

**OPTION AGREEMENT BETWEEN  
THE LANCASTER POWER AUTHORITY AND US TOPCO ENERGY, INC.**

This Option Agreement (“Agreement”) is made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 2012 (“Effective Date”), by and between the Lancaster Power Authority, a municipal utility of the State of California (hereinafter referred to as “LPA”), and US TOPCO ENERGY, INC., a California corporation (hereinafter referred to as “TOPCO”), collectively referred to as “the Parties”.

WHEREAS, LPA desires to enhance the use of renewable energy within the City; and

WHEREAS, LPA holds a leasehold interest in real property on which LPA is willing to allow TOPCO an option to construct one or more Solar Generation Facilities (the “Facilities”), as such property is specifically set forth in Exhibit A (the “Property”); and

WHEREAS, subject to the terms and conditions of the Master Solar Power Purchase and Sale Agreement, dated as of October 25, 2011, between LPA and TOPCO (as amended, modified and in effect from time to time, the “MPA”), LPA has engaged TOPCO for the construction and operation of the Facilities. TOPCO will first attempt to sell the power generated from the Facilities to Southern California Edison (SCE) under the CREST Program. If TOPCO is not awarded a Power Purchase Agreement (“PPA”) from SCE under the CREST Program, the LPA will work cooperatively with TOPCO in securing a PPA from another source up to, but not limited to, SCE under a different alternative energy program, another California IOU, CAISO, or a California municipal utility seeking to meet its State alternative energy mandate. Parties recognize that a PPA must be secured by one of the Parties and mutually agreed upon prior to TOPCO constructing an electrical generation facility; and

WHEREAS, TOPCO will at its sole cost prepare the necessary applications and pay all fees and costs associated with obtaining SCE approval(s) to interconnect the Facilities to SCE distribution lines; and

WHEREAS, in consideration for such undertaking LPA wishes to grant TOPCO an irrevocable option to lease the Property, as set forth herein.

NOW, THEREFORE, in consideration of their mutual promises, benefits, obligations, and covenants hereinafter contained, the Parties hereto agree as follows:

1. Duration of Agreement. This Agreement shall be binding upon the Parties for 24 months (the “Option Term”) from the Effective Date written unless modified in writing by the Parties.
2. SCE Filings. In consideration for the Option, TOPCO will at its sole cost prepare the necessary applications and pay all fees and costs associated with obtaining SCE approval(s) to interconnect the Facilities to SCE distribution lines.
3. Land Option: LPA hereby grants to TOPCO an irrevocable option to lease (the “Option”) the Property, such option to be open for the Option Term, on the terms and conditions set forth in Exhibit B. At any time during the Option Term TOPCO may exercise the Option by written notice to LPA. Upon LPA’s receipt of such notice the Parties shall execute a lease in the form set forth in Exhibit B. In accordance with this Agreement, LPA will not

lease, transfer or otherwise encumber the Property, but, will reserve the Property for the sole use of TOPCO pursuant to the terms of Exhibit B. LPA agrees to execute the Memorandum of Lease Option as set forth in Exhibit D, and agrees that TOPCO may file the same in the applicable real property records.

4. Termination. The Parties may terminate the Agreement at any time by mutual written agreement.
5. Indemnity. Each Party to this Agreement shall indemnify, defend, and hold the other Party harmless from and against all claims from third parties that result in damages, expenses, costs, and liabilities to such indemnified Party arising out of the indemnifying Party's negligent acts, omissions or wrongful conduct in the course of performance of this Agreement, including, without limitation, the breach or failure of the warranties and representations set forth herein.
6. Exclusive Agreement. This document constitutes the entire Agreement between the Parties, and no promises or representations, other than those contained herein and those implied by law, have been made by the Parties. Any modifications to this Agreement must be in writing and signed by all Parties.
7. Severability. In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement. All remaining provisions of this Agreement shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.
8. Applicable Law. This Agreement will be governed by the laws of the State of California.
9. Paragraph Headings. The headings of particular paragraphs and subparagraphs are inserted only for convenience and are not part of this Agreement and are not to act as a limitation on the scope of the particular paragraph to which the heading refers.
10. Notices. All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:
  - a. When delivered personally to the recipient's address as stated in this Agreement;
  - b. Three days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement; or
  - c. When sent electronically or by telex to the last e-mail address or telex number of the recipient known to the person giving notice. Notice is effective upon receipt provided that a duplicate copy of the notice is promptly given by first class mail, or the recipient delivers a written confirmation of receipt.
11. Resolving Disputes. If any court action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses in addition to any other relief to which he or she may be entitled.

12. Electronic Signatures. LPA and TOPCO agree that this Agreement will be considered signed when the signature of a party is delivered by electronic transmission. Signatures transmitted electronically shall have the same effect as original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

US TOPCO ENERGY, INC.,  
a California corporation

Lancaster Power Authority,  
a joint powers authority

Approved:

By: \_\_\_\_\_  
Joshua Chang, Chairman

By: \_\_\_\_\_  
Mark V. Bozigian, Executive Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved by Department Head

By: \_\_\_\_\_  
Robert C. Neal, Director of Public Works

ATTEST: \_\_\_\_\_  
Geri K. Bryan, Secretary

Approved as to Form:

By: \_\_\_\_\_  
David R. McEwen, Legal Counsel

**EXHIBIT A PROPERTY**

**SCHEDULE OF RENEWABLE GENERATING FACILITY SITES**

| <u>APN</u>            | <u>Location</u>                           | <u>Area (acres)</u> |
|-----------------------|---|---------------------|
| (Portion)3170-008-901 | East side of 25 <sup>th</sup> Street East | 17                  |

**EXHIBIT B**

**RENEWABLE GENERATING FACILITY SITE GROUND LEASE**

THIS RENEWABLE GENERATING FACILITY SITE GROUND LEASE (this "Lease Agreement") is entered into as of \_\_\_\_\_, 2012, by and between US Topco Energy, Inc., a California corporation, with its principal place of business located at 412 West Valley Boulevard, San Gabriel, CA 91776 ("Developer"), and Lancaster Power Authority, a joint powers authority ("LPA"). Developer and LPA are sometimes individually referred to as a "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, LPA is a joint powers authority created, existing and operating pursuant to the Joint Exercise of Powers Act (Cal. Gov't Code § 6500 et seq.). The purpose of the LPA is to establish, own and operate a municipal gas and electric utility for the benefit of the residents of the City of Lancaster ("City"), as well as for the customers, businesses and property owners within the City and/or to be served by the LPA; and

WHEREAS, Developer is in the business of developing renewable energy generating facilities; and

WHEREAS, California Government Code §§ 4217.10 et seq. authorize LPA to enter into agreements and contracts with private sector entities for developing energy conservation and production projects; and

WHEREAS, subject to the terms and conditions of the Master Solar Power Purchase and Sale Agreement, dated as of June 28, 2011, between LPA and Developer (as amended, modified and in effect from time to time, the "MPA"), LPA has engaged Developer for the construction and operation of an electric generating facility (the "Renewable Generating Facility"). Developer will first attempt to sell the power generated from the facility to SCE under the CREST Program. If Developer is not awarded a Power Purchase Agreement ("PPA") from SCE under the CREST Program, or that such terms and conditions contained within said PPA is not satisfactory to both Developer and LPA, upon written notice to either party, LPA will work cooperatively with Developer in securing a PPA from another source up to, but not limited to, SCE under a different alternative energy program, another California IOU, CAISO, or a California municipal utility seeking to meet it's State alternative energy mandate. Parties recognize that a PPA must be secured by one of the Parties and mutually agreed upon prior to Developer constructing an electrical generation facility; and

WHEREAS, the LPA is the holder of a leasehold interest in real property in the City of Lancaster, California as more particularly described in Exhibit A (the "Property"), which will be used, pursuant to the lease granted herein, for the construction and operation of the Renewable Generating Facility; and

WHEREAS, Developer requires a lease from LPA in order to construct, install, operate and maintain the Renewable Generating Facility in furtherance of Developer's obligations under the MPA and LPA is willing to grant such lease to Developer pursuant to the terms set forth herein and in consideration of Developer's obligations hereunder and under the MPA and under the Option Agreement; and

WHEREAS, the Renewable Generating Facility's gross power rating, net power rating and annual production, net of Station Use, as measured by a meter approved by the California Independent System Operator Corporation, are set forth on Exhibit B (the "Energy Production Analysis Table"); and

WHEREAS, capitalized terms used, but not defined herein (including in the recitals), shall have the respective meanings ascribed to them in the MPA, and all terms, conditions and provisions of the MPA are hereby incorporated into this Lease Agreement; and

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the sufficiency of which are acknowledged by both Parties, the Parties agree as follows:

## **ARTICLE I GRANT OF LEASE**

Section 1.1. Lease. LPA does hereby lease, demise and let unto Developer, and Developer does hereby lease from LPA, upon all of the terms and conditions set forth herein, the Property for Developer's installation, operation, maintenance, improvement and replacement of the Renewable Energy Facility on the Property (the "Lease"); provided however, that LPA shall have the right to enter the Property as described in Section 1.3 below. Developer shall have exclusive use of the Property for the purpose of (i) access, ingress and egress to the Property to facilitate the installation, operation, maintenance, improvement and replacement of the Renewable Generating Facility on the Property and (ii) the installation, operation, maintenance, improvement and replacement of such wires, cables and other utility related improvements required to install and operate the Renewable Generating Facility on the Property.

Section 1.2. Contractors. The Lease granted herein shall be for the benefit of Developer and such employees, agents, representatives, contractors and subcontractors of Developer ("Developer's Agents") as are deemed necessary or desirable by Developer in connection with its obligations hereunder and under the MPA.

Section 1.3. LPA Right of Entry; Use. Subject to the terms and conditions of this Lease Agreement, LPA shall have the right to enter the Property at any time provided that LPA does not interfere with the installation, operation or maintenance of the Renewable Generating Facility.

Section 1.4. Property. Prior to Developer's installation of the Renewable Generating Facility, Developer shall have inspected the Property and satisfied itself that the Property is in a condition ready for Developer's installation of the Renewable Generating Facility. LPA shall, in good faith, assist Developer in the acquisition of all related permits and approvals to the Property without any obligation to expend moneys. In the event Developer determines, in its sole discretion, that the Property is not in a condition ready for the installation of the Renewable Generating Facility, Developer shall have the right to terminate this Lease Agreement any time prior to the installation of the Renewable Generating Facility.

Section 1.5. Transmission Rights. LPA shall cooperate in good faith with Developer's efforts to obtain real property rights from third parties and governmental authorities as may be required to interconnect the Renewable Generating Facility to the electrical grid at the requisite point of physical delivery under Developer's PPA. To the extent LPA holds the requisite real property rights for Developer to interconnect the Renewable Generating Facility, such property shall be added

to this Lease Agreement at no cost to Developer and Developer shall have a non-exclusive easement appurtenant to the leasehold interest created hereby to use such additional property for overhead and underground electrical lines, supporting structures and all related appurtenances to interconnect the Renewable Generating Facility to the point of interconnection.

**ARTICLE II  
TERM**

The term (the "Term") of this Lease Agreement shall commence on the Effective Date and shall continue in full force and effect for a term of twenty (20) years from the date of commercial operation of the Renewable Generating Facility, but in no event shall the term extend beyond thirty-five (35) years without the mutual agreement of Developer and LPA.

**ARTICLE III  
CONSTRUCTION OF RENEWABLE GENERATING FACILITY**

Section 3.1. Approvals. Developer shall obtain all Planning and / or Building and Safety approvals and permits prior to construction as required by the City or other Agencies. LPA shall assist Developer in the acquisition of such approvals and permits without necessity to expend funds.

Section 3.2. Construction and Installation. LPA hereby consents to the construction and installation of the Renewable Generating Facility by Developer on the Property in accordance with the terms and conditions of the MPA, including Sections 202 and 203, "Design, Construction and Operation of Renewable Generating Facility; Renewable Generating Facility Site Ground Lease," and "Cost of Construction and Operation; Interconnection with SCE's System" and Developer agrees to abide by said terms and conditions. Developer shall request and obtain underground utility information through the various utility companies.

Section 3.3. Maintenance and Repair of Renewable Generating Facility.

(a) Developer, at its own cost and expense, shall secure and maintain the Renewable Energy Facility, including fencing, access roads and landscaping, to its own satisfaction in a manner that permits Developer to satisfy its obligations under the MPA and the requirements of the City of Lancaster.

(b) Developer and its agents, consultants, and representatives shall have access at all reasonable times (including under emergency conditions) to the Property and the Renewable Generating Facility, and all Renewable Generating Facility operations for purposes of inspection and maintenance of the Renewable Generating Facility. During any inspection or maintenance of the Renewable Generating Facility, Developer, and its agents, consultants and representatives shall comply with appropriate safety and security procedures, and Developer and its agents, consultants and representatives shall conduct such inspection and maintenance in such a manner as to cause minimum interference with adjacent properties.

Section 3.4. Failure to Maintain Property. If Developer fails to maintain the Property in good order and if such failure continues for thirty (30) days after Developer's receipt of written notice from LPA (which 30-day period shall be extended for the time reasonably required to cure the default if the cure requires more than 30 days, as long as Developer has commenced and is diligently pursuing such cure to completion), then LPA may (but shall not be obligated to) perform such work



in a commercially reasonable manner. If Developer's failure to maintain Property causes interference to adjacent properties' generation facilities, Developer shall be responsible for reimbursing adjacent Generation Facility owners within thirty (30) days of cure. Unless Developer has breached, defaulted or failed to perform any of its material obligations hereunder beyond any cure periods provided herein (or, if greater, 30 days after written notice hereof is received by Developer) more than two times in any twelve consecutive month period, LPA shall not have any right to terminate this Lease Agreement or suspend any of LPA's rights, duties or obligations under this Lease Agreement as a result of any breach or default by Developer of, or any failure by Developer to perform, any of its obligations hereunder.

Section 3.5. Entry Requirements. Developer shall comply with the following requirements prior to entry onto the Property in connection with the construction, installation, operation and maintenance of the Renewable Generating Facility. Developer agrees it shall:

(a) perform all construction, installation, operation and maintenance work in connection with the Renewable Generating Facility in a safe manner;

(b) notify City if Developer has reason to believe that any actions by Developer, or any of Developer's contractors, will cause any hazardous condition on the Property, and shall take reasonable means and methods to minimize risks to City or others due to such hazardous conditions, and will not permit any hazardous condition caused by Developer to remain on the Property any longer than reasonably necessary for the construction, installation, operation and maintenance of the Renewable Generating Facility;

(c) except as provided in Section 6.2, below, shall not bring and shall prohibit its contractors from bringing any Hazardous Material (as defined in Article VI below) in violation of applicable federal, state or local law onto the Property; however, Developer is not responsible for the discovery, presence, handling or identification or any hazardous materials or conditions that may exist on the Property, except to the extent caused by Developer, and subject to Article VI below;

(d) repair any damage or disturbance to the Property to the extent caused by Developer;

(e) keep the Property free and clear of all mechanics' and materialmen's liens arising out of Developer's activities (provided that if any such lien is filed, Developer shall have the right to contest the same so long as Developer provides a bond for the amount of such lien);

(f) procure and maintain, or use contractors who maintain, during all periods of entry pursuant to this section, general liability and property damage insurance with a combined single limit per occurrence of \$1,000,000, and naming LPA as additional insured; and

(g) obtain and maintain, and cause each contractor and subcontractor performing construction, installation, operation or maintenance work on behalf of the Developer on the Property to obtain and maintain Worker's Compensation insurance as required by law. Developer shall deliver to LPA a certificate evidencing such insurance and providing that such coverage shall not be terminated or modified without at least thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to LPA (ten (10) days written notice is required in the case of non-payment).

Section 3.6. Removal of Materials. Upon completion of construction of the Renewable Generating Facility, Developer shall remove all of Developer's remaining materials from the Property.

Section 3.7. Point of Delivery. The Renewable Generating Facility's Point of Delivery, which will be approved by and is subject to subsequent modifications by Southern California Edison Company ("SCE"), will be set forth in a future Interconnection Agreement by and between Developer and SCE.

Section 3.8. Regulatory Compliance. During the term of this Lease, Developer and LPA shall comply with all applicable state, federal and local laws and regulations, any and all applicable requirements imposed by the SCE CREST Program, SCE tariffs, CAISO Tariff, SCE Power Purchase Agreement and any and all other applicable contractual, tariff, legal and/or regulatory requirements.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES, COVENANTS OF LPA**

Section 4.1. Authorization; Enforceability. The execution and delivery by LPA of, and the performance of its obligations under, this Lease Agreement have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on LPA or any valid order of any court, or regulatory agency or other body having authority to which LPA is subject. This Lease Agreement constitutes a legal and valid obligation of LPA, enforceable against LPA in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law.

Section 4.2. LPA's Interest in Property. LPA represents, warrants and covenants that LPA has a valid leasehold interest in the Property, that LPA has full rights to enter into this Lease Agreement, and that throughout the Term of this Lease Agreement, provided that no default by Developer has occurred and continues beyond the expiration of applicable notice and cure periods, Developer shall enjoy quiet and peaceful use and enjoyment of the Property pursuant to the Lease granted herein, free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Developer's quiet enjoyment thereof, and neither LPA nor any person claiming by, through or under LPA shall disturb Developer's quiet and peaceful use and enjoyment of the Property pursuant to the Lease granted herein. To the best of LPA's knowledge, there are no existing conditions or use restrictions that prevent the construction, installation or operation of the Renewable Generating Facility on the Property other than the Developer's need to request and obtain the necessary entitlements through the City of Lancaster's Planning Department and Engineering Division and Los Angeles County Fire Department and other Agencies. In the event Developer and/or LPA discovers conditions or use restrictions after the execution of this Lease Agreement but before construction, LPA and Developer, shall in good faith, remedy such conditions and use restrictions and share the costs thereof. In the event such conditions or use restrictions are discovered by either party after the execution of this Lease Agreement and during the installation of the Renewable Generating Facility, LPA shall at its own cost, remedy such conditions and use restrictions.

(a) LPA shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Property unless LPA has given Developer at least thirty (30) days' prior written notice thereof, which notice shall identify the transferee, the Property to be so transferred and the proposed date of transfer. In the event LPA wishes to sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Property, LPA hereby grants to Developer the first rights to purchase the Property at the then fair market value as appraised by a mutually approved appraiser. In furtherance of the foregoing, LPA agrees that it shall use commercially reasonable efforts to cause any purchaser, lessee, assignee, mortgagee, pledgee or other party to whom a lien or other security interest in the Property has been or may be granted (individually, each a "third party") to execute and deliver to Developer a subordination and non-disturbance agreement ("SNDA"), in recordable form approved by Developer (such approval not to be unreasonably withheld by Developer), and as described below.

(b) Such SNDA shall (i) acknowledge and consent to the Developer's rights in the Property, (ii) acknowledge that the third party has no interest in the Renewable Generating Facility or Lease and shall not gain any interest in the Renewable Generating Facility or Lease by virtue of the Parties' performance or breach of this Lease Agreement, (iii) subordinate such third party's interest in the Property to this Lease Agreement, (iv) acknowledge that Developer's rights in the Property granted hereunder shall run with the Property throughout the Term of this Lease Agreement, notwithstanding any sale, lease, transfer, assignment, mortgage, pledge or other alienation or encumbrance by such third party of the Property and (v) provide that so long as Developer is not in default under this Lease Agreement beyond the expiration of any applicable grace or cure period provided for hereunder, Developer's right of peaceable and quiet use and enjoyment of the Property pursuant to the Lease herein granted by LPA shall not be disturbed by such third party.

Section 4.3. No Interference With and Protection of Renewable Generating Facility. LPA represents and warrants to Developer that there are no circumstances known to LPA or commitments to third parties that may damage, impair or otherwise adversely affect the Renewable Generating Facility or its construction, installation, or function (including activities that may adversely affect Insolation, as defined below). Except as identified in Section 204 of the MPA, LPA shall not initiate, conduct or permit activities on, in or about the Property that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the Renewable Generating Facility. LPA shall take all reasonable steps to limit access to the Property to Developer and Developer's employees, agents and representatives (except as otherwise set forth herein). LPA shall not interfere with or handle any Developer equipment (including wireless/cellular internet connectivity equipment) or the Renewable Generating Facility without written authorization from Developer; provided, however, that LPA shall at all times have access to and the right to observe the construction and installation work or Renewable Generating Facility removal. Developer shall be responsible for security measures for the Property. LPA shall not be liable for Developer damage or losses. Developer shall at Developer's cost obtain insurance coverage to the extent Developer desires protection against criminal acts.

Section 4.4. Maintenance of Property. Developer shall keep the Property neat, clean and in good order and condition as required to comply with applicable state and local laws.

Section 4.5. Insolation. LPA acknowledges and agrees that access to sunlight ("Insolation") is essential to the value of Developer of this Lease Agreement and is a material inducement to Developer in entering into this Lease Agreement. Accordingly, LPA shall take commercially reasonable actions as necessary to prevent any interference with Insolation on and at or

surrounding the Property, specifically in the air space above the Renewable Generating Facility. Without limiting the foregoing, LPA shall not construct or permit to be constructed any structure on the Property that could adversely affect Insolation levels or permit the growth of foliage that could adversely affect Insolation levels. Although not obligated to monitor such activity, if LPA becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the Insolation to the Property, LPA shall advise Developer of such information and reasonably cooperate with Developer in measures to preserve existing levels of Insolation at the Property. Notwithstanding the foregoing, Developer acknowledges and agrees that the conditions existing on the adjacent property are not governed by the provisions of this Section.

Section 4.6. Liens and Encumbrances. LPA covenants that it will not cause, create, incur, assume, permit or suffer to exist any liens (including mechanics', labor or materialmen's liens), security interests or other encumbrances on the Property that will interfere with the Lease and/or Developer's use and operation of the Renewable Generating Facility. If any liens, security interests or other encumbrances are created after the Effective Date of this Lease Agreement, LPA shall immediately notify Developer in writing and shall promptly cause such liens to be bonded, discharged and released of record without cost to Developer, and shall indemnify Developer against all costs and expenses (including reasonable attorney's fees and court costs at trial and on appeal) incurred in bonding, discharging and releasing such liens. LPA further covenants that with respect to any liens, security interests or other encumbrances to LPA's title that may adversely impact the Lease and/or the Renewable Generating Facility and that are in effect as of the date hereof, LPA shall make commercially reasonable efforts to enter into an SNDA as described in Section 4.2(b) above. LPA acknowledges that without such SDNAs, Developer may not be able to finance and build the Renewable Generating Facility on the Property.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES, COVENANTS OF DEVELOPER**

Section 5.1. Authorization; Enforceability. The execution and delivery by Developer of, and the performance of its obligations under, this Lease Agreement have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Developer or any valid order of any court, or regulatory agency or other body having authority to which Developer is subject. This Lease Agreement constitutes a legal and valid obligation of Developer, enforceable against Developer in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law.

Section 5.2. Compliance with Laws. Developer shall comply with all laws, ordinances, orders, rules and regulations (state, federal or local), including without limitation all environmental and occupational, health and safety requirements relating to Developer's use or occupancy of the Property and the operation and maintenance of the Property and Renewable Generating Facility.

Section 5.3. Insurance. Developer shall maintain, at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and in the amount of two million dollars (\$2,000,000) aggregate, endorsed to provide contractual liability in said amount, specifically covering Developer's obligations under this Lease and naming "[The City of Lancaster,

the Lancaster Power Authority, the Lancaster Redevelopment Agency, the Lancaster Financing Authority, the Lancaster Housing Authority, the Lancaster Boulevard Corporation, the Lancaster Community Services Foundation, and the Lancaster Museum/Art Gallery Associates], as well as each of their officers, agents, servants, and employees. 44933 North Fern Avenue, Lancaster, California 93534.” as additional insured. The minimum coverage amount of \$1,000,000 per occurrence and in the amount of two million dollars (\$2,000,000) aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Developer, if it has employees, shall also maintain at all times during the term of this Lease workers’ compensation insurance coverage in accordance with the applicable requirements of federal and state law. Within thirty (30) days after execution of this Lease and upon LPA’s request annually thereafter, Developer shall deliver to LPA certificates of insurance evidencing such coverage, which shall specify that LPA shall be given at least thirty (30) days’ prior written notice by the applicable insurer in the event of cancellation of coverage, except ten (10) days for non-payment of premium. Such insurance shall be primary coverage without right of contribution from any insurance of LPA. See City of Lancaster Risk Allocation Manual dated August 2010.

**ARTICLE VI  
HAZARDOUS MATERIAL; EMERGENCY**

Section 6.1. Compliance. During the term of this Lease Agreement, the Parties shall comply with all federal, state and local laws, statutes, ordinances and regulations relating to the receipt, handling, use, storage, transportation, generation, discharge, release and disposal of Hazardous Material (as defined below).

Section 6.2. Notice. Neither Party shall introduce or use any Hazardous Material on, in or under the Property in violation of any applicable law or regulation. Notwithstanding the foregoing, Developer may keep on or about the Property quantities of any Hazardous Material that is used in the ordinary, customary and lawful construction, operation and maintenance of the Renewable Generating Facility. If either Party becomes aware of any spillage, discharge, release or disposal of Hazardous Material onto or within the Property which by law must be reported to any federal, state or local agency, such Party shall promptly provide telephonic notice to the other Party of the type and location of such materials, and shall promptly confirm telephonic notice in writing.

Section 6.3. Developer Hazardous Material Indemnity. Developer shall be responsible for and shall indemnify, protect, defend and hold harmless LPA and LPA’s employees, officers, agents, contractors and invitees (collectively, the “LPA’s Parties”) from any and all liability, damages, injuries, causes of action, claims, judgments, costs, penalties, fines, losses, and expenses which arise at any time and which result directly from Developer’s or Developer’s Parties’ receipt, handling, use, storage, transportation, generation, discharge, release and disposal of Hazardous Material in violation of any applicable law or regulation, in, on, under or about the Property (excluding all Hazardous Material existing in, on, under or about the Property prior to Developer’s or Developer’s Parties’ entry under this Lease Agreement, which shall be the sole responsibility of LPA).

Section 6.4. LPA Hazardous Material Indemnity. LPA shall be responsible for and shall indemnify, protect, defend and hold harmless Developer and Developer’s employees, officers, agents, contractors and invitees (collectively, the “Developer’s Parties”) from any and all liability, damages, injuries, causes of action, claims, judgments, costs, penalties, fines, losses and expenses which arise at any time and which result directly from LPA’s or LPA’s Parties’ receipt, handling,

use, storage, transportation, generation, discharge, release and disposal of Hazardous Material in violation of any applicable law or regulation, in, on, under or about the Property (including all Hazardous Material existing in, on, under or about the Property prior to Developer's or Developer's Parties' entry onto the Property under this Lease Agreement).

Section 6.5. Survive Expiration. Developer's and LPA's obligations under this Article 6 shall survive the expiration or earlier termination of this Lease Agreement.

Section 6.6. Definition of Hazardous Material. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the State of California or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) petroleum, (ii) asbestos, (iii) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (iv) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et. seq. (42 U.S.C. Section 6903), or (v) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et. seq. (42 U.S.C. Section 9601).

## **ARTICLE VII FACILITY SITE UTILITIES**

Developer shall have the obligation to identify, extend, construct, maintain and repair all utilities, including all pipes, conduits, ducts, electric or other utilities, sinks or other apparatus through which any utility services are provided, from the Point of Delivery to and then within the Property, but only to the extent the same are used by Developer. LPA is not required to purchase or install additional utilities pursuant to this Lease Agreement.

## **ARTICLE VIII EVENT OF DEFAULT; REMEDIES**

Section 8.1. Event of Default. An "Event of Default" shall occur under this Lease Agreement when there shall be a breach of any condition, covenant, warranty, promise or representation contained in this Lease Agreement and the breach shall continue for a period of thirty (30) days after written notice thereof to the defaulting party without the defaulting party curing such breach, or if the breach cannot reasonably be cured within a thirty (30) day period, commencing the cure of the breach within the thirty (30) day period and thereafter diligently proceeding to cure the breach; provided, that in no case shall the cure period be more than one hundred twenty (120) days in the aggregate; provided, further, that if a different period or notice requirement is specified for any particular breach under any other paragraph of this Lease Agreement, the specific provision shall control.

Section 8.2. Remedies. The occurrence of any Event of Default shall give the non-defaulting party the right to proceed with any and all remedies set forth in this Lease Agreement, including an action for damages, an action or proceeding at law or in equity to require the defaulting party to perform its obligations and covenants under the documents executed pursuant hereto or to enjoin acts or things which may be unlawful or in violation of the provisions of such documents, and the right to terminate this Lease Agreement. Subject to the cure periods set forth in Section 8.1, this Lease Agreement may also be terminated pursuant to Sections 405 and 406 of the MPA.

**ARTICLE IX  
PERSONAL PROPERTY**

Section 9.1. Ownership.

(a) LPA and Developer agree that the Renewable Generating Facility and all equipment, machinery and appurtenances placed and installed on the Property by Developer that comprise the Renewable Generating Facility shall remain the personal property of Developer, severable from the Property, and shall not be or become fixtures, notwithstanding the manner in which the Renewable Generating Facility is or may be affixed to the real property of LPA. LPA shall not take any position on any tax return or on any other filings indicating or suggesting that LPA is anything other than a purchaser of electricity from the Renewable Generating Facility. Accordingly, Developer shall pay or provide for the payment of all costs, taxes, charges, insurance and expenses of every kind and nature arising or becoming due during the term of this Lease as a result of the construction, ownership, operation and maintenance of the Renewable Generating Facility. Notwithstanding the foregoing, each Party shall remain responsible for all tax liability attributable to the income (as defined by the United States Internal Revenue Service) received by such Party pursuant to this Lease or the MPA.

(b) The Renewable Generating Facility and its components may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by LPA, with LPA's fee or other interest to the Property. LPA shall indemnify Developer against all losses, claims, costs and expenses (including attorneys' fees) incurred by Developer in discharging and releasing any such lien, encumbrance, pledge, levy or attachment arising by, under or through LPA. Subject to any rights or obligations under the MPA, Developer shall be entitled to remove the Renewable Generating Facility or any part thereof or any related equipment from the Property at any time upon reasonable advance notice to LPA.

Section 9.2. Removal. Developer shall, within ninety (90) days following the end of the Term, or earlier termination as provided herein, and at Developer's sole cost and expense, remove the Renewable Generating Facility from the Property on a mutually convenient date or dates; provided, however, that Developer may leave in place such conduits and cables and related facilities as are either underground or within the walls of the buildings. Developer and Developer's Agents shall have access to the Property at all mutually agreed-upon times and the Renewable Generating Facility for purposes of such removal. Developer is responsible to repair any and all damage caused by the removal of the Renewable Generating Facility. The Property shall be returned as nearly as reasonably possible to its original condition, except for ordinary wear and tear. If the Renewable Generating Facility is located on a roof, then in no case shall Developer's removal of the Renewable Generating Facility affect the integrity of LPA's roof, which shall be as leak proof as it was prior to removal of the Renewable Generating Facility (other than due to ordinary wear and tear). If the Renewable Generating Facility is located on a shade structure installed by Developer and if LPA elects to have the shade structure removed as well as the Renewable Generating Facility, Developer shall do so at its sole cost and expense in the same manner as described above with regard to repair of any damage.

## ARTICLE X ASSIGNMENT

Section 10.1. General. Subject to the transfer of ownership provisions in Section 4.2 above, in the event of a transfer of ownership in the Property by LPA, either Party may assign this Lease Agreement pursuant to Sections 10.2 and 10.3 below, provided that any such assignee (except a Mortgagee, as defined in Section 10.4) (i) assumes in writing the obligations of the assignor hereunder and under the MPA, and (ii) agrees to be bound by the terms of this Lease Agreement and the MPA. Any assignment made by either Party in violation of the provisions in this Article 10 shall be null and void and constitute an Event of Default.

Section 10.2. Assignment by Developer. Developer shall not, without the prior written consent of LPA, which consent shall not be unreasonably withheld or delayed, assign, pledge or transfer all or any part of, or any right or obligation under this Lease Agreement or the MPPA, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void, unless such assignee is (1) an affiliate company under the umbrella corporation of Developer and (2) shall follow all terms and conditions set forth as if such assignee is Developer. Notwithstanding the foregoing, (a) changes in control of Developer shall not be deemed an assignment of this Lease Agreement or the MPA, and (b) Developer shall, without the prior written consent of LPA, but with written notice to LPA, be permitted to assign this Lease Agreement and the MPA to (i) Developer's Affiliates; (ii) an entity or entities in which Developer retains day-to-day management and control over; and/or (iii) a Mortgagee for collateral purposes in connection with any construction, equity or debt financing of Developer or Developer's Affiliates (including, without limitation, Developer's entry into a sale-leaseback or lease-leaseback transaction related to such financing) in accordance with Section 10.4.

Section 10.3. Assignment by LPA. LPA shall not, without the prior written consent of Developer, which consent shall not be unreasonably withheld or delayed, assign, pledge or transfer all or any part of, or any right or obligation under this Lease Agreement or the MPA, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void.

Section 10.4. Right to Mortgage. Developer may, at any time and from time to time, without obtaining LPA's consent, hypothecate, mortgage, grant or pledge its right, title or interest hereunder or under the MPA to any Mortgagee as security for the repayment of any indebtedness and/or the performance of any obligation ("Mortgage"). As used herein, the term "Mortgage" collectively includes any financial institution or other person or entity that from time to time provides secured financing to Developer or Developer's Affiliates, and any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in such financing, and their respective representatives, successors and assigns. LPA agrees to use its commercially reasonable efforts to cooperate with Developer in Developer's or Developer's Affiliates' efforts to obtain financing from a Mortgagee.

Section 10.5. Notice to LPA. If Developer grants a Mortgage, it shall give written notice of the same (including the name and address of the Mortgagee) to LPA; provided, however that the failure to give such notice shall not constitute a default or Event of Default under this Lease Agreement or under the MPA but rather, shall only have the effect of relieving LPA from any obligation to such Mortgagee until such written notice is provided. LPA hereby consents to the



recordation of the interest of the Mortgagee in the Official Records of Los Angeles County, California.

Section 10.6. Mortgagee Protections. Notwithstanding any other provision of this Lease Agreement or the MPA:

(a) A Mortgagee shall have the absolute right to do one, some or all of the following: (i) assign its Mortgage; (ii) enforce its Mortgage; (iii) acquire Developer's interests to the Property granted hereunder and the Developer's interests granted under the MPA (whether by foreclosure, assignment in lieu of foreclosure or other means), provided that any existing monetary defaults are cured prior to acquisition of Developer's interest; (iv) operate the Renewable Generating Facility on the Property and perform Developer's obligations under circumstances outlined in the MPA; (v) assign or transfer Developer's rights and obligations hereunder and under the MPA to a third party, including a foreclosure transferee upon cure of payment and curable non-payment defaults of Developer hereunder, as long as such third party assumes all obligations of Developer hereunder and under the MPA; (vi) exercise any rights of Developer hereunder and under the MPA; or (vii) cause a receiver to be appointed to do any of the foregoing things. LPA's consent shall not be required for any of the foregoing; and, upon acquisition of this Lease Agreement and the MPA by a Mortgagee or any other third party who acquires the same from or on behalf of the Mortgagee and upon Mortgagee's or said third party's remedy of any Developer default, LPA shall recognize the Mortgagee or such other party (as the case may be) as Developer's proper successor, and this Lease Agreement and the MPA shall remain in full force and effect.

(b) Each Mortgagee shall have the same period of time after receipt of a notice of default to remedy a default or Event of Default hereunder and under the MPA, or cause the same to be remedied, as is given to Developer after Developer's receipt of a notice of default hereunder and under the MPA, plus, in each instance an additional thirty (30) day period; provided, however, that (a) such thirty (30) day period shall be extended for the time reasonably required by the Mortgagee to complete such cure so long as Mortgagee has commenced such cure and works diligently towards completing it and (b) Mortgagee shall not be required to cure those Events of Default hereunder and under the MPA which are not reasonably susceptible of being cured or performed by Developer. Each Mortgagee shall have the absolute right to substitute itself for Developer and perform the duties of Developer hereunder and under the MPA for purposes of curing any default or Event of Default hereunder or under the MPA. LPA expressly consents to such substitution, agrees to accept such performance, and authorizes each Mortgagee (and its respective employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all of the rights and privileges of Developer hereunder and under the MPA. LPA shall not terminate this Lease Agreement or the MPA prior to expiration of the cure periods available to each Mortgagee as set forth above.

(c) A Mortgagee or any party who acquires Developer's interests hereunder and under the MPA pursuant to foreclosure or an assignment in lieu of foreclosure shall not have any obligation under this Lease Agreement or under the MPA prior to the time that such Mortgagee or other party obtains Developer's interests granted under this Lease Agreement and under the MPA, so long as all Developer defaults have been cured prior to the Mortgagee or other party obtaining Developer's interests under the Lease Agreement; and such Mortgagee or other party shall be liable to perform obligations under this Lease Agreement and under the MPA only for and during the period of time that such Mortgagee or other party directly holds such interests, so long as all

Developer defaults have been cured prior to the Mortgagee or other party obtaining Developer's interests under the Lease Agreement.

(d) LPA shall not agree to any material modification or amendment to this Lease Agreement or the MPA and LPA shall not accept a surrender or termination of this Lease Agreement or the MPA; in each such case without the prior written consent of each Mortgagee.

(e) At Developer's request, LPA shall amend this Lease Agreement and the MPA, at no cost to LPA, to include any provision that may reasonably be requested by an existing or proposed Mortgagee, and shall execute such additional documents as may reasonably be required to evidence such Mortgagee's rights hereunder and under the MPA, including a consent containing the provisions contained herein and/or listed on Exhibit C. Further, LPA shall satisfy the requirements of Section 12.6(b) below and provide any existing or proposed Mortgagee with an estoppel certificate which shall certify that LPA (i) recognizes such entity as a Mortgagee under this Lease Agreement and under the MPA and (ii) will accord to such entity all the rights and privileges of a Mortgagee hereunder and under the MPA.

## **ARTICLE XI INDEMNITY; LIMITATION ON LIABILITY**

Section 11.1. Indemnity. Each Party (the "Indemnifying Party") agrees to indemnify, defend and hold harmless the other Party and such other Party's mortgagees, affiliates, governing board members, directors, officers, employees and agents (the "Indemnified Party") from and against any and all claims including demands, actions, damages, loss, costs, expenses and attorneys' fees (collectively "Indemnity Claims") to the extent caused by the Indemnifying Party's negligence, recklessness, or intentional misconduct.

Section 11.2. Limitation on Liability. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE DEFAULTING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN.

## **ARTICLE XII MISCELLANEOUS PROVISIONS**

Section 12.1. Applicable Law. This Lease Agreement shall be interpreted and governed by the laws of the State of California, without regard to conflict of laws provisions. In the event that there is any controversy, claim or dispute between the Parties hereto arising out of or related to this Lease Agreement, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may seek relief in a court of competent jurisdiction located in Los Angeles, California. LPA agrees not to assert sovereign immunity or any similar doctrine as a defense to the enforcement of this Lease Agreement by Developer.

Section 12.2. Interpretation Rules. Titles and headings are included in this Lease Agreement for convenience only, and shall not be used for the purpose of construing and interpreting this Lease Agreement. Words in the singular also include the plural and vice versa where the context requires.

Section 12.3. Severability. In the event that any provisions of this Lease Agreement are held to be unenforceable or invalid by any court or regulatory agency of competent jurisdiction, LPA and Developer shall negotiate an equitable adjustment in the provisions of this Lease Agreement with a view toward effecting the purposes of this Lease Agreement, and the validity and enforceability of the remaining provisions shall not be affected by it.

Section 12.4. Counterparts. This Lease Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

Section 12.5. Entire Agreement, Amendments and Waivers. This Lease Agreement and the PPA constitute the entire agreement between the Parties with regard to the Property and the matters contained in this Lease Agreement and the PPA and supersede the terms of any previous agreements or understandings, oral or written. Any waiver or amendment of this Lease Agreement must be in writing. Either Party's waiver of any breach or failure to enforce any of the terms of this Lease Agreement shall not affect or waive that Party's right to enforce any other term of this Lease Agreement.

Section 12.6. Further Assurances.

(a) Additional Documents. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section 12.6.

(b) Certificates. From time to time, upon written request by Developer or any Mortgagee, LPA shall, within thirty (30) days, provide (i) a lien waiver or other documentation satisfactory to the Mortgagee confirming that no lien, security interest or other encumbrance exists which would adversely affect the Lease or the Renewable Generating Facility, or (ii) an estoppel certificate attesting that (A) the Lease Agreement is in full force and effect; (B) the Lease Agreement has not been amended or modified (or if it has been amended or modified, the nature of such amendment or modification); (C) to the knowledge of LPA, Developer is in compliance with the terms of the Lease Agreement and the PPA or detailing any known issues of noncompliance; and (D) such other confirmations or requests customary for such financing transactions and reasonably requested by the Mortgagee.

Section 12.7. Casualty. In the event the Property is so damaged or destroyed as to make the use of the Property pursuant to this Lease Agreement impractical (as determined by a qualified engineering consultant retained by LPA and reasonably acceptable to Developer), then either Party may elect to terminate this Lease Agreement upon not less than twenty (20) days' prior written notice to the other Party, and upon such termination, neither Party shall have any further obligations to the other Party hereunder other than such rights or obligations surviving termination of this Lease Agreement as expressly provided herein. If neither Party elects to terminate this Lease Agreement

pursuant to the previous sentence, LPA shall exercise commercially reasonable efforts to repair the damage to the Property (including the use of any insurance proceeds for such repair) and return the Property to its condition prior to such damage or destruction, except that LPA shall in no event be required to repair, replace or restore any property of Developer comprising part of the Renewable Generating Facility, which replacement or restoration shall be Developer's responsibility.

Section 12.8. Effective Date. This Lease Agreement must be approved by the LPA Board of Directors ("Board") prior to its effectiveness. The effective date of this Lease Agreement (the "Effective Date") shall be the date when this Lease Agreement has been approved by the Board and executed by Developer and LPA by their authorized agents. LPA shall advise Developer promptly of the occurrence of the Effective Date. Notwithstanding the foregoing, Developer shall have the right to amend this Lease Agreement from time to time in order to update the Energy Production Analysis Table, as set forth on Exhibit B, in order to reflect the technical specifications and operating parameters of the actual equipment comprising the Renewable Generating Facility, LPA shall cooperate in the execution of any such amendments and such amendments may require the approval by the Board.

### ARTICLE XIII NOTICES

Except as otherwise provided in this Lease, or as the addressee may later specify in a written notice, all notices or other communications hereunder shall be in writing and deemed given if delivered personally or to a nationally recognized express mail service addressed as follows:

If to Developer:

US TOPCO ENERGY, INC.  
412 West Valley Boulevard  
San Gabriel, CA 91776  
Phone: (877) 528-6726  
Fax: (626) 282-6677  
Attention: Joshua Chang

With a copy to:

Law Offices of David S. W. Fang  
17800 Castleton Street, #168  
City of Industry, CA 91748  
Phone: (626) 854-5787  
Fax: (626) 854-5785  
Attn: David S.W. Fang, Esq.

If to LPA:

Lancaster Power Authority  
44933 Fern Avenue  
Lancaster, CA 93534  
Phone: (661) 723-6000  
Fax: (661) 723-6141  
Attention: Mark Bozigian

With a copy to:

Stradling Yocca Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, CA 92660  
Phone: (949) 725-4162  
Fax: (949) 823-5162  
Attention: David R. McEwen

#### **ARTICLE XIV ARBITRATION**

Section 14.1. Disputes regarding the interpretation or application of any provisions of this AGREEMENT shall, to the extent reasonably feasible, be resolved through good faith negotiations between the parties.

Section 14.2. If the parties cannot resolve the dispute through good faith negotiations, either party may give Notice of Dispute to the other party. The Notice of Dispute shall state the nature of the dispute and the corrective action necessary to remedy the dispute.

After Notice of Dispute, the parties shall first attempt to resolve any disputes by mediation. The parties shall agree on a single mediator. Mediation shall be conducted in Lancaster, California. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.

If the dispute has not been resolved by mediation within 45 days after Notice of Dispute, or the parties are unable to agree to a mediator, within 15 days after Notice of Dispute, then, the dispute may, upon agreement of the parties be resolved by binding arbitration.

Section 14.3. If any action at law or in equity is brought to enforce or interpret any provisions of this AGREEMENT, the prevailing party in such action shall be entitled to reasonable attorney's fees, cost and necessary disbursements, in addition to such other relief as may be sought and awarded.

IN WITNESS WHEREOF, Developer and LPA have executed this Lease Agreement on the date written below.

**DEVELOPER**

US TOPCO ENERGY, INC., a California corporation

By: \_\_\_\_\_  
Joshua Chang, Chairman

Date: \_\_\_\_\_

**LPA**

Lancaster Power Authority, a joint powers authority

By: \_\_\_\_\_  
Mark Bozigian, Executive Director

Date: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Geri K. Bryan, Secretary

Approved as to Form:

By: \_\_\_\_\_  
David R. McEwen, Legal Counsel

STATE OF CALIFORNIA            )  
  )  
COUNTY OF LOS ANGELES        )        ss

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA            )  
  )  
COUNTY OF LOS ANGELES        )        ss

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public



**EXHIBIT A**

Description of the Property

| <u>APN</u>            | <u>Location</u>                           | <u>Area (acres)</u> |
|-----------------------|---|---------------------|
| (Portion)3170-008-901 | East side of 25 <sup>th</sup> Street East | 17                  |

## EXHIBIT B

### Energy Production Analysis Table

The following production analysis are estimates only (actual amounts may vary from estimates shown) and are subject to final design and inverter selection. These figures are subject to adjustments for weather and other conditions that are beyond the control of Developer and may impact production and/or net Station Use.

| <u>APN</u>             | <u>Gross Power Rating</u> | <u>Net Power Rating</u> | <u>Annual Energy Production</u> |
|------------------------|---------------------------|-------------------------|---------------------------------|
| (Portion) 3170-008-901 | 2,995 kW DC               | 2,458 kW AC             | 5,121,926 kWh Year 1            |

## EXHIBIT C

### Consent to Collateral Assignment

1. Consent to collateral assignment by Developer of its right, title and interest in this Lease Agreement to such Mortgagees.
2. Developer's Mortgagees to receive simultaneous notice from LPA of Developer defaults under this Lease Agreement and/or the MPA and customary extended cure rights in respect of same; provided, however, LPA has received written notice from Developer and/or Developer's Mortgagees of the identity of and contact information for such Mortgagees or their designated agent.
3. Developer's Mortgagees provided with the ability to transfer their interest in this Lease Agreement and/or the MPA to a foreclosure transferee upon cure of payment and curable non-payment defaults of Developer under this Lease Agreement.
4. Developer's Mortgagees to be entitled to a replacement lease agreement with LPA on the same terms and conditions as this Lease Agreement following any rejection or termination of this Lease Agreement in any Developer bankruptcy proceeding; provided, however, that if this Lease Agreement and the MPA are in full force and effect immediately prior to such Developer bankruptcy proceeding, LPA shall have no such obligation unless Developer's Mortgagees concurrently execute a replacement power purchase agreement with LPA on the same terms and conditions as the MPA.
5. Restrictions on material amendments to this Lease Agreement and termination of this Lease Agreement without consent of such Mortgagees; provided, however, that (a) such consent shall not be unreasonably conditioned, delayed, withheld or denied and (b) such restrictions shall not limit LPA's rights to pursue remedies for any default by Developer that is not cured in accordance with the cure provisions of this Lease Agreement and the extended cure period provided in paragraph 2 above.
6. LPA's acknowledgment that no financing party has assumed or has any obligation or liability under or pursuant to this Lease Agreement, and the exercise by such financing party of its rights and remedies under this Lease Agreement shall not constitute an assumption of Developer's obligations under this Lease Agreement (except to the extent any such obligations shall be expressly assumed by an instrument in writing executed by such financing party or as otherwise provided herein).
7. Agreement of Developer to make all payments due to LPA under this Lease Agreement to an account designated by LPA.

**Exhibit C**  
**Memorandum of Renewable Generating Facility Site Ground Lease**

RECORDING REQUESTED BY AND )  
WHEN RECORDED, RETURN TO: )  
US TOPCO ENERGY, INC. )  
James Kuo )  
412 West Valley Boulevard )  
San Gabriel, CA 91776 )  
)  
)  
Facsimile: (626) 282-6677 )  
Email: [james.kuo@ustopcoenergy.com](mailto:james.kuo@ustopcoenergy.com) )

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(space above this line reserved for recorder's use)

THIS MEMORANDUM OF LEASE is made and entered into this \_\_\_ day of \_\_\_\_\_, 2011, by and between LANCASTER POWER AUTHORITY, whose address is 44933 North Fern Avenue, Lancaster, CA 93534 ("Grantor"), and US TOPCO ENERGY, INC., whose address is 412 West Valley Boulevard, San Gabriel, CA 91776 ("Grantee").

A. Grantor is the holder of a leasehold interest in real property ("Premises"), located in the County of Los Angeles, State of California, described in Attachment A attached to and incorporated herein by reference.

B. Grantor and Grantee have entered into a Renewable Generating Facility Site Ground Lease ("Lease Agreement") dated as of [\_\_\_\_\_] (the "Effective Date") under which Grantee is granting Grantor a Lease Agreement to lease the Premises for a term of Twenty (20) years.

Grantor and Grantee agree as follows:

1. Grantor hereby grants to Grantee the Lease Agreement over the Premises on and subject to the terms and conditions set forth in the Master Agreement which is incorporated herein by reference.
2. The term of the Lease Agreement begins on the Effective Date and continues for 20 years.
3. This Memorandum of Renewable Generating Facility Site Ground Lease shall not be deemed to modify, alter or amend in any way the provisions of the Lease Agreement or the Master Agreement. In the event of any conflict between the terms of the License and/or the Master Agreement and this Memorandum, the terms of the Lease Agreement and/or the Master Agreement, as applicable, shall control.

The undersigned have executed this Memorandum of Renewable Generating Facility Site Ground Lease as of the date first written above.

GRANTOR

Lancaster Power Authority

By: \_\_\_\_\_  
Mark V. Bozigian, Executive Director

GRANTEE

US TOPCO ENERGY, INC.

By: \_\_\_\_\_  
Joshua Chang, Title: Chairman

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of \_\_\_\_\_ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of the Notary Public

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature of the Notary Public

**Attachment A**

**To Memorandum of Lease**

Legal Description of Premises

That certain real property located in the County of Los Angeles, State of California, described as follows:

| <u>APN</u>            | <u>Location</u>                           | <u>Area (acres)</u> |
|-----------------------|---|---------------------|
| (Portion)3176-008-901 | East side of 25 <sup>th</sup> Street East | 17                  |