

Jim,

My staff and I have had an opportunity to review your black-lined response to our first draft of the Asset Purchase Agreement (“Agreement”). First, let me say that I was tempted to call you and discuss the changes. Upon some reflection, given the high profile of this potential agreement I think its best to reduce my responses to writing and carefully lay out our future path.

GRU’s draft of the Asset Purchase Agreement was built on commercially reasonable terms with representations and warranties necessary to support the \$ 750 million purchase price. Unfortunately, GREC’s response is a document built for a much lower price point. Let me explain:

- Right out of the gate, in the definitions section, GREC seeks to narrowly define Fraud and excludes willful misconduct. This increases GRU’s risk over what would be acceptable in a commercially reasonable transaction.
- GREC creatively develops a term, “Excused Breach” which seeks to distinguish a breach from a breach somehow caused by the other party’s actions. This increases GRU’s risk over what would be acceptable in a commercially reasonable transaction.
- GREC seeks to exclude technical data, designs and specifications relating to the Project, including engineering designs and as-built plans from the Intellectual Property (“IP”) GRU is purchasing and instead licensing the Excluded IP back to us. I have never seen the seller of a power project seek to exclude the IP of the plant from a buyer. Probably because the buyer is buying the IP and it belongs to them upon closing. This increases GRU’s risk and possibly cost over what would be acceptable in a commercially reasonable transaction.
- GREC seeks to define a series of Permitted Actions, which include selling off spare parts, inventory and other personal property in the ordinary course of business. This would allow GREC to use spare parts and simply elect to forego replacing these spare parts, effectively increasing the ultimate purchase price to GRU. This increases GRU’s risk and possibly cost over what would be acceptable in a commercially reasonable transaction.
- GREC is seeking to exclude the its obligation to submit mechanic lien releases under the Conditions Precedent section of the Agreement, for reasons unclear to anyone within GRU or our attorney’s. This increases GRU’s risk and possibly cost over what would be acceptable in a commercially reasonable transaction.
- GREC is seeking to modify the No Proceeding or Litigation language under the Conditions Precedent section to simply “injunctions”, which is quite different language which begs the question why? This increases GRU’s risk and possibly cost over what would be acceptable in a commercially reasonable transaction.
- GREC is seeking to modify the Environmental Matters representation and warranties language to issues of “the Seller’s knowledge”. Aside from the fact that this diluted language is not in concert with

Dear Ed --

I appreciate your taking the time to provide your thoughts on our markup of your initial draft of the asset purchase agreement. While we agreed to your providing the first draft of the agreement, of course you understand that in any transaction each side will have input to ensure that all the terms are reasonable and acceptable to both parties.

With respect to timing: I appreciate that you have a number of timing and procedural constraints on your side. Please understand that I also have numerous stakeholders and hurdles on mine. In addition, our ability to respond expeditiously with a markup was hindered as we awaited the outcome of City Commission votes regarding whether the City would honor the terms we negotiated and memorialized in the MOU.

Fortunately, in reviewing your comments, our sense is that we are actually not very far apart at all. Of the fifteen points you raise, it appears to us that at least four are simple misunderstandings regarding our intent and/or the impact of the changes. For another seven we understand your concerns and either are willing to accept your proposed language or strongly believe we can agree on compromise language. I have pasted below some more detailed responses to each of your points for your review and consideration.

Ed, at this point to move this transaction forward I believe it would be most productive for us to have a meeting, with our respective attorneys, to better understand each other's concerns and positions, agree on acceptable language and finalize the agreement. Given what appear to be the limited issues that remain open, we believe we can come to closure quickly. We would be willing to meet at Winston's offices at your earliest convenience.

Sincerely,

Jim

+++

Below in blue are some more detailed thoughts on the feedback you provided in your email.

- Right out of the gate, in the definitions section, GREC seeks to narrowly define Fraud and excludes willful misconduct.
Upon further consideration, we are willing to add back references to willful misconduct.
- GREC creatively develops a term, "Excused Breach" which seeks to distinguish a breach from a breach somehow caused by the other party's actions
The Excused Breach language follows from some unusual aspects of this transaction. The City of Gainesville (and the City d/b/a GRU) is GREC's sole customer and therefore is able to exercise significant power over GREC. In addition, the City of Gainesville also exercises significant power over GREC due to its zoning, regulatory and other municipal powers. As such, the City of Gainesville, including through its utility arm GRU, is in a unique position to impact GREC's ability to meet its obligations, and GREC should not be held liable under the asset purchase agreement

for acts taken by the City of Gainesville to prevent GREC from meeting its obligations under the asset purchase agreement.

- GREC seeks to exclude technical data, designs and specifications relating to the Project, including engineering designs and as-built plans from the Intellectual Property (“IP”) GRU is purchasing and instead licensing the Excluded IP back to us. I have never seen the seller of a power project seek to exclude the IP of the plant from a buyer. Probably because the buyer is buying the IP and it belongs to them upon closing.

The thought here was that GREC would have the rights to certain IP should it choose to develop a similar facility elsewhere at some point in the future. We did not think this would be an issue for GRU as the language we included in the markup of the asset purchase agreement provided GRU with ownership or a license to all rights needed to own and operate the facility. If you would prefer, we would be willing to instead provide that such IP rights be transferred to GRU, with GRU providing GREC and its affiliated parties with a license back to such IP rights that enables them to develop, own and operate similar facilities anywhere in the world.

- GREC seeks to define a series of Permitted Actions, which include selling off spare parts, inventory and other personal property in the ordinary course of business. This would allow GREC to use spare parts and simply elect to forego replacing these spare parts, effectively increasing the ultimate purchase price to GRU.

Again, we did not think this would be an issue, as it is typical for sellers to have the right to operate businesses in the ordinary course during the periods between signing and closing. We can add further clarification to this language that GREC would hold, utilize and replenish spare parts during the interim period in the ordinary course of business consistent with past practice.

- GREC is seeking to exclude its obligation to submit mechanic lien releases under the Conditions Precedent section of the Agreement, for reasons unclear to anyone within GRU or our attorneys.

We understand and agree with your concern. We are confident that we can agree on compromise language that provides that GRU would not be obligated to close over any mechanic liens that are not bonded over or otherwise insured against.

- GREC is seeking to modify the No Proceeding or Litigation language under the Conditions Precedent section to simply “injunctions”, which is quite different language which begs the question why?

In an asset (as distinguished from an entity) sale where the Buyer is structurally insulated from Seller liabilities the Buyer has not assumed and where all necessary Governmental Approvals remain in effect, we think it in the mutual interest of both parties to set the “bar” appropriately high for any failure of a condition precedent related to third party litigation. We look forward to discussing this with you further.

- GREC is seeking to modify the Environmental Matters representation and warranties language to issues of “the Seller’s knowledge”. Aside from the fact that this diluted language is not in concert with environmental law, it also comes with limitations of materiality and a one year look-back. We understand your concern, are happy to discuss the proposed knowledge

qualifier, and believe that we can come to agreement on specific language when we meet to discuss the asset purchase agreement.

- GREC seeks to remove the representation and warranty of “no defects”, in which GREC represents, “to Seller’s Knowledge, there are no operational deficiencies or defects that are materially detrimental to the operation of the Project in a normal manner or that would otherwise have a Material Adverse Effect”. In a previous call with you and both Chadbourne and Park and Winston and Strawn I said unequivocally (and four times) that this representation is not negotiable.

We believe this representation is inconsistent with spirit of the "as is, where is" discussions we've had multiple times in the past and which formed the basis of this transaction. You will have an independent engineer review the condition of the facility, and only sign the asset purchase agreement if you are happy with the condition of the facility. During our recent outage we invited GRU to inspect the inside of the boiler, and the GRU representatives present indicated their strong belief that the facility was in excellent condition. As you yourself have noted during numerous recent City Commission and UAB meetings, the facility is in excellent condition and has successfully operated at full capacity whenever asked to perform a capacity test. Nonetheless, we would be glad to discuss additional ways to allow you to become even more comfortable with the condition of the asset.

- GREC is seeking to add a concept of the remaining receivable as of closing to be an additional purchase price. This is clearly GREC taking advantage of the tax law and trying to convert operating income into capital gains.

We believe there has been a misunderstanding on this point. There is no tax law issue or motivation for GREC here. Depending on the timing of closing, at closing GRU could owe GREC for up to two months’ worth of products delivered. Our thought was that the amounts owed to GREC by GRU would simply be paid to GREC as part of the closing of the acquisition, so that nothing further would be owed by GRU after the closing. We would not expect this to be problematic for GRU. We're happy to consider alternative language that makes clear this payment of amounts due to GREC would happen at the time of the closing.

- GREC seeks to remove Section 6.2 (ii) in which the Seller covenants not to enter into a Contract with any person that will be an Assigned Contract.

We believe there has been a misunderstanding on this point. Under the asset purchase agreement Assigned Contracts are only those listed on a schedule. Any other contracts entered into by GREC would be retained by GREC and would not impose any obligation upon GRU without its consent. GREC needs to be able to operate the business during the pre-closing period, including entering into agreements as necessary with its vendors. None of these agreements would be binding upon GRU except to the extent it agrees to an assignment and assumption of same. We would not expect this to be problematic for GRU and the language can be clarified.

- GREC seeks to remove its obligation to maintain insurance in full force and effect through closing.

We believe there has been a misunderstanding on this point. We removed this obligation because it is duplicative of another similar obligation in the purchase agreement -- see Section

6.2(a)(iv). We fully intend to maintain insurance coverage in keeping with our requirements under the PPA and with section 6.2(a)(iv) of the purchase agreement.

- GREC seeks to modify the concept of Seller updating of schedules to a voluntary exercise and compared to being based on the Seller's Knowledge as reasonably necessary.
We are willing to make updating schedules mandatory.
- GREC seeks to allow 1%, or \$ 7.5 million of funds to be escrowed. This is far below what is a commercially reasonable amount, given the scope and risk of this transaction.
We believe the escrow amount is reasonable given the nature of the transaction and that it is adequate to cover any foreseeable post-closing risks. We are happy to discuss your concerns on this point when we meet.
- GREC seeks to disallow GRU from terminating the Agreement based on 30 US Treasury Bonds rising beyond 3.43% before November 19, 2017. This effectively eliminates GRU's interest rate protection, because the last day the parties can close under the MOU is November 24, 2017 and since the interest rate protection is viewed 5 days before closing that makes the last date for a US Treasury Bond update on November 19, 2017. **My staff and I are totally mystified** by this modification to the Agreement.
We believe there has been another misunderstanding on this point. We had thought our change to the language made it consistent with the MOU, which provided GRU with a termination right if US Treasury rates increased beyond 3.43% on the date that is five days before the closing date. The MOU provided for the last possible closing date of November 24, 2017, so the November 19 date counted five days back from that. We did not intend that GRU's interest rate protection would be eliminated, but rather to have that interest rate protection be measured at one point in time, five days before closing, exactly as contemplated by the MOU.
- GREC seeks to change the legal venue to Miami-Dade County. Seriously, what is that about? It is customary for parties to agree to neutral venues to resolve disputes, particularly where one of the parties is a municipality. Our preference would be a jurisdiction such as New York or Delaware, but we offered Miami-Dade as a compromise given its location in Florida.

ASSET PURCHASE AGREEMENT

by and between

GAINESVILLE RENEWABLE ENERGY CENTER, LLC,
as Seller

and

CITY OF GAINESVILLE, FLORIDA
d/b/a GAINESVILLE REGIONAL UTILITIES,
as Buyer

Dated as of [____], 2017

CITY APPROVAL PROCESS AND CONTINGENCY. This Agreement is subject to review and input by the Gainesville Utility Advisory Board and review, input and approval by the Gainesville City Commission. This Agreement is contingent upon, and will not become effective and binding on the Buyer until, approval by the Gainesville City Commission.

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THIS ASSET PURCHASE AGREEMENT (this *Agreement*), dated as of [____], 2017 (the *Agreement Date*), is made and entered into by and between **GAINESVILLE RENEWABLE ENERGY CENTER, LLC**, a Delaware limited liability company (*Seller*), and **CITY OF GAINESVILLE, FLORIDA.**, a municipal corporation, d/b/a Gainesville Regional Utilities (*Buyer*). Seller and Buyer each are referred to herein individually as a *Party* and collectively as the *Parties*.

RECITALS

WHEREAS, Seller is the direct owner of the Project (as defined herein) and is engaged in the business of owning and operating the Project (as so defined) for the generation and sale of electric power (the *Business*); and

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Project, on and subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements in this Agreement and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.1 Defined Terms. Capitalized terms used in this Agreement (including in the recitals hereto) without other definition shall have the following meanings:

Affiliate means, with respect to a Person, any other Person that, directly or indirectly through one or more intermediaries, Controls, is Controlled by or is under common Control with such first Person.

Agreement has the meaning given in the preamble to this Agreement.

Agreement Date has the meaning given in the preamble to this Agreement.

Assigned Contracts has the meaning given in Section 2.1(a)(ii).

Assumed Liabilities has the meaning given in Section 2.1(c).

Base Purchase Price has the meaning given in Section 2.2.

Bill of Sale and Assignment Agreement has the meaning given in Section 3.2(a)(i).

Books and Records has the meaning given in Section 2.1(a)(vii).

Business has the meaning given in the recitals to this Agreement.

Business Day means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York or Gainesville, Florida are required or authorized by Law to close.

Buyer has the meaning given in the preamble to this Agreement.

Buyer Fundamental Representations means, collectively, the representations and warranties of Buyer set forth in Section 5.1(b).

Buyer Surviving Representations means, collectively, the representations and warranties of Buyer set forth in Section 5.1(b), Section 5.1(e) and Section 5.1(f).

Buyer's Knowledge means the actual knowledge of the persons set forth for Buyer on Schedule 1.1(A), it being understood that none of the individuals set forth on such Schedule shall have any individual or personal liability with respect to any matter to which such knowledge applies.

Cash Grant means a cash grant awarded pursuant to the terms of the Cash Grant Program.

Cash Grant Program means the Payments for Specified Energy Property in Lieu of Tax Credits program established pursuant to Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) and administered by the U.S. Department of Treasury.

Casualty Loss has the meaning given in Section 6.2(b)(i).

Charter Documents means, with respect to any Person, all charter, organizational and other documents by which such Person (other than an individual) establishes its legal existence or which govern its internal affairs, and shall include: (a) in respect of a corporation, its certificate or articles of incorporation or association and/or its by-laws; (b) in respect of a partnership, its certificate of partnership and its partnership agreement; and (c) in respect of a limited liability company, its certificate of formation and operating or limited liability company agreement.

Claim means any claim, audit, examination, demand, lawsuit, proceeding, arbitration or governmental investigation.

Closing has the meaning given in Section 3.1.

Closing Actions has the meaning given in Section 3.2.

Closing Date has the meaning given in Section 3.1.

Code means the Internal Revenue Code of 1986.

Condemnation Event has the meaning given in Section 6.2(c)(i).

Condemnation Value has the meaning given in Section 6.2(c)(i).

Contract means any agreement, contract, lease, consensual obligation, promissory note, evidence of indebtedness, purchase order, letter of credit, license, promise or undertaking of any nature (whether written or oral and whether express or implied), including, letters of intent, executed term sheets, and similar evidences of an agreement in principle.

Control means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by Contract or otherwise.

[**Data Site** means the online presentation of materials prepared by or for Seller posted in the [_____] virtual data room, including the documents, Q&A and other data, as well as the documents otherwise made available to Buyer to the extent included on any index included in such virtual data room.]

Deductible Amount has the meaning given in Section 7.2(b).

Dollars and **\$** mean United States dollars.

Environmental Approvals means authorizations, approvals, consents, licenses, permits, certifications, exemptions or registrations issued pursuant to an Environmental Rule.

Environmental Claim means any and all administrative or judicial actions, suits, pending claims, written notices, or legal proceedings, whether criminal or civil, relating to the Project based upon, alleging, asserting, or claiming any actual or potential (a) violation of any Environmental Rule, (b) violation of any Environmental Approval or (c) liability under any Environmental Rule for investigatory costs, cleanup costs, removal costs, remedial costs, response costs, natural resource damages, property damage, personal injury, fines, or penalties arising out of, based on, resulting from, or related to the presence, release, or threatened release into the environment, of any Hazardous Material.

Environmental Rule means any applicable federal, state, municipal or local law, statute, rule, regulation, ordinance, code, judgment, decree or decision duly implementing any of the foregoing by any Governmental Person relating to (a) the protection of the air, water, land or natural resources or (b) the generation, use, handling, treatment, storage, disposal and transportation of Hazardous Materials.

Excluded Assets has the meaning given in Section 2.1(b).

Excluded Liabilities has the meaning given in Section 2.1(d).

Expiration Date has the meaning given in Section 8.1(b).

FERC means the Federal Energy Regulatory Commission or its successor Governmental Authority.

Fuel Price Adjustment has the meaning given in Section 2.3.

GAAP means generally accepted accounting principles as in effect from time to time in the United States of America.

Governmental Approval means any authorization, approval, consent, license, ruling, permit, tariff, certification, exemption, order, recognition, grant, confirmation, clearance, filing or registration by or with any Governmental Person.

Governmental Person means any federal, national, regional, state, municipal or local government, any political subdivision or any governmental, judicial, public or statutory instrumentality, tribunal, court, agency, authority, body or entity, or other regulatory bureau, authority, body or entity having legal jurisdiction over the matter or Person in question.

Governmental Rule means any applicable federal, national, regional, state, municipal or local law, statute, treaty, rule, regulation, ordinance, order, code, judgment, decree, directive, injunction, writ or similar action or decision duly implementing any of the foregoing by any Governmental Person, other than Environmental Rules and Governmental Approvals.

Hazardous Materials means any substance, waste, contaminant, constituent or material that is listed, defined, designated, classified or regulated as hazardous, radioactive or toxic, or as a pollutant or contaminant, under or pursuant to any Environmental Rule or Environmental Approval.

Indemnified Group has the meaning given in Section 7.1.

Indemnified Party has the meaning given in Section 7.1.

Indemnitor has the meaning given in Section 7.1.

Intellectual Property means all intellectual property and proprietary rights of Seller utilized primarily in the operation of the Project, including (a) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all provisionals, reissuances, continuations, continuations-in-part, divisions, revisions, extensions and reexaminations thereof, (b) all Trademarks, (c) all works of authorship and other copyrightable works, all copyrights, any and all website content, and all applications, registrations and renewals in connection therewith, and (d) to the extent Seller possess or can readily obtain the same, any technical data, designs, drawings, specifications and test information.

Inventory has the meaning given in Section 2.1(a)(i).

IT Assets means all computers, software, servers, workstations, associated data, routers, hubs, switches, circuits, networks, data communications lines and all other information technology equipment owned by Seller and, in each case, utilized primarily in the operation of the Project.

Law means all (a) Governmental Approvals (other than Environmental Approvals and Environmental Rules) and (b) Governmental Rules.

Leased Tangible Personal Property has the meaning given in Section 2.1(a)(iv).

Lien means any mortgage, pledge, lien, charge, claim, option, equitable interest, security interest, third-party right, assignment, hypothecation, encumbrance, conditional sale or other title retention agreement.

Loss means the amount of (a) any out of pocket loss, cost, expense, damage or liability, including interest, fines, reasonable legal and accounting fees and expenses, reduced by (b) any amounts receivable by the Indemnified Parties as a result of any recovery, settlement, or otherwise under or pursuant to any insurance coverage, or pursuant to any Claim, recovery, settlement, or payment by or against any other Person in connection with the circumstances giving rise to such Loss.

Made Available means, with respect to documents and materials, that such documents or materials have been posted to the Data Site or otherwise delivered to Buyer or its Representatives by Seller or its Representatives not less than five (5) Business Days prior to the Agreement Date.

Material Adverse Effect means any condition, circumstance, event or change which causes a material adverse change from and after the Agreement Date in the Purchased Assets or the ownership or operation of the Project, in each case taken as a whole, or on the ability of Seller to perform its obligations under the Transaction Documents, except: (a) any event or condition resulting from or relating to changes or developments in Laws, Environmental Rules or Environmental Approvals or the economy, financial markets or commodity markets; (b) any changes in any GAAP or regulatory accounting requirements of general applicability or changes in the interpretation thereof; (c) changes in international, national, regional, state or local wholesale or retail markets for energy, capacity, power transmission, fuel supply or transportation or related products, including those due to actions by competitors; (d) any event or condition generally applicable to the electric generating, transmission or distribution industries, whether international, national, regional or local; (e) any order or act of a Governmental Person affecting providers or users of generation, transmission or distribution of electricity generally, that imposes restrictions, regulations or other requirements thereon; (f) changes in general regulatory or political conditions, including any acts of war, civil unrest or terrorist activities; (g) changes in regional electric transmission or distribution systems including the operation or condition thereof; (h) strikes, work stoppages or other labor disputes extending for not more than six months; (i) changes in the costs of commodities, services, equipment, materials or supplies, including fuel and other consumables, or changes in the price of energy, capacity or ancillary services; (j) changes or adverse conditions in the securities markets generally, including those relating to debt financing, interest rates or currency exchange rates; (k) any effect, occurrence, development, or condition which is cured in all material respects (including by the payment of money) before the earlier of the Closing Date or the termination of this Agreement; (l) any change, financial or otherwise, to the business, affairs or operation of Buyer or any of its Affiliates; (m) any Casualty Loss or Condemnation Event, the effects of which shall be governed by Section 6.2(b) and Section 6.2(c); (n) any event or condition attributable to the execution or delivery of this Agreement or the announcement or pendency of the transactions contemplated herein, or resulting from or relating to compliance with the terms hereof; provided that the exclusions in clauses (a) and (e) above shall not apply to the extent that the change, order or act

referred to therein disproportionately affects the Purchased Assets relative to other power plants that are comparable to the Project in terms of size, fuel type and general geographic region.

Material Contract means any Contract relating to the Business to which a Seller is a party (a) that relates to the sale or distribution of energy, capacity or ancillary services; (b) that relates to any interconnection or transmission; (c) that relates to the purchase or transportation of fuel; (d) that relates to any real property interests; or (e) as to which the expected annual cost of performing such Contract by Seller, or the annual revenue expected to be received under such Contract by Seller exceeds \$[500,000]; or (f) the non-performance or the absence of which would result in a Material Adverse Effect.

Minimum Fuel Requirement means the amount of fuel required to be maintained by Seller pursuant to Section 4.2 of the Power Purchase Agreement.

Owned Tangible Personal Property has the meaning given in Section 2.1(a)(iv).

Party or **Parties** has the meaning given in the preamble to this Agreement.

Payoff Amount has the meaning given in Section 3.3(j).

Pending Dispute means the American Arbitration Association Case No. 01-16-0000-8157 pending between Seller and Buyer.

Permitted Interim Actions means actions directly related to any of the matters listed on Schedule 1.1(B), each of which shall be taken on commercially reasonable terms.

Permitted Liens means (a) Liens for Taxes not yet due and payable or being contested in good faith by appropriate proceedings and for which amounts have been appropriately reserved in accordance with GAAP; (b) materialmen's, warehousemen's, workmen's, mechanic's, repairmen's, landlord's or other similar Liens arising in the ordinary course of business securing payments not yet due or payable or being contested in good faith by appropriate proceedings, and for which amounts have been appropriately reserved in accordance with GAAP or bonded over in accordance with applicable Law; provided that (i) any such Lien described in this clause (b), is or will be released at or prior to Closing and (ii) **Permitted Liens** shall not include any such Liens described in this clause (b) filed or asserted after Closing but related to work or services performed or materials delivered with respect to the Project prior to the Closing; and (c) Liens created by or arising by reason of this Agreement, the Assigned Contracts, or the Project Level Debt (provided that all such Liens created by or arising from the Project Level Debt shall be released on Closing).

Person means any individual, sole proprietorship, corporation, partnership, joint venture, limited partnership, limited liability company, trust, unincorporated association, institution, Governmental Person or any other entity.

Power Purchase Agreement means the Power Purchase Agreement for the Supply of Dependable Capacity, Energy and Environmental Attributes from a Biomass-Fired Production Facility between Seller and Buyer dated April 29, 2009, as amended.

Pre-Closing Period means the period commencing with the Agreement Date and ending upon the consummation of the Closing or termination of this Agreement in accordance with ARTICLE VIII.

Project means the approximate 102.5 MW biomass electricity generating facility that is owned by Seller, located in the City of Gainesville, Florida and known as the Gainesville Renewable Energy Center.

Project Level Debt means the debt described on Schedule 1.1(C).

Proprietary Rights has the meaning given in Section 4.2(d).

Purchase Price has the meaning given in Section 2.2.

Purchased Assets has the meaning given in Section 2.1(a).

Real Property means the real property described in Site Lease.

Representatives means each Party's respective officers, directors, employees, representatives, agents, attorneys or advisors.

Restoration Cost has the meaning given in Section 6.2(b)(i).

Retention Amount means an amount equal to \$7,428,899.98.

Schedule means any schedule to this Agreement.

Seller has the meaning given in the preamble to this Agreement.

Seller Fundamental Representations means, collectively, the representations and warranties of Seller set forth in, Section 4.1(b), and Section 4.2(a).

Seller Surviving Representations means, collectively, the representations and warranties of Seller set forth in Section 4.1(b), Section 4.1(e), Section 4.1(f), Section 4.2(a), Section 4.2(g), Section 4.2(h), Section 4.2(i) and Section 4.2(j).

Seller Guarantor means [_____].

Seller Guaranty means the Guaranty, dated as of the Agreement Date, by Seller Guarantor for the benefit of Buyer, in the form attached hereto as Exhibit C.¹

Seller's Knowledge means the actual knowledge of the persons set forth for Seller on Schedule 1.1(A), it being understood that none of the individuals set forth on such Schedule shall have any individual or personal liability with respect to any matter to which such knowledge applies.

¹ **Note:** In lieu of a Seller Guaranty, the parties can establish a security escrow at Closing in customary form in an amount equal to the percentage of the Base Purchase Price first set forth in Section 7.2(c) for a 12-month period.

Settlement and Release Agreement means the [_____] in the form attached hereto as Exhibit D.

Site Lease means [_____].

Tangible Personal Property has the meaning given in Section 2.1(a)(iv).

Tax or **Taxes** means all taxes, including all charges, fees, duties, levies or other assessments in the nature of taxes, imposed by any federal, state, local or foreign Taxing Authority, however levied or imposed, whether payable directly or by withholding, including net income, gross income, capital gains, gross receipts, net receipts, excise, sales, gain, use, license, custom duty, unemployment, capital stock, transfer, conveyance, franchise, payroll or other employment, withholding, social security, estimated, profit, gift, severance, value added, disability, occupation, stamp, goods and services, ad valorem, utility, utility users, registration, recording, premium, personal property, real property, unclaimed property, environmental (including Code Section 59A), alternative or add-on, windfall profits and other taxes, and shall include interest, penalties or additions attributable thereto or attributable to any failure to comply with any requirement regarding Tax Returns.

Tax Returns means any return, declaration, report, claim for refund, or information return or statement relating to Taxes filed with or required to be filed with a Taxing Authority or a third party, including any such document prepared on a consolidated, combined or unitary basis and also including any schedule or attachment thereto, and including any amendment thereof.

Taxing Authority means the United States Internal Revenue Service and any other Governmental Person responsible for administration of Taxes under the Laws of any jurisdiction.

Trademarks means all trademarks, service marks, trade names, trade dress, corporate names, company names, business names, Internet domain names, logos, certification marks, collective marks and other indicia of origin pertaining to the Project, together with all translations, adaptations, derivations and combinations thereof, all registrations, applications and renewals in connection therewith and all of the goodwill connected with the use of, and symbolized by any of, the foregoing.

Transaction Documents means, collectively, this Agreement, the Bill of Sale and Assignment Agreement, the Settlement and Release Agreement, the Seller Guaranty and all other agreements between the Parties or their Affiliates entered into pursuant to the terms hereof in order to carry out the Closing Actions and the other transactions contemplated hereby.

Transfer Taxes has the meaning given in Section 6.4(d).

Section 1.2 Interpretation. Except where otherwise expressly provided or unless the context otherwise necessarily requires, in this Agreement (including in the recitals hereto):

(a) Reference to a given Article, Section, clause, Exhibit or Schedule is a reference to an Article, Section, clause, Exhibit or Schedule of this Agreement, unless otherwise specified.

(b) The terms “hereof”, “herein”, “hereto”, “hereunder” and “herewith” refer to this Agreement as a whole.

(c) Reference to Contract, instrument, document or Law is a reference to that Contract, instrument, document or Law as modified, amended, supplemented or restated through the date as of which such reference is made, and, as to any Law, any successor Law.

(d) Unless otherwise specified, accounting and finance terms have the meanings given to them under GAAP.

(e) Reference to a Person includes its predecessors, successors and permitted assigns and, in the case of any Governmental Person, any Person succeeding to its respective function and capacities.

(f) The singular includes the plural and the masculine includes the feminine, and vice versa.

(g) “Includes” or “including” shall be deemed to be followed in each instance by the words “for example and without limitation.”

(h) References to “days” means calendar days.

(i) Any item disclosed by a Party on any Schedule to this Agreement shall be deemed to be disclosed and incorporated by reference into each other Schedule as though fully set forth therein to the extent the applicability of the disclosure to such other Schedules is reasonably apparent on the face of such disclosure.

(j) The inclusion of an item in the information Made Available to Buyer or in any Schedule to this Agreement, including any updating information provided in accordance with Section 6.2(f), shall not be deemed an indication or admission that such item is material to a Seller or the Business, or is required by this Agreement to be reflected therein (and such inclusion shall not be deemed to establish or be considered for purposes of establishing a standard of materiality or other disclosure threshold). Without limiting the foregoing, no such references to or disclosure of a possible breach or violation of any Contract or applicable Law shall be construed as an admission or indication that a breach or violation exists or has actually occurred.

ARTICLE II

SALE AND PURCHASE OF PURCHASED ASSETS; ASSUMPTION OF LIABILITIES; PURCHASE PRICE

Section 2.1 Sale and Purchase of Purchased Assets. Subject to the terms and conditions hereof, at the Closing:

(a) Purchased Assets. Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of all Liens other than

Permitted Liens, all of Seller's right, title and interest in, to and under all of the following assets, properties and rights of Seller (other than Excluded Assets) (collectively, the ***Purchased Assets***):

(i) all inventories of spare parts set forth on Schedule 2.1(a)(i), all other inventories of the Business, including all inventories of fuel (***Inventory***);

(ii) all Contracts set forth on Part C of Schedule 4.2(b) (collectively, the ***Assigned Contracts***);

(iii) all right, title and interest in and to, to the extent utilized primarily in the operation of the Project, (A) all Intellectual Property and (B) the IT Assets;

(iv) all furniture, fixtures, equipment (including any cars, trucks, fork lifts and other industrial vehicles), machinery, parts, bulk process chemicals, bulk process lubricants and other tangible personal property, in each case, to the extent utilized primarily in the operation of the Project and either (A) owned by Seller and listed on Schedule 2.1(a)(iv)-1 (the ***Owned Tangible Personal Property***) or (B) leased by Seller and listed on Schedule 2.1(a)(iv)-2 (***Leased Tangible Personal Property*** and, together with the Owned Tangible Personal Property, the ***Tangible Personal Property***);

(v) all Governmental Approvals, including Environmental Approvals, listed on Schedule 4.2(f), but only to the extent such Governmental Approvals may be transferred under applicable Law (including upon request or application to the applicable Governmental Person);

(vi) all deposits, prepaid expenses, credits, advance payments, security, deposits, charges, sums and fees (including pursuant to any Assigned Contract), in each case set forth on Schedule 2.1(a)(vi);

(vii) all of Seller' rights under warranties and licenses received from third parties to the extent such warranties may be transferred under applicable Law and Contract (including upon request or application to the applicable Person);

(viii) all books, operating records, engineering designs, blueprints, as-built plans, specifications, procedures, studies, reports and equipment repair, safety, maintenance or service records of Seller relating to the Project, and all files relating to compliance with Environmental Rules, Environmental Approvals and files relating to the environmental condition of the Project (all of the foregoing, collectively, ***Books and Records***);

(ix) all rights, claims, credits, causes of action or rights of set off against third parties held by Seller in connection with the operation of the Project, including rights under vendors' and manufacturers' warranties, indemnities and guaranties to the extent that such rights, claims, credits, causes of action or rights of set off may be transferred under applicable Law and Contract (including upon request or application to the applicable Person);

(x) any claims, counterclaims, setoffs, rights of recoupment, equity rights or defenses that Seller may have with respect to any Assumed Liabilities; and

(xi) all goodwill associated with any of the assets described in the foregoing clauses.

(b) Excluded Assets. Buyer expressly understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, and the Purchased Assets do not include any of the following (the *Excluded Assets*):

(i) all accounts and notes receivable of the Business, including accounts receivable of Seller under the Power Purchase Agreement that are owed for performance prior to the Closing;

(ii) all cash and cash equivalents, bank accounts and securities of Seller;

(iii) all Contracts that are not Assigned Contracts and all rights, claims, credits, causes of action or rights of set off against third parties held by Seller in connection therewith;

(iv) all Intellectual Property other than as expressly set forth in Section 2.1(a)(iii);

(v) the organizational documents, minute books, membership books, Tax Returns, books of account or other records having to do with the legal organization of Seller or its operations, correspondence, research and development and legal files, customer lists, price lists and any other books and records of Seller, other than as expressly set forth in Section 2.1(a)(viii) and Section 2.1(a)(ix);

(vi) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder and any right to any refund thereunder;

(vii) all Tax assets (including duty and Tax refunds and prepayments) of Seller or any of its Affiliates);

(viii) all rights to any action, suit or claim of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise, other than as expressly set forth in Section 2.1(a)(ix);

(ix) the assets, properties and rights specifically set forth on Schedule 2.1(b)(ix); and

(x) the rights which accrue or will accrue to Seller under the Transaction Documents.

(c) Assumed Liabilities. Subject to the terms and conditions set forth herein, Seller shall assign to Buyer and Buyer shall assume from Seller and pay, perform and discharge when due each of the Assumed Liabilities. *Assumed Liabilities* shall mean solely the following, and shall not include any other liabilities of Seller relating to the Purchased Assets, the Business, the Project or otherwise:

(i) all liabilities and obligations arising under or relating to the Assigned Contracts on or after the Closing;

(ii) all liabilities and obligations for Taxes relating to the Purchased Assets or the Assumed Liabilities for any taxable period beginning after the Closing Date, except to the extent that Buyer, as a municipality, is exempt from such Taxes;

(iii) all other liabilities and obligations arising out of or relating to Buyer's ownership or operation of the Project and the Purchased Assets on or after the Closing; and

(iv) all liabilities and obligations of Seller set forth on Schedule 2.1(c)(iv).

(d) Excluded Liabilities. Buyer shall not assume and shall not be responsible to pay, perform or discharge any of the following liabilities or obligations of Seller which shall be and remain liabilities of Seller for which Seller shall remain responsible (collectively, the *Excluded Liabilities*):

(i) all trade accounts payable of Seller to third parties in connection with the Business that remain unpaid as of the Closing Date;

(ii) all liabilities and obligations arising under or relating to the Assigned Contracts prior to the Closing;

(iii) any liabilities or obligations relating to or arising out of the Excluded Assets;

(iv) any liabilities or obligations (whether direct or as a result of transferee liability, joint and several liability, contractual liability, or otherwise) for (A) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period ending on or prior to the Closing Date (whether accrued or payable on, after, or before the Closing Date), (B) any other Taxes not relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period, and (C) any liabilities or obligations relating to or arising out of a recapture of any portion of any Cash Grant that was claimed with respect to the Business or the Purchased Assets (whether such recapture is caused by the transactions contemplated by the Transaction Documents or otherwise);

(v) any liabilities or obligations of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this

Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others;

(vi) all liabilities arising under Environmental Rules or Environmental Approvals as a result of acts or omissions of Seller or its Affiliates occurring prior to the Closing Date, whether discovered before or after the Closing Date; and

(vii) any liabilities and obligations of Seller set forth on Schedule 2.1(d)(vii).

Section 2.2 Purchase Price. The aggregate consideration for the Purchased Assets shall be Seven hundred and fifty million Dollars (\$750,000,000) (the **Base Purchase Price**) plus any Fuel Price Adjustment that is positive or minus any Fuel Price Adjustment that is negative (the Base Purchase Price as so adjusted, the **Purchase Price**).

Section 2.3 Fuel Price Adjustment. Not later than three (3) Business Days, nor earlier than five (5) Business Days, prior to the Closing Date, Seller shall demonstrate to Buyer's reasonable satisfaction that the amount of fuel available in the Inventory is at least equal to the Minimum Fuel Requirement. To the extent such amount is less than or greater than the Minimum Fuel Requirement, the Base Purchase Price shall be adjusted, upward or downward, by an amount determined in accordance with Exhibit E (the **Fuel Price Adjustment**).

ARTICLE III

CLOSING AND CLOSING CONDITIONS

Section 3.1 Time and Place of the Closing. Subject to the terms and conditions hereof, including ARTICLE VIII (relating to termination) the closing of the transactions contemplated by ARTICLE II (the **Closing**) shall take place [at the office of Winston & Strawn LLP, 200 Park Avenue, New York, NY or] such other location as the Parties mutually agree three (3) Business Days after the satisfaction or waiver of the closing conditions set forth in this ARTICLE III (other than conditions that can only be satisfied at the Closing), and/or at such other place and on such other date as the Parties mutually agree (the actual date of the Closing is referred to herein as the **Closing Date**).

Section 3.2 Actions at the Closing. At the Closing Seller and Buyer shall take or cause to be taken the following actions all of which will be deemed taken simultaneously at the Closing and no one of which will be deemed completed until all have been completed and the Closing shall have occurred (the **Closing Actions**):

(a) Transfer of Purchased Assets.

(i) Seller shall execute and deliver to Buyer, and Buyer shall execute and deliver to Seller, a bill of sale and assignment and assumption agreement in the form of Exhibit A hereto (the **Bill of Sale and Assignment Agreement**), transferring

the Purchased Assets described therein to Buyer and effecting the assignment to and assumption by Buyer of such Purchased Assets and the Assumed Liabilities; and

(ii) with respect to each Assigned Contract, Seller shall execute and deliver to Buyer such instruments and agreements in a form reasonably acceptable to Buyer as shall be reasonably necessary to convey all of Seller' rights and interests therein to Buyer;

(b) Payment of Purchase Price. Buyer shall pay to Seller an amount equal to (i) the Purchase Price *minus* (ii) the Payoff Amount, by wire transfer of immediately available funds, without deduction (other than as expressly set forth in this Agreement), to such account or accounts as shall be specified not less than five (5) Business Days prior to Closing by Seller in writing to Buyer.

(c) Payoff of Project Level Debt. Buyer shall pay or cause to be paid to the applicable lenders (or administrative agents) the Payoff Amount by wire transfer of immediately available funds (to such account or accounts as Seller shall have notified Buyer in writing on behalf of the parties entitled thereto not less than five (5) Business Days prior to the Closing).

(d) Settlement and Release. Buyer and Seller shall each execute and deliver to the other the Settlement and Release Agreement.

(e) Release of Support Obligations. Seller and Buyer shall effect the release of, effective as of Closing, any credit support obligations required under the Power Purchase Agreement or the Site Lease.

(f) Additional Actions. The Parties shall execute and deliver, or cause to be executed and delivered, all other documents, and take such other actions, in each case as shall be reasonably necessary or appropriate to consummate the transactions contemplated hereby.

Section 3.3 Conditions Precedent to Obligations of Buyer. The obligation of Buyer to consummate the transactions contemplated hereby shall be subject to the satisfaction, at or prior to the Closing, of the following conditions precedent, any of which may be waived by Buyer in its sole discretion:

(a) Performance of Closing Actions. Seller shall have tendered performance of the Closing Actions to be performed by Seller.

(b) Governmental Approvals. All Governmental Approvals identified on Schedules 4.1(d) and 5.1(d), shall have been duly obtained, made or filed, as the case may be.

(c) Consents. All third-party consents identified on Schedule 4.1(d), 4.2(b) and 5.1(d) shall have been duly obtained and be in full force and effect.

(d) No Proceeding or Litigation. No suit, action, investigation, inquiry or other legal or administrative proceeding shall have been instituted by any Person (other than

the Buyer or its Affiliates) that challenges the validity of, or seeks to enjoin, the consummation of the transactions contemplated by the Transaction Documents.

(e) Representations and Warranties. The representations and warranties set forth in Section 4.1 and Section 4.2 that are qualified with respect to materiality, including by reference to Material Adverse Effect, shall be true and correct in all respects, and the representations and warranties set forth in Section 4.1 and Section 4.2 that are not so qualified, shall be true and correct in all material respects, in each case as of the Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date).

(f) Covenants. Seller shall have performed or complied with, in all material respects, the covenants and obligations hereunder required to be performed or complied with by it on or prior to the Closing.

(g) Seller's Certificates. Buyer shall have received, with respect to Seller, (i) a certificate, dated as of the Closing Date and signed by a member or duly authorized officer of Seller, pursuant to which such Person certifies that the conditions described in Section 3.3(a) and Section 3.3(e) have been satisfied and (ii) a certificate from Seller, dated as of the Closing Date and signed by a member or its secretary or assistant secretary, certifying as to its authorized signatories, Charter Documents, good standing and authorization.

(h) Seller Guaranty. Seller shall have caused the Seller Guaranty to be executed and delivered to Buyer.

(i) Non-foreign Certificates. Seller shall furnish Buyer with a certificate, substantially in the form of Exhibit B hereto, which satisfies the requirements of Section 1.1445-2(b)(2) of the Treasury Regulations.

(j) Repayment of Project Level Debt and Release of Liens. Seller shall have delivered to Buyer payoff letters with respect to the Project Level Debt, in form and substance reasonably satisfactory to Buyer, that (i) set forth the total amount necessary to repay the Project Level Debt in full as of the Closing (the **Payoff Amount**) and (ii) releases any Liens securing such indebtedness and provide for the filing of UCC-3 termination statements and other appropriate Lien releases and satisfactions to evidence release of such Liens upon payment in full of the Payoff Amount.

(k) Books and Records. Seller shall deliver the Books and Records, it being understood that any Books and Records located at the Project shall be kept at the Project and deemed delivered at the Closing.

(l) Mechanic's Liens. Seller shall have delivered to Buyer (x) Lien waivers or Lien releases from any contractor with a right to impose a Lien of the type described in clause (b) of the definition of Permitted Lien related to work or services performed or materials delivered with respect to the Purchased Assets prior to the Closing or (y) evidence satisfactory to Buyer that Seller has established and shall maintain an escrow in a form and with a bank acceptable to Buyer that will provide sufficient funds to Buyer to discharge any such Lien.

Section 3.4 Conditions Precedent to Obligations of Seller. The obligation of Seller to consummate the transactions contemplated hereby shall be subject to the satisfaction, on or prior to the Closing, of the following conditions precedent, any of which may be waived by Seller in their sole discretion:

(a) Performance of Closing Actions. Buyer shall have tendered performance of the Closing Actions to be performed by Buyer.

(b) Governmental Approvals. All Governmental Approvals identified on Schedules 4.1(d) and 5.1(d) shall have been duly obtained, made or filed, as the case may be.

(c) Consents. All third-party consents specifically identified on Schedule 4.1(d), 4.2(b) and 5.1(d) shall have been duly obtained and be in full force and effect.

(d) No Proceeding or Litigation. No suit, action, investigation, inquiry or other legal or administrative proceeding shall have been instituted by any Person (other than Seller or its Affiliates) that challenges the validity of, or seeks to enjoin, the consummation of the transactions contemplated by the Transaction Documents.

(e) Representations and Warranties. The representations and warranties set forth in Section 5.1 that are qualified with respect to materiality shall be true and correct in all respects, and the representations and warranties set forth in Section 5.1 that are not so qualified shall be true and correct in all material respects, in each case as of the Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date).

(f) Covenants. Buyer shall have performed or complied with, in all material respects, the covenants and obligations hereunder required to be performed or complied with by Buyer on or prior to the Closing.

(g) Buyer's Certificates. Buyer shall have furnished to Seller (i) a certificate, dated as of the Closing Date and signed by a duly authorized official of Buyer, pursuant to which such official certifies that the conditions described in Section 3.4(a) and Section 3.4(e) have been satisfied, and (ii) a certificate from Buyer, dated as of the Closing Date and signed by an authorized official, certifying as to its authorized signatories and due authorization.

(h) PPA Payments. Subject to the terms of the Settlement and Release Agreement (including Buyer's right to retain the Retention Amount), Buyer shall have paid to Seller any amounts that are due and payable to Seller on or before the Closing Date under the Power Purchase Agreement.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Section 4.1 Representations and Warranties Regarding Seller. Seller hereby represents and warrants to Buyer as of the Agreement Date and as of the Closing Date (except

with respect to representations and warranties made as of a particular date, which shall be deemed to be made only as of such date) as follows:

(a) Organization. Seller is a limited liability Company, duly formed, validly existing and in good standing under the Laws of the State of Delaware. Seller is qualified to do business in all jurisdictions where the failure to qualify would materially and adversely affect its ability to execute or deliver, or perform its obligations under, the Transaction Documents to which it is or will be a party.

(b) Authority and Power. Seller has the requisite limited liability company power and authority to enter into each of the Transaction Documents to which it is or will be a party, consummate each of the transactions and undertakings contemplated thereby, and perform all of the terms and conditions thereof to be performed by it. The execution, delivery and performance of each of the Transaction Documents to which Seller is or will be a party and the consummation of each of the transactions and undertakings contemplated thereby have been duly authorized by all requisite limited liability company action on the part of Seller under its respective Charter Documents.

(c) Valid and Binding Obligations. Each of the Transaction Documents to which Seller is or will be a party has been, or will be when executed and delivered, duly and validly executed and delivered by Seller and is, or will be when executed and delivered, enforceable against Seller in accordance with the terms thereof, except as such enforceability may be limited or denied by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights and the enforcement of debtors' obligations generally and (ii) general principles of equity, regardless of whether enforcement is pursuant to a proceeding in equity or at law.

(d) Approvals and Consents. Assuming the receipt, effectiveness and validity of the approvals and consents set forth in Schedules 4.1(d) and 5.1(d) hereto, Seller is not and will not be, required to give any notice to, make any filing with, or obtain any consent or approval from, any Person (including Governmental Approvals and consents or approvals of any third party) to execute, deliver or perform any of the Transaction Documents to which it is or will be a party or to consummate the transactions contemplated.

(e) No Violations. Assuming that all filings, consents and approvals set forth on Schedule 4.1(d) have been timely made or obtained, as applicable, the execution, delivery and performance by Seller of each of the Transaction Documents to which it is or will be a party, and the consummation of the transactions contemplated thereby, does not (i) violate the Charter Documents of Seller; (ii) violate or be in conflict with, or constitute a default (or any event which, with or without due notice or lapse of time, or both, would constitute a default) under (A) any Assigned Contract or (B) any other Contract to which Seller is a party or by which any properties or assets of Seller are or may be bound; or (iii) violate in any Law applicable to Seller.

(f) No Litigation. Except for the Pending Dispute and as set forth on Schedule 4.1(f), there are no actions, suits, or legal, mediation or arbitration proceedings pending to which Seller is a party (and, to Seller's Knowledge, there are no actions, suits or legal,

mediation or arbitration proceedings threatened in writing against Seller), before any Governmental Person or arbitral body against or affecting Seller, that (i) challenges the validity of, or seeks to enjoin, the consummation of the transactions contemplated by the Transaction Documents, or (ii) would, individually or in the aggregate, have a Material Adverse Effect.

Section 4.2 Representations and Warranties Regarding the Purchased Assets.

Seller hereby represents and warrants to Buyer as of the Agreement Date and as of the Closing Date (except with respect to representations and warranties made as of a particular date, which shall be deemed to be made only as of such date) as follows:

(a) Title to and Interest in Tangible Personal Property. Except as set forth in Schedule 4.2(a), Seller has good and valid title to the Owned Tangible Personal Property and a valid leasehold interest in all of the Leased Tangible Personal Property, in each case free and clear of any Liens except for Permitted Liens.

(b) Contracts. Schedule 4.2(b) contains a true, correct and complete list of all Material Contracts and all amendments and supplements thereto. True, correct and complete copies of all such Material Contracts that are included among the Assigned Contracts have been Made Available to Buyer. Seller is not in default (and to Seller's Knowledge, no other party thereto is in default) as of the date hereof of any obligation under any such Assigned Contract, except for such defaults that would not, individually or in the aggregate, result in a Material Adverse Effect.

(c) Real Property. The Real Property constitutes all of the real property interests used or held for use by Seller and their Affiliates in connection with the operation of the Project as presently conducted. Other than the Site Lease, there are no leases, ground leases, subleases, licenses, options, appurtenant easements, rights of way, real property licenses or other real property entitlements used in connection with the Business. Seller has not subleased or otherwise granted any Person the right to use or occupy any portion of the Real Property which is still in effect, other than the granting of Permitted Liens.

(d) Proprietary Rights. To Seller's Knowledge, Seller is the sole owner, free and clear of any Lien other than Permitted Liens, of, or has a valid license to, any software, U.S. trademarks, designs, trade names, patents, registered designs or copyrights necessary for the conduct of the Business (collectively, the **Proprietary Rights**), except for such Proprietary Rights the absence of which would not, individually or in the aggregate, have a Material Adverse Effect. The representations and warranties made in this Section 4.2(d) are the sole and exclusive representations and warranties with respect to the Proprietary Rights of Seller.

(e) Compliance with Laws. Except (i) as has been cured or otherwise resolved in all material respects and (ii) as to any Environmental Approval, Environmental Rule, Hazardous Material or any other environmental matters (which matters are covered exclusively by the representations made in Section 4.2(i) below), (A) Seller is in compliance with all applicable Laws, except for such non-compliance as would not, individually or in the aggregate, have a Material Adverse Effect and (B) no notice, charge, claim, action or assertion has been filed, or commenced against Seller or threatened in writing against Seller alleging any violation

of any applicable Laws, which such notice, charge, action or assertion remains threatened or pending.

(f) Governmental Approvals. Seller has obtained all material Governmental Approvals and made all material filings, applications and registrations with Governmental Persons, in each case that is necessary or required in order for the conduct and operation of the Project by Seller as currently conducted. Each such Governmental Approval obtained by Seller in connection with the operation of the Project is listed on Schedule 4.2(f) and is in full force and effect.

(g) Litigation. Except for the Pending Dispute and as set forth on Schedule 4.2(g), there are no actions, suits or legal, mediation or arbitration proceedings pending to which Seller is a party (and to Seller's Knowledge there are no actions, suits or legal, mediation or arbitration proceedings threatened against Seller), in any such case at law or in equity before any Governmental Person or arbitral body against or affecting the Project, which actions, suits, legal proceedings or arbitration proceedings in any such case would, if adversely determined, have a Material Adverse Effect.

(h) Tax Matters.

(i) Tax Returns. Seller has filed (or will file) all material Tax Returns with respect to the Purchased Assets and the Project that are required to be filed on or before the Closing Date (giving regard to valid extensions) and such Tax Returns are (or will be) true, correct and complete in all material respects.

(ii) Taxes Paid. All Taxes shown to be due on all Tax Returns with respect to the Purchased Assets filed on or before the Closing Date by Seller have been (or will be) timely paid by Seller in full on or before the Closing Date.

(iii) Audits; Assessments. No audits or other proceedings are ongoing or, to the Knowledge of Seller, threatened with respect to any Taxes relating to the Business or the Purchased Assets for which Buyer could have liability under this Agreement or under applicable Law. There are no written notices of unpaid or proposed assessments for Taxes with respect to any of the Purchased Assets received by Seller.

(iv) Tax Liens. There are no existing Liens for Taxes on any of the Purchased Assets other than Permitted Liens.

(v) Tax Rulings. There are no rulings or special agreements relating to the Purchased Assets or exclusively relating to the Business.

(vi) No Withholding from Purchase Price. Subject to delivery by Seller of the certificate described in Section 3.3(i), neither the Code nor any other provision of applicable Law requires Buyer to withhold any portion of the Purchase Price payable to Seller.

(vii) Recapture Liability. Buyer will not be responsible for any payment required to be made to the extent relating to or arising out of any recapture of

any portion of any Cash Grant that was claimed with respect to the Purchased Assets or the Business as a result of the transactions contemplated by the Transaction Documents.

(i) Environmental Matters. Except as set forth on Schedule 4.2(i)(i):

(i) During the term of the Site Lease, no Hazardous Materials have been released, and none are present at, onto, from, under or in the Project, or to Seller's Knowledge, at any off-site location, with respect to which Seller may bear an obligation or responsibility for investigation or other remedial action under any Environmental Approval or Environmental Rule, other than such investigation or other remedial action as has been completed;

(ii) (A) all Environmental Approvals held by Seller in connection with the construction or operation of the Project (1) are listed on Schedule 4.2(i)(ii), and (2) are in full force and effect; and

(iii) There are no pending Environmental Claims that have been asserted against Seller or otherwise against the Project, and to Seller's Knowledge, no such Environmental Claims have been threatened; and

(iv) Seller is not subject to any orders, decrees or judgments arising in connection with an Environmental Rule or Environmental Approval, excluding any such orders, decrees or judgments that have been fully satisfied with no further obligation on the part of Seller, as acknowledged by a court or agency of appropriate authority and jurisdiction.

The representations and warranties made in this Section 4.2(i) are the sole and exclusive representations and warranties with respect to Environmental Approvals, Environmental Rules, Hazardous Materials and other environmental matters.

(j) No Defects. To Seller's Knowledge, there are no operational deficiencies or defects that are materially detrimental to the operation of the Project in a normal manner or that would otherwise have a Material Adverse Effect.

ARTICLE V

REPRESENTATIONS, WARRANTIES AND ACKNOWLEDGEMENTS OF BUYER

Section 5.1 Representations and Warranties of Buyer. Buyer hereby represents and warrants to Seller as of the Agreement Date and as of the Closing Date (except with respect to representations and warranties made as of a particular date, which shall be deemed to be made only as of such date) as follows:

(a) Organization. Buyer is a municipal corporation duly organized, validly existing and in good standing under the Laws of the State of Florida.

(b) Authority and Power. Buyer has the requisite power and authority to enter into each of the Transaction Documents to which it is or will be a party, consummate

each of the transactions and undertakings contemplated thereby, and perform all the terms and conditions thereof to be performed by it. The execution, delivery and performance of each of the Transaction Documents to which Buyer is or will be a party and the consummation of each of the transactions and undertakings contemplated thereby have been duly authorized by all requisite action on the part of Buyer.

(c) Valid and Binding Obligations. Each of the Transaction Documents to which Buyer is or will be a party has been, or will be when executed and delivered, duly and validly executed and delivered by Buyer, and is, or will be when executed and delivered, enforceable against Buyer in accordance with the terms thereof, except as such enforceability may be limited or denied by (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights and the enforcement of debtors' obligations generally and (ii) general principles of equity, regardless of whether enforcement is pursuant to a proceeding in equity or at law.

(d) Approvals and Consents. Assuming the receipt, effectiveness and validity of the approvals and consents set forth in Schedules 4.1(d) and 5.1(d) hereto, Buyer is not and will not be, required to give any notice to, make any filing with, or obtain any consent or approval from, any Person (including Governmental Approvals and consents or approvals of any third party) to execute, deliver or perform any of the Transaction Documents to which it is or will be a party or to consummate the transactions contemplated.

(e) No Violations. Assuming that all filings, consents and approvals set forth on Schedule 5.1(d) have been timely made or obtained, as applicable, the execution, delivery and performance by Buyer of each of the Transaction Documents to which it is or will be a party, and the consummation of the transactions contemplated thereby, does not: (i) violate Buyer's Charter, (ii) violate or be in conflict with, or constitute a default (or any event which, with or without due notice or lapse of time, or both, would constitute a default) under, any Contract to which Buyer is a party or by which any of Buyer's properties or assets are or may be bound, which in any case, would materially and adversely affect the ability of Buyer to perform its obligations under the Transaction Documents to which it is or will be a party, or (iii) violate in any material respect any Law applicable to Buyer.

(f) No Litigation. There are no actions, suits or legal or arbitration proceedings pending to which Buyer is a party (and, to Buyer's Knowledge, there are no actions, suits or legal or arbitration proceedings threatened against Buyer), in any such case at law or in equity before any Governmental Person or arbitral body against or affecting Buyer, that (i) challenges the validity of, or seeks to enjoin, the consummation of the transactions contemplated by the Transaction Documents; provided Buyer makes no representation or warranty as to actions, suits or legal or arbitration proceedings commenced by Seller, or (ii) would, individually or in the aggregate, have a material adverse effect on the ability of Buyer to perform its obligations under the Transaction Documents or to consummate the transactions contemplated thereby.

Section 5.2 No Further Representations. EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH AND MADE BY SELLER IN ARTICLE IV OF THIS AGREEMENT OR IN ANY OTHER TRANSACTION

DOCUMENTS, SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, RELATING TO SELLER, THE PURCHASED ASSETS, THE ASSUMED LIABILITIES, THE BUSINESS, THE PROJECT OR THE TRANSACTIONS CONTEMPLATED HEREBY. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AND EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE IV OF THIS AGREEMENT OR IN ANY OTHER TRANSACTION DOCUMENTS, BUYER ACKNOWLEDGES AND AGREES IN PARTICULAR AS FOLLOWS: (A) THE PURCHASED ASSETS AND ANY PART THEREOF, ARE BEING ACQUIRED, “AS IS, WHERE IS” ON THE CLOSING DATE, AND IN THEIR RESPECTIVE CONDITIONS ON THE CLOSING DATE “WITH ALL FAULTS”; (B) BUYER IS RELYING ON ITS OWN EXAMINATION OF THE PURCHASED ASSETS, THE BUSINESS AND THE PROJECT AND NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, ARE GIVEN AS TO LIABILITIES, OPERATION OF THE PURCHASED ASSETS, INCLUDING THE PROJECT, THE TITLE, CONDITION, VALUE OR QUALITY OF THE PURCHASED ASSETS OR THE BUSINESS, CONDITION (FINANCIAL OR OTHERWISE) OR PROSPECTS OF THE BUSINESS, THE RISKS AND OTHER INCIDENTS OF OWNERSHIP OF THE PURCHASED ASSETS, THE BUSINESS, THE PROJECT AND ANY PART THEREOF, AND ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO PURCHASED ASSETS, THE BUSINESS, THE PROJECT, OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF DEFECTS THEREIN, WHETHER LATENT OR PATENT; AND (C) NO INFORMATION OR MATERIAL PROVIDED BY OR COMMUNICATION MADE BY SELLER OR ANY REPRESENTATIVE OF SELLER CREATE OR OTHERWISE CAUSE TO EXIST ANY REPRESENTATION OR WARRANTY BY SELLER.

ARTICLE VI

COVENANTS

Section 6.1 Covenants of All Parties.

(a) Consummation of Transactions and Obtaining Approvals. Each Party shall (i) as promptly as is reasonably practicable, diligently and in good faith, use its reasonable best efforts to cause the Closing conditions in this Agreement to be satisfied as soon as practicable and (ii) coordinate and cooperate with the other Party in providing such information and supplying such assistance as may be reasonably requested by such other Party in connection with the foregoing, to the extent not protected by a legal privilege or prohibited by Law. Without limiting the generality of the foregoing or any other provision of this Agreement regarding approvals, Buyer and Seller agree to take, or cause to be taken, all actions and to do, or cause to be done, all things required, necessary, proper or advisable to obtain such authorizations, consents, orders and approvals from any Governmental Person, including FERC, or any third-party as are required, necessary, proper or advisable in connection with the consummation of the transactions contemplated hereby on the terms set forth herein. Each Party will promptly inform the other Party of any material communication received by such Party from, or given by such party to, any Governmental Person from which any such authorization,

consent, order or approvals is required and of any material communication received or given in connection with any Claim by a private party, in each case regarding any of the transactions contemplated hereby, and will permit the other party to review any communication given by it to, and consult with each other in advance of any meeting or conference with, any such Governmental Person or, in connection with any Claim by a private party, with such other Person, and to the extent permitted by such Governmental Person or other Person, give the other Party the opportunity to attend and to participate in such meetings and conferences.

(b) Pending Dispute. Each Party agrees that during the Pre-Closing Period (i) this Agreement shall operate to stay the Pending Dispute, and (ii) Buyer shall not withhold any amounts invoiced by Seller under the Power Purchase Agreement, other than amounts that may be withheld in accordance with the Power Purchase Agreement where such withholding is based on either (A) one or more of Buyer's claims or counterclaims that are the subject of the Pending Dispute (consistent with Buyer's past practice) or (B) any calculation error that may appear in such invoices; provided, that, Buyer shall not retroactively withhold any amounts that have been previously paid by Buyer under the Power Purchase Agreement.

(c) Further Assurances. Following the Closing, each Party shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents. Without limiting the generality of the foregoing, Seller shall execute and deliver to Buyer such bills of sale, endorsements, assignments and other good and sufficient instruments of assignment, transfer and conveyance, in form and substance reasonably satisfactory to Buyer and Seller, and take such additional actions as Buyer may reasonably request to vest in Buyer all of Seller's right, title and interest in and to the Purchased Assets. Seller and Buyer shall also cooperate in the transition of operational matters in respect of the Purchased Assets as outlined in Schedule 6.1(c).

Section 6.2 Covenants of Seller.

(a) Pre-Closing Period Actions. During the Pre-Closing Period Seller shall operate and maintain the Project in the ordinary course using good utility practices and in accordance with the terms of the Site Agreement and the Power Purchase Agreement. Without limited the generality of the foregoing, except (i) as otherwise contemplated herein, (ii) to the extent constituting Permitted Interim Actions, (iii) as required by any Law, Environmental Approval, Environmental Rule, Governmental Approval, Governmental Rule or Material Contract or (iv) to the extent constituting actions taken with Buyer's consent (which consent shall not be unreasonably withheld, conditioned or delayed), during the Pre-Closing Period, Seller shall:

- (i) not take actions which are outside of the ordinary course of the Business;
- (ii) not enter into any Contract with any Person that will be an Assigned Contract;

(iii) not amend, modify in any material respect or terminate any Assigned Contract;

(iv) not abandon any rights under any Assigned Contract or fail to honor or perform in any material respect any Assigned Contract;

(v) maintain, to the extent available on commercially reasonable terms, in full force and effect insurance policies and programs currently in effect as of the Agreement Date;

(vi) not mortgage, pledge or subject to Liens (other than Permitted Liens) any of the Purchased Assets;

(vii) not lease, license, surrender, relinquish, sell, transfer, convey, assign or otherwise dispose of any interest in any Purchased Assets other than a *de minimis* part thereof in the ordinary course of business, including in connection with the normal repair and replacement of assets or to the extent obsolete or no longer needed; or

(viii) not agree or commit to do any of the foregoing.

Notwithstanding the foregoing, Seller may take any action otherwise prohibited by this Section 6.2(a) during the Pre-Closing Period to the extent determined in good faith by Seller to be necessary in accordance with prudent industry practice to respond to an emergency so long as Seller shall as soon as reasonably possible inform Buyer of any such actions taken outside of the ordinary course of business.

(b) Casualty Losses.

(i) If the Project (or any portion thereof) is damaged or destroyed by casualty loss during the Pre-Closing Period (a **Casualty Loss**), and the cost of restoring the Project (or portion thereof), to a condition reasonably comparable to its prior condition, as estimated by a qualified engineering firm selected by Buyer and reasonably acceptable to Seller (the **Restoration Cost**) is greater than \$[_____] but does not exceed \$[_____] , Seller shall elect, by notice to Buyer within thirty (30) days after the date of such Casualty Loss, to: (A) repair or replace the damaged or destroyed Project (or portion thereof) to a condition reasonably comparable to its prior condition, in which event (I) Seller shall receive all casualty insurance proceeds in connection with such Casualty Loss (including any such proceeds received by Seller after the Closing) and (II) the completion of the work related to such Casualty Loss will be a condition to Closing and the Expiration Date shall be extended to ten (10) days after the date on which the repair or replacement with respect to such Casualty Loss is completed, **provided** that in no event shall the Expiration Date be extended by more than four months, or (B) reduce the amount of the Purchase Price by such Restoration Cost, by notice to Buyer.

(ii) If the Restoration Cost is in excess of \$[_____] or Seller is unable to undertake the restoration and repair work resulting from such Casualty Loss as a result of the Project Level Debt, Seller shall elect, by notice to Buyer within thirty (30)

days after the date of such Casualty Loss, to: (A) without any delay in the Closing, reduce the Purchase Price by the Restoration Cost (and Seller shall not have an obligation to repair or replace the damaged or destroyed Project) or (B) terminate this Agreement; **provided** that if Seller does not elect to terminate this Agreement as provided in this sentence, then Buyer may, by written notice to Seller, terminate this Agreement within ten (10) Business Days of receipt by Buyer of Seller's notice regarding its election.

(iii) Seller shall promptly notify Buyer of any Casualty Loss for which Seller reasonably expects the Restoration Cost to exceed \$[_____]. Any repair or replacement of a Casualty Loss or reduction in the Purchase Price on account thereof, in each case, pursuant to this Section 6.2(b), shall be the exclusive remedy in respect of such Casualty Loss under this Agreement.

(c) Condemnation Events.

(i) If the Project (or any portion thereof) is taken by condemnation during the Pre-Closing Period (a **Condemnation Event**), other than as a result of action taken by Buyer or any of its Affiliates, and the condemnation value of the Project (or portion thereof) as estimated by a qualified firm selected by Buyer and reasonably acceptable to Seller, (the **Condemnation Value**) is greater than \$[_____] but is not in excess of \$[_____], Seller shall elect, by notice to Buyer within thirty (30) days after the date of such Condemnation Event, either to: (A) replace the Project (or portion thereof) that is subject to the condemnation proceeding with reasonably comparable assets, in which event (I) Seller shall receive all condemnation award proceeds in connection with such Condemnation Event (including any such proceeds received by Seller or Buyer after the Closing) and (II) the replacement of assets related to such Condemnation Event will be a condition to Closing and the Expiration Date shall be extended to ten (10) days after the date on which the replacement with respect to such Condemnation Event is completed **provided** that in no event shall the Expiration Date be extended by more than four months, or (B) reduce the Purchase Price by such Condemnation Value but only if such Condemnation Event does not result in a Material Adverse Effect.

(ii) If the Condemnation Value is in excess of \$[_____] or Seller is unable to replace the condemned assets as a result of the Project Level Debt, Seller shall elect, by notice to Buyer within thirty (30) days after the award of the condemnation proceeds, elect to: (A) without any delay in the Closing, reduce the Purchase Price up to such Condemnation Value (and Seller shall not have an obligation to replace the condemned Project (or portion thereof)) but only if such Condemnation Event does not result in a Material Adverse Effect or (B) terminate this Agreement; **provided** that if Seller does not elect to terminate this Agreement as provided in this sentence, then Buyer may, by written notice to Seller, terminate this Agreement within ten (10) Business Days of receipt by Buyer of Seller's notice regarding its election.

(iii) Seller shall promptly notify Buyer of any Condemnation Event for which Seller reasonably expects the Condemnation Value to exceed \$[_____]. Any replacement in respect of a Condemnation Event or reduction in the Purchase Price

on account thereof, in each case, pursuant to this Section 6.2(c), shall be the exclusive remedy in respect of such Condemnation Event under this Agreement.

(d) Insurance. Seller shall maintain or cause to be maintained in full force and effect the insurance policies described on Schedule 6.2(d) (or comparable replacement coverage) throughout the Pre-Closing Period. Buyer shall be solely responsible for providing all insurance in respect of the Project after the Closing.

(e) Access. Subject to applicable Law and such safety and other procedures as Seller may reasonably specify, during the Pre-Closing Period, Seller shall (i) give Buyer and its Representatives reasonable access during normal business hours to the Purchased Assets for the purpose of transitioning ownership of the Purchased Assets and (ii) furnish to Buyer and its Representatives such operating and property data and other information related to the Purchased Assets as Buyer may reasonably request (excluding, for the avoidance of doubt, Seller's proprietary information). All inspections shall be conducted so as not to interfere unreasonably with the conduct of the Business by Seller. Buyer agrees to indemnify and hold Seller and their Affiliates and their respective Representatives harmless of and from all actions, suits, claims, investigations, fines, judgments, damages, losses, deficiencies, liabilities, costs and expenses (including attorneys' fees and expenses) that arise out of or relate to physical injuries or damage arising from Buyer's or its Representative's inspection of the Purchased Assets (other than to the extent any of the foregoing results from the gross negligence or the willful misconduct of the Person seeking such indemnification).

(f) Updating. Seller shall promptly notify Buyer of any change or addition to any of the Schedules which to Seller's Knowledge is reasonably necessary to correct any matter that would otherwise constitute a breach of any representation or warranty in ARTICLE IV. No such updates shall be deemed to cure any inaccuracy of any representation or warranty made in this Agreement as of the Agreement Date or for purposes of Section 3.3(e) or ARTICLE VII, unless Buyer specifically agrees thereto.

(g) Exclusivity. Prior to the earlier of the Closing or the termination of this Agreement, Seller shall not, and shall not permit any of its Affiliates or any of its or their respective Representatives to, directly or indirectly, (1) sell all, or any portion of, or interest in, Seller, the Business, the Project or any Purchased Assets to any other Person, or (b) engage in discussions (whether solicited or unsolicited) or negotiate with, or solicit any expression of interest, inquiry, proposal or offer from, any Person (other than Buyer) relating to the possible acquisition of or investment in any or all of Seller, the Business, the Project or any Purchased Assets; [provided, however, that the foregoing provisions shall not create restrictions on transfers of indirect interests in Seller that are not already addressed in the Power Purchase Agreement]. Further, prior to the Expiration Date, Seller will promptly notify Buyer of the receipt by Seller, any of its Affiliates or any of its or their respective Representatives of any expression of interest or offer to acquire or invest in all or any portion of Seller, the Project or any Purchased Assets (or enter into any other transaction that is substantially similar to, or that would preclude, the transaction contemplated hereby), and the terms and conditions of any such offer or expression of interest.

Section 6.3 Covenants of Buyer.

(a) Contact During Pre-Closing Period. Notwithstanding anything to the contrary in this Agreement, during the Pre-Closing Period, without Seller's prior written consent (which shall not be unreasonably withheld, conditioned or delayed), Buyer shall not contact or correspond with the Project's operator or any customer, supplier, contract counterparty, financing party, subcontractor or agent of Seller or the Project, any management or other personnel directly or indirectly employed by a Seller or the Project, any other Person that is a party to a Material Contract or any Governmental Person in relation to the matters contemplated by this Agreement.

Section 6.4 Tax Matters.Cooperation. Seller and Buyer shall cooperate, and shall cause their Affiliates, officers, employees, agents, auditors and representatives to cooperate, as reasonably required to prepare and to file all Tax Returns in respect of the Purchased Assets or the Business and to deal with any audit, examination or other proceedings related to liabilities for Taxes. Such assistance shall include making employees available on a mutually convenient basis to provide additional information or explanation of material provided hereunder and shall include providing copies of relevant tax returns and supporting material. The party requesting assistance hereunder shall reimburse the assisting party for reasonable out-of-pocket expenses incurred in providing assistance. Buyer and Seller will retain for the full period of any statute of limitations and provide the others with any records or information which may be relevant to such preparation, audit, examination, proceeding or determination for which Seller could be liable.

(b) Tax Contests. If any Taxing Authority makes a Claim or proposes an adjustment that could give rise to a Tax Claim for which Seller could be liable, Buyer promptly shall give Seller written notice of the Claim or proposal; provided, however, that no failure or delay of Buyer in providing such notice shall reduce or otherwise affect the obligations or liabilities of Seller pursuant to this Agreement except to the extent Seller is actually prejudiced. Seller shall have the right to contest the Claim or proposal in proper proceedings at Seller's sole cost and expense. Buyer shall have the right to attend the proceedings at its own expense with its own counsel and to receive copies of all materials relevant to the proceedings. Seller shall not settle or compromise any Claim or agree to any payment, refund or credit of Tax without the written consent of Buyer (which shall not be unreasonably withheld or delayed).

(c) Transfer Taxes. All sales, general excise, use, transfer, goods and services, real property transfer, conveyance, value added, filing, recording, gains, documentary, stock transfer, stamp duty, excise, gross receipts and other similar taxes, duties, fees and charges (*Transfer Taxes*), if any, arising out of or in connection with the purchase of the Purchased Assets shall be paid 50% by Buyer and 50% by Seller. Buyer on the one hand and Seller on the other shall indemnify, defend and hold harmless the other Party to the extent the other Party pays the other's share of Transfer Taxes. Buyer shall prepare and timely file all Tax Returns or other documentation relating to such Transfer Taxes; provided, however, that to the extent required by applicable Law, Seller will join in the execution of any such Tax Returns or other documents relating to such Transfer Taxes. Buyer shall provide Seller with copies of each such Tax Return or other document at least thirty (30) days prior to the date on which such Tax Return or other document is required to be filed.

ARTICLE VII

INDEMNIFICATION

Section 7.1 General. To the fullest extent permitted by applicable Law, but subject to Section 7.2, Seller shall defend, indemnify and hold harmless Buyer, and Buyer shall defend, indemnify and hold harmless Seller (the applicable indemnifying party, the *Indemnitor*), including, in the case of non-indemnifying Seller and Buyer, such Party's Affiliates and their respective partners, managers, members, shareholders, consultants, Representatives, successors and assigns (each, an *Indemnified Party*, with each Party and its respective group of Indemnified Parties being referred to collectively as an *Indemnified Group*) from and against any Loss actually suffered or incurred by any Indemnified Party to the extent arising out of, or resulting from (a)(i) with respect to Seller's indemnity of Buyer, the inaccuracy of any Seller Surviving Representation, and with respect to Buyer's indemnity of Seller, the inaccuracy of any Buyer Surviving Representation, and (b)(i) with respect to Seller's indemnity of Buyer, any Excluded Asset or Excluded Liability and (ii) with respect to Buyer's indemnity of Seller, any Assumed Liability but only to the extent any Loss accrues following the Closing. Notwithstanding the foregoing, no Indemnified Party shall be entitled to any indemnification hereunder in respect of any Loss to the extent caused by the negligence, willful misconduct or failure to perform obligations under this Agreement of such Indemnified Party or any Person who is a member of its Indemnified Group.

Section 7.2 Limitations on Indemnification.

(a) Timing of Claim. Notwithstanding the provisions of Section 7.1 above, no Indemnified Party shall be entitled to make any claim for indemnification as provided in Section 7.1 unless such claim shall have been made in writing no later than the one-year anniversary of the Closing Date, except that (i) any claim for indemnification that results from fraud or willful misconduct on the part of the Indemnitor and any claim for breaches of the Seller Fundamental Representations and the Buyer Fundamental Representations may be made at any time, and (ii) any claim for a breach of Section 2.1(d)(iv) or Section 4.2(h) may be made at any time that is no later than 60 days following the expiration of the applicable statute of limitations (including extensions).

(b) Deductible Amount. An Indemnified Party shall not be entitled to make any claim for indemnification under Section 7.1 to the extent that, except in the case of any claim for indemnification that results from fraud or willful misconduct on the part of the Indemnitor, or a claim resulting from a breach of Section 2.1(d)(iv) or Section 4.2(h), in which case this Section 7.2(b) shall not apply, the aggregate amount of all Losses for which such Person's Indemnified Group is entitled to indemnification pursuant to Section 7.1 does not exceed an amount equal to [__]% of the Base Purchase Price (the *Deductible Amount*). After the Deductible Amount has been reached with respect to an Indemnitor, such Indemnified Party shall be entitled to indemnification only for amounts in excess of the Deductible Amount and only to the extent otherwise allowable, including under Section 7.2(c).

(c) Overall Limitation on Liability of Parties.

(i) Liability of Seller. Except to the extent that any claim for indemnification results from fraud or willful misconduct on the part of the Indemnitor or a claim resulting from a breach of Section 2.1(d)(iv) or Section 4.2(h) in which case this Section 7.2(c)(i) shall not apply, notwithstanding any other provision of this Agreement or any other Transaction Document and the aggregate liability of Seller under this ARTICLE VII for all Losses (other than any liability arising from a breach of any Seller Fundamental Representation) shall not exceed [__]% of the Base Purchase Price; **provided** that the aggregate liability of Seller under this ARTICLE VII for a breach of any Seller Fundamental Representation shall in no event exceed 100% of the Base Purchase Price.

(ii) Liability of Buyer. Except to the extent that any claim for indemnification results from the fraud or willful misconduct on the part of the Indemnitor in which case this Section 7.2(c)(ii) shall not apply, notwithstanding any other provision of this Agreement or any other Transaction Document, the aggregate liability of Buyer under this ARTICLE VII (other than any liability arising from its breach of any Buyer Fundamental Representation) shall not exceed [__]% of the Base Purchase Price; **provided** that the aggregate liability of Buyer under this ARTICLE VII for a breach of any Buyer Fundamental Representation shall in no event exceed 100% of the Base Purchase Price.

(d) Exclusive Remedy. Except as provided in the last sentence of this Section 7.2(d), the indemnification provisions of this ARTICLE VII shall be the sole and exclusive remedy of each Party (including Indemnified Parties) (i) for any breach of any Party's representations, warranties, covenants or agreements contained in this Agreement or (ii) otherwise with respect to this Agreement, the Project or the transactions contemplated hereby. The only exceptions to the foregoing sole and exclusive remedy are (A) a Party's right to terminate this Agreement pursuant to Section 8.1, (B) proceedings by any Party for specific performance as provided in ARTICLE X below and (C) breaches resulting from fraud or willful misconduct by a Party.

Section 7.3 Procedure for Indemnification.

(a) Notice of Claim. If any Claim shall be instituted or shall be asserted by any third party in respect of which indemnification may be sought by any Indemnified Party under this ARTICLE VII, such Indemnified Party shall, within twenty days of the actual receipt of notice thereof by a responsible officer, cause written notice of such Claim to be forwarded to the Indemnitor, specifying the nature of such Claim and the amount or the estimated amount thereof to the extent then feasible, which estimate shall not be binding upon the Indemnified Party, in its effort to collect the final amount arising out of such Claim; **provided**, that the failure of an Indemnified Party to give timely notice shall not affect its rights to indemnification under this ARTICLE VII except to the extent that the Indemnitor has been materially prejudiced by such failure.

(b) Conduct of Claim. If any such Claim is brought by a third party, the Indemnitor shall be entitled, upon written notice to the Indemnified Party, to participate in the defense of such Claim and, to the extent that it wishes, to assume the defense of, and to

negotiate and/or settle, such Claim. The Indemnified Party shall, in its sole discretion, have the right to employ separate counsel in any such action and to participate in the defense thereof, **provided** all fees and expenses of such counsel shall be paid by such Indemnified Party. If notice is given to the Indemnitor by the Indemnified Party of the commencement of any third-party Claim and (i) the Indemnitor does not, within 30 days after receiving such notice, give notice to the Indemnified Party of its election to assume the defense of such Claim, (ii) the Indemnitor chooses counsel not reasonably acceptable to Indemnified Party, (iii) the Indemnitor or its Affiliate is also a party to such third-party Claim and the Indemnified Party has been advised by counsel that a conflict of interest exists between the Indemnitor or its Affiliate and the Indemnified Party, or (iv) after undertaking the defense of such third-party Claim, the Indemnitor or legal counsel selected by it fails to pursue the defense of Claim with reasonable diligence, then in any such case the Indemnified Party shall (upon notice to the Indemnitor) have the right to participate or in or assume the defense, compromise or settlement of such Claim, and the Indemnitor shall reimburse such Indemnified Party for the reasonable costs of defending against such third-party Claim (including reasonable attorneys' fees and expenses) to the extent it is determined that such Indemnifying Party is obligated with respect to such third-party Claim under this Agreement. If an Indemnitor assumes the defense of a third-party Claim, no compromise, discharge or settlement of such Claim may be effected by the Indemnitor without the Indemnified Party's consent, such consent not to be unreasonably withheld, delayed or conditioned; **provided**, that no such consent shall be necessary (and the Indemnitor shall be entitled to effect such compromise, discharge or settlement on its own behalf and on behalf of the Indemnified Parties) if (A) there is no finding or admission of any violation of Law by or on behalf of the Indemnified Parties, (B) if applicable, the sole relief provided in connection with such third-party Claim is monetary damages that are paid in full by the Indemnifying Party and (C) an unconditional term of the compromise, discharge or settlement of such Claim is the giving of a release from all liability with respect to such Claim by the applicable claimant or plaintiff to each Indemnified Party that is or may be subject to the third-party Claim. Whether or not the Indemnitor assumes the defense of a third-party Claim, the Indemnified Party shall not admit any liability with respect to, or compromise, discharge or settle, such third-party Claim without the Indemnitor's prior written consent, which consent not to be unreasonably withheld, delayed or conditioned. The Indemnitor and the Indemnified Party shall cooperate fully with each other in connection with the defense, negotiation or settlement of any such Claim. Any Claim by Buyer for indemnification with respect to Taxes shall be further subject to the provisions in Section 6.4, and, to the extent there is any inconsistency between the specific provisions of Section 6.4 and this Section 7.3, the provisions in Section 6.4 shall govern.

(c) Payment of Third-Party Claims. After final judgment or award shall have been rendered by a court, arbitration board or administrative agency of competent jurisdiction and the expiration of the time in which to appeal therefrom, or a settlement shall have been consummated in accordance with this Agreement, or the Indemnified Party and the Indemnitor shall have arrived at a mutually binding agreement with respect to each separate matter indemnified by the Indemnitor, the Indemnified Party shall forward to the Indemnitor notice of any sums due and owing by the Indemnitor with respect to such matter.

(d) Access to Information. If any Claim is made by a third party against an Indemnified Party, the Indemnified Party shall use commercially reasonable efforts to make available to the Indemnitor those partners, members, officers and employees whose

assistance, testimony or presence is necessary to assist the Indemnitor in evaluating and in defending such Claims; **provided**, that any such access shall be conducted at reasonable times upon reasonable notice in such a manner as not to interfere unreasonably with the operations of the business of the Indemnified Party, and any out of pocket expenses incurred by any Indemnified Party in connection therewith shall be included in such Indemnified Party's Losses.

(e) Subrogation. Upon payment of a Loss by an Indemnitor to an Indemnified Party pursuant to this ARTICLE VII, such Indemnitor, without any further action, shall be subrogated to any and all Claims that such Indemnified Party or any member of its Indemnified Group may have against third parties relating to such Loss, to the extent of the amount paid to such Indemnified Party or any member of its Indemnified Group by such Indemnitor in respect of such Loss, and such Indemnified Party and the members of its Indemnified Group shall use commercially reasonable efforts to cooperate with such Indemnitor, at the expense of such Indemnitor in order to enable such Indemnitor to pursue such Claims.

Section 7.4 No Waiver of Sovereign Immunity. Nothing in this Article VII shall be interpreted as a waiver of Buyer's sovereign immunity to any extent beyond the limited waiver set forth in section 768.28, Fla. Stat., which includes prohibitions on punitive damages and prejudgment interest, caps on damages and attorney's fees, and other provisions.

ARTICLE VIII

TERMINATION

Section 8.1 Termination. This Agreement may be terminated at any time prior to the Closing only in the following manner:

- (a) By mutual written agreement of Seller and Buyer;
- (b) By Buyer or Seller by written notice to each other Party if the Closing shall not have occurred on or before November 24, 2017 (such date, the ***Expiration Date***); **provided**, that a Party shall only be entitled to deliver a written notice under this Section 8.1(b) if such Party shall not have breached its obligations under this Agreement in any manner that shall have proximately caused the failure of the Closing to occur on or before such date;
- (c) By Buyer if on the date that is five (5) days prior to the Closing the interest rate of 30-year United States Treasury bonds is more than [3.43]%;
- (d) By Seller upon written notice to Buyer if Buyer shall have breached in any material respect any of its covenants contained in this Agreement, and such breach would result in failure to satisfy the conditions to Closing set forth in Section 3.4, but (except in the case of a failure by Buyer to pay the Purchase Price when due, which shall not be subject to the following) only if (i) Seller shall have first given written notice to Buyer identifying such breach and (ii) Buyer has not cured or remedied such breach (including, where payment of compensation would reasonably be considered an adequate remedy, the payment of such adequate compensation) within thirty (30) days of receipt of such notice;

(e) By Buyer upon written notice to Seller if Seller shall have breached in any material respect any of its covenants contained in this Agreement, and such breach would result in failure to satisfy the conditions to Closing set forth in Section 3.3, but only if (i) Buyer shall have first given written notice to Seller identifying such breach and (ii) Seller has not cured or remedied such breach (including, where payment of compensation would reasonably be considered an adequate remedy, the payment of such adequate compensation) within thirty (30) days of receipt of such notice; or

(f) By Buyer or Seller pursuant to Section 6.2(b) or Section 6.2(c).

Section 8.2 Effect of Termination. In the event of a termination of this Agreement as provided in Section 8.1, except as otherwise expressly agreed in writing by the Parties, this Agreement shall cease to have force and effect, and there shall be no further liability or obligation on the part of Seller or of Buyer, except that (a) the provisions of ARTICLE VIII and ARTICLE IX shall continue to apply following any such termination and (b) the provisions of ARTICLE VII applicable to a Party's breach of any covenant contained in this Agreement occurring prior to such termination shall continue to apply following any such termination.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices. Any notice, statement, demand, claim, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be deemed properly served, given or made if delivered in person or sent by electronic mail, facsimile or sent by registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service that provides a receipt of delivery, in each case, to the other Party at the addresses specified below, or such other address as a Party may specify in the manner specified in this Section 9.1:

(a) If to Buyer, to:

[_____]

With a copy, which shall not constitute notice to:

[_____]

(b) If to Seller, to:

[_____]

With a copy, which shall not constitute notice to:

[_____]

Notice given by personal delivery, mail or overnight courier pursuant to this Section 9.1 shall be effective upon physical receipt. Notice given by facsimile or electronic mail pursuant to this Section 9.1 shall be effective as of the date of confirmed delivery if delivered before 5:00 p.m. Eastern Time on any Business Day or the next succeeding Business Day if confirmed delivery is after 5:00 p.m. Eastern Time on any Business Day or during any non-Business Day.

Section 9.2 Entire Agreement; Amendments. This Agreement and the other Transaction Documents constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, of the Parties with respect to the subject matter hereof. Any oral representations or modifications concerning this instrument shall be of no force or effect unless contained in a subsequent written modification signed by the party to be charged. This Agreement may be amended or modified only by a written instrument executed by the Parties.

Section 9.3 Successors and Assigns. This Agreement and the other Transaction Documents shall be binding upon, and shall inure to the benefit of, and shall be enforceable by, the Parties and their respective successors and permitted assigns. Neither this Agreement, nor any other Transaction Document, nor any right hereunder or thereunder, may be assigned by any Party without the prior written consent of each other Party.

Section 9.4 Governing Law. This Agreement, and any instrument or agreement required hereunder (to the extent not otherwise expressly provided for therein), shall be governed by, and construed in accordance with, the Law of the State of Florida.

Section 9.5 Consent to Jurisdiction. The Parties agree that any suit, action or other legal proceeding by or against any Party (or its Affiliates or designees) with respect to or arising out of this Agreement or any other Transaction Document shall be brought exclusively in the Federal or State courts sitting in Gainesville, Florida as the Party instituting such suit, action or other legal proceeding may elect. By execution and delivery of this Agreement, each Party (for itself, its Affiliates and its designees) irrevocably and unconditionally consents and submits to the exclusive jurisdiction of such courts and the appellate courts therefrom, and waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding. The Parties irrevocably consent to the service of process in any such action or proceeding by the mailing of copies thereof by registered or certified mail, first class postage prepaid to the addresses set forth in Section 9.1. IN ALL CASES, EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY AND ALL ACTIONS, CLAIMS AND DISPUTES IN CONNECTION WITH THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 9.6 Expenses. Regardless of whether the transactions contemplated by this Agreement are consummated, each Party shall bear responsibility for its own costs and expenses in connection with this Agreement, the Transaction Documents and the transactions contemplated hereby or thereby, including the fees and expenses of its legal counsel and other

consultants and advisors in connection with this Agreement and any other Transaction Document, except as may be otherwise provided herein

Section 9.7 Public Records and Confidentiality.

(a) This Agreement is a public record that will be disclosed to the public and discussed during public meetings of the Gainesville Utility Advisory Board and Gainesville City Commission.

(b) Should either Party reasonably believe that written information provided in connection with this Agreement, due diligence, closing or otherwise provided in connection with this purchase and sale transaction falls within a specific exemption under Florida's Public Record laws, the Party transmitting or providing such information shall submit such information to the receiving Party in a separate envelope that includes a general description of the information together with a reference to the specific Florida Statute or other law that deems such materials exempt from public disclosure. The receiving Party will not warrant or guarantee that information designated by the transmitting Party as exempt is in fact exempt under Florida's Public Records Laws, and the receiving Party will offer no opinion as to the accuracy of the legal reference provided by the transmitting Party.

(c) If the receiving Party receives a public records request for any information that the transmitting Party has designated as exempt, the receiving Party will notify the transmitting Party through email notice. The transmitting Party shall have no longer than five (5) business days after receipt of such notice to file any necessary court documents to prevent the disclosure of the information, at the sole expense of the transmitting Party. If the transmitting Party timely files the necessary court documents, the receiving Party will not disclose the information until the conclusion of any proceedings.

(d) If the transmitting Party fails to comply with any of the requirements in this section or fails to file any necessary court documents to prevent the receiving Party from disclosing materials as described herein, such failure shall be deemed as a waiver by the transmitting Party to the claim that any materials submitted by the transmitting Party constitute exempt information. The transmitting Party agrees that its designation of information as exempt may be challenged in court by any person or entity. The transmitting Party agrees to indemnify and defend the receiving Party, its employees, agents and officials against all claims and actions, whether or not a lawsuit is commenced, related to the transmitting Party's designation of materials as exempt and to hold harmless such receiving Party and its employees, agents and officials for any award to a plaintiff for damages, costs and attorneys' fees by reason of any claim or action arising out of or related to the transmitting Party's designation of materials as exempt.

(e) Notwithstanding the foregoing, the Parties agree that any information provided, including any materials designated as exempt, will be distributed to members of staff, management and members of the Utility Advisory Board and City Commission for evaluation and consideration of the purchase and sale transaction

Section 9.8 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one Party than against any other Party.

Section 9.9 Waiver of Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, except to the extent included in a third-party Claim for which indemnification is sought under Article VII or a Claim resulting from the fraud or willful misconduct of a Party or its Affiliates, in no event shall either Party or its Affiliates, or their respective managers, members, shareholders, or Representatives, be liable hereunder at any time for punitive, incidental, consequential special or indirect damages, including loss of future profits, revenue or income, or loss of business reputation of the other Party or any of its Affiliates, whether in contract, tort (including negligence), strict liability or otherwise, and each Party hereby expressly releases the other Party, its Affiliates, and their respective managers, members, shareholders, partners, consultants, Representatives, successors and assigns therefrom.

Section 9.10 Captions. The captions contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

Section 9.11 Severability. The invalidity of one or more phrases, sentences, clauses, Sections or Articles contained in this Agreement shall not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.

Section 9.12 Counterparts; Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall constitute an original but all of which, taken together, shall constitute but one agreement. Signatures to this Agreement, any Transaction Document or any other document or instrument delivered in connection herewith, may be delivered by facsimile or transmitted electronically (including by portable document format) and shall be deemed originals for all purposes.

Section 9.13 Third Parties. Except as otherwise expressly provided in this Agreement, nothing contained in this Agreement shall be construed to create any right in, duty to, standard of care with respect to, or any liability to any Person who is not a party to this Agreement.

Section 9.14 No Waiver. Any failure of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

ARTICLE X

SPECIFIC PERFORMANCE

Section 10.1 Waivers and Acknowledgments. The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement are not performed

by the Parties in accordance with their specific terms or are otherwise breached. It is accordingly agreed that Buyer, on the one hand, and Seller, on the other hand, may seek an injunction or injunctions to prevent breaches of this Agreement by the other for the purpose of enforcing specifically the terms and provisions of this Agreement against the other Party and to cause the Closing to occur on the terms and subject to the conditions thereto set forth herein. In such case, each of the Parties hereby waives (i) any defenses in any action for specific performance that such other Party is required to mitigate damages or otherwise has an adequate remedy under Law and (ii) any requirement under any Law to post a bond or other security as a prerequisite to obtaining such equitable relief. If either Party brings any action to enforce specifically the performance of the terms and provisions hereof by the other Party, the Expiration Date shall automatically be extended by (x) the amount of time during which such action is pending, plus twenty (20) Business Days or (y) such other time period established by the court presiding over such action.

Section 10.2 Alternative Remedy. If a Party has sought to specifically enforce the obligation of the Parties under this Agreement but a court of competent jurisdiction has declined to specifically enforce such obligations, the claiming Party may pursue any other remedy available to it at law or in equity, including monetary damages.

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be duly executed and delivered as of the Agreement Date.

SELLER:

**GAINESVILLE RENEWABLE ENERGY
CENTER, LLC,**

By: _____

Name:

Title:

BUYER:

**CITY OF GAINESVILLE, FLORIDA, D/B/A
GAINESVILLE REGIONAL UTILITIES,**

By: _____
Name:
Title:

Approved by the City Commission

By: _____
Name: Lauryn Poe
Title: Mayor

For Buyer: Approved as to form and legality

By: _____
Name:
Title:

environmental law, it also comes with limitations of materiality and a one year look-back. This increases GRU's risk and possibly cost over what would be acceptable in a commercially reasonable transaction.

- GREC seeks to remove the representation and warranty of "no defects", in which GREC represents "to Seller's Knowledge, there are no operational deficiencies or defects that are materially detrimental to the operation of the Project in a normal manner or that would otherwise have a Material Adverse Effect". In a previous call with you and both Chadbourne and Park and Winston and Strawn I said unequivocally (and four times) that this representation is not negotiable. This increases GRU's risk and possibly cost over what would be acceptable in a commercially reasonable transaction.
- GREC is seeking to add a concept of the remaining receivable as of closing to be an additional purchase price. This is clearly GREC taking advantage of the tax law and trying to convert operating income into capital gains. It represents a monetary benefit to GREC for which no consideration has been offered to GRU.
- GREC seeks to remove Section 6.2 (ii) in which the Seller covenants not to enter into a Contract with any person that will be an Assigned Contract. This provision was part of the MOU and as a result should not be removed.
- GREC seeks to remove its obligation to maintain insurance in full force and effect through closing. This increases GRU's risk and possibly cost over what would be acceptable in a commercially reasonable transaction.
- GREC seeks to modify the concept of Seller updating of schedules to a voluntary exercise and compared to being based on the Seller's Knowledge as reasonably necessary. This increases GRU's risk and possibly cost over what would be acceptable in a commercially reasonable transaction.
- GREC seeks to allow 1%, or \$ 7.5 million of funds to be escrowed. This is far below what is a commercially reasonable amount, given the scope and risk of this transaction. This increases GRU's risk and possibly cost over what would be acceptable in a commercially reasonable transaction.
- GREC seeks to disallow GRU from terminating the Agreement based on 30 US Treasury Bonds rising beyond 3.43% before November 19, 2017. This effectively eliminates GRU's interest rate protection, because the last day the parties can close under the MOU is November 24, 2017 and since the interest rate protection is viewed 5 days before closing that makes the last date for a US Treasury Bond update on November 19, 2017. My staff and I are totally mystified by this modification to the Agreement. This increases GRU's risk and possibly cost over what would be acceptable in a commercially reasonable transaction.
- GREC seeks to change the legal venue to Miami-Dade County. Seriously, what is that about?

Although these comments are not meant to be inclusive of all the issues GRU has with GREC's black-lined response, they do represent significant enough issues which make me question whether you and the other GREC investors are committed to getting this agreement executed. We stand just over 2 months away from the deadline for the execution of the Asset Purchase Agreement. It took GREC 5

weeks to respond to GRU's first draft. Prior to executing the agreement, GRU will need to communicate the Agreement with the UAB and the City Commission as well as the general public. Execution of the Agreement will only come after an independent engineer's ("IE") report and positive dialogue with the Rating Agencies in New York. The more you and your investors modify the agreement to include barriers to its execution the less likely the agreement is to be executed. The more time you and your investors take modifying the agreement the less likely the Agreement is to be executed.

Although both you and I have talked about this potential purchase being an "as-is, where-is" purchase, nothing that was contained in our 1st draft changed that concept. GRU simply needs to know what "as-is" is! I believe that GREC should be absolutely fine with representing that to their knowledge there are no operational deficiencies or defects that are materially detrimental to the operation of the Project in a normal manner or that would otherwise have a Material Adverse Effect. It's no different than GREC's current representation obligation under our PPA. If GREC cannot, I have to seriously ask "why not?"

Ultimately, the answer to that question may not matter because if GRU cannot start its IE on its review of the plant and produce a final report and we can't schedule time with the Rating Agencies, GRU won't be able to meet the August 24th deadline for the Agreement.

In summary, if you and your investors are intent on maintaining the modifications to the Agreement as written GRU would not be able to execute for the price we offered in the MOU. In order to receive \$ 750 million GRU will need to receive commercially reasonable terms, as was spelled out in the MOU and memorialized in the 1st draft of the Agreement. Falling short of either of these options, GRU would be ready to return to arbitration and continue with the status quo of our contractual arrangement.

Edward Bielarski Jr

General Manager

Gainesville Regional Utilities