set forth herein, the Borrower pays over any amounts required to be deposited into the Proceeds Account directly to the Lender, the Lender may, at its option, either retain such amounts for application to the Obligations in accordance with the forgoing priorities (or, if a Facility Event of Default or Project Company Event of Default then exists, to the Obligations in such order as Lender may determine in its sole discretion) or deposit such amounts into the Proceeds Account.

(c) If a Facility Event of Default or a Project Company Event of Default then exists, in addition to all other remedies available to it, whether under the Loan Documents or under Applicable Law, the Lender may exercise exclusive control over amounts held in the Proceeds Account from time to time, and may apply such amounts toward repayment of the Obligations in such manner as it may determine in its sole discretion.

(d) The Borrower shall cause to be maintained, as a debt service reserve (the “**Debt Service Reserve**”), in a Debt Service Account in an amount equal to three monthly payments of principal and interest on the outstanding Loans as such amount is reasonably determined by Lender. The Debt Service Reserve shall be funded by applying three percent (3%) of each Working Capital Loan (or such lesser percentage as may be necessary to satisfy the debt service reserve requirement described above) to the Reserve Account at the time of disbursement of such Working Capital Loan. If at any time Borrower fails to make any payment of principal and/or interest on the Loans or any other Obligations as and when the same is due and owing hereunder, the Lender may apply amounts held as Debt Service Reserve to such payments in its sole discretion. During the existence of a Facility Event of Default or a Project Company Event of Default, Lender may apply amounts on deposit in the Reserve Account to the Obligations in such manner as it determines in its sole discretion. Following payment in full of the Obligations outstanding hereunder, any portion of the Debt Service Reserve then remaining shall be repaid to the Borrower.

6.16 Enforcement of Material Project Documents. The Loan Parties shall diligently enforce all of their respective rights and remedies under Revenue Contracts, EPC Contracts and other Material Project Documents. If any Loan Party or any other Person shall materially breach or default under the terms of any Material Project Document, then the Loan Parties shall promptly provide notice of such breach or default. In the case of a breach or default by a Loan Party, the Loan Parties shall cause such breach or default to be cured as promptly.

6.17 New Subsidiaries.

(a) In the event that, after the Closing Date, any Person becomes a Subsidiary of any Loan Party, whether pursuant to formation, acquisition or otherwise, (i) the Borrower shall promptly notify the Lender and (ii) within fifteen (15) days after such Person becomes a Subsidiary, the applicable Loan Party shall cause such Subsidiary (x) to become a Project Company Guarantor party to, and agree to be bound by the terms of, this Agreement and the other Loan Documents, grant Liens in favor of the Lender in all of its personal property, and authorize and deliver, at the request of the Lender, such UCC financing statements or similar instruments required by the Lender to perfect the Liens in favor of the Lender granted under any of the Loan Documents, in each case pursuant to a Joinder Agreement, satisfactory to the Lender in all respects and (y) to deliver all such other documentation (including without limitation, certified organizational documents, resolutions, lien searches and legal opinions) and to take all such other actions as such Subsidiary would have been required to deliver and take pursuant to Section 5.1 if such Subsidiary had been a Loan Party on the Closing Date, in each case as required by the Lender with respect to such new Subsidiary, each in form and substance reasonably satisfactory to the Lender

(b) The Loan Parties shall, and shall cause any applicable Subsidiary that becomes a Loan Party to, pledge its ownership interest in any Equity Interests in any Person that becomes a Subsidiary after the Closing Date within fifteen (15) days after the day on which such Person becomes a Subsidiary (but in any event prior to the disbursement of any Loans attributable to any Approved Project owned or to be owned by such Subsidiary), by delivering to the Lender (i) a supplement to the Security Agreement in the form of Annex A attached thereto, and (ii) all original certificates evidencing such pledged Equity Interests, together with appropriate transfer powers executed in blank.

(c) Once any Subsidiary becomes a party to this Agreement in accordance with this Section 6.17, such Subsidiary thereafter shall remain a party to this Agreement as a Loan Party, and the Equity Interests in such Subsidiary (including, all initial Subsidiaries) shall remain subject to the pledge to the Lender.

6.18 USA Patriot Act. Provide information to the Lender, and to take such other and further actions as the Lender shall require, to enable the Lender to comply with the USA Patriot Act. The Lender hereby notifies the Loan Parties that, pursuant to the requirements of the USA Patriot Act, the Lender may be required to obtain, verify and record information that identifies the Loan Parties, which information includes the name and address of each Loan Party and other information that will enable the Lender to identify the Loan Parties in accordance with the USA Patriot Act.

6.19 Separateness. Conduct its business and operations separate and apart from that of any other Person. In furtherance of the foregoing and without limiting any other covenants applicable to the Borrower set forth in this Agreement, the Borrower:

(a) has not owned, does not own and will not own any asset or property other than (i) the Projects, and (ii) incidental personal property necessary for the ownership, management or operation of the Projects;

(b) has not engaged, does not engage, and will not engage in any business other than as set forth in its limited liability company operating agreement in effect on the Closing Date;

(c) shall maintain its accounts, financial statements, books, accounting and other records, and other Borrower documents separate from those of any other Person, provided that the Borrower may be consolidated with Parent solely for tax and accounting purposes and for purposes of Parent's consolidated financial statements;

(d) shall not commingle or pool any of its funds or assets with those of any Affiliate or any other Person (other than as expressly contemplated in this Agreement), and it shall hold all of its assets in its own name, except as otherwise permitted or required under the Loan Documents;

(e) shall conduct its own business in its own name and, for all purposes, shall not operate, or purport to operate, collectively as a single or consolidated business entity with respect to any Person except with regard to Permissible Capacity Payments;

(f) shall pay its own debts, liabilities and expenses (including overhead expenses, if any) only out of its own assets as the same shall become due;

(g) has observed, and shall observe all: (i) limited liability company formalities, and (ii) other organizational formalities, in each case to the extent necessary or advisable to preserve its separate existence, and shall preserve its existence, and it shall not, nor shall it permit any Affiliate or any other Person to, amend, modify or otherwise change the Borrower's limited liability company agreement;

(h) shall not: (i) guarantee, become obligated for, or hold itself or its credit out to be responsible for or available to satisfy, the debts or obligations of any other Person, or (ii) control the decisions or actions respecting the daily business or affairs of any other Person except as permitted by or pursuant to the Loan Documents;

(i) shall, at all times, hold itself out to the public as a legal entity separate and distinct from any other Person; provided that the assets of the Borrower may be consolidated into Parent for accounting purposes and included in consolidated financial statements of Parent;

(j) shall not identify itself as a division of any other Person;

(k) shall maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any other Person;

(l) shall not use its separate existence to perpetrate a fraud in violation of Applicable Law;

(m) shall not, in connection with the Transaction Documents, act with an intent to hinder, delay or defraud any of its creditors in violation of Applicable Law;

(n) shall maintain an arm's length relationship with its Affiliates;

(o) shall not grant a security interest or otherwise pledge its assets for the benefit of any other Person, except as permitted by or pursuant to the Loan Documents;

(p) shall not acquire any securities or debt instruments of Parent, its Affiliates or any other Person, except as permitted by or pursuant to the Loan Documents;

(q) shall not make loans or advances to any Person, except as permitted by or pursuant to the Loan Documents;

(r) shall make no transfer of its assets, except as permitted by or pursuant to the Loan Documents;

(s) shall not acquire obligations or securities of its members;

(t) shall correct any known misunderstanding regarding its separate identity;

(u) shall maintain adequate capital in light of its contemplated business operations;

(v) shall at all times be organized as a special purpose entity with organizational documents substantially similar in all material respects to its organizational documents in effect as of the Closing Date;

(w) shall not dissolve, merge, liquidate or consolidate, except as provided in this Agreement; and

(x) shall not amend its organizational documents with respect to matters expressly set forth in this Section 6.19 which would cause it to not be in compliance with this Section 6.19, without the prior written consent of the Lender.

6.20 Further Assurances. Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, fixture filings, Mortgages and other documents), which may be required under any Applicable Law, or which the Lender may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created by any of the Loan Documents or the validity or priority of any such Lien, all at the expense of the Loan Parties. The Loan Parties also agree to provide to the Lender, from time to time upon request, evidence reasonably satisfactory to the Lender as to the perfection and priority of the Liens created or intended to be created by the Loan Documents. To the extent otherwise permitted hereunder, if any Loan Party proposes to acquire an interest in Real Estate after the Closing Date, it shall at the time of such acquisition provide to the Lender Real Estate Documents in regard to such Real Estate.

6.21 Post-Closing Covenants.

(a) With respect to each Initial Project, within five (5) Business Days following the execution of each Revenue Agreement, interconnection agreement, site lease or license, or any other Material Project Document (other than any Material Subcontract) related to such Initial Project that requires consent to any assignments of such Material Project Document by the counterparty thereto (including any collateral assignment to the Lender or any subsequent assignment by the Lender in respect of such collateral assignment), submit an appropriate request to such counterparty to provide such consent, and thereafter diligently pursue such requested consent, to be in form and substance reasonably satisfactory to the Lender, until the same has been obtained.

(b) As of the date hereof, the Equity Interests of each of the Initial Project Company Guarantors is owned by Holdco. Within thirty (30) days following the date hereof, the Borrower shall acquire all of such Equity Interests from Holdco, subject to the pledge of such Equity Interests in favor of the Lender, and shall provide to the Lender an executed supplement to the Security Agreement reflecting that such Equity Interests have been pledged to the Lender pursuant to such Security Agreement.

(c) Within sixty (60) days following the date hereof, the Borrower shall provide to the Lender a fully-executed deposit account control agreement with respect to the Project Revenue Account maintained by Bakersfield with the Depository Bank, which deposit account control agreement shall provide for springing dominion and control of such Project Revenue Account in favor of the Lender.

(d) Within ten (10) Business Days following the date hereof, the Borrower shall have delivered to Lender's counsel all original certificates evidencing Holdco's pledge of the Equity Interests in Borrower, including Certificate No. A-001, together with appropriate, original transfer powers executed in blank.

SECTION 7

RESERVED

SECTION 8

NEGATIVE COVENANTS

So long as the Borrower may borrow under this Agreement and until payment in full of the Obligations (other than contingent indemnification obligations in respect of which no claim has been made hereunder), the Loan Parties will not:

8.1 Borrowings. Without the prior written consent of the Lender (which consent the Lender may grant or withhold at its sole discretion), create, incur, assume, or suffer to exist in any manner any Debt, except:

- (a) Debt of any Loan Party existing or arising under this Agreement;
- (b) Debt of any Loan Party owed to any other Loan Party;
- (c) Debt incurred as a result of endorsing negotiable instruments for deposit or collection in the ordinary course of business;
- (d) Debt in respect of any Approved Project constituting payments due and owing from time to time pursuant to an EPC Contract, so long as such payments have been reflected in the Construction Budget and Schedule for such Approved Project approved by the Lender;
- (e) Debt owed to any Affiliate constituting Permissible Capacity Payments; and
- (f) Debt of any Loan Party owed to any third party pursuant to any Project Document including, without limitation, any Debt relating to any letter of credit, guaranty or other financial assurance provided to any such third party to secure obligations of a Loan Party under a Project Document.

8.2 Mortgages and Pledges. Without the prior written consent of the Lender (which consent the Lender may grant or withhold in its sole discretion), create, incur, assume, or suffer to exist, any Lien of any kind upon any of their property or assets, whether now owned or hereafter acquired, except for Permitted Encumbrances.

8.3 Dispositions. Without the prior written consent of the Lender (which consent the Lender may grant or withhold in its sole discretion), sell, transfer, lease, assign, or otherwise dispose of (each a “ **Disposition** ” (it being understood and agreed that “ **Disposition** ” shall not be deemed to include the issuance of equity interests of the Borrower)), in one transaction or a series of transactions, all or any portion of its assets, other than:

(a) Dispositions among the Loan Parties; provided that at all times, each Approved Project shall be owned by only one Project Company Guarantor, and each Project Company Guarantor shall own no more than one Approved Project;

(b) to the extent constituting a Disposition, the creation of Permitted Encumbrances, the making of Investments permitted by Section 8.6 and the making of Restricted Payments permitted by Section 8.12;

(c) the lapse or abandonment in the ordinary course of business of any registrations or applications for registration of any immaterial intellectual property that is no longer used or useful in the Loan Parties’ business;

(d) Dispositions of Collateral which is subject to a casualty event resulting in damage to or the destruction of such Collateral, so long as the Borrower prepays the Loans as required pursuant to Section 2.4(a);

(e) Dispositions of interests in Approved Projects, or of interests in Project Company Guarantors, in each case subject to compliance with the requirements of Section 2.3(c) or Section 2.3(e);

(f) Dispositions of cash and cash equivalents pursuant to transactions not prohibited hereunder for reasonably equivalent value;

(g) Dispositions of machinery, equipment or materials no longer used or useful in the business of any Loan Party;

(h) Dispositions of obsolete or worn-out property in the ordinary course of business; and

(i) Dispositions resulting from any taking or condemnation of any property of the Borrower, any Loan Party by any Governmental Authority or Dispositions of any assets subject to a casualty event in connection with the adjustment of insurance claims relating to such assets, in each case so long as the Borrower complies with all applicable mandatory prepayment requirements set forth herein.

8.4 Acquisitions. Without the prior written consent of the Lender (which consent the Lender may grant or withhold in its sole discretion), acquire in one transaction or a series of transactions, all or any substantial part of the capital stock (or other ownership interests) or assets of any other Person unless associated with the acquisition of an Approved Project that is financed by Lender hereunder. Any new Subsidiary shall become a Loan Party in accordance with the requirements of Section 6.17 hereof; provided that Borrower shall not have or acquire any Subsidiary other than a Subsidiary that is to become, and does become, a Project Company Guarantor.

8.5 Contingent Liabilities. Assume, guarantee, endorse, or otherwise become surety for or upon the obligation of any Person (other than obligations of another Loan Party that are permitted hereunder), except by the endorsement of negotiable instruments for deposit or collection in the ordinary course of business and as otherwise permitted under Section 8.1 of this Agreement.

8.6 Investments. Make or suffer to exist any Investment in any Person, except:

(a) the Borrower may make Investments in Project Company Guarantors, including new Subsidiaries that are to become, and do become, Project Company Guarantors pursuant to Section 6.17 hereof, so long as each such Project Company Guarantor holds one Approved Project;

(b) Investments consisting of extensions of trade credit in the nature of accounts receivable or general intangibles arising in the ordinary course of business pursuant to the Material Project Documents;

(d) Investments constituting acquisitions permitted pursuant to Section 8.4; and

(c) Investments in cash and Cash Equivalents.

8.7 Merger, Consolidation or Dissolution. Without the prior written consent of the Lender (which consent the Lender may grant or withhold in its sole discretion) merge, consolidate, dissolve or liquidate, in whole or in part, or change the form of entity of any Loan Party.

8.8 Conduct of Business. Engage to any material degree in any business other than the business conducted by them on the Closing Date and any business reasonably related thereto or ancillary extensions thereof.

8.9 Change in Board of Directors, Control or Management. Permit any change after the Closing Date in the ownership (including without limitation the ownership of the voting stock or voting membership interests of the Borrower) of, control of, or individuals holding executive offices (including without limitation the president and the chief executive officer) of the Borrower or any other Loan Party without providing Lender notice thereof within thirty (30) days after such change.

8.10 [Reserved].

8.11 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of any Loan Party (other than transactions between or among the Loan Parties) except for (i) compensation arrangements approved by the managers of the Borrower; (ii) subordinated Debt financings agreed to by the Lender in its sole discretion; (iii) equity financings not otherwise prohibited hereunder; (iv) O&M Agreements; (v) EPC Contracts; and (vi) transactions with Affiliates relating to Permissible Capacity Payments.

8.12 Dividends and Distributions. Declare or make, directly or indirectly, any Restricted Payment, except that (i) any Project Company Guarantor may declare and pay dividends and distributions to the Borrower; and (ii) so long as so no Facility Default, Facility Event of Default, Project Company Default or Project Company Event of Default then exists or would result therefrom, the Borrower may make Restricted Payments to Holdco in accordance with Section 6.15(b).

8.13 Project Documents. Without the prior written consent of the Lender (which consent the Lender may grant or withhold in its sole discretion), following the time at which Lender has designated a Project as an Approved Project, with regard to such Approved Project:

(a) enter into any Material Additional Project Document; or

(b) (i) Amend or modify, or consent to the amendment or modification of, the Project Documents or waive any material provision thereof (each an “Agreement Change”); (ii) terminate, replace or assign any or all interests of the Borrower or any Project Company in any Project Document; or (iii) exercise any rights Borrower or any Project Company Guarantor may have to consent to any termination, replacement or assignment of the Project Documents by the Project Participant thereto or give any other material consent or exercise any material option thereunder (each a “Consent Action”); in any such case described in this clause (c) unless one of the following conditions is met:

(A) such Agreement Change is of a ministerial nature;

(B) such Agreement Change, Consent Action or termination, expiration, replacement or assignment of the Project Document (other than any Revenue Contract, O&M Agreement or EPC Contract) could not reasonably be expected to have a Project Material Adverse Effect and, in the case of any such Agreement Change, Consent Action or termination, replacement or assignment of any Material Project Document, the Borrower shall have delivered to the Lender a certificate to that effect; or

(C) such Agreement Change, Consent Action or termination, expiration, replacement or assignment of any Revenue Contract or other Project Document is approved by the Lender.

8.14 Sanctions and Anti-Corruption Laws. The Loan Parties will not, and will not permit any Subsidiary to, request any Loan or, directly or indirectly, use the proceeds of any Loan, or lend, contribute or otherwise make available such proceeds to any subsidiary, joint venture partner or other Person (i) to fund any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of Sanctions, (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as the Lender, underwriter, advisor, investor or otherwise), or (iii) in furtherance of an offer, payment, promise to pay or authorization of the payment or giving of money or anything else of value to any Person in violation of applicable Anti-Corruption Laws.

SECTION 9

EVENTS OF DEFAULT

9.1 Project Company Events of Default. A “**Project Company Event of Default**” means, with respect to any Project Company Subsidiary and related Approved Project, any one or more of the following events: (a) Failure to pay when due any principal or interest on any Working Capital Loans or any portion thereof attributable to such Project Company Guarantor and its Approved Project, when and as the same becomes due and payable, whether at the stated maturity thereof, by mandatory prepayment, by acceleration, demand or otherwise; or

(b) Failure to pay when due any other amount due to Lender under this Agreement or any of the other Loan Documents attributable to such Project Company Guarantor and its Approved Project, when the payment thereof becomes due and payable and such failure shall continue unremedied for a period of five (5) or more Business Days;

(c) (i) Default shall be made by such Project Company, or by the Borrower solely with respect to such Project Company, in the due observance of any of the covenants contained in Sections 6.1(f), 6.1(h), 8.2, 8.5, 8.7, 8.8, 8.10, 8.11, 8.12, or 8.13; or

(ii) Default shall be made by such Project Company, or by the Borrower solely with respect to such Project Company, in the due observance or performance of any of the covenants contained in Sections 6.1(i), 6.3, 6.4, 6.5, 6.6 (solely with respect to the Project Company), 6.7, 6.8, 6.10, 6.11, 6.12, 6.13, 6.14, 6.15, 6.16 or 6.20, or under any of the other Loan Documents, and such default shall continue for a period in excess of thirty (30) days after the earlier of such Project Company or the Borrower learns of such default or receives notice thereof;

(d) Any representation or warranty made by such Project Company, or by the Borrower with respect to such Project Company, herein pursuant to Section 5.3(j)(ii), or in any statement, representation or warranty made in any certificate, report, or opinion delivered pursuant hereto by or on behalf of such Project Company, or by the Borrower with respect to such Project Company, shall prove to have been incorrect in any material respect when made; provided, however, that to the extent a representation or warranty was incorrect when made in any material respect, no Project Company Event of Default shall result therefrom, so long as all of the following conditions have been satisfied with respect to such incorrect representation and warranty: (i) such misrepresentation was unintentional; (ii) the condition, event or circumstances that gave rise to such incorrect representation or warranty did not, individually or in the aggregate, result in a Project Material Adverse Effect; and (iii) the condition, event or circumstances that gave rise to such incorrect representation or warrant can be corrected, and are corrected, within sixty (60) days after the earlier of the Borrower or such Project Company Guarantor learns of such incorrect representation and warranty or receives notice thereof, such that such representation or warranty and after giving effect to such correction, if made on such date, would no longer be incorrect; or

(e) Such Project Company Guarantor shall be generally not paying its debts as such debts become due, shall make an assignment for the benefit of creditors, shall consent to the appointment of a trustee or a receiver, or shall admit in writing its inability to pay its debts as they mature; or

(f) A trustee, receiver or custodian shall be appointed for such Project Company Guarantor, or for a substantial part of any of their respective properties; or

(g) (i) Any case in bankruptcy shall be commenced, or any reorganization, arrangement, insolvency, or liquidation proceedings shall be instituted, by such Project Company Guarantor; or

(ii) Any case in bankruptcy shall be commenced, or any reorganization, arrangement, insolvency or liquidation proceeding shall be instituted, against such Project Company Guarantor by any other Person or Person, and shall be consented to by the Project Company Guarantor or shall remain undismissed or unstayed for a period of sixty (60) calendar days; or

(h) any material default shall be made in the performance of any Material Project Document relating to such Project Company Guarantor or its Approved Project, which has not been cured or waived pursuant to the terms of such Material Project Document, or any party to any Material Project Document otherwise shall be entitled to terminate such Material Project Document prior to its scheduled termination or expiration date, in each case that would reasonably be expected to have a Project Material Adverse Effect; or

(i) any default shall be made in the payment or performance of any obligation incurred in connection with such Project Company involving an amount in excess of 20% of the total contract price set forth in the EPC Contract to which such Project Company is a party, if in any such case the effect of such default is to permit the holder of such Debt (or a trustee on behalf of such holder) to cause it to become due prior to its stated maturity or to do so with the giving of notice or passage of time, or both, or any such Debt becomes due prior to its stated maturity or shall not be paid when due; provided that this clause shall not apply to secured Debt that becomes due as a result of a voluntary sale or transfer of property or assets securing such Debt, if such sale or transfer is permitted hereunder and under the documents evidencing the terms of such Debt; or

(j) One or more final judgments for the payment of money shall be rendered at any time against such Project Company in an aggregate amount in excess of \$150,000 (exclusive of amounts covered by insurance provided by a financially sound insurance company and for which such insurer has accepted liability) and the same shall remain undischarged for a period of thirty (30) calendar days during which time execution shall not be effectively stayed; or

(k) (i) Any material part of the properties of such Project Company Guarantor or the Equity Interests of such Project Company Guarantor shall be sequestered or attached.

For the avoidance of doubt, any breach, default, event or occurrence described in this Section 9.1 may constitute a Project Company Event of Default with respect to more than one Project Company Guarantor.

9.2 Facility Events of Default. A “**Facility Event of Default**” means any one or more of the following events: (a) There shall occur during the period commencing on the date hereof Project Company Events of Default with respect to three (3) or more Project Company Guarantors; or

(b) (i) Default shall be made by the Loan Parties, or any of them, in the due observance of any of the covenants contained in Sections 2.5, 6.19 and 8.1, 8.3, 8.4, 8.6, 8.9 or 8.14; or

(ii) Default shall be made by the Loan Parties, or any of them, in the due observance of any of the covenants contained in Sections 6.1 (other than Section 6.1(f), 6.1(h) or 6.1(i)), and such failure shall continue unremedied for a period of ten (10) or more Business Days following the earlier of (x) written notice thereof from Lender to Borrower and (y) Borrower’s actual knowledge of such failure; or

(iii) Default shall be made by the Loan Parties, or any of them, in the due observance or performance of any of the covenants contained in Sections 6.2, 6.9, 6.17, 6.18, 6.21, or under any of the other Loan Documents, to the extent such default is not limited to two or fewer Project Company Guarantors and related Approved Projects, and such default shall continue for a period in excess of thirty (30) days after the earlier of such Project Company or the Borrower learns of such default or receives notice thereof;

(c) Any representation or warranty made by any Loan Party herein pursuant to Section 5.3(j)(i), or by Parent or Holdco in any Loan Document, or in any statement, representation or warranty as to the Loan Parties as a whole made in any certificate, report, delivered pursuant hereto by or on behalf of the Loan Parties, or any of them, shall prove to have been incorrect in any material respect when made; provided, however, that to the extent a representation or warranty was incorrect when made in any material respect, no Facility Event of Default shall result therefrom, so long as all of the following conditions have been satisfied with respect to such incorrect representation and warranty: (i) such misrepresentation was unintentional; (ii) the condition, event or circumstances that gave rise to such incorrect representation or warranty did not, individually or in the aggregate, result in a Material Adverse Effect; and (iii) the condition, event or circumstances that gave rise to such incorrect representation or warrant can be corrected, and are corrected, within sixty (60) days after the earlier of the applicable Loan Party learns of such incorrect representation and warranty or receives notice thereof, such that such representation or warranty and after giving effect to such correction, if made on such date, would no longer be incorrect; or

(d) The Parent, Holdco, or the Borrower shall be generally not paying its debts as such debts become due, shall make an assignment for the benefit of creditors, shall consent to the appointment of a trustee or a receiver, or shall admit in writing its inability to pay its debts as they mature; or

(e) A trustee, receiver or custodian shall be appointed for the Parent, Holdco or the Borrower, or for a substantial part of any of their respective properties; or

(f) (i) Any case in bankruptcy shall be commenced, or any reorganization, arrangement, insolvency, or liquidation proceedings shall be instituted, by the Parent, Holdco, or the Borrower; or

(ii) Any case in bankruptcy shall be commenced, or any reorganization, arrangement, insolvency, or liquidation proceedings shall be instituted, against the Parent, Holdco, or the Borrower by any other Person or Persons, and shall be consented to by the Parent, Holdco, or the Borrower, as the case may be, or shall remain undismissed or unstayed for a period of sixty (60) calendar days; or

(g) any default shall be made in the payment or performance of any obligation incurred in connection with any Debt of Parent in an aggregate principal amount in excess of \$1,000,000, or in connection with any Debt of Holdco or Borrower in an aggregate principal amount in excess of \$250,000, if in any such case the effect of such default is to permit the holder of such Debt (or a trustee on behalf of such holder) to cause it to become due prior to its stated maturity or to do so with the giving of notice or passage of time, or both, or any such Debt becomes due prior to its stated maturity or shall not be paid when due; provided that this clause shall not apply to secured Debt that becomes due as a result of a voluntary sale or transfer of property or assets securing such Debt, if such sale or transfer is permitted hereunder and under the documents evidencing the terms of such Debt; or

(h) One or more final judgments for the payment of money shall be rendered at any time against Holdco or the Borrower in an aggregate amount in excess of \$250,000 (in each case exclusive of amounts covered by insurance provided by a financially sound insurance company and for which such insurer has accepted liability) and the same shall remain undischarged for a period of thirty (30) calendar days during which time execution shall not be effectively stayed; or

(i) (i) Any material part of the properties of Parent shall be sequestered or attached and such event could reasonably be expected to result in a Material Adverse Effect, or (ii) any material part of the properties of Holdco or the Borrower (other than Equity Interests in a Project Subsidiary Guarantor) shall be sequestered or attached; or

(j) Any provision of this Agreement or any of the other Loan Documents to which the Parent, Holdco, or any Loan Party is a party at any time for any reason shall cease to be valid and binding on such Parent, Holdco, such Servicer, or such Loan Party, as the case may be, or shall be declared to be null or void (other than as a result of any action or inaction by the Lender); or the validity or enforceability of any such provision shall be contested by the Parent, Holdco, or any Loan Party; or the Parent, Holdco, or any Loan Party shall deny that it has further liability or obligation under any such provision;

(k) The occurrence of a Change of Control; or

(n) Failure to pay when due the entire then outstanding principal amount of the Working Capital Loans, together with all then accrued and unpaid interest thereon, on or before September 30, 2019, if the Lender provides notice to the Borrower pursuant to Section 2.3(i).

9.3 Remedies Upon the Occurrence of a Project Company Event of Default. Upon the occurrence of a Project Company Event of Default, the Lender may, if it deems appropriate, by written notice to the Borrower, take any or all of the following actions, at the same or different times: (i) declare that portion of all Loans and all other amounts attributable to the Project Company Guarantor(s) and the related Approved Project(s) to which such Project Company Event of Default relate (“**Defaulted Project Company Obligations**”) to be forthwith due and payable, whereupon such Defaulted Project Company Obligations shall be forthwith due and payable, both as to principal and interest, without notice of intent to accelerate, notice of acceleration, presentment, demand, protest, or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in such the Loan Note to the contrary notwithstanding, and/or (ii) proceed to enforce payment of the Loan Note, to the extent of such Defaulted Project Company Obligations, and to exercise any and all of its rights hereunder, under the Loan Note, under the other Loan Documents or otherwise available to the Lender, in each case solely with respect to subject Project Company Guarantor(s) (including, but not limited to, the Equity Interests of such Project Company Guarantor(s)) and Approved Project(s), and may apply any amounts received in respect thereof to the Defaulted Project Company Obligations in such manner as it may determine in its sole discretion. In addition, the Lender shall be entitled to apply all amounts on deposit in the Proceeds Account, or otherwise payable to the Borrower upon the Disposition or Refinancing of any Project Company Guarantor and related Approved Project, to the Defaulted Project Company Obligations as it may determine in its sole discretion. For the avoidance of doubt, the Lender agrees that it is not entitled to exercise any remedies with respect to any Project Company Guarantors and related Approved Projects that are not subject to a Project Company Event of Default as a result of such Project Company Event of Default, except as expressly set forth herein.

9.4 Remedies Upon the Occurrence of a Facility Event of Default. (A) Upon the occurrence of a Facility Event of Default described in Section 9.2(f), (i) the Commitment and the Lender's obligation to make any further advances of any Loan hereunder shall automatically and immediately terminate, (ii) the entire outstanding principal balance of the Loans and all accrued interest thereon and all other amounts payable by the Loan Parties to the Lender shall automatically become immediately due and payable without notice of intent to accelerate, notice of acceleration, presentment, demand, protest or any notice of any kind, or any other action by or on behalf of the Lender, all of which are hereby waived, anything contained herein or in the Loan Note to the contrary notwithstanding, and (iii) the Lender may proceed to enforce payment of the Loan Note and to exercise any and all of its rights hereunder, under the Loan Note, under the other Loan Documents or otherwise available to the Lender; and (B) at any time after the occurrence of any Facility Event of Default (other than a Facility Event of Default described in Section 9.2(f)), the Lender may, if it deems appropriate, by written notice to the Borrower, take any or all of the following actions, at the same or different times: (i) terminate forthwith the Commitment and its obligation to make any further advances of Loans hereunder, (ii) declare the Loans and all other amounts payable by the Loan Parties to the Lender to be forthwith due and payable, whereupon such Loans and all such other amounts shall be forthwith due and payable, both as to principal and interest, without notice of intent to accelerate, notice of acceleration, presentment, demand, protest, or any other notice of any kind, all of which are hereby expressly waived, anything contained herein or in such the Loan Note to the contrary notwithstanding, and/or (iii) proceed to enforce payment of the Loan Note, and to exercise any and all of its rights hereunder, under the Loan Note, under the other Loan Documents or otherwise available to the Lender. All proceeds received by Lender upon such enforcement may be applied to the Obligations in such manner as the Lender may determine in its sole discretion.

SECTION 10

GUARANTEE

10.1 Unconditional Guaranty. Each Project Company Guarantor hereby irrevocably, unconditionally and jointly and severally guarantees, each as a primary obligor and not merely as a surety, to the Lender the due and punctual payment and performance in full of the Obligations. The Project Company Guarantors' guaranty under this Section 10 is an absolute, present and continuing guarantee of payment and not of collectability, and is in no way conditional or contingent upon any attempt to collect from the Borrower, any of the Project Company Guarantors or any other guarantor of the Obligations (or any portion thereof) or upon any other action, occurrence or circumstances whatsoever. In the event that the Borrower or any Project Company Guarantor shall fail so to pay any such principal, premium, interest or other amount to the Lender, the Project Company Guarantors will pay the same forthwith, without demand, presentment, protest or notice of any kind (all of which are waived by the Project Company Guarantors to the fullest extent permitted by law), in lawful money of the United States, at the place for payment specified in the Loan Documents or specified by the Lender in writing, to the Lender. The Project Company Guarantors further agree, promptly after demand, to pay to the Lender the costs and expenses incurred by the Lender in connection with enforcing the rights of the Lender against the Borrower and any or all of the Project Company Guarantors (whether in a bankruptcy proceeding or otherwise) following any default in payment of any of the Obligations or the obligations of the Project Company Guarantors hereunder, including, the fees and expenses of counsel to the Lender.

10.2 Obligations Absolute. The obligations of the Project Company Guarantors hereunder are and shall be absolute and unconditional, irrespective of the validity, regularity or enforceability of this Agreement, any of the Obligations or any of the Loan Documents, shall not be subject to any counterclaim, set-off, deduction or defense based upon any claim any of the Project Company Guarantors may have against the Borrower, any other Project Company Guarantor or the Lender, hereunder or otherwise, and shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by, to the fullest extent permitted by law, any circumstance or condition whatsoever (other than the prior payment in full of the Obligations) (whether or not any of the Project Company Guarantors shall have any knowledge or notice thereof), including:

- (a) any amendment or modification of or supplement to any of the Loan Documents or any other instrument referred to herein or therein, or any assignment or transfer of any thereof or of any interest therein, or any furnishing or acceptance of additional security for any of the Obligations;
- (b) any waiver, consent or extension under any Loan Document or any such other instrument, or any indulgence or other action or inaction under or in respect of, or any extensions or renewals of, any Loan Document, any such other instrument or any Obligation;
- (c) any failure, omission or delay on the part of the Lender to enforce, assert or exercise any right, power or remedy conferred on or available to the Lender against the Borrower or any Project Company Guarantor, any Subsidiary of the Borrower or any Subsidiary of any Project Company Guarantor;
- (d) any bankruptcy, insolvency, readjustment, composition, liquidation or similar proceeding with respect to the Borrower, any Project Company Guarantor, any Subsidiary of the Borrower or any Subsidiary of any Project Company Guarantor or any property of the Borrower, any Project Company Guarantor or any such Subsidiary or any unavailability of assets against which the Obligations, or any of them, may be enforced;
- (e) any merger or consolidation of the Borrower, any Subsidiary of the Borrower or any Project Company Guarantor or any of the Project Company Guarantors into or with any other Person or any sale, lease or transfer of any or all of the assets of any of the Project Company Guarantors, the Borrower or any Subsidiary of the Borrower or any Project Company Guarantor to any Person;

- (f) any failure on the part of the Borrower, any Project Company Guarantor or any Subsidiary of the Borrower or any Project Company Guarantor for any reason to comply with or perform any of the terms of any agreement with any of the Project Company Guarantors;
- (g) any exercise or non-exercise by the Lender of any right, remedy, power or privilege under or in respect of any of the Loan Documents or the Obligations, including, under this Section 10.2;
- (h) any default, failure or delay, willful or otherwise, in the performance or payment of any of the Obligations;
- (i) any furnishing or acceptance of security, or any release, substitution or exchange thereof, for any of the Obligations;
- (j) any failure to give notice to any of the Project Company Guarantors of the occurrence of any breach or violation of, or any event of default or any default under or with respect to, any of the Loan Documents or the Obligations;
- (k) any partial prepayment, or any assignment or transfer, of any of the Obligations; or
- (l) any other circumstance (other than payment in full) which might otherwise constitute a legal or equitable discharge or defense of a guarantor or which might in any manner or to any extent vary the risk of such Project Company Guarantor.

The Project Company Guarantors covenant that their respective obligations hereunder will not be discharged except by full and complete payment and performance of the Obligations. The Project Company Guarantors unconditionally waive, to the fullest extent permitted by law (1) notice of any of the matters referred to in this Section 10.2, (2) any and all rights which any of the Project Company Guarantors may now or hereafter have arising under, and any right to claim a discharge of the Project Company Guarantor's obligations hereunder by reason of the failure or refusal by the Lender to take any action pursuant to any statute permitting a Project Company Guarantor to request that the Lender attempt to collect the Obligations from the Borrower, any of the Project Company Guarantors or any other guarantor, (3) all notices which may be required by statute, rule of law or otherwise to preserve any of the rights of the Lender against the Project Company Guarantors, including, presentment to or demand of payment from any of the Borrower, any of the Subsidiaries of the Borrower or any Project Company Guarantor, or any of the other Project Company Guarantors with respect to any Loan Document or this agreement, notice of acceptance of the Project Company Guarantors' guarantee hereunder and/or notice to the Borrower, any of the Subsidiaries of the Borrower or any Project Company Guarantor, or any Project Company Guarantor of default or protest for nonpayment or dishonor, (4) any diligence in collection from or protection of or realization upon all or any portion of the Obligations or any security therefor, any liability hereunder, or any party primarily or secondarily liable for all or any portion of the Obligations, and (5) any duty or obligation of the Lender to proceed to collect all or any portion of the Obligations from, or to commence an action against, the Borrower, any Project Company Guarantor or any other Person, or to resort to any security or to any balance of any deposit account or credit on the books of the Lender in favor of the Borrower, any Project Company Guarantor or any other Person, despite any notice or request of any of the Project Company Guarantors to do so.

Each Project Company Guarantor further waives all rights and defenses such Project Company Guarantor may have arising out of (i) any election of remedies by Lender, even though that election of remedies, such as a non-judicial foreclosure with respect to any security for any portion of the Obligations, destroys such Project Company Guarantor's rights of subrogation or Project Company Guarantor's rights to proceed against the Borrower or any other Person for reimbursement, or (ii) any loss of rights such Project Company Guarantor may suffer by reason of any rights, powers or remedies of any of the Borrower in connection with any anti-deficiency laws or any other laws limiting, qualifying or discharging Borrower's Obligations, whether by operation of Applicable Law or otherwise, including any rights such Project Company Guarantor may have to a fair market value hearing to determine the size of a deficiency following any foreclosure sale or other disposition of any real property security for any portion of the Obligations.

10.3 Continuing Obligations; Reinstatement. The obligations of the Project Company Guarantors under this Section 10 are continuing obligations and shall continue in full force and effect until such time as all of the Obligations (and any renewals and extensions thereof) shall have been finally performed, paid and satisfied in full, other than contingent indemnification obligations for which no claim has been asserted. The obligations of the Project Company Guarantors under this Section 10 shall continue to be effective or be automatically reinstated, as the case may be, if any payment made by the Borrower, any Project Company Guarantor or any Subsidiary of the Borrower or any Project Company Guarantor on, under or in respect of any of the Obligations is rescinded or must otherwise be restored or returned by the recipient upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower, any Project Company Guarantor or any such Subsidiary, or upon or as a result of the appointment of a custodian, receiver, trustee or other officer with similar powers with respect to the Borrower, any Project Company Guarantor or any such Subsidiary or any substantial part of the property of the Borrower, any Project Company Guarantor or any such Subsidiary, or otherwise, all as though such payment had not been made. If an event permitting the acceleration of all or any portion of the Obligations shall at any time have occurred and be continuing, and such acceleration shall at such time be stayed, enjoined or otherwise prevented for any reason, including because of the pendency of a case or proceeding relating to the Borrower, any Project Company Guarantor or any Subsidiary of the Borrower or any Project Company Guarantor under any bankruptcy or insolvency law, for purposes of this Section 10 and the obligations of the Project Company Guarantors hereunder, such Obligations shall be deemed to have been accelerated with the same effect as if such Obligations had been accelerated in accordance with the terms of the applicable Loan Documents or of this Agreement.

10.4 Additional Security, Etc. The Project Company Guarantors authorize the Lender without notice to or demand on the Project Company Guarantors and without affecting their liability hereunder, from time to time (a) to obtain additional or substitute endorsers or guarantors; (b) to exercise or refrain from exercising any rights against, and grant indulgences to, the Borrower, any Subsidiary of the Borrower, any Project Company Guarantor or any others; and (c) to apply any sums, by whomsoever paid or however realized, to the payment of the principal of, premium, if any, and interest on, and other obligations consisting of, the Obligations. The Project Company Guarantors waive any right to require the Lender to proceed against any additional or substitute endorsers or guarantors or the Borrower or any of their Subsidiaries or any other Person or to pursue any other remedy available to the Lender.

10.5 Information Concerning the Borrower. The Project Company Guarantors assume all responsibility for being and keeping themselves informed of the financial condition and assets of the Borrower, the other Project Company Guarantors and their respective Subsidiaries, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks which the Project Company Guarantors assume and insure hereunder, and agree that the Lender shall not have any duty to advise the Project Company Guarantors, or any of them, of information known to the Lender regarding or in any manner relevant to any of such circumstances or risks.

10.6 Project Company Guarantors' Subordination. The Project Company Guarantors hereby absolutely subordinate, both in right of payment and in time of payment, any present and future indebtedness of the Borrower or any Subsidiary of the Borrower or any Project Company Guarantor to any or all of the Project Company Guarantors to the indebtedness of the Borrower or any such Subsidiary or Project Company Guarantor to the Lender.

10.7 Subrogation. Notwithstanding anything herein to the contrary, until the payment in full of the Obligations, the Project Company Guarantors hereby agree not to exercise any rights they may acquire by way of subrogation (under contract, Section 509 of the Bankruptcy Code or otherwise) or any other right of indemnity, reimbursement or contribution against the Borrower, any Project Company Guarantor or any endorser or any other guarantor of all or any part of the Obligations until the Obligations shall have been paid in full (other than contingent obligations for which no claim has been asserted).

10.8 Enforcement. In the event that the Project Company Guarantors shall fail forthwith to pay upon demand of the Lender any amounts due pursuant to this Section 10 or to perform or comply with or to cause performance or compliance with any other obligation of the Project Company Guarantors under this Agreement the Lender shall be entitled and empowered to institute any action or proceeding at law or in equity for the collection of the sums so due and unpaid or for the performance of or compliance with such terms, and may prosecute any such action or proceeding to judgment or final decree and may enforce such judgment or final decree against the Project Company Guarantors and collect in the manner provided by law out of the property of the Project Company Guarantors, wherever situated, any monies adjudged or decreed to be payable. The obligations of the Project Company Guarantors under this Agreement are continuing obligations and a separate cause of action shall arise in respect of each default hereunder.

10.9 **Miscellaneous**. Except as may otherwise be expressly agreed upon in writing, the liability of the Project Company Guarantors under this Section 10 shall neither affect nor be affected by any prior or subsequent guaranty by the Project Company Guarantors of any other indebtedness to the Lender. Notwithstanding anything in this Section 10 to the contrary, the maximum liability of each Project Company Guarantor hereunder shall in no event exceed the maximum amount which could be paid out by such Project Company Guarantor without rendering such Project Company Guarantor's obligations under this Section 10, in whole or in part, void or voidable under Applicable Law, including, (i) the Bankruptcy Code, and (ii) any applicable state or federal law relative to fraudulent conveyances.

SECTION 11

INDEMNIFICATION

11.1 **Environmental**. The Loan Parties, jointly and severally, hereby agree to indemnify, defend and hold the Lender, Generate Capital, their respective Affiliates, officers, employees, directors and agents, and their respective successors and assigns (collectively, the "**Indemnified Parties**") harmless from, and to indemnify the Indemnified Parties against, all claims, demands, suits, losses, damages, assessments, fines, penalties, costs and other expenses (including, but not limited to, reasonable and documented attorneys' fees, costs and expenses) incurred by any such Indemnified Parties as a result of or arising from or in any way related to actual or threatened damage to the environment, agency costs of investigation, personal injury or death, or property damage, due to a release of Hazardous Materials arising from any of the Loan Parties' real property or business operations or any of any Project Company Guarantor's business operations, any other condition existing or arising from any of the Loan Parties' real property or business operations resulting from the use or existence of Hazardous Materials; provided that such indemnity shall not be available to any Indemnified Party to the extent that such claims, demands, suits, losses, damages, assessments, fines, penalties, costs and other expenses are determined by a court of competent jurisdiction in a final, non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Party. The Loan Parties further hereby agree that their indemnity obligations shall include, but are not limited to, liability for damages resulting from the personal injury or death of an employee of any Borrower, regardless of whether any Loan Party has paid the employee under the worker's compensation laws of any state or other similar federal or state legislation for the protection of employees. The term "property damage" as used in this Section 11.1 includes, but is not limited to, damage to any real or personal property of the Loan Parties, the Indemnified Parties, or of any third party. All of the foregoing losses, damages, costs and expenses of the Indemnified Parties shall be payable by the Loan Parties on demand by the Indemnified Parties and shall be secured by the Liens granted to the Lender or for its benefit pursuant to the Loan Documents. The Loan Parties' obligations under this Section 11.1 shall survive the repayment of the Loans and all other Obligations owing by the Loan Parties to the Lender under this Agreement and the other Loan Documents.

11.2 Other. In addition to all of the Indemnified Parties' other rights and remedies against the Loan Parties, the Loan Parties, jointly and severally, hereby agree to hold the Indemnified Parties harmless from, and to indemnify the Indemnified Parties against, all claims, demands, suits, losses, damages, assessments, fines, penalties, costs and other expenses (including, but not limited to, reasonable and documented attorneys' fees, costs and expenses) incurred by the Indemnified Parties as a result of or arising from or in any way related to any suit, action or proceeding by any Person other than the Loan Parties, or any of them, whether actual or threatened, asserting a claim for any legal or equitable remedy or relief against any Person under any federal, state or local statute, or ordinance or regulation, including, but not limited to, any federal or state securities laws, or under any common law or equitable cause or otherwise, arising from or in connection with the negotiation, preparation, execution or performance of, or the financing transaction contemplated by, this Agreement or the other Transaction Documents or the Lender's furnishing of funds to the Loan Parties pursuant to this Agreement, provided that such indemnity shall not be available to any Indemnified Party to the extent that such claims, demands, suits, losses, damages, assessments, fines, penalties, costs and other expenses are determined by a court of competent jurisdiction in a final, non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Party. All of the foregoing losses, damages, costs and expenses of the Indemnified Parties shall be payable by the Loan Parties upon demand by the Indemnified Parties and shall be secured by the Liens granted to the Lender or for its benefit pursuant to the Loan Documents. The Loan Parties' obligations under this Section 11.2 shall survive the repayment of the Loans and all other Obligations owing by the Loan Parties to the Lender under this Agreement and the other Loan Documents. This Section 11 shall not apply with respect to Taxes, other than Taxes that represent losses, damages, etc. arising from any non-Tax claim.

SECTION 12

MISCELLANEOUS

12.1 Costs and Expenses. (a) The Loan Parties, jointly and severally, hereby agree that they will pay all reasonable and documented out-of-pocket expenses incurred by the Lender and its Affiliates in connection with the negotiation and preparation of this Agreement and the other Loan Documents (whether or not the transactions hereby contemplated shall be consummated) and the making of the Loans hereunder, including but not limited to, the reasonable fees and disbursements of counsel for the Lender, all recordation and filing fees, Collateral audits, financing statement search costs and expenses, and all other third party costs, fees and expenses arising under or in connection with the negotiation, preparation and closing of the Loan Documents and the making of the Loans hereunder, subject to the limitation set forth in Section 5.1(l).

(b) The Loan Parties, jointly and severally, hereby agree that they will pay all out-of-pocket expenses incurred by the Lender and its Affiliates in connection with the waiver of any provision hereof or thereof, any amendments to or other modifications of any of the provisions hereof or thereof, the workout of the facilities hereunder, and the enforcement of the rights of the Lender in connection with this Agreement and the other Loan Documents, including but not limited to, the reasonable fees and disbursements of counsel for the Lender, and all other costs, fees and expenses arising under or in connection with any of the foregoing.

12.2 Cumulative Rights and No Waiver. Each and every right granted to the Lender hereunder or under any other Loan Document, or allowed it by law or equity, shall be cumulative and may be exercised from time to time. No failure on the part of the Lender to exercise, and no delay in exercising, any right shall operate as a waiver thereof, nor shall any single or partial exercise by the Lender of any right preclude any other or future exercise thereof or the exercise of any other right.

12.3 Reserved.

12.4 Notices. Any request, demand, notice, authorization, direction, consent or waiver permitted or required to be given hereunder shall be in writing and shall be given to such party at its address or telefacsimile number set forth below or such other address or facsimile number as such party may hereafter specify in writing for this purpose by notice to the other party:

If to the Loan Parties:

c/o FuelCell Energy, Inc.
3 Great Pasture Road
Danbury, Connecticut 06810
Attn: Legal Department
Facsimile: (203) 825-6069
Email: jarasimowicz@fce.com

If to the Lender:

Generate Lending, LLC
555 De Haro Street, Suite 300
San Francisco, CA 94107
Attn: Notices
Email: notices@generatecapital.com

With a copy to:

Justin Boose, Esquire
Troutman Sanders LLP
875 Third Avenue
New York, NY 10022
Facsimile: 212-704-5922
Email: Justin.boose@troutman.com

Each such notice, request or other communication will be effective (i) if given by facsimile, the date sent, (ii) if given by recognized overnight courier service, one (1) Business Day after delivery to such courier with all charges prepaid, addressed as provided above, (iii) if given by mail, two (2) Business Days after it is deposited in the U.S. mail with first class postage prepaid, addressed as provided above, or (iv) if given by any other means, when delivered at the applicable address as provided above.

12.5 Applicable Law.

(a) GOVERNING LAW. The Loans shall be deemed to have been made in the State of New York and this Agreement and the other Loan Documents shall be governed by and construed and enforced in accordance with the laws of the State of New York without giving effect to any choice or conflict of law provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

(b) SUBMISSION TO JURISDICTION. EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE LENDER IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE STATE AND FEDERAL COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION 12.5. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) **SERVICE OF PROCESS.** EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 12.4. IF THE MANNER OF SUCH SERVICE IS PERMITTED BY APPLICABLE LAW, EACH LOAN PARTY OTHER THAN THE BORROWER HEREBY IRREVOCABLY APPOINTS THE BORROWER AS ITS AGENT FOR SERVICE OF PROCESS IN RESPECT OF ANY ACTION OR PROCEEDING. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

12.6 Modifications. No modification, amendment or waiver of any provision of this Agreement, nor consent to any departure by the Loan Parties therefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender and the Loan Parties and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand upon the Loan Parties, or any of them in any case shall entitle the Loan Parties, or any of them, to any other or further notice or demand in the same or similar circumstances.

12.7 Successors and Assigns; Reliance. Whenever in this Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party, and all covenants, promises and agreements by or on behalf of the Loan Parties, or any of them, which are contained in this Agreement shall bind the successors and assigns of each such Loan Party and inure to the benefit of the successors and assigns of the Lender. The Lender may assign its rights and interests under this Agreement and the other Loan Documents, in whole or in part (i) to any Eligible Assignee, (ii) in connection any Disposition of all or a material portion of the Lender's business, (iii) pursuant to any pledge to the any Person that has extended credit to the Lender, or (iv) if at the time of such assignment, any Facility Event of Default then exists, to any other Person or Persons. Subject to notification of an assignment, such assignee shall be a party hereto and, to the extent of the interest assigned, shall have the rights and obligations of the Lender under this Agreement, and the Lender shall, to the extent of the interest assigned, be released from its obligations under this Agreement. The Loan Parties shall not have the right to assign any of their respective rights or delegate any of their respective duties or obligations hereunder. This Agreement is solely for the benefit of the Lender and the Loan Parties, and may not be relied upon by any other Person for any purpose.

12.8 Survivorship. All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making of the Loans under this Agreement and the execution and delivery of the Loan Note, and shall continue in full force and effect so long as any portion of the Obligations hereunder or under any other Loan Document is outstanding and unpaid.

12.9 Assignments and Participations. The holder of the Loan Note, or any interest therein, may, subject to the Borrower's consent to the extent expressly required pursuant to Section 12.7 herein, from time to time, sell or offer to sell the Loan Note or interests therein to one or more assignees or participants, and is hereby authorized to disseminate any information it has pertaining to the Loans, including, without limitation, any security for the Loans and credit information on the Loan Parties, to any such assignee or participant or prospective assignee or prospective participant, and to the extent, if any, specified in any such assignment or participation, such assignee(s) or participant(s) shall have the same rights and benefits with respect to this Agreement and the Loan Note as such Person(s) would have if such Person(s) were the Lender hereunder.

12.10 Independence of Covenants. Each covenant and agreement of the Loan Parties contained herein is independent of each other covenant and agreement of the Loan Parties contained herein. The fact that the operation of any such covenant or agreement permits a particular action to be taken or condition to exist does not mean that such action or condition is not prohibited, restricted or conditioned by operation of another such covenant or agreement.

12.11 WAIVER OF JURY TRIAL. EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN THE EVENT THAT THE JURY TRIAL WAIVER CONTAINED HEREIN SHALL BE HELD OR DEEMED TO BE UNENFORCEABLE, EACH PARTY HERETO HEREBY EXPRESSLY AGREES TO SUBMIT TO JUDICIAL REFERENCE ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER FOR WHICH A JURY TRIAL WOULD OTHERWISE BE APPLICABLE OR AVAILABLE. PURSUANT TO SUCH JUDICIAL REFERENCE, THE PARTIES AGREE TO THE APPOINTMENT OF A SINGLE REFEREE AND SHALL USE THEIR BEST EFFORTS TO AGREE ON THE SELECTION OF A REFEREE. IF THE PARTIES ARE UNABLE TO AGREE ON A SINGLE REFEREE, A REFEREE SHALL BE APPOINTED BY THE COURT TO HEAR ANY DISPUTES HEREUNDER IN LIEU OF ANY SUCH JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE APPOINTED REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES IN THE APPLICABLE ACTION OR PROCEEDING, WHETHER OF FACT OR LAW, AND SHALL REPORT A STATEMENT OF DECISION THEREON; PROVIDED, HOWEVER, THAT ANY MATTERS WHICH WOULD NOT OTHERWISE BE THE SUBJECT OF A JURY TRIAL WILL BE UNAFFECTED BY THIS WAIVER AND THE AGREEMENTS CONTAINED HEREIN. THE PARTIES HERETO HEREBY AGREE THAT THE PROVISIONS CONTAINED HEREIN HAVE BEEN FAIRLY NEGOTIATED ON AN ARM'S-LENGTH BASIS, WITH BOTH SIDES AGREEING TO THE SAME KNOWINGLY AND BEING AFFORDED THE OPPORTUNITY TO HAVE THEIR RESPECTIVE LEGAL COUNSEL CONSENT TO THE MATTERS CONTAINED HEREIN. ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 12.11 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY AND THE AGREEMENTS CONTAINED HEREIN REGARDING THE APPLICATION OF JUDICIAL REFERENCE IN THE EVENT OF THE INVALIDITY OF SUCH JURY TRIAL WAIVER.

(b) Each party hereto hereby agrees that it will not have a remedy of punitive damages or exemplary damages against the other in any claim or controversy arising out of or related to this Agreement, the Loan Note and/or any of the other Loan Documents (a “Dispute”), and each hereby waives any right or claim to punitive or exemplary damages it may have now or which may arise in the future in connection with any Dispute.

12.12 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the applicable interest rate, together with all fees and charges that are treated as interest under Applicable Law (collectively, “Charges”), as provided for herein or in any other document executed in connection herewith, or otherwise contracted for, charged, received, taken or reserved by Lender, shall exceed the maximum lawful rate (the “Maximum Rate”) that may be contracted for, charged, taken, received or reserved by Lender in accordance with Applicable Law, the rate of interest payable hereunder, together with all Charges payable to Lender, shall be limited to the Maximum Rate, provided, that such excess amount shall be paid to Lender on subsequent payment dates to the extent not exceeding the legal limitation.

12.13 Execution in Counterparts. This Agreement and the other Loan Documents may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same instrument. Delivery of an executed counterpart of a signature page of this Agreement or any other Loan Document by telefacsimile, email or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Agreement.

12.14 Time of the Essence. Time is of the essence of this Agreement and of each and every provision hereof, to the full extent that time can be of the essence of an agreement under the laws of the State of New York.

12.15 Entire Agreement. This Agreement and the other Loan Documents constitute the entire understanding of each Loan Party and the Lender with respect to the subject matter hereof, and supersede any prior or contemporaneous agreements, commitments, discussions and understandings, oral or written.

[Remainder of page intentionally blank; signature pages follow.]

IN WITNESS WHEREOF , the Loan Parties and the Lender have caused this Agreement to be duly executed by their duly authorized officers or representatives, all as of the day and year first above written.

BORROWER:

FUELCELL ENERGY FINANCE II, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Senior Vice President & Chief Financial Officer

[*Signatures continue on following page.*]

CONSTRUCTION LOAN AGREEMENT
SIGNATURE PAGE

INITIAL PROJECT COMPANY GUARANTORS:

BAKERSFIELD FUEL CELL 1, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Senior Vice President & Chief
Financial Officer

BRT FUEL CELL, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Senior Vice President & Chief
Financial Officer

CR FUEL CELL, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Senior Vice President & Chief
Financial Officer

[*Signatures continue on following page.*]

CONSTRUCTION LOAN AGREEMENT
SIGNATURE PAGE

YAPHANK FUEL CELL PARK, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Senior Vice President & Chief
Financial Officer

HOMESTEAD FUEL CELL 1, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Senior Vice President & Chief
Financial Officer

DERBY FUEL CELL, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Senior Vice President & Chief
Financial Officer

[*Signatures continue on following page.*]

CONSTRUCTION LOAN AGREEMENT
SIGNATURE PAGE

LENDER:

GENERATE LENDING, LLC

By: /s/ Matan Friedman

Name: Matan Friedman

Title: Manager

CONSTRUCTION LOAN AGREEMENT
SIGNATURE PAGE

EXHIBIT A

FORM OF WORKING CAPITAL LOAN NOTICE

_____, 20__

To: Generate Lending, LLC, as Lender
555 De Haro Street, Suite 300
San Francisco, CA 94107
Attention: Notices
Email: notices@generatecapital.com

Re: Construction Loan Agreement dated as of December 21, 2018 (as the same may be amended, restated, supplemented or modified from time to time, the “Loan Agreement”), among FUELCELL ENERGY FINANCE II, LLC, a Connecticut limited liability company, as Borrower, the Project Company Guarantors from time to time party thereto, and GENERATE LENDING, LLC, as Lender.

Ladies and Gentlemen:

Unless otherwise defined herein, capitalized terms used herein shall have the meanings attributable thereto in the Loan Agreement. This Working Capital Loan Notice (this “Loan Notice”) is delivered to you pursuant to Section 2.1(c) of the Loan Agreement.

The Borrower hereby requests an advance of a Working Capital Loan in the aggregate principal amount of \$_____ to be made on _____, 20__. The proceeds of such Working Capital Loan shall be used to finance the manufacture, construction, installation, commissioning and start-up of the Projects identified below, and not for any other purpose.

In connection with the foregoing request, the Borrower hereby certifies the Lender as follows:

1. Each of the Projects associated with the requested Working Capital Loan is (a) described on Exhibit A attached hereto, including the identity of the Loan Party that will manufacture and install and manage such Project and the identity of the Customer for such Project, and (b) an Approved Project.
2. Attached hereto as Exhibit B is a summary of the Approved Costs for each Approved Project to be paid with the proceeds of the requested Working Capital Loan.
3. Attached hereto as Exhibit C is (a) a copy of the most recent month-end balance sheet for the Parent and its Subsidiaries, and (b) a copy of the most recent quarterly projections of the Parent, to demonstrate that the Parent is Solvent, and shall continue to be Solvent at all times through the commissioning of each of the Projects associated with the requested Working Capital Loan.

The Borrower hereby further certifies that all of the conditions to the requested advance, as set forth in each of Section 5.2 and Section 5.3 of the Loan Agreement, as applicable, are satisfied or have been waived by the Lender in writing. .

The Borrower has caused this Loan Notice to be executed and delivered by its duly authorized officer this ____ day of _____, 20__.

FUELCELL ENERGY FINANCE II, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: _____
Name: Michael S. Bishop
Title: Senior Vice President & Chief Financial Officer

EXHIBIT B

FORM OF WORKING CAPITAL LOAN NOTE

\$300,000,000.00

San Francisco, California
December 21, 2018

For value received, the undersigned, **FUELCELL ENERGY FINANCE II, LLC**, a Connecticut limited liability company (hereinafter referred to as the "Borrower"), hereby promises to pay to the order of, GENERATE LENDING, LLC, a Delaware limited liability company, whose address is 555 De Haro Street, Suite 300, San Francisco, CA 94107 (hereinafter referred to as the "Lender"), , the principal sum of THREE HUNDRED MILLION and 00/100 Dollars (\$300,000,000.00), or such lesser amount as shall equal the unpaid principal amount of the Loans advanced by the Lender to the Borrower pursuant to the Loan Agreement referred to below, on the dates and in the amounts determined in accordance with the Loan Agreement. The Borrower promises to pay interest on the unpaid principal amount of this Loan Note (this "Loan Note") on the dates and at the rate or rates provided for in accordance with the Loan Agreement. Interest on any overdue principal of and, to the extent permitted by law, overdue interest on the principal amount hereof shall bear interest at the Default Rate, as provided for in the Loan Agreement. All such payments of principal and interest shall be made in lawful money of the United States in federal or other immediately available funds at the office of the Lender at 555 De Haro Street, Suite 300, San Francisco, CA 94107, or at such other address as may be specified by the Lender from time to time pursuant to the Loan Agreement.

Each Loan advance made by the Lender, the interest rates from time to time applicable thereto and all repayments of the principal thereof shall be recorded by the Lender in its books and records, which shall constitute prima facie evidence of the information set forth therein, provided that the failure of the Lender to make, or any error of the Lender in making, any such recordation shall not affect the obligations of the Borrower hereunder or under the Loan Agreement. The obligations evidenced by this Loan Note are secured by the Collateral.

This Loan Note is the Loan Note referred to in the Construction Loan Agreement dated as of December 21, 2018 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), among the Borrower, the Project Company Guarantors from time to time party thereto, and the Lender. Terms defined in the Loan Agreement but not otherwise defined herein are used herein with the same meanings. Reference is made to the Loan Agreement for provisions for the prepayment and the repayment hereof and the acceleration of the maturity hereof.

Borrower hereby waives presentment, demand, protest, notice of demand, protest and nonpayment and any other notice required by law relative hereto, except to the extent as otherwise may be expressly provided for in the Loan Agreement.

[*Remainder of page intentionally blank; signature page follows.*]

IN WITNESS WHEREOF, Borrower has caused this Loan Note to be duly executed under seal, by its duly authorized officers as of the day and year first above written.

FUELCELL ENERGY FINANCE II, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: _____
Name: Michael S. Bishop
Title: Senior Vice President & Chief Financial Officer

EXHIBIT C

FORM OF COLLATERAL REPORT

*[Form of Collateral Report to be mutually agreed by
Lender and the Loan Parties prior to the initial funding.]*

EXHIBIT D

FORM OF JOINDER AND REAFFIRMATION AGREEMENT

THIS JOINDER AND REAFFIRMATION AGREEMENT (the “Agreement”) dated as of _____, 20__ (this “Agreement”) is executed and delivered by _____, a _____ (the “New Project Company Guarantor”), **FUELCELL ENERGY FINANCE II, LLC**, a Connecticut limited liability company (the “Borrower”), and each of the parties listed on the signature pages hereto as a “Project Company Guarantor” (collectively, the “Guarantors”), in favor of GENERATE LENDING, LLC (the “Lender”).

WHEREAS, the Borrower, the Guarantors, and the Lender are parties to that certain Construction Loan Agreement, dated as of December 21, 2018 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), pursuant to which, among other things, and subject to the terms and conditions contained therein, the Lender has made, and will continue to make a working capital and term loan facility available to the Borrower on the terms and conditions contained therein; and

WHEREAS, pursuant to the terms, conditions and provisions of Section 6.17 of the Loan Agreement, the Borrower is required to cause the New Project Company Guarantor to become a party to the Loan Agreement and the Security Agreement (used herein as such term is defined in the Loan Agreement); and

WHEREAS, the New Project Company Guarantor acknowledges that it will receive direct and indirect benefits from the making of financial accommodations by the Lender to the Borrower under the Loan Agreement and, accordingly, the New Project Company Guarantor is willing to become a party to the Loan Agreement and the Security Agreement on the terms and conditions contained herein; and

NOW, THEREFORE, in consideration of the above premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the New Project Company Guarantor, the Borrower and the Guarantors, the New Project Company Guarantor, the Borrower and the Guarantors hereby agree as follows:

Section 1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have their respective defined meanings given them in the Loan Agreement.

Section 2. Accession to Loan Agreement. The New Project Company Guarantor hereby adopts the Loan Agreement as a “Guarantor” thereunder, and agrees that effective upon its execution and delivery to the Lender of this Agreement, it constitutes a Guarantor thereunder, and assumes all obligations of a Guarantor thereunder, all as if the New Project Company Guarantor had been an original party to the Loan Agreement as a Guarantor thereunder.

Section 3. Accession to Security Agreement; Grant of a Security Interest. The New Project Company Guarantor hereby adopts the Security Agreement as a “Grantor” thereunder, and agrees that effective upon its execution and delivery to the Lender of this Agreement, it constitutes a Grantor under the Security Agreement, and assumes all obligations of a Grantor thereunder, all as if the New Project Company Guarantor had been an original party to the Security Agreement as a Grantor thereunder. In furtherance of the foregoing, New Project Company Guarantor hereby assigns, pledges, hypothecates and sets over to Lender, its successors and its assigns, and grants to the Lender, its successors and its assigns, a security interest in all of its right, title and interest in and to the following, in each case whether now owned or existing or hereafter acquired or arising, and wheresoever located: all Collateral (as such term is defined in the Security Agreement), including without limitation, all Commercial Tort Claims and all Supporting Obligations, and all Proceeds (as each such term is defined in the Security Agreement) arising out of or relating to the Collateral.

Section 4. Representations, Warranties and Covenants. In addition to the continuing representations, warranties and covenants heretofore or hereafter made by the Guarantors (which term shall expressly include the New Project Company Guarantor for purposes of this Section 4.) to the Lender pursuant to the Loan Agreement and the other Loan Documents, the New Project Company Guarantor, the Borrower and the Guarantors, jointly and severally, hereby represent, warrant and covenant with and to the Lender as follows (which representations, warranties and covenants are continuing and shall survive the execution and delivery hereof and shall be incorporated into and made a part of the Loan Documents):

(a) The execution and delivery by the New Project Company Guarantor of this Agreement and the other Loan Documents that it is executing in connection therewith, and performance by the New Project Company Guarantor of this Agreement, the Loan Agreement, the Security Agreement and the other Loan Documents to which it is a party, and the transactions contemplated hereunder, (i) are all within its corporate, limited partnership or other organizational powers (as applicable), (ii) have been duly authorized by all necessary corporate, partnership or other necessary organizational action, (ii) are not in contravention of law or the terms of its certificate of incorporation, any bylaws, partnership agreement and/or any other organizational documentation, or any indenture, agreement or undertaking to which it is a party or by which it or its property are bound, and (iv) will not result in the creation or imposition of, or require or give rise to any obligation to grant, any lien, security interest, charge or other encumbrance upon any of its property (except for the liens and security interests expressly granted to the Lender by the New Project Company Guarantor pursuant to the terms of this Agreement).

(b) This Agreement and each of the Loan Agreement, the Security Agreement and the other Loan Document to which the New Project Company Guarantor is a party constitutes the valid and legally binding obligations of the New Project Company Guarantor, enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 5. Consent and Reaffirmation By Borrower and Guarantors. The Borrower and the Guarantors, by their execution and delivery of this Agreement, hereby (i) consent to the joinder of the New Project Company Guarantor to the Loan Agreement and the Security Agreement pursuant to the terms of this Agreement, and (ii) reaffirm all of their respective obligations under the Loan Agreement, the Security Agreement and the other Loan Documents to which they are a party, all of which shall remain in full force and effect without waiver or modification, notwithstanding the joinder of the New Project Company Guarantor as contemplated herein or any other event or circumstance.

Section 6. Further Assurances. The New Project Company Guarantor, the Borrower and the Guarantors shall take all such steps and execute and deliver, and cause to be executed and delivered, to the Lender, such other and further agreements, documents and instruments as the Lender may require in order to more fully evidence, in order to fully consummate all the transactions contemplated under this Agreement, the Loan Agreement, the Security Agreement and all other Loan Documents.

Section 7. Counterparts. This Agreement may be executed in multiple counterparts, each of which may be considered an original, but all of which together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall have the same force and effect as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall also deliver an original executed counterpart of this Agreement, but the failure to do so shall not affect the validity, enforceability, and binding effect of this Agreement.

Section 8. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

[Remainder of page intentionally blank; signature page follows.]

IN WITNESS WHEREOF, the New Project Company Guarantor, the Borrower and the Guarantors have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first written above.

NEW PROJECT COMPANY GUARANTOR :

FUELCELL ENERGY FINANCE II, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: _____
Name: Michael S. Bishop
Title: Senior Vice President & Chief Financial Officer

GUARANTORS :

BAKERSFIELD FUEL CELL 1, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: _____
Name: Michael S. Bishop
Title: Senior Vice President & Chief Financial Officer

[*Signatures continue on following page.*]

BRT FUEL CELL, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: _____
Name: Michael S. Bishop
Title: Senior Vice President & Chief Financial Officer

CR FUEL CELL, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: _____
Name: Michael S. Bishop
Title: Senior Vice President & Chief Financial Officer

YAPHANK FUEL CELL PARK, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: _____
Name: Michael S. Bishop
Title: Senior Vice President & Chief Financial Officer

[Signatures continue on following page.]

HOMESTEAD FUEL CELL 1, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: _____
Name: Michael S. Bishop
Title: Senior Vice President & Chief Financial Officer

DERBY FUEL CELL, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: _____
Name: Michael S. Bishop
Title: Senior Vice President & Chief Financial Officer

Accepted and agreed:

LENDER:

GENERATE LENDING, LLC

By: _____
Name: Matan Friedman
Title: Manager

EXHIBIT E

FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: _____, 20__

Reference is made to the Construction Loan Agreement dated as of December 21, 2018 (as the same may be amended or modified from time to time, the “Loan Agreement”), among FUELCELL ENERGY FINANCE II, LLC, a Connecticut limited liability company, as Borrower, the Project Company Guarantors from time to time party thereto, and GENERATE LENDING, LLC, a Delaware limited liability company, as Lender. Capitalized terms used herein shall have the meanings ascribed thereto in the Loan Agreement.

Pursuant to Section 6.1(d) of the Loan Agreement, I, _____, the duly authorized **[President][Chief Executive Officer]** of the Parent, hereby certify, solely on behalf of the Parent and not in my individual capacity, to the Lender that:

1. I am the duly elected or appointed and acting **[President][Chief Executive Officer]** of the Parent.
2. I further certify that the Loan Parties are in compliance (unless otherwise specified) with all covenants set forth in to Sections 6 and 8 of the Loan Agreement.
3. As of the date hereof, no Project Company Default or Project Company Event of Default under Section 9.1 of the Loan Agreement has occurred and is continuing (except as specified on Exhibit I, attached hereto, which Exhibit I also sets forth any corrective action taken or proposed to be taken with respect to such Project Company Default or Project Company Event of Default).
4. As of the date hereof, no Facility Default or Facility Event of Default under Section 9.2 of the Loan Agreement has occurred and is continuing (except as specified on Exhibit II, attached hereto, which Exhibit II also sets forth any corrective action taken or proposed to be taken with respect to such Facility Default or Facility Event of Default)

[Remainder of page intentionally blank; signature page follows.]

IN WITNESS WHEREOF , I have caused this Compliance Certificate to be executed and delivered to the Lender this _____ day of _____, _____.

FUELCELL ENERGY FINANCE II, LLC

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: _____
Name: Michael S. Bishop
Title: Senior Vice President & Chief Financial Officer

EXHIBIT F

BASE CASE MODEL

[*Form on file with each of Borrower and Lender.*]

EXHIBIT G

EPC CONSENT

CONTRACTOR'S CONSENT AND AGREEMENT

[*FCE ENTITY*]

This CONSENT AND AGREEMENT, dated as of [____], 20[___] (this “ **Consent** ”), is entered into by and among [*FCE ENTITY*] a [limited liability company] organized under the laws of [____] (“ **Assignor** ”), FUELCELL ENERGY, INC., a Delaware corporation (“ **Contractor** ”), and GENERATE LENDING, LLC, a Delaware limited liability company, as Lender under the Financing Agreement (as defined below) (“ **Lender** ”) . Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Financing Agreement referred to below.

RECITALS

- A. Assignor and Contractor have entered into that that certain Engineering, Procurement and Construction Agreement, dated as of [____], 20[___] (as amended, supplemented or otherwise modified from time to time, the “ **Assigned Agreement** ”).
- B. FuelCell Energy II, LLC, a Connecticut limited liability company (“ **Borrower** ”), Assignor, certain subsidiaries of Borrower, and Lender are parties to that certain Construction Loan Agreement, to be dated on or about December 21, 2018 (as the same may be amended, modified, or supplemented from time to time, the “ **Loan Agreement** ”), which, among other things, provides financing for the manufacturing, construction, installation, and commissioning and start-up of a [____] MW_{AC} fuel cell power plant located in [____] (the “ **Project** ”) being constructed by Contractor;
- C. All permits required for the construction of the fuel cell power plant have been issued or are expected to be issued when required at a later stage of construction, and all insurance coverage that Contractor is required to carry under the Engineering, Procurement and Construction Agreement has been obtained.
- D. As a condition of the financing of the construction of the Project under the Loan Agreement, Assignor is required to grant to Lender a first-priority security interest in all of Assignor's right, title and interest in, to and under the Assigned Agreement as collateral security for satisfaction of the obligations (the “ **Secured Obligations** ”) of Borrower under the Loan Agreement and the other related financing documents (together, the “ **Loan Documents** ”); and
- E. It is a requirement under the Loan Agreement that Contractor and the other parties hereto shall have executed this Consent.

- F. Contractor acknowledges that the Lender will rely on this Consent and Agreement in entering into the Loan Agreement and its commitment to make loans, advances and disbursements to Assignor as contemplated by the Loan Agreement.

The parties agree as follows, notwithstanding anything to the contrary in the Assigned Agreement:

**ARTICLE 1
CONSENT TO ASSIGNMENT**

1.1 Assignor hereby requests Contractor's consent to the assignment by Assignor to Lender (and its assignees and designees) of Assignor's respective right, title and interest in, to and under the Assigned Agreement, to secure Borrower's payment and other obligations under the Financing Agreement and related Financing Documents. Contractor hereby consents to such assignment. Contractor agrees that Lender or its designee shall have the right, but not the obligation, to pay amounts due from Assignor and to perform any other act, duty or obligation required of Assignor under the Assigned Agreement or to cure any default of Assignor under the Assigned Agreement, each on behalf of the secured parties under the Financing Agreement.

**ARTICLE 2
FURTHER AGREEMENTS**

2.1 Contractor agrees to deliver to Lender, concurrently with delivery thereof to Assignor, a copy of each notice of default or of force majeure given by Contractor under the Assigned Agreement, together with a description of the action that Contractor has taken or proposes to take with respect thereto.

**ARTICLE 3
RIGHTS TO CURE**

3.1 Contractor agrees that, in accordance with its rights under the Assigned Agreement, at law, in equity or otherwise, it will not take any action to terminate or suspend the Assigned Agreement until (a) Contractor has given Lender prior written notice stating its intent to terminate or suspend the Assigned Agreement on a date not less than 180 days after the later of (i) the date of such notice and (ii) the date that Assignor's cure period provided in the Assigned Agreement expires and (b) Lender fails to cure such default by making a payment in the amount in default or by performing or causing to be performed the obligation in default, prior to the date identified in such notice; provided, however, Lender shall be entitled to an additional reasonable period of time prior to termination or suspension of the Assigned Agreement so long as Lender is making efforts to cure or cause to be cured the condition(s) giving rise to the right of termination or suspension, including but not limited to, commencing foreclosure, deed of lieu of foreclosure, or other proceedings to obtain direct or indirect possession or control of some or all of the property and assets of Assignor or Borrower, or of equity interests in Assignor, Borrower, or appropriate other entity, under the applicable Loan Documents.

3.2 If, whether as a result of an exercise of remedies under the applicable Financing Documents following an event of default under the Financing Agreement or otherwise, Lender acquires direct or indirect title (including leasehold title) to, or direct or indirect control of, some or all of the property and assets of Assignor, or of equity interests in Assignor or appropriate other entity through foreclosure, deed in lieu of foreclosure, or other remedy available under contract or applicable law, as under the Loan Documents, provided that any past due amounts owed to Contractor under the Contract are paid to Contractor promptly following the request by Lender, and provided, further that Contractor is thereafter compensated for its services as provided in the Contract, and cures all defaults under the Assigned Agreement which are able to be cured by such entity, then any default of Assignor which is not able to be cured by such entity shall no longer be deemed to be a default under the Assigned Agreement; All defaults in payment for work completed shall be deemed curable.

3.3 Commencing on the date of this Consent and prior to the date on which Lender notifies Contractor in writing that the collateral assignment of the Assigned Agreement has been discharged, Contractor hereby agrees to make payments to be made by it to Assignor, if any, under the Assigned Agreement directly into the account specified from time to time by Lender (or its designee or transferee) to Contractor and Assignor in writing. Unless and until directed otherwise by Lender as set forth above, Contractor agrees to pay all such amounts, if any, directly to such account as Lender may specify in writing from time to time. This Section 3.3 shall not otherwise modify Contractor's rights pursuant to the Assigned Agreement with respect to any such payments.

ARTICLE 4 FURTHER RIGHTS

4.1 Upon the exercise of remedies under the applicable Financing Documents following an event of default under the Financing Agreement, or if Lender otherwise acquires direct or indirect title to, or direct or indirect control of, some or all of the property and assets of Assignor, or of equity interests in Assignor or appropriate other entity under the Financing Documents, Lender may, but shall not be obligated to, on behalf of Assignor or itself, assign the rights and interests of Assignor under the Assigned Agreement and this Consent to any purchaser or transferee of the property and assets of Assignor or Lender, as applicable, if such purchaser or transferee assumes in writing all of the obligations of Assignor under the Assigned Agreement (such purchaser or transferee, including Lender, a "**Subsequent Transferee**"). Upon such assignment, and provided no payment default remains uncured, (i) Contractor shall recognize the Subsequent Transferee as the counterparty under the Assigned Agreement, (ii) Contractor shall continue to perform its obligations under the Assigned Agreement in favor of the Subsequent Transferee, and (iii) Lender and, if applicable, the other Secured Parties (including their agents and employees) shall be released from any further liability thereunder to the extent of the interest assigned.

4.2 If the Assigned Agreement is terminated or rejected in connection with a bankruptcy, insolvency, winding up or similar occurrence with respect to Assignor, then, at the written request of Lender, Contractor will execute and deliver to Lender or its designee or Subsequent Transferee a new agreement for the balance of the remaining term under the original Assigned Agreement containing reasonably the same conditions, agreements, terms, provisions and limitations as such original Assigned Agreement, provided that all claims of Contractor for non-payment for services previously performed under the terminated agreement are cured, including services performed under open change orders and disputed work which is determined to have been properly completed pursuant to dispute resolution procedures in the Assigned Agreement. Lender shall have the right to assign all of its interest in a new Assigned Agreement to any Subsequent Transferee, provided that such Subsequent Transferee assumes in writing all obligations of Assignor and/or Lender under such new Assigned Agreement.

4.3 Notwithstanding anything to the contrary set forth in the Assigned Agreement, Contractor hereby confirms and agrees that any foreclosure by Lender on or transfer by Lender of the membership interests in Assignor or the appropriate entity under the Financing Documents, whether upon the occurrence of a default by any Borrower under the Financing Documents or otherwise as contemplated by the Financing Agreement, shall be permitted under (without the requirement to satisfy any other condition set forth therein) and shall not be a breach of the Assigned Agreement.

ARTICLE 5 REPRESENTATIONS

Contractor hereby represents and warrants to Lender that:

5.1 Contractor is a corporation duly organized, validly existing and in good standing under the laws of Delaware and has all requisite power and authority to conduct, execute, deliver and perform its obligations under the Assigned Agreement and this Consent.

5.2 The execution, delivery and performance by Contractor of the Assigned Agreement and this Consent have been duly authorized by all necessary corporate action, and do not and will not (a) require any consent or approval of Contractor's board of directors, shareholders or any other person or entity that has not been obtained, (b) violate any provision of Contractor's charter documents, or any law, rule, regulation, order, writ, judgment, injunction, decree or award having applicability to Contractor, or (c) result in a breach of or constitute a default under any agreement to which Contractor is a party.

5.3 The Assigned Agreement and this Consent have been duly executed and delivered and are in full force and effect and constitute the legal, valid and binding obligation of Contractor enforceable against Contractor in accordance with their respective terms, except as enforceability may be limited by general principles of equity and by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally. Contractor has not assigned, transferred or pledged the Assigned Agreement or any interest therein or consented to any such assignment, transfer or pledge, except pursuant to this Consent.

5.4 No consent, license, approval or authorization of, or other action by, or any notice or filing with, any court or administrative or governmental body or any other entity is necessary in connection with the execution, delivery and performance by Contractor of the Assigned Agreement or this Consent other than those which have been duly obtained by Contractor and which are in full force and effect.

5.5 There is no pending or threatened action or proceeding affecting Contractor before any court, governmental agency, regulatory body or arbitrator which could reasonably be expected to materially adversely affect the ability of Contractor to perform its obligations under, or which purports to affect the legality, validity or enforceability of the Assigned Agreement.

5.6 There exists no default under the Assigned Agreement. The Assigned Agreement is in full force and effect, and all conditions precedent thereunder have been satisfied or waived.

5.7 Contractor has received no written notice of, nor has consented to, any previous assignment, pledge or hypothecation by Assignor of all or any part of its rights under the Assigned Agreement.

5.8 The Assigned Agreement [, that certain Service Agreement, dated as of _____,]and this Consent are the only agreements between Assignor and Contractor or its affiliates with respect to the Project as of the date hereof. The Assigned Agreement has not been amended, modified or supplemented, and no changes, amendments or modifications have been proposed by Assignor or Contractor.

ARTICLE 6
AMENDMENTS TO THE ASSIGNED AGREEMENT; ACKNOWLEDGEMENTS

6.1 Except as permitted in the Loan Agreement, each of Contractor and Assignor agrees that it will not amend, supplement or otherwise modify the Assigned Agreement or assign the Assigned Agreement or its rights thereunder except with Lender's prior written consent.

6.2 Each of Contractor and Assignor acknowledge and agree any security required to be provided by Contractor in respect of its obligations under the Assigned Agreement, as and to the extent required pursuant to the Assigned Agreement, has been delivered to Assignor as of the date hereof.

ARTICLE 7
ADDRESSES FOR NOTICES

7.1 All notices, consents, certificates, waivers, documents and other communications required or permitted to be delivered to any party under the terms of this Consent (a) must be in writing; (b) must be personally delivered, transmitted by a nationally recognized courier service or transmitted by facsimile; and (c) must be directed to such party at its address or facsimile number set forth below. All notices will be deemed to have been duly given and received on the date of delivery if delivered personally, three (3) days after delivery to the courier if transmitted by courier, or the date of transmission with confirmation of receipt if transmitted by facsimile, whichever occurs first. Any party may change its address or facsimile number for purposes hereof by notice to all other parties.

For Assignor:

[**FCE Entity**]
c/o FuelCell Energy, Inc.
3 Great Pasture Road
Danbury, Connecticut 06810
Attn: Legal Department
Facsimile: (203) 825-6069
Email: jarasimowicz@fce.com

For Contractor:

FuelCell Energy, Inc.
3 Great Pasture Road
Danbury, CT 06810
Facsimile: 203-825-6069
Attention: Michael Bishop, Senior Vice President and Chief Financial Officer

With a copy to:

FuelCell Energy, Inc.
3 Great Pasture Road
Danbury, CT 06810
Facsimile: 203-825-6069
Attention: Jennifer Arasimowicz, Esq., Senior Vice President
General Counsel and Corporate Secretary

For Lender:

Generate Lending, LLC
555 De Haro Street, Suite 300
San Francisco, CA 94107
Attn: Notices
Email: notices@generatecapital.com

With a copy to:

Generate Lending, LLC
555 De Haro Street, Suite 300
San Francisco, CA 94107
Attn: Darryl Carbonaro, Head of Legal
Email: dcarbonaro@generatecapital.com

ARTICLE 8
MISCELLANEOUS

8.1 This Consent will be binding upon and inure to the benefit of the successors and assigns of Contractor and Lender and their respective successors and assigns; provided, however, that in no event shall Contractor assign its rights or obligations hereunder without the prior written consent of Lender.

8.2 This Consent and the rights and obligations of the parties hereunder shall be construed in accordance with and be governed by the laws of the State of New York, without reference to conflicts of laws rules thereof.

8.3 Any provision of this Consent which is invalid or prohibited in any jurisdiction will, as to such jurisdiction, be ineffective and severable from the rest of this Consent to the extent of such invalidity or prohibition, without impairing or affecting the validity of any other provision of this Consent, or of such provision in any other jurisdictions. The parties agree to replace any provision which is ineffective by operation of this Section 8.3 with an effective provision that as closely as possible corresponds to the spirit and purpose of the ineffective provision and this Consent as a whole.

8.4 No supplement, modification, amendment, or cancellation of this Consent will be binding unless it is in writing and signed by all of the parties.

8.5 This Consent may be executed in any number of counterparts and by the different parties hereto in separate counterparts, by facsimile or electronic mail, each of which when so executed shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument. A facsimile or Portable Document Format (“**PDF**”) signature page shall constitute an original for purposes hereof.

8.6 The Parties agree that any suit, action or other legal proceeding by or against any party with respect to or arising out of this Consent may be brought in the courts of the State of New York sitting in New York County or in the courts of the United States for the Southern District of New York and each of Contractor and Assignor irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of such New York or federal courts, to the fullest extent permitted by applicable law.

8.7 EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS CONSENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties, intending to be legally bound, have caused this Consent to be signed on the date first above written.

Assignor:

[*FCE Entity*]

By: _____

Name:

Title:

[*Signature Page to EPC Contractor Consent*]

Contractor:

FUELCELL ENERGY, INC .

By: _____
Name:
Title:

[*Signature Page to EPC Contractor Consent*]

Lender:

GENERATE LENDING, LLC

By: _____

Name:

Title:

[*Signature Page to EPC Contractor Consent*]

EXHIBIT H

INSURANCE REQUIREMENTS

- I. Insurance Requirements. The Borrower and each Project Company Guarantor shall, directly (in the case of Borrower), and indirectly (in the case of each Project Company Guarantor), through Parent, maintain in full force and effect insurance as specified in the amount, at the times and on the terms and conditions specified below and with financially sound and reputable carriers, maintaining a minimum rating of “A-,” “X” by A.M. Best, “A” by S&P Global, or other rating from another internationally recognized rating agency reasonably acceptable to Lender; provided, that, (i) all insurance shall be in customary form and content unless otherwise approved by Lender (consent not unreasonably withheld), (ii) the policies for such insurance shall have attached thereto standard loss payee clauses in favor of and permitting Lender to collect proceeds payable as its interests may appear thereunder and shall include notice of a cancellation clause in favor of Lender (providing ten (10) days’ notice for nonpayment of premium and thirty (30) days’ notice in all other cases), (iii) if the Borrower or any Project Company Guarantor subcontracts the design and engineering portion of the Project, the Borrower or the Project Company Guarantor, as applicable, shall ensure that such design or engineering professional (or firm) shall procure and maintain the professional liability (errors & omissions) insurance required below under Section I. (g) in lieu of the Borrower (or any other permitted Affiliate) providing such professional liability insurance under Section I. (g) below, and (iv) all insurance shall comply with the insurance requirements in each Material Project Document (the determination of which shall be the sole responsibility of Borrower and each Project Company Guarantor). Liability insurance coverage shall be occurrence-based and shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Lender or its affiliates. The insurance to be maintained is as follows:

(a) ***During construction***. During construction and until replaced by the permanent operational property insurance, required under I. (b) below, Borrower shall procure and maintain All-Risk Builder’s Risk insurance, insuring the Borrower, Contractor, Project Company Guarantor and Lender as their interests may appear, covering physical elements of each Project, and all related installation costs from physical loss or damage caused by perils covered by standard all risk coverage on a full replacement cost basis, to include flood, windstorm and earthquake. The insurance procured shall also provide coverage for materials and equipment in storage and transit to or from the site of the applicable Project and coverage for Project startup, commissioning and testing. The limit of liability shall be the full replacement cost of the Project on an agreed amount basis (with no coinsurance). Limits shall automatically reinstate following each loss, except with respect to aggregate limits reasonably approved by Lender. The coverage shall continue, until the Construction Completion. Delay in start-up shall be procured with a limit of not less than twelve (12) months’ advance loss of profits. Deductibles shall be not more than Seventy-Five Thousand Dollars (\$75,000) for each occurrence, with a thirty (30) day waiting period with respect to a delay in start-up, with the exception of natural catastrophe perils (including flood, windstorm and earthquake), which shall have deductibles on commercially reasonable and available terms subject to Lender review and approval.

(b) **Following construction** . Operational All-Risk, insuring the interest of Borrower, Project Company Guarantor and Lender as loss payee, covering physical elements of each Project from the physical loss or damage caused by perils covered by a standard all-risk form, to include flood, windstorm and earthquake. Such insurance shall also provide coverage for materials and equipment stored offsite (as applicable) and Project coverage for mechanical and electrical, boiler and machinery breakdown. The limit of liability shall be the full replacement cost value of the Project on an agreed amount basis (with no coinsurance). Limits shall automatically reinstate following each loss, except with respect to aggregate limits reasonably approved by Lender. The Operational All-Risk coverage shall continue for the entire time, uninterrupted, the Borrower is subject to the requirements herein. Business Interruption coverage shall be procured with a limit of not less than twelve (12) months' revenue. Deductibles shall be not more than Seventy-Five Thousand Dollars (\$75,000) for each occurrence with a thirty (30) day waiting period with respect to business interruption coverage, with the exception of natural catastrophe perils (including flood, windstorm and earthquake), which shall have deductibles on commercially reasonable and available terms subject to Lender's reasonable review and approval.

(c) At all times during the term of the Loan Agreement, as required by law, Workers Compensation Insurance covering the Borrower's, and if applicable Project Company Guarantor's, employees, including employers liability insurance with a limit of One Million Dollars (\$1,000,000).

(d) At all times during the term of the Loan Agreement, Commercial Automobile Liability insurance covering automobiles owned, non-owned, leased, or used by the Borrower and Project Company Guarantor with a limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per occurrence.

(e) At all times during the term of the Loan Agreement, Commercial General Liability insurance on an occurrence form for Bodily Injury and Property Damage with the following minimum limits:

- (i) Each Occurrence – One Million Dollars (\$1,000,000);
- (ii) General Aggregate – Two Million Dollars (\$2,000,000);
- (iii) Products/Completed Operations – Two Million Dollars (\$2,000,000); and
- (iv) Personal Injury and Advertising Injury – One Million Dollars (\$1,000,000);
- (v) Damage to Premises Liability – One Million Dollars (\$1,000,000).

Such coverage to include premises, operations, property damage and contractual liability, products and completed operations, sudden & accidental (time element) pollution, independent contractors, with no exclusions for explosion, collapse and underground (XCU) perils. Deductibles shall be maintained in accordance with Borrower's business practice. Any such deductible or retention shall be Borrower's sole responsibility.

(f) At all times during the term of the Loan Agreement, follow form Umbrella/Excess liability coverage with an occurrence and aggregate limit of Ten Million Dollars (\$10,000,000). This policy shall be specifically endorsed to schedule the required coverages in Sections I. (c) Employers Liability, I. (d) Commercial Auto Liability and I. (e) Commercial General Liability, above.

(g) At all times during the term of the Loan Agreement, Professional Liability (errors & omissions) with a limit of Two Million Dollars (\$2,000,000) per occurrence. If this insurance is written on a "claims made" basis, then the policy shall be renewed annually, without lapse, for no less than three (3) years after the earlier of (i) the date of Commercial Operation or (ii) the date of termination of this Agreement.

If the policy or policies provided under this Section I. contain(s) aggregate limits, and such limits are diminished by 25% or more during the applicable policy term by any one or more incident, occurrence, claim, settlement or judgment against such insurance which has caused the insurer to establish a reserve, the Borrower shall, within ten (10) banking days after obtaining knowledge of such event, inform Lender in writing of such reduction and the events giving rise thereto, and within thirty (30) banking days purchase an additional limit of insurance satisfying the requirements of this Section I.

- II. Waiver of Subrogation. All insurance policies procured under the Loan Agreement and this Exhibit H shall be endorsed to include a waiver of subrogation against Lender (together with each of its respective affiliates, members, employees, agents, assigns, successors, officers and directors).
- III. Additional Insureds – Primary and Noncontributory. Lender (together with each of its respective affiliates, members, employees, agents, assigns, successors, officers and directors) shall be named as additional insureds with respect to the Borrower's and Project Company Guarantor's activities under this Agreement under the coverages required by the Loan Agreement and this Exhibit H, except for Workers Compensation and Professional Liability policies. Borrower's and Project Company Guarantor's insurance shall be endorsed to be primary and not seek contribution from any insurance maintained by the additional insured parties.
- IV. Lender Loss Payable Endorsement. All property related policies of insurance required to be maintained pursuant to Sections I. (a) and (b) of this Exhibit H, shall name Lender, as loss payee as its interests may appear for all losses insured thereunder, pursuant to a lenders loss payable endorsement or blanket loss payee wording approved by Lender.
- V. Named Insureds. All policies of insurance required to be maintained in this Exhibit H shall name the applicable Project Company Guarantor, Borrower Entities and Borrower as Named Insureds.

- VI. Non-Vitiation. All property related policies of insurance required to be maintained pursuant to Sections I. (a) and (b) of this Exhibit H shall insure the interests of Lender regardless of any breach or violation by the Borrower, Project Company Guarantor, or their respective Affiliates or others acting on their behalf of any warranties, declarations or conditions contained in such policies, any action or inaction, or any foreclosure relating to any of the Projects or any change in ownership of all or any portion of the Projects (the foregoing may be accomplished by the use of an approved lender loss payable endorsement required in Section IV. above, or acceptable multiple insureds clause).
- VII. Insurance Certificates. On or before the applicable Loan Disbursement Date, the Borrower shall submit to Lender certificates of insurance signed by the Borrower's insurance broker, as applicable, evidencing the insurance coverage required under the Loan Agreement and this Exhibit H, and shall provide a similar certificate evidencing renewal of such coverage on at least the same terms and conditions as originally required for the Loan Agreement and this Exhibit H not less than thirty (30) days prior to the expiration date of any such policy; provided that, solely with respect to the policy described in Section I. (b) above, the Borrower shall only be required to deliver or cause to be delivered such certificates of insurance on or before the date on which the Project becomes operational.
- VIII. Assignment of Proceeds. In the event of any casualty or other insured loss affecting the Project or any portion of the Project, and if in such event the Borrower or Project Company Guarantor does not replace or restore the Project, the Borrower and Project Company Guarantor shall assign the related insurance claim and proceeds to Lender.
- IX. Subcontractor Insurance. Borrower shall require its subcontractors to procure and maintain insurance with the same requirements and limits as Borrower with the following exceptions, changes or additions: (1) umbrella/excess liability limit shall be commensurate with each subcontractor's scope of work, (2) if applicable; contractor's pollution liability insurance liability limit shall be \$1,000,000 per incident. All subcontractor policies shall be endorsed to include Lender, Borrower, and their respective affiliates, officers, directors, members, employees, agents assigns, as additional insureds on a primary and noncontributory basis, and all policies shall be endorsed to waive all rights of subrogation against Lender, Borrower and their respective affiliates, officers, directors, members, employees, agents assigns. Borrower shall be required to provide proof of subcontractor coverage upon request of Lender.

EXHIBIT I

PROJECT APPROVAL CERTIFICATION

To: Generate Lending, LLC, as Lender

Re: FuelCell Energy Finance II, LLC - [Available Project Name[s]] (collectively, the “Available Projects”, and each, an “Available Project”)

Ladies and Gentlemen:

Reference is hereby made to that certain Construction Loan Agreement dated as of December 21, 2018 (as the same may be amended, restated, supplemented or modified from time to time, the “Loan Agreement”), among FUELCELL ENERGY FINANCE II, LLC, a Connecticut limited liability company, as Borrower, the Project Company Guarantors from time to time party thereto, and GENERATE LENDING, LLC, a Delaware limited liability company, as Lender. Unless otherwise defined herein, capitalized terms used herein shall have the meanings attributable thereto in the Loan Agreement. This Project Approval Certification (this “Certification”) is delivered to you pursuant to Section 2.1(b) of the Loan Agreement.

In connection with this Certification, the Borrower hereby certifies the Lender as follows with respect to each Available Project:

1. Each Available Project is described on Exhibit A attached hereto, including the identity of the Customer of each such Available Project, a list of all Material Project Documents associated with each such Available Project and the date on which each such Available Project is projected to achieve Final Acceptance.
 2. Attached hereto as Exhibit B is a true, correct and complete copy of the Revenue Contract relating to each Available Project.
 3. Attached hereto as Exhibit C is a description and summary of revenue assumptions and operating cost assumptions for each Available Project, in each case determined in accordance with the Base Case Model.
 4. Attached hereto as Exhibit D are true, correct and complete copies of the EPC Contract, all Material Subcontracts related thereto, the Construction Budget and Schedule, and all plans and designs, in each case relating to each Available Project.
 5. Attached hereto as Exhibit E is a true, correct and complete copy of the Proposed Project Loan Disbursement and Construction Schedule for each Available Project.
 6. Attached hereto as Exhibit F is, with respect to each Available Project, (a) a true, correct and complete copy of the Notice to Proceed pursuant to the applicable EPC Contract, or (b) if a Notice to Proceed has not been issued due to Approvals that are obtainable in the ordinary course not having been issued, a list of all Approvals required for such Available Project, which list shall (x) identify all of such Approvals that have already been obtained, and (y) include a certification that any remaining required Approvals that have not yet been obtained shall be obtainable in the ordinary course of business.
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7. Attached hereto as Exhibit G are true, correct and complete copies of all insurance certificates demonstrating that Borrower and the applicable Project Company Guarantors possess insurance policies satisfying the requirements set forth in Section 6.5, which insurance policies are each in full force and effect.

8. Attached hereto as Exhibit H is a list of all material equipment for each Available Project.

9. Attached hereto as Exhibit I is evidence of approved rebate awards, if any, associated with each Available Project.

10. Attached hereto as Exhibit J is, with respect to each Available Project, either (a) a true, correct and complete copy of an Independent Engineer's report or (b) other documentation which shall be acceptable to Lender which confirms the Base Case Model and relevant assumptions.

11. Attached hereto as Exhibit K are true, correct and complete copies of the Services Manual and Operating Budget for each Available Project.

12. Attached hereto as Exhibit L are true, correct and complete copies of all other Material Project Documents relating to each Available Project.

13. Attached hereto as Exhibit M is a true, correct and complete copy of the complete Credit File for the Customer associated with each Applicable Project.

14. Attached hereto as Exhibit N are true, correct and complete copies of all other documents required to be delivered in connection with this Certification, including any other material documents associated with each Available Project as the Lender may reasonably require.

The Borrower has caused this Certification to be executed and delivered by its duly authorized officer this ____ day of _____, 20__.

FUELCELL ENERGY FINANCE II, LLC

By: FuelCell Energy Finance, LLC

Its: Sole Member

By: FuelCell Energy, Inc.

Its: Sole Member

By: _____

Name: Michael S. Bishop

Title: Senior Vice President & Chief Financial Officer

**GENERATE LENDING, LLC
555 DE HARO STREET, SUITE 300
SAN FRANCISCO, CA 94107**

December 21, 2018

FuelCell Energy, Inc.
3 Great Pasture Rd.
Danbury, CT 06810
Attention: Michael Bishop

Dear Mr. Bishop:

Re: RIGHT TO FINANCE AGREEMENT: REGARDING REVOLVING CONSTRUCTION LOAN AGREEMENT (THE “LOAN AGREEMENT”) DATED AS OF DECEMBER 21, 2018 BY AND AMONG FUELCELL ENERGY FINANCE II, LLC (“BORROWER”), CERTAIN OF ITS SUBSIDIARIES AND GENERATE LENDING, LLC (“LENDER”).

In connection with Lender and Borrower entering into the Loan Agreement, Lender, Borrower and FuelCell Energy, Inc. (the “Parent”), hereby agree to the following (this “Agreement”)

1. All capitalized terms used herein and not otherwise defined herein shall have the meaning set forth in the Loan Agreement.
 2. During the Term of this Agreement (as defined in Section 8 below), Parent agrees that (i) Parent will not, and will not permit any Subsidiary to, enter into, offer, solicit or negotiate to enter into, any agreements, arrangements, term sheets or commitments with any third party to obtaining debt financing (“Third Party Construction Financing”) for the development, construction, installation, commissioning or startup of an Available Project; or (ii) consummate any Third Party Construction Financing for an Available Project, except as permitted pursuant to this Agreement. Parent will not and will not permit any Subsidiary to respond to any unsolicited third-party proposal or offer for Third Party Construction Financing by any person or entity, other than to inform such person or entity that an exclusive right to finance exists with respect to such Available Project, except as permitted pursuant to this Agreement. For the avoidance of doubt, a Third Party Construction Financing shall not mean any debt financing in which Parent is the primary borrower and which is secured by all or substantially all of Parent’s assets (a “Parent Corporate Facility”) and nothing herein shall be construed to limit any rights of Parent to consummate a Parent Corporate Facility.
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3. In the event that Borrower has provided a Project Approval Certification and all related information required to be delivered by Borrower pursuant to Section 2.1(b) of the Loan Agreement and requested that (i) Lender determine that such Available Project is an Approved Project, and (ii) Lender provide a Working Capital Loan with regard to such Available Project in accordance with the terms and conditions of the Loan Agreement, and Lender has not provided written notice to Borrower within the eighteen (18) Business Day period referenced in Section 2.1(b) of the Loan Agreement that Lender has determined that such Available Project constitutes an Approved Project, the provisions of Section 2 of this Agreement shall no longer apply to such Available Project and Parent and Borrower shall not be subject to any restrictions regarding obtaining Third Party Construction Financing for such Available Project. Notwithstanding the foregoing, in the event that Lender does not designate an Available Project as an Approved Project during the referenced eighteen (18) Business Day period in accordance with this Section 3, if at any time thereafter but prior to Parent's or Borrower's closing on a Third Party Construction Financing for such Available Project, a "Material Change" shall occur with respect to such Available Project, then Parent shall be required to resubmit such Available Project to Lender in accordance with the provisions of Section 2 prior to consummating any Third Party Construction Financing. For purposes of this Agreement, a "Material Change" shall mean any of the following: (i) a material increase in the pricing of the Revenue Contract for such Available Project; (ii) an increase in the term of the Revenue Contract for such Available Project; (iii) a material improvement in the credit rating of the Customer for such Available Project; (iv) a change in the identity of the Customer for such Available Project; (v) a material decrease in the pricing of the EPC Contract or the O&M Agreement for such Available Project or (vi) a material change in the terms or structure of the Revenue Contract, EPC Contract or O&M Agreement.
 4. In the event that Lender approves an Available Project as an Approved Project pursuant to Section 2.1 of the Loan Agreement but does not provide a Working Capital Loan to such Approved Project within ninety (90) days after Notice to Proceed has been delivered to Lender for such Approved Project as a result of either: (i) Lender's breach of its obligations under the Loan Agreement or (ii) the failure of any of the conditions set forth in Section 5.2 of the Loan Agreement to be satisfied despite Borrower's reasonable efforts; then, in such event, the provisions of Section 2 of this Agreement shall no longer apply to such Approved Project and Parent and Borrower shall be relieved of any restrictions regarding obtaining Third Party Construction Financing for such Approved Project.
 5. In the event that the Borrower has provided a Project Approval Certification and all related information required to be delivered by Borrower pursuant to Section 2.1 of the Loan Agreement and the amount of the Working Capital Loans to be requested for such Available Project combined with all Working Capital Loans then outstanding would, at any point, exceed \$100 million, then, within thirty (30) days of Lender's receipt of such written notice from Borrower, (i) Lender shall obtain approval of its board of directors to lift any restrictions regarding extending Loans in excess of \$100 million and provide Borrower with a copy of any such Board approval; and (ii) Lender shall provide substantiation to Borrower showing the Lender has sufficient funds available (either through existing capital commitments, cash on hand or existing credit lines) to make such Working Capital Loans to Borrower. In the event that Lender does not satisfy either of the requirements in clauses (i) or (ii) within such thirty (30) day period, then this Agreement shall terminate at such time and neither Parent or Borrower shall be subject to any further restrictions or obligations set forth herein.
 6. In the event that Lender, during the Term: (i) fails to approve as Approved Projects three (3) Available Projects submitted by Borrower to Lender pursuant to Section 2.1 of the Loan Agreement or, (ii) over any six (6) month period of time that commences on or after June 30, 2019, does not make at least one (1) disbursement of Working Capital Loans in respect of Approved Projects, then, in either event, this Agreement shall terminate at such time and neither Parent nor Borrower shall be subject to any further restrictions or obligations set forth herein. In addition, if the Lender exercises its right to terminate the Commitment and require repayment of the Working Capital Loans pursuant to Section 2.3(i) of the Loan Agreement, this Agreement shall terminate as of June 30, 2019.
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7. At any time prior to Borrower submitting any Available Project to Lender pursuant to Section 2.1 of the Loan Agreement, Borrower may, in its discretion, submit preliminary information to Lender regarding an Available Project in accordance with Schedule 1 attached to this Agreement (“Preliminary Project Presentation Information”) and Lender, in good faith, shall review such Preliminary Project Presentation Information to determine whether such Available Project is likely to be an Approved Project. No later than ten (10) days after Borrower’s submission of Preliminary Project Presentation Information to Lender, Lender shall, in good faith, provide adequate notice (a “Preliminary Project Response”) to Borrower whether or not Lender reasonably believes that such Available Project will ultimately be an Approved Project following a subsequent submission pursuant to Section 2.1 of the Loan Agreement. If Lender indicates it does not believe such Available Project will be an Approved Project, then the provisions of Section 2 of this Agreement shall no longer apply to such Available Project and Parent and Borrower shall not be subject to any restrictions regarding obtaining Third Party Construction Financing for such Available Project. Alternatively, if Lender’s Preliminary Project Response is that Lender reasonably believes that such Available Project will be an Approved Project, the provisions of Section 2 of this Agreement shall continue to apply to Parent and Borrower with respect to such Available Project and the final determination of whether such Available Project is an Approved Project will be made in accordance with the provisions of Section 2.1 (b) of the Loan Agreement; provided, however, that, to the extent that the Preliminary Project Presentation Information includes (i) a Credit File for the proposed Customer; (ii) a Revenue Contract with such proposed Customer; (iii) a proposed Construction Budget and Schedule; or (iv) a proposed Project Loan Disbursement Schedule, then by virtue of Lender’s Preliminary Project Response indicating that such Available Project will be an Approved Project, Lender will be deemed to have approved the foregoing items for purposes of Borrower’s subsequent submission of the Available Project to Lender under Section 2.1 of the Loan Agreement; provided that no material change to any such item shall have occurred since the Preliminary Project Presentation.
 8. The term (“Term”) of this Agreement shall commence on the date hereof (the “Effective Date”) and, unless terminated sooner in accordance with the provisions of Sections 5 or 6 of this Agreement, shall remain in effect until the first to occur of: (i) the third (3rd) anniversary of the Effective Date and (ii) the termination of the Commitment pursuant to the Loan Agreement.
 9. This Agreement shall be binding upon and inure to the benefit of the Parent, the Borrower and the Lender. Lender agrees that, in the event that Borrower or Parent shall breach the provisions of Section 2 with respect to any Available Project and close on a Third Party Construction Financing for such Available Project in contravention of this Agreement, as Lender’s sole legal or equity remedy (including in lieu of the equitable remedies of restraint, injunction and specific performance), and as liquidated damages that all parties agree are fair, reasonable and adequate, Parent shall pay to Lender a cash amount equal to \$650,000 (the “Liquidated Damages Amount”), such amount to be paid no later than ten (10) Business Days after closing has occurred on the Third Party Construction Financing for such Available Project in breach of Section 2 of this Agreement. At such time as Parent has paid the Liquidated Damages Amount to Lender, this Agreement shall terminate and neither Parent or Borrower shall be subject to any further restrictions or obligations set forth herein.
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10. This Agreement may be amended or otherwise modified only by a written instrument executed by the parties hereto which (i) specifically refers to the provision of this Agreement to be amended, and (ii) is signed by the parties hereto. This Agreement may be waived but only by a written instrument executed by the party providing the waiver which states that it constitutes a waiver hereunder and specifies the provision(s) being waived. A waiver by one party of any right or benefit provided in this Agreement does not infer or constitute a waiver of any other right or benefit in this Agreement.
11. Neither party shall transfer or assign any of its rights or obligations hereunder without the prior written consent of the other party and any transfer of obligations hereunder without the prior written consent of both parties shall be void and of no effect. Subject to the preceding sentence, this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, successors and permitted assigns. This Agreement is not intended and shall not be construed to create any rights in or to enforceable by any other person other than the parties to this Agreement.
12. Except for the provisions of Section 9, the parties agree that each of the clauses and sub-clauses of this Agreement shall be separate and several and enforceable as such. The complete or partial invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provision hereof.

THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION. EACH PARTY AGREES THAT ANY AND ALL ACTIONS AND PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS SHALL BE COMMENCED AND PROSECUTED SOLELY AND EXCLUSIVELY IN ANY FEDERAL OR STATE COURT IN THE CITY AND STATE OF NEW YORK, AND ANY APPELLATE COURTS THEREFROM (“ NEW YORK COURTS ”), AND EACH PARTY IRREVOCABLY WAIVES ANY RIGHT TO OBJECT TO SUCH VENUE. EACH PARTY IRREVOCABLY CONSENTS AND SUBMITS TO THE PERSONAL JURISDICTION OF THE NEW YORK COURTS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING. EACH PARTY CONSENTS TO SERVICE OF PROCESS UPON IT WITH RESPECT TO ANY SUCH ACTION OR PROCEEDING BY REGISTERED MAIL, RETURN RECEIPT REQUESTED, AND BY ANY OTHER MEANS PERMITTED BY APPLICABLE LAWS. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE TRANSACTIONS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE SUCH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT THERETO. THIS AGREEMENT CONSITUTES A LOAN DOCUMENT.

Any communications between the parties hereto or regular notices provided herein to be given shall be given to the following addresses:

To Lender:

Generate Capital, Inc.
555 DeHaro Street
Suite 300
San Francisco, CA 94107
Email: notices@generatecapital.com
Attention: Notices

To Parent or Borrower:

FuelCell Energy, Inc.
3 Great Pasture Road
Danbury, CT 06810
Email:
Attention: Legal Department

[*Remainder of page intentionally blank; signature page follows.*]

Please indicate your agreement to the terms set forth herein by executing this Agreement where indicated below and returning a signed copy hereof to Generate, at which point this Agreement will constitute a binding agreement of the parties.

Very truly yours,

Generate Lending, LLC

By: /s/ Matan Friedman
Name: Matan Friedman
Title: Manager

Agreed to and accepted by:

FuelCell Energy Finance II, LLC

FuelCell Energy, Inc.

By: FuelCell Energy Finance, LLC
Its: Sole Member

By: FuelCell Energy, Inc.
Its: Sole Member

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Senior Vice President & Chief
Financial Officer

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Senior Vice President & Chief
Financial Officer

EXECUTION VERSION

GUARANTY AGREEMENT

GUARANTY AGREEMENT (this “Guaranty”), dated as of December 21, 2018, is made by **FUELCELL ENERGY, INC.**, a Delaware corporation (“Guarantor”), in favor of **GENERATE LENDING, LLC**, a Delaware limited liability company (“Lender”).

A. Pursuant to that certain Construction Loan Agreement, dated as of December 21, 2018, by and among **FUELCELL ENERGY FINANCE II, LLC**, a Connecticut limited liability company (“Borrower”), **BAKERSFIELD FUEL CELL 1, LLC**, a Delaware limited liability company (“Bakersfield”), **BRT FUEL CELL, LLC**, a New York limited liability company (“BRT”), **CR FUEL CELL, LLC**, a New York limited liability company (“CR”), **YAPHANK FUEL CELL PARK, LLC**, a New York limited liability company (“Yaphank”), **HOMESTEAD FUEL CELL 1, LLC**, a Connecticut limited liability company (“Homestead”), **DERBY FUEL CELL, LLC**, a Connecticut limited liability company (“Derby”), and collectively with Bakersfield, BRT, CR, Yaphank and Homestead, each, an “Initial Project Company Guarantor”, and together, the “Initial Project Company Guarantors”), the other Loan Parties party thereto from time to time, and Lender (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “Loan Agreement”), Lender has agreed to make certain loans and other financial accommodations to Borrower.

B. The Lender is not willing to make the Loan, or otherwise extend credit, to Borrower unless Guarantor unconditionally guarantees payment and performance to the Lender of the Guaranteed Obligations pursuant to the terms and conditions herein agreed.

C. Guarantor directly or indirectly owns all of the ownership interests of Borrower and each Initial Project Company Guarantor, is financially interested in their respective affairs, and expects to derive financial benefits from the loans and other financial accommodations to be provided by Lender to the Borrower under or in connection with the Loan Agreement.

D. This Guaranty is required pursuant to the terms of the Loan Agreement.

NOW THEREFORE, in consideration of the foregoing, in order to induce Lender to enter into and make loans and other financial accommodations to Borrower under the Loan Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantor hereby agrees as follows:

ARTICLE I
DEFINITIONS

As used in this Guaranty, capitalized terms not otherwise defined herein have the meanings defined for them in the Loan Agreement.

ARTICLE II
INDEMNITIES AND GUARANTIES

Section 1. **Guaranty**. Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Lender the punctual payment and performance of the Obligations of the Borrower and the other Loan Parties to the Lender arising under or in connection with Sections 2.3(h) and 2.3(i) of the Loan Agreement, including without limitation the payment of all sums now owing or which may in the future be owing by Borrower or any other Loan Party under such Sections of the Loan Agreement, as and when the same are due and payable, and whether for principal, interest, fees, expenses, indemnification or otherwise (all of the foregoing being the “Guaranteed Obligations”). The Guaranteed Obligations include, without limitation, interest accruing after the commencement of a proceeding under bankruptcy, insolvency or similar laws of any jurisdiction at the rate or rates provided in the Loan Documents. This Guaranty is a guaranty of payment and not of collection only. Lender shall not be required to exhaust any right or remedy or take any action against Borrower, any other Loan Party or any other guarantor, person or entity or any collateral. Guarantor agrees that, as between Guarantor and Lender, the Guaranteed Obligations may be declared to be due and payable for the purposes of this Guaranty notwithstanding any stay, injunction or other prohibition which may prevent, delay or vitiate any declaration regarding Borrower or any other Loan Party and that in the event of a declaration or attempted declaration, the Guaranteed Obligations shall immediately become due and payable by Guarantor for the purposes of this Guaranty.

Section 2. **Guaranty Absolute**. Guarantor guarantees that the Guaranteed Obligations shall be paid strictly in accordance with the terms of the Loan Documents. The liability of Guarantor under this Guaranty is absolute and unconditional irrespective of: (a) any change in the time, manner or place of payment of, or in any other term of, all or any of the Loan Documents or Guaranteed Obligations, or any other amendment or waiver of or any consent to departure from any of the terms of any Loan Document or Guaranteed Obligation, including any increase or decrease in the rate of interest thereon; (b) any release or amendment or waiver of, or consent to departure from, or failure to act by Lender with respect to, any other guaranty or support document, or any exchange, release or non-perfection of, or failure to act by Lender with respect to, any collateral, for all or any of the Loan Documents or Guaranteed Obligations, or the release of Borrower or any other Loan Party from its respective obligations under the Loan Documents; (c) any present or future law, regulation or order of any jurisdiction (whether of right or in fact) or of any agency thereof purporting to reduce, amend, restructure or otherwise affect any term of any Loan Document or Guaranteed Obligation; (d) any change in the corporate existence, structure, or ownership of Borrower or any other Loan Party or the liquidation or dissolution of Borrower or any other Loan Party; (e) without being limited by the foregoing, any lack of validity or enforceability of any Loan Document or Guaranteed Obligation; and (f) any other setoff, recoupment, defense or counterclaim whatsoever (in any case, whether based on contract, tort or any other theory) with respect to the Loan Documents or the transactions contemplated thereby which might constitute a legal or equitable defense available to, or discharge of, Borrower, any other Loan Party or a guarantor.

Section 3. **Guaranty Irrevocable**. This Guaranty is a continuing guaranty of all Guaranteed Obligations now or hereafter existing under the Loan Agreement and shall remain in full force and effect until all Guaranteed Obligations and other amounts payable under this Guaranty are paid in full in cash and any Commitments of the Lender with respect to the Guaranteed Obligations are terminated.

Section 4. **Reinstatement**. Notwithstanding Section 3 of this Guaranty, this Guaranty shall continue in full force and effect or be revived, as the case may be, if at any time any payment by or on behalf of the Borrower or the Guarantor is made, in respect to the Guaranteed Obligations is rescinded or must otherwise be returned by Lender on the insolvency, bankruptcy or reorganization of Borrower or any other Loan Party or otherwise, all as though the payment had not been made.

Section 5. **Subrogation**. The Guarantor shall not exercise any right of subrogation or similar rights with respect to any payments it makes under this Guaranty until all the Guaranteed Obligations have been paid in full and any Commitments with respect to the Guaranteed Obligations are terminated. If any amounts are paid to the Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of Lender, and shall forthwith be paid to Lender to reduce the amount of the Guaranteed Obligations, whether matured or unmatured. If Guarantor makes payment to Lender, of all or any part of the Guaranteed Obligations and all the Guaranteed Obligations are paid in full and the Loan Documents are no longer in effect, Lender shall, at Guarantor's request, execute and deliver to Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to Guarantor of an interest in the Guaranteed Obligations resulting from the payment.

Section 6. **Subordination**. Without limiting Lender's rights under any other agreement, until the Obligations are indefeasibly paid in full, any liabilities owed by Borrower or any other Loan Party to Guarantor in connection with any extension of credit or financial accommodation by Guarantor to or for the account of Borrower or any other Loan Party, including but not limited to interest accruing at the agreed contract rate after the commencement of a bankruptcy or similar proceeding, are hereby subordinated to the Guaranteed Obligations, and such liabilities of Borrower or such Loan Party, as applicable, to Guarantor, if Lender so requests, shall be collected, enforced and received by Guarantor as trustee for Lender and shall be paid over to Lender on account of the Guaranteed Obligations but without reducing or affecting in any manner the liability of Guarantor under the other provisions of this Guaranty.

Section 7. **Certain Taxes**. The Guarantor further agrees that all payments to be made hereunder shall be made without setoff or counterclaim and free and clear of, and without deduction for, any taxes, levies, imposts, duties, charges, fees, deductions, withholdings or restrictions or conditions of any nature whatsoever now or hereafter imposed, levied, collected, withheld or assessed by any country or by any political subdivision or taxing authority thereof or therein ("**Taxes**"). If any Taxes are required to be withheld from any amounts payable to Lender hereunder, the amounts so payable to Lender shall be increased to the extent necessary to yield to Lender (after payment of all Taxes) the amounts payable hereunder in the full amounts so to be paid. Whenever any Tax is paid by Guarantor, as promptly as possible thereafter, Guarantor shall send Lender an official receipt showing payment thereof, together with such additional documentary evidence as may be required from time to time by Lender.

Section 8. **Representations and Warranties**. Guarantor represents and warrants that: (a) this Guaranty (i) has been authorized by all necessary action; (ii) does not violate any agreement, instrument, law, regulation or order applicable to Guarantor; (iii) does not require the consent or approval of any person or entity, including but not limited to any governmental authority, or any filing or registration of any kind; and (iv) is the legal, valid and binding obligation of Guarantor enforceable against Guarantor in accordance with its terms, except to the extent that enforcement may be limited by applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally; and (b) in executing and delivering this Guaranty, Guarantor has (i) without reliance on Lender or any information received from Lender and based upon such documents and information it deems appropriate, made an independent investigation of the transactions contemplated hereby and Borrower and the other Loan Parties and their respective business, assets, operations, prospects and condition, financial or otherwise, and any circumstances which may bear upon such transactions, the Borrower or any other Loan Party or the obligations and risks undertaken herein with respect to the Guaranteed Obligations; (ii) adequate means to obtain from Borrower and each other Loan Party on a continuing basis information concerning Borrower and each other Loan Party; (iii) has full and complete access to the Loan Documents and any other documents executed in connection with the Loan Documents; and (iv) not relied and will not rely upon any representations or warranties of Lender not embodied herein or any acts heretofore or hereafter taken by Lender (including but not limited to any review by Lender of the affairs of Borrower or any other Loan Party).

Section 9. **Affirmative Covenant**. Guarantor shall (i) maintain its existence as a corporation in good standing under the laws of the State of Delaware and good standing in each other jurisdiction where it is required to be so qualified, authorized or in good standing, except where the failure to so qualify or be in good standing would not reasonably be expected to result in a Material Adverse Effect and (ii) cause to be done all things necessary to preserve and keep in full force and effect its existence and rights, to conduct its business in a prudent manner, to maintain in full force and effect, and renew from time to time, its franchises, permits, licenses, patents, and trademarks that are necessary to operate its business.

Section 10. **[RESERVED.]**

Section 11. **Remedies.**

(a) Upon the occurrence of any Project Company Event of Default which continues beyond the applicable period of grace provided for in the Loan Agreement, Lender shall be entitled, in addition to exercising any remedies set forth in this Guaranty or otherwise available at law or in equity, to accelerate Guarantor's obligations hereunder with respect to the Project Company Guarantor(s) and the related Approved Project(s) to which such Project Company Event of Default relate.

(b) Upon the occurrence of any Facility Event of Default which continues beyond the applicable period of grace provided for in the Loan Agreement, Lender shall be entitled, in addition to exercising any remedies set forth in this Guaranty or otherwise available at law or in equity, to accelerate all of the Guarantor's obligations hereunder.

(c) The remedies provided in this Guaranty are cumulative and not exclusive of any remedies provided by law.

Section 12. **Setoff.** Guarantor agrees that, in addition to (and without limitation of) any right of setoff, banker's lien or counterclaim Lender may otherwise have, Lender shall be entitled, at its option, to offset balances (general or special, time or demand, provisional or final) held by it for the account of Guarantor, against any amount payable by Guarantor under this Guaranty which is not paid when due (regardless of whether such balances are then due to Guarantor).

Section 13. **Formalities.** Guarantor waives presentment, demand, notice of dishonor, protest, notice of acceptance of this Guaranty or incurrence of any Guaranteed Obligation and any other formality with respect to any of the Guaranteed Obligations or this Guaranty.

Section 14. **Amendments and Waivers.** No amendment or waiver of any provision of this Guaranty, nor consent to any departure by Guarantor therefrom, shall be effective unless it is in writing and signed by Lender, and then the waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of Lender to exercise, and no delay in exercising, any right under this Guaranty shall operate as a waiver or preclude any other or further exercise thereof or the exercise of any other right.

Section 15. **Expenses.** Guarantor shall reimburse Lender on demand for all costs, expenses and charges (including without limitation fees and charges of legal counsel for Lender) incurred by Lender in connection with the enforcement of this Guaranty. The obligations of Guarantor under this Section 15 shall survive the termination of this Guaranty.

Section 16. **Assignment.** This Guaranty shall be binding on, and shall inure to the benefit of Guarantor, Lender and their respective successors and assigns; provided that Guarantor may not assign or transfer its rights or obligations under this Guaranty. Without limiting the generality of the foregoing, Lender may assign, sell participations in or otherwise transfer its rights under the Loan Documents pursuant to the terms thereof to any other person or entity, and the other person or entity shall then become vested with all the rights granted to Lender in this Guaranty or otherwise.

Section 17. **Captions.** The headings and captions in this Guaranty are for convenience only and shall not affect the interpretation or construction of this Guaranty.

Section 18. **Notices.** All notices or communications by any party relating to this Guaranty shall be in writing and shall be personally delivered or sent by a recognized overnight delivery service, certified mail, postage prepaid, return receipt requested, electronic mail, or by fax to Guarantor or to Lender, as the case may be, at its addresses set forth below:

If to the Guarantor : FuelCell Energy, Inc.
3 Great Pasture Road
Danbury, Connecticut 06810
Attn: Legal Department
Facsimile: (203) 825-6069
Email: jarasimowicz@fce.com

If to the Lender : Generate Lending, LLC
555 De Haro Street, Suite 300
San Francisco, CA 94107
Attn: Notices
Email: notices@generatecapital.com

With a copy to:

Justin Boose, Esquire
Troutman Sanders LLP
875 Third Avenue
New York, NY 10022
Facsimile: 212-704-5922
Email: Justin.boose@troutman.com

The parties hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other.

Section 19. **Governing Law; Jurisdiction; Consent to Service of Process.**

(a) This Guaranty and any claims, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Guaranty and the transactions contemplated hereby and thereby shall be construed in accordance with and be governed by the law (without giving effect to the conflict of law principles thereof) of the State of New York.

(b) GUARANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE JURISDICTION OF THE STATE AND FEDERAL COURTS OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH COURTS OR, TO THE EXTENT PERMITTED BY APPLICABLE LAW, SUCH APPELLATE COURT. EACH OF GUARANTOR AND, BY ITS ACCEPTANCE HEREOF, LENDER, AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS GUARANTY SHALL AFFECT ANY RIGHT THAT THE LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS GUARANTY AGAINST THE GUARANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION .

(c) Guarantor irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any such suit, action or proceeding described in subsection (b) of this Section and brought in any court referred to in subsection (b) of this Section. Each of the parties hereto irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Guarantor irrevocably consents to the service of process in the manner provided for notices in Section 18 herein. Nothing in this Guaranty will affect the right of Guarantor or Lender to serve process in any other manner permitted by law.

Section 20. **WAIVER OF JURY TRIAL**. EACH OF GUARANTOR AND, BY ITS ACCEPTANCE HEREOF, LENDER, HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH OF GUARANTOR AND, BY ITS ACCEPTANCE HEREOF, LENDER, (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTY BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 21. **Integration; Effectiveness**. This Guaranty alone sets forth the entire understanding of Guarantor and Lender relating to the guarantee of the Guaranteed Obligations and constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Guaranty shall become effective when it shall have been executed and delivered by Guarantor to Lender. Delivery of an executed signature page of this Guaranty by PDF, telecopy, or other electronic means shall be effective as delivery of a manually executed signature page of this Guaranty.

[Remainder of page intentionally blank; signature page follows.]

IN WITNESS WHEREOF , Guarantor has caused this Guaranty Agreement to be duly executed and delivered by its duly authorized officer as of the date first above written.

FUELCELL ENERGY, INC.

By: /s/ Michael S. Bishop
Name: Michael S. Bishop
Title: Senior Vice President & Chief Financial Officer

GUARANTY AGREEMENT
SIGNATURE PAGE

FIFTH AMENDMENT TO LOAN AND SECURITY AGREEMENT

THIS **FIFTH AMENDMENT TO LOAN AND SECURITY AGREEMENT** (this “**Amendment**”), dated as of December 19, 2018 (the “**Amendment Effective Date**”), is entered into by and among FuelCell Energy, Inc., a Delaware corporation (“**Parent**”), Versa Power Systems, Inc., a Delaware corporation (“**Versa Delaware**”), Versa Power Systems Ltd. a corporation organized under the laws of Alberta, Canada (“**Versa Canada**”), and each of Parent’s Subsidiaries that delivers a Joinder Agreement pursuant to Section 7.13 of the Loan and Security Agreement (hereinafter collectively referred to as the “**Borrowers**” and each, a “**Borrower**”), the several banks and other financial institutions or entities from time to time parties thereto as Lender, constituting the Required Lenders, and HERCULES CAPITAL, INC., a Maryland corporation, in its capacity as administrative agent and collateral agent for itself and the Lender (in such capacity, together with its successors and assigns in such capacity, “**Agent**”).

Borrower, the Lender and Agent are parties to a Loan and Security Agreement dated as of April 14, 2016 (as amended as of September 5, 2017, October 27, 2017, March 28, 2018 and August 29, 2018, and as may be further amended, restated or modified from time to time, the “**Loan and Security Agreement**”). The Borrowers have requested that Agent and Lender agree to certain amendments to the Loan and Security Agreement. Agent and Lender have agreed to such request, subject to the terms and conditions hereof.

Accordingly, the parties hereto agree as follows:

SECTION 1 Definitions; Interpretation.

(a) **Terms Defined in Loan and Security Agreement**. All capitalized terms used in this Amendment (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Loan and Security Agreement.

(b) **Interpretation**. The rules of interpretation set forth in Section 1.1 of the Loan and Security Agreement shall be applicable to this Amendment and are incorporated herein by this reference.

SECTION 2 Amendments to the Loan and Security Agreement.

(a) The Loan and Security Agreement shall be amended as follows effective as of the Amendment Effective Date:

(i) **New Definitions**. The following definitions are added to Section 1.1 in their proper alphabetical order:

“Fifth Amendment” means that certain Fifth Amendment to Loan and Security Agreement dated as of December 19, 2018, among Borrowers, Lender and Agent.

“Fifth Amendment Effective Date” means December 19, 2018.

(ii) **Amended Definitions**. The following definitions, as set forth in Section 1.1 are amended as follows:

(1) Clause (x) of the definition of “Permitted Investment” is hereby amended and restated in its entirety as follows:

“(x) Investments in Project Companies (directly or indirectly through FuelCell Energy Finance, LLC or FuelCell Energy Finance II, LLC), as long as no Event of Default has occurred and is existing, pursuant to Project Roundtrip Transactions; provided that in each case substantially all of such invested proceeds are used (X) in connection with the development, construction, ownership and operation of Projects by Project Companies including with regard to proceeds that are paid by a Project Company to Borrower or any Affiliate thereof in connection with the acquisition or construction of equipment or other assets or services related to such Project; or (Y) solely with respect to Project Roundtrip Transactions, to repay Project Company Indebtedness;”

(2) Clause (viii) of the definition of “Permitted Liens” is hereby amended and restated in its entirety as follows:

“(viii) Liens pursuant to any Project Company Indebtedness as long as such Liens are limited to the assets held by Project Companies and equity interests in Project Companies held by FuelCell Energy Finance, LLC or FuelCell Energy Finance II, LLC;”

(3) The definition of “Project Companies” is hereby amended and restated in its entirety as follows:

““Project Companies” means those Subsidiaries of Borrower listed on Schedule AD or as may be created after the Closing Date solely to hold all the assets of a Project or to hold equity interests in other Project Companies or to function as a lead market participant for one or more Project Companies.”

(4) The introductory clause of “Project Company Indebtedness” is hereby amended and restated in its entirety as follows:

““Project Company Indebtedness” means any Indebtedness, including Indebtedness listed on Schedule AB, that is incurred by either FuelCell Energy Finance, LLC, FuelCell Energy Finance II, LLC or Project Companies for which substantially all of the proceeds are used [. . .]”

(5) Clause (b) of the definition of “Project Roundtrip Transaction” are amended and restated in their entirety as follows:

“(b) no Investment under a Project Roundtrip Transaction shall exceed \$40,000,000.00 in each instance (i.e., no more than \$40,000,000.00 outstanding from any Project Company before the proceeds have to be distributed back to Borrower to cover the amount invested dollar for dollar), and”

(6) The definition of “Qualified Subsidiary” is amended and restated in its entirety as follows:

““Qualified Subsidiary” means any direct or indirect Domestic Subsidiary (other than the Project Companies, Permitted Shell Subsidiaries, FuelCell Energy Finance, LLC or FuelCell Energy Finance II, LLC) or Eligible Foreign Subsidiary.”

(iii) Section 7.7. Clause (b)(i) of Section 7.7 is hereby amended in its entirety as follows:

“(i) a Subsidiary may pay dividends or make distributions to Borrower or to any Subsidiary that is, directly or indirectly, wholly owned by Borrower and”

(iv) Schedules. As of the Fifth Amendment Effective Date, Schedule 1, Schedule 1A, Schedule 5.14, Schedule AB, Schedule AC and Schedule AD are amended and restated in their entirety as attached hereto.

(b) **References within Loan and Security Agreement**. Each reference in the Loan and Security Agreement to “this Agreement” and the words “hereof,” “herein,” “hereunder,” or words of like import, shall mean and be a reference to the Loan and Security Agreement as amended by this Amendment.

SECTION 3 Conditions of Effectiveness. The effectiveness of Section 2 of this Amendment shall be subject to the satisfaction of each of the following conditions precedent:

(a) **Fees and Expenses** . The Parent shall have paid all attorney fees and other costs and expenses then due in accordance with Section 5(e), and (ii) all other fees, costs and expenses, if any, due and payable as of the Amendment Effective Date under the Loan and Security Agreement.

(b) **This Amendment** . Agent shall have received this Amendment, executed by Agent, the Lender and the Borrowers.

(c) **Representations and Warranties; No Default** . On the Amendment Effective Date, after giving effect to the amendment of the Loan and Security Agreement contemplated hereby:

(i) The representations and warranties contained in Section 4 shall be true and correct on and as of the Amendment Effective Date as though made on and as of such date; and

(ii) There exist no Events of Default or events that with the passage of time would result in an Event of Default.

SECTION 4 Representations and Warranties . To induce Agent and Lender to enter into this Amendment, each Borrower hereby confirms, as of the date hereof, (a) that the representations and warranties made by it in Section 5 of the Loan and Security Agreement and in the other Loan Documents are true and correct in all material respects; *provided, however*, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; (b) that there has not been and there does not exist a Material Adverse Effect; and (c) that the information included in the Perfection Certificate delivered to Agent on the Amendment Effective Date is true and correct. For the purposes of this Section 4, (i) each reference in Section 5 of the Loan and Security Agreement to “this Agreement,” and the words “hereof,” “herein,” “hereunder,” or words of like import in such Section, shall mean and be a reference to the Loan and Security Agreement as amended by this Amendment, and (ii) any representations and warranties which relate solely to an earlier date shall not be deemed confirmed and restated as of the date hereof (provided that such representations and warranties shall be true, correct and complete as of such earlier date).

SECTION 5 Miscellaneous.

(a) **Loan Documents Otherwise Not Affected; Reaffirmation** . Except as expressly amended pursuant hereto or referenced herein, the Loan and Security Agreement and the other Loan Documents shall remain unchanged and in full force and effect and are hereby ratified and confirmed in all respects. The Lender’s and Agent’s execution and delivery of, or acceptance of, this Amendment shall not be deemed to create a course of dealing or otherwise create any express or implied duty by any of them to provide any other or further amendments, consents or waivers in the future. Each Borrower hereby reaffirms the grant of security under Section 3.1 of the Loan and Security Agreement (including but not limited to the pledge of all shares and equity interests required under Sections 3.1 and 3.2 of the Loan and Security Agreement) and hereby reaffirms that such grant of security in the Collateral (including but not limited to the pledge of all shares and equity interests required under Sections 3.1 and 3.2 of the Loan and Security Agreement) secures all Secured Obligations under the Loan and Security Agreement and the other Loan Documents, and each Borrower hereby grants a security interest and lien in the shares of Fuel Cell Energy EU, B.V. to secure the Secured Obligations under the Loan Documents, in each case subject to the terms of Sections 3.1 and 3.2 of the Loan and Security Agreement.

(b) **Conditions** . For purposes of determining compliance with the conditions specified in Section 3, each Lender that has signed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless Agent shall have received notice from such Lender prior to the Amendment Effective Date specifying its objection thereto.

(c) **Release** . In consideration of the agreements of Agent and each Lender contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Borrower, on behalf of itself and its successors, assigns, and other legal representatives, hereby fully, absolutely, unconditionally and irrevocably releases, remises and forever discharges Agent and each Lender, and its successors and assigns, and its present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees, agents and other representatives (Agent, Lenders and all such other persons being hereinafter referred to collectively as the “ **Releasees** ” and individually as a “ **Releasee** ”), of and from all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any and all other claims, counterclaims, defenses, rights of set-off, demands and liabilities whatsoever of every name and nature, known or unknown, suspected or unsuspected, both at law and in equity, which any Borrower, or any of its successors, assigns, or other legal representatives may now or hereafter own, hold, have or claim to have against the Releasees or any of them for, upon, or by reason of any circumstance, action, cause or thing whatsoever which arises at any time on or prior to the day and date of this Amendment, including, without limitation, for or on account of, or in relation to, or in any way in connection with the Loan Agreement, or any of the other Loan Documents or transactions thereunder or related thereto. Each Borrower understands, acknowledges and agrees that the release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release. Each Borrower agrees that no fact, event, circumstance, evidence or transaction which could now be asserted or which may hereafter be discovered shall affect in any manner the final, absolute and unconditional nature of the release set forth above. Borrower waives the provisions of California Civil Code section 1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

(d) **No Reliance** . Each Borrower hereby acknowledges and confirms to Agent and the Lender that such Borrower is executing this Amendment on the basis of its own investigation and for its own reasons without reliance upon any agreement, representation, understanding or communication by or on behalf of any other Person.

(e) **Costs and Expenses** . Each Borrower agrees to pay to Agent on the Amendment Effective Date the out-of-pocket costs and expenses of Agent and the Lenders party hereto, and the fees and disbursements of counsel to Agent and the Lenders party hereto (including allocated costs of internal counsel), in connection with the negotiation, preparation, execution and delivery of this Amendment and any other documents to be delivered in connection herewith on the Amendment Effective Date or after such date.

(f) **Binding Effect** . This Amendment binds and is for the benefit of the successors and permitted assigns of each party.

(g) **Governing Law**. This Agreement and the other Loan Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding conflict of laws principles that would cause the application of laws of any other jurisdiction.

(h) **Complete Agreement; Amendments** . This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements with respect to such subject matter. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

(i) **Severability of Provisions**. Each provision of this Amendment is severable from every other provision in determining the enforceability of any provision.

(j) **Counterparts** . This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Amendment. Delivery of an executed counterpart of a signature page of this Amendment by facsimile, portable document format (.pdf) or other electronic transmission will be as effective as delivery of a manually executed counterpart hereof.

(k) **Loan Documents** . This Amendment shall constitute a Loan Document.

[Balance of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment, as of the date first above written.

BORROWERS:

FUELCELL ENERGY, INC.

Signature: /s/ Michael S. Bishop

Print Name: Michael S. Bishop

Title: Sr. Vice President, Chief Financial Officer

VERSA POWER SYSTEMS, INC.

Signature: /s/ Michael S. Bishop

Print Name: Michael S. Bishop

Title: Sr. Vice President, Chief Financial Officer

VERSA POWER SYSTEMS LTD.

Signature: /s/ Michael S. Bishop

Print Name: Michael S. Bishop

Title: Sr. Vice President, Chief Financial Officer

[Signature Page to Fith Amendment to Loan and Security Agreement]

AGENT:

HERCULES CAPITAL, INC.

Signature: /s/ Jennifer Choe

Print Name: Jennifer Choe

Title: Assistant General Counsel

LENDER:

HERCULES FUNDING II, LLC

Signature: /s/ Jennifer Choe

Print Name: Jennifer Choe

Title: Assistant General Counsel

[Signature Page to Fifth Amendment to Loan and Security Agreement]

SCHEDULE 1

Subsidiaries

1. Versa Power Systems, Inc., a Delaware corporation.
 2. Versa Power Systems, Ltd., a corporation organized under the laws of Alberta, Canada.
 3. FuelCell Energy Finance, LLC, a Connecticut limited liability company.
 4. FCE FuelCell Energy Ltd., a corporation organized under the laws of British Columbia, Canada.
 5. FCE Korea Ltd., a corporation organized under the laws of the Republic of Korea.
 6. FuelCell Energy Solutions GmbH, a corporation organized under the laws of Germany.
 7. FuelCell Energy EU B.V., a corporation organized under the laws of the Netherlands.
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SCHEDULE 1A

Current Indebtedness

1. Loan Agreement, dated April 29, 2008, by and between FUELCELL ENERGY, INC. and THE CONNECTICUT DEVELOPMENT AUTHORITY.
 2. Loan Agreement, dated March 5, 2013, by and between FuelCell Energy, Inc. and the Clean Energy Finance and Investment Authority.
 3. Assistance Agreement by and between the STATE OF CONNECTICUT Acting by the DEPARTMEBT OF ECONOMIC AND COMMUNITY DEVELOPMENT and FUELCELL ENERGY, INC. dated October 19, 2015 regarding a Phase I Loan and Phase 2 Loan to be made to Borrower with regard to the FuelCell Energy Expansion Project, as defined therein.
 4. Loan Agreement, dated July 30, 2014, by and between FUELCELL ENERGY FINANCE, LLC, a Connecticut limited liability company and NRG Energy, Inc., a Delaware corporation.
 5. Amended and Restated Lease Agreement, dated as of December 23, 2015, between PNC Energy Capital, LLC a Delaware limited liability company and UCI Fuel Cell, LLC a Delaware limited liability company.
 6. Guaranty, dated as of July 30, 2014 by FUELCELL ENERGY, INC. in favor of NRG ENERGY, INC.
 7. Master Guaranty Agreement, dated December 11, 2015 by FuelCell Energy, Inc. in favor of PNC Energy Capital LLC.
 8. Guaranty, dated April 28, 2014 by FuelCell Energy, Inc. for the benefit of the University of Bridgeport.
 9. Guaranty, dated October 13, 2015 by FuelCell Energy, Inc. for the benefit of the County of Alameda.
 10. Parent Guarantee, dated November 23, 2015 by FuelCell Energy, Inc. for the benefit of Pfizer Inc.
 11. Lease Guaranty, dated July 21, 2016 by FuelCell Energy, Inc. for the benefit of J.A.R. Associates.
 12. Guarantee, dated August 29, 2016, by FuelCell Energy, Inc. in favor of City of Riverside.
 13. Guaranty, dated May 18, 2017, by FuelCell Energy, Inc. in favor of the Trustees of Trinity College, Inc.
 14. Guaranty, dated October 18, 2017, by FuelCell Energy, Inc. in favor of the Connecticut Municipal Electric Energy Cooperative.
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15. Payment and Performance Guaranty, dated November 27, 2017, by FuelCell Energy, Inc. in favor of Toyota Motor North America, Inc.
 16. Irrevocable Standby Letter of Credit No. CTCS-285954, dated April 25, 2012, in favor of BIOFUELS FUEL CELL, LLC and U.S. BANKCORP COMMUNITY DEVELOPMENT CORPORATION and the BANK OF NEW YORK MELLON for the account of FUELCELL ENERGY, INC. for an amount of \$4,800,000.
 17. Irrevocable Letter of Credit No. CTCS-767201, dated November 8, 2013 in favor of CIGNA HEALTH AND LIFE INSURANCE COMPANY for the account of FUELCELL ENERGY, INC. for the amount of \$750,000.
 18. Standby Letter of Credit No. TTTS-700624 as amended by Amendment No. 1 dated May 24, 2013, in favor of THE TRAVELERS INDEMNITY COMPANY for the account of FUELCELL ENERGY, INC. for the amount of \$100,000.
 19. Irrevocable Standby Letter of Credit No. CTCS-874167, dated January 16, 2015, in favor of UIL DISTRIBUTED RESOURCES, LLC for the account of FUELCELL ENERGY, INC. for the amount of \$1,000,000.
 20. Irrevocable Standby Letter of Credit No. CTCS-840261, dated December 2, 2014, in favor if THE UNITED ILLUMINATING COMPANY, for the account of FUELCELL ENERGY, INC. for the amount of \$518,736.
 21. Irrevocable Standby Letter of Credit No. CTCS-840219, dated December 2, 2014, in favor of THE UNITED ILLUMINATING COMPANY, for the account of FUELCELL ENERGY, INC. for the amount of \$523,636.
 22. Standby Letter of Credit No. CTCS-809963 as amended by Amendment No. 3 dated November 18, 2014, in favor of ZURICH AMERICAN INSURANCE COMPANY, for the account of FUELCELL ENERGY, INC. for the amount of \$1,200,000.
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SCHEDULE 5.14

Capitalization

Common stock (\$0.0001 par value). There are 225,000,000 shares authorized as of December 03, 2018. There are 98,912,230 shares issued and outstanding as of December 03, 2018.

Preferred Stock. The Company has 250,000 shares of Preferred Stock authorized for issuance.

At December 03, 2018, there are 64,020 shares of our 5% Series B Cumulative Convertible Perpetual Preferred Stock (Liquidation Preference \$1,000) Series B Preferred Stock issued and outstanding.

As of December 03, 2018, there were 7,917 shares of Series C Preferred Stock issued and outstanding.

As of December 03, 2018, there were 29,690 shares of Series D Preferred Stock issued and outstanding.

Subsidiaries:

1. Versa Power Systems, Inc., a Delaware corporation.
 2. Versa Power Systems, Ltd., a corporation organized under the laws of Alberta, Canada.
 3. FuelCell Energy Finance, LLC, a Connecticut limited liability company.
 4. FCE FuelCell Energy, Ltd. a corporation organized under the laws of British Columbia, Canada.
 5. FCE Korea Ltd., a corporation organized under the laws of the Republic of Korea.
 6. FuelCell Energy Solutions, GmbH, a corporation organized under the laws of Germany.
 7. FuelCell Energy EU, B.V., a corporation organized under the laws of the Netherlands.
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SCHEDULE AC

Permitted Shell Subsidiaries

None.

SCHEDULE AD

Project Companies

1. UCI Fuel Cell, LLC, a Delaware limited liability company.
 2. Riverside Fuel Cell, LLC, a Delaware limited liability company.
 3. Yaphank Fuel Cell Park, LLC, a New York limited liability company.
 4. CR Fuel Cell, LLC, a New York limited liability company.
 5. Montville Fuel Cell Park, LLC, Connecticut limited liability company.
 6. Eastern Connecticut Fuel Cell Properties, LLC, a Connecticut limited liability company.
 7. SRJFC, LLC, a Delaware limited liability company.
 8. Farmingdale Fuel Cell, LLC, a New York limited liability company.
 9. BRT Fuel Cell, LLC, a New York limited liability company.
 10. Bakersfield Fuel Cell 1, LLC, a Delaware limited liability company.
 11. Groton Fuel Cell 1, LLC, a Connecticut limited liability company.
 12. Groton Station Fuel Cell, LLC, a Connecticut limited liability company.
 13. Long Beach Trigen, LLC, a Delaware limited liability company.
 14. Central CA Fuel Cell 2, LLC, a Delaware limited liability company.
 15. New Britain Renewable Energy, LLC, a Delaware limited liability company.
 16. Central CT Fuel Cell 1, LLC, a Connecticut limited liability company.
 17. TRS Fuel Cell, LLC, a Connecticut limited liability company.
 18. Derby Fuel Cell, LLC, a Connecticut limited liability company.
 19. Homestead Fuel Cell 1, LLC, a Connecticut limited liability company.
 20. FuelCell Energy, Finance II, LLC, a Connecticut limited liability company.
 21. DFC ERG CT, LLC, a Connecticut limited liability company.
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FOR IMMEDIATE RELEASE

**FuelCell Energy Announces New \$100+ Million Construction Loan
Facility with Generate Capital**

DANBURY, CT -- December 26, 2018- FuelCell Energy, Inc. (Nasdaq: FCEL), a global leader in delivering clean, innovative and affordable fuel cell solutions for the supply, recovery and storage of energy, today announced the signing of a project finance facility with a recognized leader in sustainable infrastructure investing, Generate Capital. The facility will be used by FuelCell Energy to finance the construction, installation and commissioning of the Company's current and future project backlog and awards.

Under the terms of the agreement, FuelCell Energy will submit projects to Generate Capital over a 36-month period. Once an individual project is funded, the construction loan will remain outstanding until the project becomes commercially operational. The facility structure provides for aggregate principal commitments up to \$100 million, with accordion features enabling expansions up to \$300 million, if certain performance criteria are met, subject to funding availability.

The initial draw amount under this facility, funded at closing, is \$10 million. The initial draw reflects loan advances for the first approved project under the facility, the Bolthouse Farms five-megawatt project in California. Additional drawdowns are expected to take place as FuelCell Energy completes certain project milestones. The Company expects to use this project finance facility to fund the construction of its utility-scale backlog, including the three projects totaling 39.8 MW with PSEG Long Island (LIPA) and the two projects awarded pursuant to the Connecticut DEEP RFP, totaling 22.2 MW.

"We are pleased to announce the closure of this project finance facility. This facility establishes a clear pathway to execute and build out our project backlog," commented Chip Bottone, FuelCell Energy's President and Chief Executive Officer. "Importantly, this facility can be used for multiple projects, streamlining the time-consuming process of financing and asset deployment. With available capital for much of our backlog now put in place, we can concentrate on project execution and implementation of our growth strategy for our fuel cell solutions."

Jigar Shah, President and Co-Founder of Generate Capital said, "We are excited to be able to work with FuelCell Energy as they undertake the deployment of their megawatt-scale clean distributed energy solutions. Our unique approach to partnering and financing distributed energy infrastructure is perfect for innovative companies like FuelCell Energy, who need to find capital partners that understand and support their pathway to success"

FuelCell Energy and Generate Capital will work collaboratively to source additional capital for long-term ownership upon achievement of commercial operations. The long-duration of project cash flows, high-quality nature of utility off-takers, and the continuous generation profile of the projects make them attractive to all project stakeholders – including customers and investors.

Forward Looking Statement

This news release contains forward-looking statements within the meaning of the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, including, without limitation, statements with respect to the Company's anticipated financial results and statements regarding the Company's plans and expectations regarding the continuing development, commercialization and financing of its fuel cell technology and business plans. All forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those projected. Factors that could cause such a difference include, without limitation, changes to projected deliveries and order flow, changes to production rate and product costs, general risks associated with product development, manufacturing, changes in the regulatory environment, customer strategies, unanticipated manufacturing issues that impact power plant performance, changes in critical accounting policies, potential volatility of energy prices, rapid technological change, competition, and the Company's ability to achieve its sales plans and cost reduction targets, as well as other risks set forth in the Company's filings with the Securities and Exchange Commission. The forward-looking statements contained herein speak only as of the date of this press release. The Company expressly disclaims any obligation or undertaking to release publicly any updates or revisions to any such statement to reflect any change in the Company's expectations or any change in events, conditions or circumstances on which any such statement is based.

About FuelCell Energy

FuelCell Energy, Inc. (NASDAQ: FCEL) delivers efficient, affordable and clean solutions for the supply, recovery and storage of energy. We design, manufacture, undertake project development of, install, operate and maintain megawatt-scale fuel cell systems, serving utilities and industrial and large municipal power users with solutions that include both utility-scale and on-site power generation, carbon capture, local hydrogen production for transportation and industry, and long duration energy storage. With SureSource™ installations on three continents and millions of megawatt hours of ultra-clean power produced, FuelCell Energy is a global leader in designing, manufacturing, installing, operating and maintaining environmentally responsible fuel cell power solutions. Visit us online at www.fuelcellenergy.com and follow us on Twitter [@FuelCell_Energy](https://twitter.com/FuelCell_Energy).

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