
ASSET PURCHASE AND SALE AGREEMENT

by and between

MIRANT OREGON, LLC

and

AVISTA CORPORATION

October 13, 2004

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Exhibit B	Form of Termination Agreements
Exhibit C	Form of Bill of Sale
Exhibit D	Form of Assignment and Assumption Agreement

ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT (this "*Agreement*") is made this 13th day of October, 2004 (the "*Effective Date*"), by and between MIRANT OREGON, LLC, a Delaware limited liability company ("*Seller*"), and AVISTA CORPORATION, a Washington corporation ("*Purchaser*").

WITNESSETH:

WHEREAS, pursuant to that certain Securities Purchase Agreement, dated as of December 12, 2001, Seller purchased from Avista Power, LLC, a Delaware limited liability company and a wholly owned subsidiary of Purchaser ("*Avista Power*"), 50% of the issued and outstanding limited liability company interests in Coyote Springs 2, LLC, a Delaware limited liability company ("*CS2 LLC*"), and Avista Power retained the remaining 50% of the issued and outstanding limited liability company interests in CS2 LLC;

WHEREAS, prior to the Distribution (as defined below), CS2 LLC was the developer and sole owner of an approximately 280 MW gas-fired combined-cycle electric generating power plant (the "*Project*") located in the City of Boardman, Oregon, adjacent to and sharing certain common facilities with the Coyote Springs Unit 1 generating facility owned by Portland General Electric Company;

WHEREAS, pursuant to the Bill of Sale and Assignment and Assumption Agreement, each dated as of January 1, 2003, CS2 LLC distributed (the "*Distribution*") to each of Seller and Avista Power, as tenants-in-common pursuant to that certain Co-Tenancy and Joint Operating Agreement, dated as of January 1, 2003 (the "*Co-Tenancy Agreement*"), an undivided 50% interest in certain assets of CS2 LLC, including the Project;

WHEREAS, upon the terms and subject to the conditions hereinafter set forth, Seller desires to sell and transfer to Purchaser Seller's 50% undivided interest in the Assets (as defined herein) ("*Seller's Interest*"), and Purchaser desires to purchase Seller's Interest and assume the Assumed Liabilities (as defined herein) from Seller; and

WHEREAS, Seller is wholly owned by Mirant Americas, Inc. ("*MAI*"); and MAI and certain of its Affiliates have filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "*Bankruptcy Code*"), commencing cases (collectively, the "*Chapter 11 Case*") in the United States Bankruptcy Court for the Northern District of Texas (the "*Bankruptcy Court*"), and continue to operate their respective businesses as debtors and debtors in possession.

NOW, THEREFORE, in consideration of the premises and the mutual promises, representations, warranties and covenants hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1 DEFINITIONS

As used herein, the following terms shall have the following meanings unless the context otherwise requires:

1.1. "Acceptance" means the execution by Seller and any Qualified Bidder, after the conclusion of the Auction but not later than 11:59 p.m. (New York time) on December 17, 2004, of a definitive agreement to consummate an Alternative Transaction.

1.2. "Administrative Services Agreement" means the Administrative Services Agreement, dated as of January 1, 2003, between Seller and Purchaser.

1.3. "Adjustment Notice" has the meaning set forth in Section 2.4.1(c).

1.4. "Affiliate" of an entity means any entity controlling such entity, controlled by such entity, or under common control with such entity. As used in this definition, the terms "controlling", "controlled by" or "under common control" shall mean the possession, directly or indirectly, of the power either to (i) vote more than fifty percent (50%) of the securities or interests having ordinary voting power for the election of directors (or other comparable controlling body) of such Person or (ii) direct or cause the direction of the actions, management or policies of such Person, whether through the ownership of voting securities or interests, by contract or otherwise, excluding in each case, any lender of such Person or any Affiliate of such lender.

1.5. "Agreed Claims" shall have the meaning set forth in Section 10.8.3.

1.6. "Agreement" has the meaning set forth in the preamble hereto.

1.7. "Allocation Schedule" shall have the meaning set forth in Section 2.4.3.

1.8. "Alternative Transaction" shall mean a disposition of Seller's Interest to a Person or Persons (other than the Purchaser or an Affiliate of the Purchaser).

1.9. "Applicable Law" means, with respect to any Person, any law, rule, regulation, order or other requirement of any Governmental Authority applicable to such Person and having the force of law.

1.10. "Assets" means all of the assets, contracts, properties and rights that were distributed by CS2 LLC to Seller and Avista Power pursuant to the Distribution (less any of the foregoing disposed of by Seller or Purchaser since the date of the Distribution and plus any related assets acquired by Seller and Purchaser as tenants-in-common since the date of the Distribution), together with the other assets, properties and rights listed on Schedule 1.10(a). For the avoidance of doubt, none of the assets, contracts, properties or rights of Seller listed on Schedule 1.10(b) shall constitute Assets.

1.11. "Assumed Liabilities" has the meaning set forth in Section 2.3.

- 1.12. "Auction" has the meaning set forth in Section 3.4.1.
- 1.13. "Avista Power" has the meaning set forth in the recitals hereto.
- 1.14. "Bankruptcy Code" means Title 11 of the United States Code.
- 1.15. "Bankruptcy Court" has the meaning set forth in the recitals hereto.
- 1.16. "BPA Commitment Time" shall have the meaning set forth in Section 11.1.4.
- 1.17. "Break-Up Fee" shall mean an amount equal to \$1,875,000.
- 1.18. "CapEx Amount" has the meaning set forth in Section 2.4.1(b)(i).
- 1.19. "Certificate" shall have the meaning set forth in Section 10.8.1.
- 1.20. "Chapter 11 Case" has the meaning set forth in the recitals hereto.
- 1.21. "Closing" means the consummation of the transactions provided for in this Agreement.
- 1.22. "Closing Date" means the date on which the Closing occurs pursuant to Section 9.1.
- 1.23. "Closing Statement" has the meaning set forth in Section 2.4.1(b).
- 1.24. "Collateral Source" has the meaning set forth in Section 10.10.
- 1.25. "Competing Bid" shall mean bona fide proposal made by a Person or Persons qualifying as a Third Person Purchaser (as such term is defined in the Co-Tenancy Agreement) to acquire Seller's Interest, submitted in connection with the Auction.
- 1.26. "Consents Deadline"
has the meaning set forth in Section 3.3(c).
- 1.27. "Co-Tenancy Agreement" has the meaning set forth in the recitals hereto.
- 1.28. "CS2 LLC" has the meaning set forth in the recitals hereto.
- 1.29. "Distribution" has the meaning set forth in the recitals hereto.
- 1.30. "Effective Date" has the meaning set forth in the preamble hereto.
- 1.31. "Encumbrances" has the meaning set forth in Section 5.5.
- 1.32. "Environmental Claim" means any and all pending or threatened administrative or judicial actions, suits, orders, claims, liens, notices, notices of violations, investigations,

complaints, requests for information, proceedings, or other written communication, whether criminal or civil, pursuant to or relating to any applicable Environmental Law or pursuant to a common law theory, by any person or entity (including, without limitation, any Governmental Authority, private person and citizens' group) based upon, alleging, asserting, or claiming any actual or potential (i) violation of, or liability under any Environmental Law, (ii) violation of any Environmental Permit, or (iii) liability 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 any Environmental Condition or any Release or threatened Release into the environment of any Regulated Substances at any location related to the Project, including, without limitation, any Off-Site Location to which Regulated Substances, or materials containing Regulated Substances, were sent for handling, storage, treatment, or disposal.

1.33. "Environmental Condition" means the presence or Release of a Regulated Substance (other than a naturally-occurring substance) on or in environmental media, or structures on, in or under the Real Property or Off-Site Location (including, without limitation, the presence in surface water, groundwater, sediment, land, surface and subsurface strata, or ambient or indoor air), including, without limitation, the subsequent movement or migration of any such Regulated Substance.

1.34. "Environmental Laws" mean all federal, state or local civil and criminal laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders or common law relating to pollution or protection of the environment, natural resources or human health and safety, including, without limitation, laws relating to Releases or threatened Releases of Regulated Substances (including, without limitation, Releases to ambient or indoor air, surface water, groundwater, sediment, land, surface and subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, Release, transport, disposal or handling of Regulated Substances. "Environmental Laws" include, without limitation, CERCLA (42 U.S.C. §§ 9601 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. §§ 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*), the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), the Oil Pollution Act (33 U.S.C. §§ 2701 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. §§ 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. §§ 651 *et seq.*), the Safe Drinking Water Act (42 U.S.C. §§ 300f *et seq.*), the Surface Mine Conservation and Reclamation Act (30 U.S.C. §§ 1251-1279), and regulations adopted pursuant thereto, and analogous state and local laws adopted pursuant thereto.

1.35. "Environmental Permits" mean any permits, registrations, certificates, certifications, licenses and authorizations, consents and approvals of Governmental Authorities required under Environmental Laws with respect to the Project, the Assets or the Real Property.

1.36. "Escrow Agent" shall mean Wilmington Trust Company.

1.37. "Escrow Agreement" has the meaning set forth in Section 2.4.1(a).

1.38. "Escrow Deposit" means the \$5,000,000 to be deposited with the Escrow Agent pursuant to Section 2.4.1(a).

1.39. "Final Closing Statement" has the meaning set forth in Section 2.4.1(e).

1.40. "Expense Reimbursement" shall mean an amount equal to Purchaser's reasonable, actual and fully documented out-of-pocket costs and expenses incurred after June 25, 2004, in connection with this Agreement, up to a maximum of \$250,000.

1.41. "Governmental Authority" means any foreign, federal, state, local or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body or other governmental authority.

1.42. "H-S-R Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

1.43. "Income Tax" means any Tax imposed by any Tax Authority (a) based upon, measured by or calculated with respect to gross or net income, profits or receipts (including municipal gross receipts Taxes, capital gains Taxes and minimum Taxes), or (b) based upon, measured by or calculated with respect to multiple bases (including corporate franchise Taxes) if one or more of such bases is described in clause (a), in each case together with any interest, penalties or additions attributable to such Tax.

1.44. "Indemnified Party" has the meaning set forth in Section 10.8.1.

1.45. "Indemnifying Party" has the meaning set forth in Section 10.8.1.

1.46. "Independent Accounting Firm" means such nationally recognized, independent accounting firm as is mutually appointed by Seller and Purchaser for purposes of this Agreement.

1.47. "IRS" means the Internal Revenue Service.

1.48. "Knowledge of Purchaser" means the actual knowledge, in respect of the matter in question, of Tim Carlberg and George Perks.

1.49. "Knowledge of Seller" means the actual knowledge, in respect of the matter in question, of Alan Meyers, Mark Osterholt and Larry Labire.

1.50. "Losses" has the meaning set forth in Section 10.2.

1.51. "MAI" means Mirant Americas Inc.

1.52. "Material Adverse Effect" means any effect on Seller's Interest that is, individually or in the aggregate, materially adverse to the condition (financial or otherwise) of Seller's Interest, but shall exclude effects on Seller's Interest arising from (i) changes generally

applicable to companies in the electric generating industry (including, without limitation, changes in interest rates or conditions in financial markets, changes in the electric power industry, the natural gas industry or in the energy industry on a national or regional basis or changes in the United States or global economy or United States or global commodities markets in general), as opposed to changes specifically applicable to the Project or the Assets, (ii) acts of war or terrorism (other than acts of war or terrorism that have a disproportionate effect on the Project or the Assets, as opposed to the electric generating industry generally), (iii) the execution of this Agreement or the transactions contemplated hereby or the announcement thereof, (iv) a failure or malfunction of the Transformer for the Project that occurs after the date hereof, but only if the consequences of such failure or malfunction are limited to (A) loss of revenues and/or profits in respect of the Project, (B) loss and/or inoperability of the Transformer and/or (C) other damages, losses and expenses of the same character as resulted from the failures and/or malfunctions of the Transformer which have occurred prior to the date of this Agreement not in excess of the largest amount of damages, losses and expenses which resulted from the largest of such failures and/or malfunctions.

- 1.53. "Material Agreements" has the meaning set forth in Section 5.8.1.
- 1.54. "OEFSC" means the Oregon Energy Facilities Siting Council.
- 1.55. "OEFSC Approval" means approval by the OEFSC of an Application for Partial Transfer of Site Certificate reflecting the transfer of Seller's Interest to Purchaser.
- 1.56. "Off-Site Location" means any and all real property other than the Real Property.
- 1.57. "Operator" means Portland General Electric Company, an Oregon corporation.
- 1.58. "OpEx Amount" has the meaning set forth in Section 2.4.1(b)(ii).
- 1.59. "Ownership Period" means the period from and including December 12, 2001 to and including the Effective Date or to and including the Closing, as applicable.
- 1.60. "Party" means Seller or Purchaser, individually.
- 1.61. "Parties" mean Seller and Purchaser, collectively.
- 1.62. "Permit" means any permit, license, franchise, approval or other action from Governmental Authorities required for the construction, start-up, ownership or operation of the Project or the Assets, including, without limitation, all licenses, certificates, permits, franchises and rights which are required under federal, foreign, state or local laws relating to public health and safety, worker health and safety and pollution or protection of the environment, including, without limitation, laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants or hazardous or toxic substances into ambient air, surface water, groundwater or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants or hazardous or toxic substances, including, without limitation, Environmental Permits.

- 1.63. **“Permitted Encumbrances”** has the meaning set forth in Section 5.5.
- 1.64. **“Person”** means an individual or a corporation, partnership, limited liability company, trust, estate, unincorporated organization, association or other entity.
- 1.65. **“PILOT Agreement”** means that certain Third Addendum to Agreement for Payments in Lieu of Ad Valorem Taxes among the City of Boardman, Seller and Purchaser. For purposes of this Agreement, any payments made under the PILOT Agreement shall be treated as personal and/or real property Tax.
- 1.66. **“Project”** has the meaning set forth in the recitals hereto.
- 1.67. **“Purchaser”** has the meaning set forth in the preamble hereto.
- 1.68. **“Purchase Price”** has the meaning set forth in Section 2.4.2.
- 1.69. **“Real Property”** has the meaning set forth in Section 5.6.
- 1.70. **“Regulated Substances”** mean (i) any petrochemical or petroleum products, oil or coal ash, radioactive materials, radon gas, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and dielectric fluid containing polychlorinated biphenyls; (ii) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “hazardous constituents,” “restricted hazardous materials,” “extremely hazardous substances,” “toxic substances,” “contaminants,” “pollutants,” “toxic pollutants” or words of similar meaning and regulatory effect under any applicable Environmental Law; and (iii) any other chemical, material or substance, exposure to which or whose discharge, emission, disposal or Release is prohibited, limited or regulated by any applicable Environmental Law.
- 1.71. **“Release”** means release, spill, leak, discharge, dispose of, pump, pour, emit, empty, inject, leach, dump or allow to escape into or through the environment.
- 1.72. **“Remediation”** means any action taken in the investigation, removal, confinement, cleanup, treatment, or monitoring of a Release or an Environmental Condition, including, without limitation, (i) obtaining any Permits, including, without limitation, Environmental Permits, required for such remedial activities, and (ii) implementation of any engineering controls and institutional controls. The term “Remediation” includes, without limitation, any action which constitutes “removal action” or “remedial action” as defined by Section 101 of CERCLA, § 6901(23) and (24); or any action which constitutes a “remedy” or “remedial activities” as defined by applicable state or local law, and further includes the repair or replacement of any materials, equipment or facilities necessary to prevent the reoccurrence of any Release or Environmental Condition.
- 1.73. **“Required Approvals”** means (i) the OEFSC Approval, (ii) the expiration or termination of the applicable waiting period under the H-S-R Act relating to the transactions contemplated by this Agreement without any order enjoining or restraining consummation of the transactions contemplated by this Agreement, (iii) the waiver, consent or approval of the Federal

Energy Regulatory Commission, and (iv) the approval by the Bankruptcy Court of (a) the consent of MAI to the transactions contemplated by this Agreement and (b) any action required to be taken by any debtor in the Chapter 11 Case in order to carry out the provisions of this Agreement.

- 1.74. "Review Period" has the meaning set forth in Section 2.4.1(c).
- 1.75. "Seller" has the meaning set forth in the preamble hereto.
- 1.76. "Seller's Interest" has the meaning set forth in the recitals hereto.
- 1.77. "Site Certificate" means the Third Amended Thermal Power Plant Site Certificate for the Coyote Springs Cogeneration Project (Incorporating Amendments #1 through 8) dated October 2002.
- 1.78. "Site Restoration Letter of Credit" shall mean the irrevocable standby letter of credit required by the terms of the Site Certificate for the benefit of the State of Oregon, acting by and through the Oregon Energy Facility Siting Council.
- 1.79. "Tax" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.
- 1.80. "Tax Amount" has the meaning set forth in Section 2.4.1(b)(iii).
- 1.81. "Tax Authority" means any Governmental Authority or any subdivision, agency, commission or authority thereof having jurisdiction over the assessment, determination, collection or imposition of any Tax.
- 1.82. "Tax Code" means the Internal Revenue Code of 1986, as amended, and all Treasury Regulations promulgated thereunder.
- 1.83. "Tax Proceeding" has the meaning set forth in Section 7.6.4.
- 1.84. "Tax Return" means any return, report, information return, declaration, claim for refund, or other document, including all amendments and supplements thereto (including all related or supporting information), required to be filed with any Tax Authority.
- 1.85. "Third-Party Claim" shall have the meaning set forth in Section 10.8.

1.86. "Transfer Tax" means any sales Tax, transfer Tax, transaction Tax, conveyance fee, recording fee, use Tax, stamp Tax, stock/security transfer Tax or other similar Tax, including any related penalties, interest and additions thereto.

1.87. "Transformer" means the main step-up transformer, including materials and devices internal to the transformer enclosure or connected directly thereto and supplied by the manufacturer of the transformer, that connects the Project to the 500 kV substation owned by the Bonneville Power Administration adjacent to the Project.

ARTICLE 2 PURCHASE AND SALE

2.1. Purchase and Sale of Seller's Interest. Subject to the terms and conditions of this Agreement, Seller shall, at the Closing, sell, assign, transfer, convey and deliver to Purchaser, free and clear of all Encumbrances of any nature whatsoever (other than the Permitted Encumbrances and Encumbrances to the extent arising through Purchaser), and Purchaser shall purchase, assume and accept from Seller, Seller's Interest, for the consideration (including the assumption of the Assumed Liabilities) specified in Section 2.4.2 below.

2.2. Excluded Assets and Liabilities. Purchaser shall not acquire any right, title or interest of Seller in, to or under any assets, properties or rights of Seller other than Seller's Interest and Purchaser shall not assume any liabilities of Seller other than Assumed Liabilities.

2.3. Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, Purchaser shall, effective at the Closing, assume, satisfy and discharge as they become due all liabilities and obligations (a) of Seller arising out of Seller's Interest or the ownership or operation of the Assets after the Closing and (b) of Seller's Affiliates arising after the Closing pursuant to the Material Agreements identified on Schedule 2.3, in each case whether accrued or fixed, known or unknown, absolute or contingent, matured or unmatured or determined or determinable as of the Closing Date, including, without limitation, all liabilities or obligations of Seller under the Material Agreements (all of the foregoing liabilities and obligations to be so assumed, satisfied or discharged being herein collectively called the "Assumed Liabilities").

2.4. Purchase Price.

2.4.1 Escrow Agreement; Closing Statement. (a) Concurrently with the execution of this Agreement, Purchaser shall deposit the Escrow Deposit with the Escrow Agent in accordance with the terms of the Escrow Agreement, dated as of the date hereof, among the Escrow Agent, Seller and Purchaser (the "Escrow Agreement").

(b) At least ten (10) days prior to the Closing Date, Seller shall prepare and deliver to Purchaser a statement (the "Closing Statement") setting forth:

(i) the amount of capital expenditures made by Seller after June 25, 2004 in accordance with the terms of the Co-Tenancy Agreement (the "CapEx Amount");

(ii) the amount of any operating expenditures (including with respect to utilities, fuel, steam, water, sewer, electricity, gas and oil) paid by Seller after June 25, 2004 in connection with the Assets that is attributable to the period after the Closing (the "*OpEx Amount*"); and

(iii) the amount of (w) all payments pursuant to the PILOT Agreement, (x) all Taxes related to real property, (y) all Taxes related to personal property and (z) all Taxes similar to Taxes related to real property and Taxes related to personal property, in each case paid by Seller with respect to the ownership, use, maintenance or operation of the Assets to the extent attributable to periods from and after the Closing Date (the "*Tax Amount*"). Allocations under this subsection shall be made on the basis of the number of days included in each such Tax period or portion thereof.

(c) During the 5-day period following delivery of the Closing Statement (the "*Review Period*"), Purchaser shall be afforded the opportunity to review the Closing Statement and the supporting documentation relating thereto. Purchaser may object to any item listed on the Closing Statement by delivering to Seller, prior to the expiration of the Review Period, a proposed adjustment notice (an "*Adjustment Notice*") setting forth in reasonable detail those items or amounts as to which Purchaser objects and the basis for each of its objections. Purchaser shall be deemed to have agreed with all items and amounts contained in the Closing Statement that are not addressed by the Adjustment Notice, if any. If Purchaser does not deliver an Adjustment Notice to Seller prior to the expiration of the Review Period, the Closing Statement shall become final, binding and conclusive on both Purchaser and Seller.

(d) If an Adjustment Notice is delivered in accordance with Section 2.4.1(c), Purchaser and Seller shall negotiate in good faith to resolve such disputed items prior to the Closing Date. If Seller and Purchaser are not able to resolve each of the items set forth in the Adjustment Notice prior to the Closing Date, then Seller and Purchaser shall select an Independent Accounting Firm and provide such firm with a mandate to resolve the disputed items set forth in the Adjustment Notice within five days following the Closing Date. The Independent Accounting Firm shall consider only those items or amounts in the Closing Statement as to which Purchaser has objected in accordance with Section 2.4.1(c) and Seller and Purchaser have not resolved prior to the Closing Date. Purchaser shall pay 50% and Seller shall pay 50% of the costs and expenses of the Independent Accounting Firm. Seller and Purchaser shall instruct the Independent Accounting Firm to render its written determination as promptly as practicable, but in no event later than 20 days after the date the Independent Accounting Firm receives a written mandate to make such determination. Such determination shall be conclusive and binding upon the Parties.

(e) The "*Final Closing Statement*" means the Closing Statement containing the items and amounts which are not in dispute (i) as modified based on the written agreement of Seller and Purchaser with respect to any items or amounts under dispute, if any, or (ii) if Seller and Purchaser are unable to resolve all objections, as modified based on the determination of the Independent Accounting Firm, if an accounting firm was used pursuant to Section 2.4.1(d).

(f) From the date hereof until the earlier of (i) payment of all expenses relating to pre-Closing periods and (ii) the twelve-month anniversary of the Closing Date, Purchaser will provide Seller, on a monthly basis, invoices for certain operating expenses

relating to the Project (including, without limitation, engineering services, charges under Material Agreements, land rents and property insurance) attributable to periods prior to and including the Closing that are the responsibility of Seller. Such invoices will be provided in the ordinary course of business, consistent with past practices. Notwithstanding anything set forth in this Agreement or in any related documents, Seller will continue to be liable for satisfaction of all such expenses on the same terms and under the same conditions as Seller is liable for such expenses immediately prior to the execution of this Agreement.

2.4.2 **Payment of the Purchase Price.** (a) At the Closing, Purchaser shall pay to Seller, by wire transfer of immediately available funds to an account or accounts designated in writing by Seller, an amount (the "**Purchase Price**") equal to (i) the sum of (A) Sixty-Two Million Five Hundred Thousand Dollars (\$62,500,000.00), plus (B) each of the following line items to the extent they are set forth on the Final Closing Statement as of the Closing Date, (1) the CapEx Amount, if any, (2) the OpEx Amount, if any, and (3) the Tax Amount, if any, minus (ii) the Escrow Deposit and any interest earned thereon through the day immediately preceding the Closing Date. Seller shall designate in writing such account or accounts at least two business days prior to the Closing Date. At the Closing, Seller and Purchaser shall jointly instruct the Escrow Agent to release the Escrow Deposit to Seller at the Closing in accordance with the terms of the Escrow Agreement.

(b) If, in accordance with Section 2.4.1(c), an Independent Accounting Firm must be selected to determine any unresolved line item set forth on the Closing Statement, then the sum of the final CapEx Amount, if any, the final OpEx Amount, if any, and the final Tax Amount, if any, shall be paid by Purchaser to an account designated by Seller, promptly after the receipt by Purchaser of the written determination of the Independent Accounting Firm in accordance with Section 2.4.1(d).

2.4.3 **Allocation of Purchase Price.** The consideration (including Assumed Liabilities) shall be allocated for Income Tax purposes among the Assets (to the extent of Seller's Interest), consistent with Section 1060 of the Tax Code, and in a manner consistent with Schedule 2.4.3. Within thirty (30) days after the date of this Agreement, Purchaser shall provide Seller with a proposed schedule (the "**Allocation Schedule**") allocating all such amounts as provided herein. The Allocation Schedule shall become final and binding on the parties hereto fifteen (15) days after Purchaser provides such schedule to Seller, unless Seller objects in writing to Purchaser, specifying the basis for its objection and preparing an alternative allocation. If Seller does object, Purchaser and Seller shall in good faith attempt to resolve the dispute within fifteen (15) days of written notice to Purchaser of Seller's objection. Any such resolution shall be final and binding on the Parties. Any unresolved disputes shall be promptly submitted to the Independent Accounting Firm for determination, which shall be final and binding on the Parties. Purchaser and Seller will each pay one-half of the fees and expenses of the Independent Accounting Firm. Purchaser and Seller shall cooperate with each other and the Independent Accounting Firm in connection with the matters contemplated by this Section 2.4.3, including providing such information as may be reasonably requested. Each of Purchaser and Seller agrees that, at its own cost and expense, it (a) will prepare or cause to be prepared all required Income Tax Returns in a manner that is consistent with such allocation, (b) will file or cause to be filed Internal Revenue Service Form 8594 in a manner consistent with Schedule 2.4.3, and (c) will not voluntarily take or permit to be taken by an Affiliate any position inconsistent therewith in filing

any Income Tax Returns, or any amendments or supplements thereto (including any refund claims), or upon settlement of any examination of any such Tax Returns, or in any proceedings, litigation or otherwise with respect to such Tax Returns.

ARTICLE 3 COVENANTS OF SELLER

3.1. Conduct of the Business of Seller Prior to the Closing Date. Except with the consent in writing of Purchaser, and except as may be required to effect the transactions contemplated by this Agreement, Seller shall, between the Effective Date and the Closing, conduct its business only in accordance with the Co-Tenancy Agreement, the Administrative Services Agreement, and the Transaction Record between Seller and Purchaser. Without limiting the generality of the foregoing, Seller shall not, except as otherwise provided in this Agreement:

3.1.1 sell, lease, mortgage, pledge or otherwise dispose of or encumber all or any portion of Seller's Interest or the Assets;

3.1.2 take any action (or permit any action to be taken by any agent, Affiliate or representative of Seller) that would reasonably be expected to result in a Material Adverse Effect, or that would impair the ability of Seller to consummate the transactions contemplated by this Agreement;

3.1.3 enter into any agreement or understanding with respect to the Project or the Assets, including, without limitation, any electric interconnection agreement, fuel supply or transportation agreement, or agreement related to engineering, procurement or construction, or modify, amend, terminate, extend or waive any material term of any Material Agreement or Permit;

3.1.4 fail to perform any of Seller's obligations under the Co-Tenancy Agreement or the Administrative Services Agreement; or

3.1.5 enter into any agreement or understanding with respect to any of the transactions set forth in the foregoing Sections 3.1.1 through 3.1.4.

3.2. Obligation to Update. Seller shall promptly advise Purchaser, in writing, of any matters arising or discovered after the Effective Date which, if existing or known at the date hereof, would be required to be set forth or described in this Agreement or the Exhibits or Schedules hereto.

3.3. Consents and Approvals. (a) Seller shall apply for and use commercially reasonable efforts to (i) obtain the waiver, consent and approval of all Persons whose waiver, consent or approval is required in order to consummate the transactions contemplated by this Agreement, or is required by any agreement, lease, instrument, arrangement, judgment, decree, order, permit or license to which Seller is a party or subject to on the Closing Date (including, without limitation, the consent of any third parties to any agreements included in the Assets, if required), and which would prohibit, or require the waiver, consent or approval of any Person to

such transaction or under which, without such waiver, consent or approval, such transaction would constitute an occurrence of default under the provisions thereof, result in the transaction being null or void, result in the acceleration of any obligation thereunder, or give rise to a right of any party thereto to terminate its obligations thereunder and (ii) obtain, prior to Closing, the release of the Permitted Encumbrance referenced as #13 on Schedule 5.5; provided, that Seller shall not make any agreements or understandings affecting the Project or the Assets as a condition for obtaining any such waivers, consents or approvals, except with the prior written consent of Purchaser. All obtained written waivers, consents and approvals shall be produced at Closing. The covenant contained in this Section 3.3(a) shall be deemed to have been breached if MAI and/or any other debtor in the Chapter 11 Case, as the case may be, shall have failed to apply for or use commercially reasonable efforts to obtain the approvals referred to in clause (iv) of the definition of "Required Approvals."

(b) Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an obligation to transfer or assign or to acquire or assume any asset or any claim or right or any benefit arising under or resulting from such asset if an attempted transfer or assignment thereof, without the consent of a third party, would constitute a breach, default, violation or other contravention of the rights of such third party, would be ineffective with respect to any party to an agreement concerning such asset, claim or right, or would in any way adversely affect the rights of Seller or, upon transfer, Purchaser, under such asset, claim or right. Subject to the satisfaction (or waiver by Purchaser) of the condition set forth in Section 8.2.5, if any transfer or assignment by Seller or any of its Affiliates to Purchaser, or any acquisition or assumption by Purchaser of, any interest in, or liability, obligation or commitment under, any asset, claim or right requires the consent of a third party, then such transfer or assignment, acquisition or assumption, shall be made subject to such consent being obtained.

(c) If any consent is not obtained prior to the Closing, and the Closing nonetheless takes place on the terms set forth herein, thereafter, Seller shall use commercially reasonable efforts to secure such consent as promptly as practicable after the Closing and shall cooperate in any lawful and reasonable arrangement to provide Purchaser with all of the benefits of the relevant asset, claim, right or benefit as though the required consent or consents had been obtained (and, in the event such benefits are provided, Purchaser shall assume the corresponding obligations, if any) and Seller shall continue to use commercially reasonable efforts to obtain such consent or consents, provided, however, that in any case Seller shall not be obligated to continue to seek such consent or consents after 12 months from the Closing Date ("Consents Deadline"). Until the Consents Deadline, Seller and Purchaser shall each be responsible for 50% of all costs and expenses (including legal fees) associated with the pursuit of such consents. Seller shall have no responsibility to pay any costs and expenses (including legal fees) incurred after the Consents Deadline in connection with the pursuit of such consents.

3.4. Overbid Procedures. The purchase and sale of the Assets will be subject to higher or otherwise better offers submitted in connection with a competitive auction to be held on or before December 17, 2004, at the conclusion of an active marketing process for the sale of the Assets conducted by Seller (the "*Auction*"). The Auction shall be held at the offices of White & Case LLP or at such other location as Seller may determine in its discretion.

3.4.2 The Auction shall be conducted in accordance with the bidding procedures set forth on Exhibit A hereto.

3.4.3 Seller shall promptly notify Purchaser in writing of (i) all Competing Bids received from any third party within 24 hours of Seller's receipt of such Competing Bid, and (ii) any inquiry or request for information from any third party within five Business Days of receipt of such inquiry or request. Seller shall keep Purchaser informed of the status (including amendments or proposed amendments) of any such inquiry, bid or request, and upon the request of Purchaser shall identify and furnish to Purchaser all information provided in response to any such inquiry, bid or request, which has not been previously provided to Purchaser and is not otherwise freely available to Purchaser.

3.5. Restricted Dealings. In the event that this Agreement is not terminated pursuant to Section 11.1.7 as of 11:59 p.m. (New York time) on December 17, 2004, Seller shall not, from such time until the earlier of the termination of this Agreement in accordance with Article 11 hereof or the Closing, enter into any agreement with a Person other than Purchaser with respect to the sale, acquisition or transfer of all or any portion of Seller's Interest.

ARTICLE 4 COVENANTS OF PURCHASER

4.1. Consents and Approvals. Purchaser shall apply for and use commercially reasonable efforts to obtain the waiver, consent and approval of all Persons whose waiver, consent or approval is required in order to consummate the transactions contemplated by this Agreement, or is required by any agreement, lease, instrument, arrangement, judgment, decree, order, permit or license to which Purchaser is a party or subject to on the Closing Date, and which would prohibit, or require the waiver, consent or approval of any Person to such transaction or under which, without such waiver, consent or approval, such transaction would constitute an occurrence of default under the provisions thereof, result in the transaction being null or void, result in the acceleration of any obligation thereunder, or give rise to a right of any party thereto to terminate its obligations thereunder. Purchaser shall have primary responsibility for making or obtaining the requisite notices, filings, waivers, consents and approvals in connection with the H-S-R Act, the Federal Energy Regulatory Commission and the OEFSC; provided, that the foregoing shall not relieve Seller of its obligation set forth in Section 3.3 hereof to cooperate with Purchaser and use its commercially reasonable efforts to assist in making or obtaining such notices, filings, waivers, consents or approvals, including, without limitation, by filing a Notification and Report Form as required under the H-S-R Act.

4.2. Restricted Dealings. During the period commencing on the Effective Date and terminating at the Closing, Purchaser shall not, and shall cause its Affiliates not to, directly or indirectly, solicit or entertain offers from, negotiate with or in any manner encourage, discuss, accept or consider any proposal of any other Person relating to the sale or transfer by Purchaser or its Affiliates of all or part of a power generation asset in Boardman, Oregon or within the surrounding fifty (50) miles thereof.

4.3. Right of First Refusal. Purchaser acknowledges and agrees that with respect to any sale of Seller's Interest by Seller in accordance with the auction procedures set forth in this

Agreement, Purchaser waives the right of first refusal set forth in Section 11.2 of the Co-Tenancy Agreement.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser that the following are true and correct on and as of the Effective Date:

5.1. **Organization and Standing.** Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is duly qualified and/or licensed to transact business as a foreign limited liability company in the State of Oregon and is in good standing in the State of Oregon.

5.2. **Authority and Status.** The execution, delivery and performance by Seller of this Agreement and each and every agreement, document and instrument provided for herein have been duly authorized and approved by all necessary limited liability company action on the part of Seller. This Agreement and each agreement, document and instrument provided for herein constitute or will, when executed and delivered, constitute the legal, valid and binding obligations of Seller, enforceable against it in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, applicable equitable principles, or similar laws from time to time in effect affecting the enforcement of creditors' rights generally.

5.3. **No Conflicts.** The execution, delivery and performance of this Agreement and the other agreements, documents and instruments contemplated hereby, and the consummation of the transactions contemplated hereby and thereby, by Seller will not conflict with or result in any violation of, or default (or give rise to any right of termination, cancellation or acceleration) under, any provision of (i) the certificate of formation or the limited liability company agreement of Seller, (ii) any agreement (including, without limitation, any Material Agreement) or instrument to which Seller or its Affiliates is a party or may be bound, or (iii) subject to obtaining the Required Approvals, any judgment, order, decree, law, regulation or rule applicable to Seller.

5.4. **Approvals.** Except for the Required Approvals and as set forth in Schedule 5.4, no act, consent, approval, authorization, permit, order, filing, notice, registration or qualification of or with any Person (including, without limitation, any Governmental Authority) is required to be obtained by Seller in connection with the execution, delivery or performance of this Agreement and the other agreements, documents and instruments contemplated hereby and the consummation of the transactions contemplated hereby and thereby.

5.5. **Title and Encumbrances.** Except as set forth in Schedule 5.5 (the "*Permitted Encumbrances*"), Seller has good and marketable title to Seller's Interest free and clear of any lien (including, without limitation, any lien associated with any Taxes, except for Taxes which are due but not yet payable, or Taxes the validity of which is being contested in good faith by appropriate Tax Proceedings), encumbrance, charge, mortgage, claim, pledge, security interest, option, preemptive subscription, warrant or other rights of any kind or securities convertible or

exchangeable for, or which otherwise confer on the holder thereof, any right to acquire any of Seller's Interest or any other similar restriction whatsoever (collectively, "*Encumbrances*"), in each case other than any Encumbrances on Seller's Interest to the extent arising through the Purchaser. Except pursuant to this Agreement or as set forth in Schedule 5.5, Seller is not a party to any contract or obligation whereby there has been granted to any Person an absolute or contingent right to purchase, obtain or acquire any rights in Seller's Interest.

5.6. Real Property. Schedule 5.6 contains a description of all real property included in the Assets (the "*Real Property*"). True and correct copies of any current surveys, abstracts, title reports, title commitments and title opinions related to the Real Property in the possession of Seller or its Affiliates have been made available to Purchaser.

5.7. Environmental Matters. Except as set forth in Schedule 5.7:

5.7.1 During the Ownership Period, each of Seller and its Affiliates has complied with all Environmental Permits that are or were associated with the Project, the Assets or the Real Property, except for instances of noncompliance that would not result in a Material Adverse Effect;

5.7.2 To the Knowledge of Seller, during the Ownership Period, (a) no Environmental Condition has occurred in or under the Project, the Assets or the Real Property and (b) neither Seller nor any of its Affiliates has received (i) any request for information, or been notified that it is a potentially responsible party, or is otherwise responsible, under any Environmental Laws with respect to the Real Property or any Off-Site Location related to the Project or the Assets, or (ii) any notification from a Governmental Authority with respect to proposed, pending or ongoing investigations or enforcement actions related to alleged, potential or actual violations of any applicable Environmental Law with respect to the Project, the Assets or the Real Property;

5.7.3 Neither Seller nor any of its Affiliates and, to the Knowledge of Seller, no other Person (other than the Purchaser and the Operator), has entered into or agreed to any consent decree or order relating to the Project, the Assets or the Real Property, nor is subject to any outstanding judgment, decree, or judicial order relating to compliance with any Environmental Law or to Remediation of Regulated Substances under any Environmental Law relating to the Project, the Assets or the Real Property;

5.7.4 To the Knowledge of Seller, no Environmental Claim is pending or threatened with respect to the Project, the Assets or the Real Property;

5.7.5 To the Knowledge of Seller, no Remediation has occurred during the Ownership Period, is being conducted or is pending or threatened, or proposed or required by any Environmental Law with respect to the Project, the Assets or the Real Property; and

5.7.6 Neither Seller nor any of its Affiliates and, to the Knowledge of Seller, no other Person (other than the Purchaser and the Operator), has during the Ownership Period taken (or has permitted or directed any agent, Affiliate or representative of Seller to take or fail to take) any action which would violate any Environmental Law which would result in material negative

consequences to the Project, the Assets or the Real Property or that would create any material Environmental Condition or any other condition that would give rise to any material Environmental Claim on or with respect to the Project, the Assets or the Real Property.

5.8. Material Agreements.

5.8.1 Schedule 5.8.1 lists each material agreement which is included in the Assets ("*Material Agreements*").

5.8.2 Each Material Agreement to which Seller is a party constitutes a legal, valid and binding obligation of Seller and, to the Knowledge of Seller, of each other party thereto.

5.8.3 Except as set forth in Schedule 5.8.3, there is not under any Material Agreement any default or event which, with notice or lapse of time or both, would constitute a default on the part of Seller or, to the Knowledge of Seller, any of the other parties thereto, and, in each case, would result in material negative consequences to the Project, the Assets or the Real Property.

5.9. Legal Proceedings. Except (a) as set forth in Schedule 5.9 and (b) for the Chapter 11 Case, there is no suit, claim, action, proceeding or investigation pending or, to the Knowledge of Seller, threatened relating to Seller's Interest before any Governmental Authority, which would, individually or in the aggregate, create a Material Adverse Effect or would prohibit or restrain Seller's execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby. Except (i) as set forth in Schedule 5.9 and (ii) for the Chapter 11 Case, neither Seller nor any of its Affiliates and, to the Knowledge of Seller, no other Person (other than the Purchaser and the Operator) is subject to any outstanding judgments, rules, orders, writs, injunctions or decrees of any Governmental Authority that could, individually or in the aggregate, create a Material Adverse Effect.

5.10. Compliance with Law. Seller is in compliance and has at all times complied with all Applicable Laws with respect to Seller's Interest, except where failure to comply with any Applicable Law would not, individually or in the aggregate, have a Material Adverse Effect. Except as set forth in Schedule 5.10, to the Knowledge of Seller, there are no present or past violations of any Applicable Law by any Person (other than the Purchaser and the Operator) that would reasonably be expected to materially impair the right of Purchaser to own or operate the Project or the Assets.

5.11. Permits. Seller's Interest includes an interest in each Permit listed in Schedule 5.11. To the Knowledge of Seller, (i) such Permits are in full force and effect, (ii) Seller is in material compliance with all such Permits and (iii) there is no claim, action, or proceeding pending, or proposed or threatened, which would result in such Permits not remaining in full force and effect and vested in and inuring to the benefit of Seller (to the extent of Seller's Interest therein), nor do any circumstances exist which would reasonably be expected to result in said Permits not remaining in full force and effect and vested in and inuring to the benefit of Purchaser after consummation of the transactions contemplated by this Agreement.

5.12. Taxes.

5.12.1 Seller has prepared and timely filed or has caused to be prepared and timely filed, or will prepare and timely file or will cause to be prepared and timely filed all Tax Returns with respect to the Seller's Interest for all Tax periods or portions thereof ending on or prior to the Closing Date regardless of when such Tax Returns are required to be filed.

5.12.2 With respect to Tax periods which include the Closing Date or any date prior to the Closing Date, Seller shall timely pay, or cause to be paid, the Taxes attributable to the Seller's Interest, other than Purchaser's portion of Transfer Taxes, which shall be the responsibility of Purchaser.

5.12.3 Except as set forth in Schedule 5.12.3, no notice of deficiency or assessment has been received from any Taxing Authority with respect to material liabilities for Taxes in respect of the Seller's Interest for Tax periods or portions thereof which fall within the Ownership Period, which have not been fully paid or finally settled, and any such deficiency shown in Schedule 5.12.3 is being contested in good faith through appropriate Tax Proceedings.

5.13. Fees, Commissions and Expenses. There is no brokerage, commission, finder's fee or similar compensation payable by Seller or any of its Affiliates in connection with the Project, the Assets or this Agreement for which Purchaser would be responsible.

5.14. Certain Payments. Neither Seller nor any of its Affiliates, nor any of their respective owners (including any partner or shareholder), officers, employees, agents or representatives, directly or indirectly, has given or agreed to give or solicited or received any gift, rebate or similar benefit to any customer, supplier, governmental employee or other Person in connection with the Project or the Assets which could reasonably be expected to subject Purchaser to any damage or penalty in any civil, criminal or governmental litigation or proceeding.

5.15. No Employees. At no time has Seller had any employees.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller that the following are true and correct on and as of the Effective Date:

6.1. Organization and Standing. Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington. Purchaser is duly qualified and/or licensed to transact business as a corporation in the State of Oregon and is in good standing in the State of Oregon.

6.2. Authority and Status. The execution, delivery and performance by Purchaser of this Agreement and each and every agreement, document and instrument provided herein have been duly authorized and approved by all necessary corporate action on the part of Purchaser. This Agreement and each agreement, document and instrument to be executed by Purchaser provided for herein constitute or will, when executed and delivered, constitute the legal, valid

and binding obligations of Purchaser enforceable against it in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, applicable equitable principles, or similar laws from time to time in effect affecting the enforcement of creditors' rights generally.

6.3. **No Conflicts.** The execution, delivery and performance of this Agreement and the other agreements, documents and instruments contemplated hereby, and the consummation of the transactions contemplated hereby and thereby, by Purchaser will not conflict with or result in any violation of, or default (or give rise to any right of termination, cancellation or acceleration) under, any provision of (i) the amended and restated articles of incorporation and the bylaws of Purchaser, (ii) any agreement or instrument to which Purchaser is a party or may be bound, or (iii) any judgment, order, decree, law, regulation or rule applicable to Purchaser.

6.4. **Approvals.** Except as set forth in Schedule 6.4, no consent, approval, authorization, permit, order, filing, notice, registration or qualification of or with any Person (including, without limitation, any Governmental Authority) is required to be obtained by Purchaser in connection with the execution, delivery or performance of this Agreement and the other agreements, documents and instruments contemplated hereby and the consummation of the transactions contemplated hereby and thereby.

6.5. **Legal Proceedings.** Except as set forth in Schedule 6.5, there is no suit, claim, action, proceeding or investigation pending or, to the Knowledge of Purchaser, threatened relating to Purchaser, the Project or the Assets before any Governmental Authority, which would prohibit or restrain Purchaser's execution, delivery or performance of this Agreement or the consummation of the transactions contemplated hereby.

6.6. **Fees, Commissions and Expenses.** There is no brokerage, commission, finder's fee or similar compensation payable by Purchaser in connection with the Project, the Assets or this Agreement for which Seller would be responsible.

6.7. **Financial Capability.** Purchaser has as of the Effective Date, cash on hand or immediately available under existing credit agreements, and will at the Closing have cash on hand, in an aggregate amount sufficient to timely perform each of its obligations hereunder, including to pay in full the Purchase Price and all fees and expenses payable by Purchaser in connection with this Agreement and the transactions contemplated hereby.

6.8. **Representations and Warranties.** Except for the representations and warranties expressly set forth in this Agreement, Purchaser acknowledges, for itself and on behalf of its Affiliates, agents and representatives, that neither Seller nor any of its Affiliates or any other Person makes any other express or implied representation or warranty with respect to Seller's Interest, the Assets, the Project, the Real Property or otherwise or with respect to any other information provided to Purchaser or its Affiliates, agents or representatives, whether on behalf of Seller or such other Persons, including as to the operation, probable success or profitability of the Project or the Assets after the Closing.

ARTICLE 7
ADDITIONAL AGREEMENTS OF THE PARTIES

7.1. Further Assurances. Seller and Purchaser shall use commercially reasonable efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable under Applicable Law to consummate and make effective the purchase, sale, transfer and delivery of Seller's Interest under this Agreement, including, without limitation, executing and delivering termination agreements, each substantially in the form set forth on Exhibit B hereto, for each contract listed on Schedule 8.3.4. At any time, and from time to time, after the Closing Date, Seller shall execute such additional instruments and take such actions as may be reasonably requested by Purchaser, and Purchaser shall execute such additional instruments and take such actions as may be reasonably requested by Seller, in each case to confirm or perfect or otherwise to carry out the intent and purposes of this Agreement.

7.2. Cooperation. Subject to the terms and conditions of this Agreement and Applicable Law, the Parties shall consult, cooperate and assist each other in connection with (i) securing any nongovernmental approvals, consents and waivers of third parties necessary for the consummation of the transactions contemplated hereby and (ii) giving notices to, or making any filings with, any Governmental Authority (including the preparation and filing of Internal Revenue Service Form 8594), or securing the permission, approval, determination, consent or waiver of any Governmental Authority, required by Applicable Law in connection with the transactions contemplated hereby, including with respect to any Permit. Each Party agrees that the foregoing obligations shall include an obligation to provide the other party with copies of any such notices, filings or submissions promptly after same are delivered to third parties or Governmental Authorities and an obligation to file and seek early termination of the waiting period under the H-S-R Act, if applicable. Except as otherwise expressly provided herein, no Party shall have any liability whatsoever for the failure of any Governmental Authority or other Person to grant any required approval, consent or waiver, or to agree to take or refrain from taking any action necessary or desirable to consummate the transactions contemplated by this Agreement.

7.3. Confidential Information.

7.3.1 Confidentiality Agreement. The Parties agree that this Agreement, the matters identified herein and any information exchanged or delivered pursuant hereto, shall be governed by the provisions of that certain Confidentiality Agreement dated as of May 7, 2004, between the Parties, and that the terms and conditions of the Confidentiality Agreement remain in full force and effect, except that the Confidentiality Agreement shall not apply to any disclosure of (i) the execution of this Agreement by the parties or the transactions contemplated hereby; and (ii) any other information in connection with this Agreement or the transactions contemplated hereby which shall be necessary to conduct the Auction in accordance with the bidding procedures set forth on Exhibit A hereto.

7.3.2 Public Announcements. Except as required by Applicable Law or stock exchange requirements, prior to the Closing, none of the Parties or their Affiliates shall make any public announcements or press releases regarding the Project, the Assets, this Agreement or the

transactions contemplated hereunder without the prior written consent of the other Parties which consent shall not be unreasonably withheld.

7.4. **Transfer Taxes.** All Transfer Taxes incurred in connection with this Agreement and the transactions contemplated herein shall be borne equally by Seller and Purchaser. Purchaser shall pay all Transfer Taxes when due, and Seller shall reimburse Purchaser for its portion of such Transfer Taxes paid within ten (10) days after receiving written notification and proof of payment from Purchaser. Purchaser will file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes, to the extent required by Applicable Laws, and Seller shall cooperate in the preparation and filing of such Tax Returns and other documentation. Seller will be entitled to review and comment on such Tax Returns and other documentation in advance of filing. To the extent required by Applicable Laws, Seller or any of its Affiliates will join in the execution of any such Tax Returns or other documentation.

7.5. **Liability for Property Taxes.** Liability for Taxes related to real property, personal property and other similar Taxes with respect to the Seller's Interest for any period which begins on or before the Closing Date and ends after the Closing Date shall be allocated between the Parties in the manner specified in Section 7.6.

7.6. **Tax Matters.** The following provisions shall govern the allocation of responsibility as between the Parties for certain Tax matters following the Closing Date:

7.6.1 Seller shall prepare and timely file or cause to be prepared and timely filed all Tax Returns with respect to the Seller's Interest for all Tax periods ending on or prior to the Closing Date regardless of when they are to be filed. Seller shall timely pay, or cause to be paid, the Taxes attributable to the Seller's Interest with respect to such period or portions thereof, other than Purchaser's portion of Transfer Taxes, which shall be the responsibility of Purchaser.

7.6.2 Purchaser shall prepare and timely file or cause to be prepared and timely filed any Tax Returns with respect to the Seller's Interest for Tax periods which begin after the Closing Date. Purchaser shall timely pay, or cause to be paid, the Taxes attributable to the Seller's Interest with respect to such period or portions thereof, other than Seller's portion of Transfer Taxes, which shall be the responsibility of Seller.

7.6.3 In respect of Taxes other than Income Taxes, Purchaser shall prepare and timely file or cause to be prepared and timely filed any Tax Returns with respect to the Seller's Interest for Tax periods beginning before and ending after the Closing Date. Seller shall pay, or cause to be paid, to Purchaser within ten (10) days after the date on which Taxes are paid with respect to such periods, other than Purchaser's portion of Transfer Taxes, an amount equal to the product of Seller's share of the Assets stated as a percentage multiplied by the portion of such Taxes which relates to the portion of such Tax period ending on the Closing Date. Allocations under this subsection shall be done on the basis of the number of days included in such Tax period or portion thereof.

7.6.4 Each Party shall provide the other Party with such assistance as may reasonably be requested by the other Party in connection with the preparation of any Tax Return, any audit or other examination by any Taxing Authority, or any judicial or administrative

proceedings relating to liability for Taxes ("***Tax Proceeding***"). Any information obtained pursuant to this Section 7.6 or pursuant to any other Section hereof providing for the sharing of information relating to or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the Parties in accordance with Section 7.3.

7.6.5 Any refund of Taxes paid with respect to Taxes attributable to the Seller's Interest shall be promptly paid as follows (or to the extent payable but not paid due to offset against other Taxes shall be promptly paid by the Party receiving the benefit of the offset as follows): (i) to Seller if attributable to Taxes with respect to any Tax period or portion thereof ending on or before the Closing Date (or for any Tax year beginning before and ending after the Closing Date to the extent allocable (determined in a manner consistent with Section 7.6.3) to the portion of such period beginning before and ending on the Closing Date); and (ii) to Purchaser if attributable to Taxes with respect to any Tax period or portion thereof beginning after the Closing Date (or for any Tax period beginning before and ending after the Closing Date to the extent allocable (determined in a manner consistent with Section 7.6.3) to the portion of such period beginning after the Closing Date).

7.6.6 In the event that a dispute arises between Seller and Purchaser in respect of Taxes, the Parties shall attempt in good faith to resolve such dispute, and any amount so agreed upon, if any, shall be paid to the appropriate Party. If such dispute is not resolved within thirty (30) days thereafter, the Parties shall submit the dispute to the Independent Accounting Firm for resolution, which resolution shall be final, conclusive and binding on the Parties and their Affiliates. The Independent Accounting Firm shall be instructed to deliver to the Parties a written resolution of the dispute within twenty (20) Business Days from the date of its engagement. Notwithstanding anything in this Agreement to the contrary, the fees and expenses of the Independent Accounting Firm in resolving the dispute shall be borne equally by Seller and Purchaser. Any payment required to be made as a result of the resolution of the dispute by the Independent Accounting Firm shall be made within ten (10) days after such resolution, together with any interest determined by the Independent Accounting Firm to be appropriate.

7.7. Letter of Credit. Purchaser shall, at the Closing, replace or otherwise assume all of the obligations to furnish a Site Restoration Letter of Credit, and such arrangements shall be otherwise acceptable to OEFSC. To the extent of any remaining obligations, Purchaser shall make such arrangements as are reasonably acceptable to Seller to replace or otherwise assume all of the obligations of the Project to the Oregon Climate Trust under the Site Certificate and such arrangements shall be otherwise acceptable to OEFSC and the Oregon Climate Trust.

7.8. Cash Distribution. Purchaser shall take all necessary actions to cause to be distributed to Seller at the Closing fifty percent (50%) of all funds on deposit in any of the bank accounts set forth on Schedule 7.8 hereto as of the Closing Date.

7.9. Bonneville Power Administration. Seller has no obligation to either make a bid or make any payment to the Bonneville Power Administration in order to secure power transmission over the McNary-John Day path through the "Open Season" process announced by the Bonneville Power Administration on July 1, 2004. No condition to Purchaser's obligation to close the transactions contemplated by this Agreement shall be deemed not satisfied as a result of

Seller's or Purchaser's failure to bid, make any payment or take any other action in connection with such "Open Season" process.

ARTICLE 8 CONDITIONS PRECEDENT

8.1. Conditions to Each Party's Obligations. The respective obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or waiver at or prior to the Closing of the following: (a) no order, injunction or decree issued by any Governmental Authority of competent jurisdiction or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement shall be in effect, (b) no proceeding initiated by any Governmental Authority seeking an injunction against the transactions contemplated by this Agreement shall be pending and (c) no statute, rule, regulation, order, injunction or decree shall have been enacted, entered, promulgated or enforced by any Governmental Authority which prohibits, restricts or makes illegal consummation of the transactions contemplated hereby.

8.2. Conditions Precedent to Purchaser's Obligation to Close. The obligations of Purchaser to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each and every one of the following conditions, all or any of which may be waived, in whole or in part, by Purchaser for purposes of consummating such transactions:

8.2.1 Representations True at Closing. The representations and warranties made by Seller in this Agreement (including the Schedules and Exhibits hereto) or any document or instrument delivered to Purchaser or its representatives hereunder shall be true and correct on the Closing Date hereunder with the same force and effect as though such representations and warranties had been made on and as of such date.

8.2.2 Covenants of Seller. Seller shall have duly performed all of the covenants, acts and undertakings to be performed by it on or prior to the Closing Date and a duly authorized officer of Seller shall deliver to Purchaser a certificate dated as of the Closing Date certifying to Purchaser the fulfillment of this condition and the condition set forth under Section 8.2.1 above. Said certificate shall be deemed a representation and warranty of Seller hereunder.

8.2.3 No Material Adverse Effect. No Material Adverse Effect shall have occurred during the Ownership Period and be continuing.

8.2.4 Instruments of Transfer. The Bill of Sale and each other instrument of transfer contemplated by Section 9.2.1(b) shall have been executed by Seller and delivered to Purchaser.

8.2.5 Required Approvals; Other Consents. The Required Approvals shall have been obtained and shall not, individually or in the aggregate, impose terms or conditions that would have, or would be reasonably likely to have, (a) a Material Adverse Effect or (b) a material adverse effect on the business, operations, financial condition or results of operations of

Purchaser and its subsidiaries, taken as a whole. Each of the consents listed on Schedule 8.2.5 shall have been obtained and shall be in full force and effect.

8.2.6 Termination of Certain Contracts. Each of the contracts identified on Schedule 8.3.4 shall have been terminated in accordance with the termination agreements for each such contract, each substantially in the form attached hereto as Exhibit B hereto.

8.3. Conditions Precedent to Seller's Obligation to Close. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction, on or before the Closing Date, of each and every one of the following conditions, all or any of which may be waived, in whole or in part by Seller for the purposes of consummating such transactions:

8.3.1 Representations True at Closing. The representations and warranties made by Purchaser in this Agreement (including the Schedules and Exhibits hereto) or any document or instrument delivered to Seller or its representatives hereunder shall be true and correct on the Closing Date hereunder with the same force and effect as though such representations and warranties had been made on and as of such date.

8.3.2 Covenants of Purchaser. Purchaser shall have duly performed all of the covenants, acts and undertaking in all material respects to be performed by it on or prior to the Closing Date, and a duly authorized officer of Purchaser shall deliver to Seller a certificate dated as of the Closing Date certifying to Seller the fulfillment of this condition and the condition set forth under Section 8.3.1 above. Said certificate shall be deemed a representation and warranty of Purchaser hereunder.

8.3.3 Assumption Agreement. The Assumption Agreement contemplated by Section 9.2.2(c) shall have been executed by Purchaser and delivered to Seller.

8.3.4 Termination of Certain Contracts. Each of the contracts identified on Schedule 8.3.4 shall have been terminated in accordance with the termination agreements for each such contract, each substantially in the form attached hereto as Exhibit B hereto.

8.3.5 Required Approvals. The Required Approvals shall have been obtained. Each of the consents listed on Schedule 8.3.5 shall have been obtained and shall be in full force and effect.

ARTICLE 9 CLOSING

9.1. Time and Place of the Closing. The Closing shall be held at the offices of Dewey Ballantine LLP, 1301 Avenue of the Americas, New York, New York 10019-6092, within five (5) business days after the date on which the conditions precedent in Sections 8.1, 8.2 and 8.3 have been satisfied (other than those conditions which, by their terms, are to be satisfied at the Closing), commencing at 10:00 a.m. local time, unless another place or date is agreed to in writing by the Parties.

9.2. Transactions at the Closing. At the Closing, each of the following transactions shall occur:

9.2.1 Seller's Performance. At Closing, Seller shall deliver to Purchaser the following:

(a) an incumbency certificate for the manager of Seller executing this Agreement or any document or agreement ancillary hereto;

(b) a Bill of Sale, substantially in the form attached hereto as Exhibit C, and such other instrument of assignment and transfer, in form and substance reasonably acceptable to Purchaser, transferring to Purchaser Seller's Interest in each of the Material Agreements, each executed on behalf of Seller;

(c) termination agreements, substantially in the form attached hereto as Exhibit B; and

(d) such other evidence of the performance of all covenants and satisfaction of all conditions required of Seller by this Agreement as Purchaser or its counsel may reasonably require.

9.2.2 Performance by Purchaser. At Closing, Purchaser shall deliver to Seller the following:

(a) the Purchase Price, in the manner contemplated by Section 2.4.2;

(b) incumbency certificate for the officer of Purchaser executing this Agreement or any document or agreement ancillary hereto;

(c) an Assumption Agreement, substantially in the form attached hereto as Exhibit D, assuming all of the Assumed Liabilities, executed on behalf of Purchaser;

(d) termination agreements, substantially in the form attached hereto as Exhibit B; and

(e) such other evidence of the performance of all covenants and satisfaction of all conditions required of Purchaser by this Agreement as Seller or its counsel may reasonably require.

ARTICLE 10 SURVIVAL OF REPRESENTATIONS AND WARRANTIES AND INDEMNIFICATION

10.1. Survival of Representations and Warranties of Seller. All representations and warranties of Seller in this Agreement, the Schedules and Exhibits hereto, or in any certificate, document or instrument executed and delivered by Seller pursuant hereto are material, have been relied upon by Purchaser, shall survive Closing hereunder for nine (9) months, except that the representations and warranties contained in Section 5.12 shall not be limited in duration (except

for any applicable statute of limitations with respect to any Taxes), and shall not merge in the performance of any obligation by any Party.

10.2. Indemnification by Seller.

10.2.1 Subject to the applicable survival periods set forth in Section 10.1 and to the other limitations set forth in Section 10.5, Seller shall indemnify and hold Purchaser harmless from and against all liability, loss, damage, or injury and all costs and expenses (including, without limitation, reasonable counsel fees and costs of any investigation or suit related thereto) (collectively, "*Losses*"), arising from any breach of any representation, warranty or covenant of Seller contained in this Agreement, any Schedule or Exhibit hereto or any certificate or other instrument furnished or to be furnished by Seller hereunder, or from the waiver of bulk sales laws pursuant to Section 12.10. For the avoidance of doubt, with respect to any breach or alleged breach of any of Seller's representations or warranties relating to the Project or the Assets, the amount of Losses subject to indemnification hereunder shall not include the portion thereof which Purchaser would otherwise suffer or incur as the owner of an undivided 50% interest in the Assets as tenant-in-common with Seller.

10.2.2 Seller shall indemnify and hold harmless Purchaser from and against the entirety of any and all Losses that Purchaser may suffer for any Taxes attributable to the Seller's Interest with respect to any Tax period or portion thereof ending on or before the Closing Date (or for any Tax period beginning before and ending after the Closing Date to the extent allocable (determined in a manner consistent with Section 7.6.3) to the portion of such period beginning before and ending on the Closing Date), to the extent that such Losses are directly attributable to any breach or inaccuracy of the representations or warranties contained in Section 5.12 or to any breach by Seller of the covenants and other agreements, as contained in Sections 7.4, 7.5 and 7.6 of this Agreement

10.3. Survival of Representations and Warranties of Purchaser. All representations, warranties, agreements, covenants and obligations made or undertaken by Purchaser in this Agreement, the Schedules and Exhibits hereto, or in any certificate, document or instrument executed and delivered by Purchaser pursuant hereto are material, have been relied upon by Seller, shall survive Closing hereunder for nine (9) months and shall not merge in the performance of any obligation by any Party.

10.4. Indemnification by Purchaser.

10.4.1 Purchaser shall indemnify and hold Seller harmless from and against any and all Losses arising from (a) any Assumed Liability, and (b) subject to the applicable survival periods set forth in Section 10.3 and to the other limitations set forth in Section 10.5, any breach of any representation, warranty or covenant of Purchaser contained in this Agreement, any Schedule or Exhibit hereto or any certificate or other instrument furnished or to be furnished by Purchaser hereunder.

10.4.2 Purchaser shall indemnify and hold harmless Seller from and against the entirety of any and all Losses that Seller may suffer for any Taxes attributable to the Seller's Interest with respect to any Tax period or portion thereof beginning after the Closing Date (or for

any Tax period beginning before and ending after the Closing Date to the extent allocable (determined in a manner consistent with Section 7.6.3) to the portion of such period beginning after the Closing Date), to the extent that such Losses are directly attributable to any breach by Purchaser of the covenants and other agreements, as contained in Sections 7.4, 7.5 and 7.6 of this Agreement.

10.5. Limitations on Liability.

10.5.1 Except in the event of fraud, Seller shall have no obligation or liability for breaches of representations or warranties pursuant to Section 10.2, (i) until the aggregate amount of Losses shall have exceeded, in the aggregate, \$625,000, whereupon Purchaser shall be entitled to indemnification pursuant to Section 10.2 with respect only to Losses in excess of \$625,000 or (ii) for an aggregate amount in excess of \$15,000,000; provided that the limitations set forth in this Section 10.5.1 shall not apply to Losses attributable to breaches of representations or warranties contained in Sections 5.2, 5.5 or 5.12 hereof.

10.5.2 Except in the event of fraud, Purchaser shall have no obligation or liability for breaches of representations or warranties pursuant to Section 10.4, (i) until the aggregate amount of Losses shall have exceed, in the aggregate, \$625,000, whereupon Seller shall be entitled to indemnification pursuant to Section 10.4 with respect only to Losses in excess of \$625,000 or (ii) for an aggregate amount in excess of \$15,000,000; provided that the limitations set forth in this Section 10.5.2 shall not apply to Losses attributable to breaches of representations or warranties contained in Sections 6.2 or 6.7 hereof.

10.6. Calculation of Indemnity Payments. The amount of any Loss for which indemnification is provided under this Article X shall be (a) increased to take account of any net Tax detriment actually incurred by the Indemnified Party arising from the receipt or accrual of indemnity payments hereunder (grossed up for such increase) and (b) reduced to take account of any net Tax benefit actually realized by the Indemnified Party arising from the incurrence of the liability giving rise to such indemnification claim.

10.7. No Consequential Damages. Except in the event of willful misconduct or fraud, no Party shall have any obligation or liability arising under or relating to this Agreement, the Schedules and Exhibits hereto, or in any certificate, document or instrument executed and delivered pursuant hereto, for any consequential, incidental, indirect, punitive, exemplary or special loss or damage, resulting from any cause whatsoever, whether arising in contract, warranty, tort, strict liability, indemnity or otherwise.

10.8. Indemnification Procedures.

10.8.1 Promptly after the incurrence of any Losses that are subject to indemnification pursuant to Section 10.2 or 10.4 (including, any claim by a third party which might give rise to indemnification hereunder as described in Section 10.9), the Party entitled to such indemnification (the "**Indemnified Party**"), shall deliver to the Party from which indemnification is sought (the "**Indemnifying Party**") a certificate (the "**Certificate**"), which Certificate shall:

(a) state that the Indemnified Party has paid or anticipates it will incur liability for Losses for which such Indemnified Party is entitled to indemnification pursuant to this Agreement; and

(b) specify in reasonable detail (and have annexed thereto supporting documentation, including, if practicable, correspondence in connection with any Third-Party Claim and paid invoices for claimed Losses) each individual item of Loss included in the amount so stated, the date such item was paid, if applicable, the basis for any anticipated liability and the nature of the misrepresentation, breach of warranty, breach of covenant or claim to which each such item is related and the computation of the amount to which such Indemnified Party claims to be entitled hereunder.

10.8.2 In the event that the Indemnifying Party shall object to the indemnification of an Indemnified Party in respect of any claim or claims specified in any Certificate, the Indemnifying Party shall, within forty-five (45) days after receipt by the Indemnifying Party of such Certificate, deliver to the Indemnified Party a notice to such effect, specifying in reasonable detail the basis for such objection, and the Indemnifying Party and the Indemnified Party shall, within the sixty (60) day period beginning on the date of receipt by the Indemnified Party of such objection, attempt in good faith to agree upon the rights of the respective parties with respect to each of such claims to which the Indemnifying Party shall have so objected. If the Indemnified Party and the Indemnifying Party shall succeed in reaching agreement on their respective rights with respect to any of such claims, the Indemnified Party and the Indemnifying Party shall promptly prepare and sign a memorandum setting forth such agreement. Should the Indemnified Party and the Indemnifying Party be unable to agree as to any particular item or items or amount or amounts within such time period, then the Indemnified Party and the Indemnifying Party shall submit such dispute to a court of competent jurisdiction.

10.8.3 Claims for Losses specified in any Certificate to which an Indemnifying Party shall not object in writing within forty-five (45) days of receipt of such Certificate, claims for Losses covered by a memorandum of agreement of the nature described in Section 10.7(b) and claims for Losses the validity and amount of which have been the subject of judicial determination as described in Section 10.7(b) or shall have been settled with the consent of the Indemnifying Party, as described in Section 9.4, are hereinafter referred to, collectively, as "*Agreed Claims*". Within ten (10) business days after the determination of the amount of any Agreed Claim, the Indemnifying Party shall pay to the Indemnified Party an amount equal to the Agreed Claim by wire transfer in immediately available funds to the bank account or accounts designated by the Indemnified Party in a notice to the Indemnifying Party not less than two (2) business days prior to such payment.

10.9. Third-Party Claims. If a claim by a third party is made against any Indemnified Party with respect to which the Indemnified Party intends to seek indemnification hereunder for any Losses under this Article 10, the Indemnified Party shall promptly notify the Indemnifying Party of such claim; provided that failure to deliver such notice shall not relieve the Indemnifying Party of its indemnification obligation, except to the extent materially prejudiced thereby. The Indemnifying Party shall have the right, but not the obligation, to conduct and control, through counsel of its choosing, any third party claim, action, suit or proceeding (a "*Third-Party Claim*"), and the Indemnifying Party may compromise or settle the same,

provided, however, that the Indemnifying Party shall give the Indemnified Party advance notice of any proposed compromise or settlement. No Indemnified Party may compromise or settle any Third-Party Claim for which it is seeking indemnification hereunder without the written consent of the Indemnifying Party and no indemnification shall be available hereunder to an Indemnified Party that compromises or settles any Third-Party Claim without first obtaining such consent. The Indemnifying Party shall permit the Indemnified Party to participate in, but not control, the defense of any such action or suit through counsel chosen by the Indemnified Party, provided, however, that the fees and expenses of such counsel shall be borne by the Indemnified Party. If the Indemnifying Party elects not to control or conduct the defense or prosecution of a Third-Party Claim, the Indemnifying Party nevertheless shall have the right to participate in the defense or prosecution of any Third-Party Claim and, at its own expense, to employ counsel of its own choosing for such purpose.

10.10. Recovery from Collateral Sources. The amount of any Losses for which indemnification is provided under Section 10.2 or 10.4 shall be net of (i) any amounts recovered by the Indemnified Party pursuant to any indemnification by or indemnification agreement with any third party and (ii) any insurance proceeds or other cash receipts or sources of reimbursement received as an offset against such Losses (each source of recovery named in clauses (i) and (ii), a "*Collateral Source*"). Prior to seeking indemnification under this Article X, an Indemnified Party shall use its commercially reasonable efforts to seek recovery from Collateral Sources, if any; *provided, however*, that the foregoing shall not require any Indemnified Party to initiate litigation against or in respect of any Collateral Source. If the amount to be netted hereunder in connection with a Collateral Source from any payment required under Sections 10.2 or 10.4 is determined after payment by the Indemnifying Party of any amount otherwise required to be paid to an Indemnified Party pursuant to this Article 10, the Indemnified Party shall repay to the Indemnifying Party, promptly after such determination, any amount that the Indemnifying Party would not have had to pay pursuant to this Article 10 had such determination been made at the time of such payment.

ARTICLE 11 TERMINATION

11.1. Method of Termination. This Agreement constitutes the binding and irrevocable agreement of the Parties to consummate the transactions contemplated hereby and this Agreement may be terminated or abandoned only as follows:

11.1.1 by the mutual written consent of the Parties;

11.1.2 by Seller on or after January 31, 2005 upon written notice to Purchaser, if any of the conditions set forth in Sections 8.1 or 8.3, to which the obligations of Seller are subject, have not been fulfilled or waived, unless such fulfillment has been frustrated or made impossible by any act or failure to act of Seller or any of its Affiliates;

11.1.3 by Seller prior to the Closing Date upon written notice to Purchaser in the event Purchaser materially breaches any of its obligations hereunder and fails to cure such breach within 15 days after Seller provides Purchaser written notice describing such breach;

11.1.4 by Purchaser (a) on or after January 31, 2005 upon written notice to Seller, if any of the conditions set forth in Sections 8.1 or 8.2, to which the obligations of Purchaser are subject, have not been fulfilled or waived, unless such fulfillment has been frustrated or made impossible by any act or failure to act of Purchaser or any of its Affiliates or (b) at any time on or after the later of (i) December 20, 2004 and (ii) the date on which Purchaser shall have become irrevocably obligated to make a bid or payment to the Bonneville Power Administration in order to secure power transmission over the McNary-John Day path through the Open Season Process referred to in Section 7.9 hereof (such later time, the "*BPA Commitment Time*"), unless, prior to the BPA Commitment Time, Seller shall have obtained the approval described in clause (iv) of the definition of "Required Approvals";

11.1.5 by Purchaser prior to the Closing Date upon written notice to Seller in the event Seller materially breaches any of its obligations hereunder and fails to cure such breach within 15 days after Purchaser provides Seller written notice describing such breach;

11.1.6 by either Party, if the Closing Date has not occurred on or prior to January 31, 2005, provided, however, that if the Closing Date has not occurred only because the conditions precedent in Sections 8.2.5 and/or 8.3.5 have not been satisfied or waived by such date, such termination date shall be extended to July 31, 2005, and provided, further, that the Party seeking to terminate, or any Affiliate of such party, shall not have frustrated or made impossible the Closing by its acts or omissions;

11.1.7 automatically upon Acceptance by Seller of a Competing Bid; or

11.1.8 by Purchaser prior to the Closing Date upon written notice to Seller in the event Seller breaches its obligations pursuant to Section 3.5 hereof.

11.2. Escrow Deposit. If this Agreement is terminated and the transactions contemplated hereby are not consummated for any reason (other than due to a breach by Purchaser of this Agreement for which Seller validly terminates this Agreement in accordance with its terms), the Escrow Deposit shall be released by the Escrow Agent and returned to Purchaser, in accordance with the terms of the Escrow Agreement. If this Agreement is validly terminated by Seller pursuant to Section 11.1.3, the Escrow Deposit shall be released by the Escrow Agent and delivered to Seller, in accordance with the terms of the Escrow Agreement. In the event of such a termination, Seller shall be entitled to retain the Escrow Deposit as damages. For the avoidance of doubt, retention of the Escrow Deposit shall not preclude Seller from pursuing any other remedies available at law or in equity.

11.3. Break-Up Fee; Expense Reimbursement. In the event that this Agreement is terminated by Purchaser pursuant to Section 11.1.5, Purchaser shall be entitled to the Expense Reimbursement. Seller shall pay the Expense Reimbursement by wire transfer of immediately available funds to an account designated by Purchaser promptly after such termination. In the event that this Agreement is terminated pursuant to Section 11.1.7 or 11.1.8, Seller shall pay to Purchaser, by wire transfer of immediately available funds to an account designated in writing by Purchaser (a) promptly after such termination, the Expense Reimbursement and (b) if (i) on or prior to December 1, 2005, Purchaser enters into a definitive agreement with any Person to consummate an Alternative Transaction and (ii) Seller consummates an Alternative Transaction

with such Person at any time thereafter, the Break-Up Fee, simultaneously with the closing of such Alternative Transaction.

11.4. Effect of Termination. In the event of any termination of this Agreement as provided in Section 11.1 hereof, this Agreement shall forthwith become wholly void and of no further force and effect and there shall be no liability on the part of any of the Parties hereto or their respective Affiliates, officers or directors by reason of the execution hereof except (a) as set forth in Section 7.3, Article 10, Sections 11.2 and 11.3 and Article 12 hereof, which sections shall survive the termination of this Agreement, and (b) nothing herein shall relieve any Party hereto from liability for any breach hereof.

ARTICLE 12 GENERAL PROVISIONS

12.1. Notices. Any notice to be given hereunder shall be in writing and may be sent via personal delivery, facsimile transmission or United States mail. Notices sent by personal delivery shall be effective upon receipt and notices sent by facsimile transmission shall be effective upon receipt of automatic confirmation transmission; provided, however, that where, in the case of personal delivery to an address or transmission by facsimile, delivery or transmission occurs after 4 p.m. (in the time zone applicable for the recipient) on a business day or on a day that is not a business day in the place of receipt, receipt shall be deemed to occur at 9 a.m. (in the time zone applicable for the recipient) on the next following business day in that place, and for this purpose "business day" means a day on which banks in that place are open for business in the ordinary course, other than Saturdays and Sundays. Notices sent by United States mail shall be effective upon receipt, or if receipt is refused, at such time as delivery is refused by addressee upon presentation. Notices shall be sent to the Parties at the addresses set forth below, provided that any Party may change its address for notice hereunder upon prior written notice to the other Party.

If to Seller:

Mirant Oregon, LLC
1155 Perimeter Center West
Atlanta, Georgia 30338
Attention: Anthony Ellis
Phone: (678) 579-5000
Fax: (678) 579-5001

With a copy (which shall not constitute notice) to:

White & Case LLP
1155 Avenue of the Americas
New York, New York 10036
Attention: John M. Reiss, Esq. & Mark L. Mandel, Esq.
Phone: 212-819-8200
Fax: 212-354-8113

If to Purchaser:

Avista Corporation
1411 East Mission Avenue
Spokane, Washington 99220-3727

Attention: Ronald R. Peterson
Phone: 509-495-8045
Fax: 509-495-4272

With a copy (which shall not constitute notice) to:

Dewey Ballantine LLP
1301 Avenue of the Americas
New York, New York 10017
Attention: J. Anthony Terrell, Esq. & Jaclyn L. Mintz, Esq.
Phone: 212-259-7070
Fax: 212-259-6333

12.2. Relationship. Notwithstanding any implication herein to the contrary, this Agreement does not create and shall not be deemed to create a partnership, company, joint venture or any other entity or similar legal relationship between the Parties. No Party hereto is or shall act as or be deemed to be the agent or representative of the other.

12.3. Modifications. No change, amendment or modification of this Agreement shall be valid or binding upon the Parties unless such change, amendment or modification shall be in writing and duly executed by both Parties.

12.4. Assignment. Neither Party may assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Purchaser may assign its rights under this Agreement to a wholly-owned subsidiary of Purchaser with notice to Seller but without Seller's consent; provided, that no such assignment by Purchaser shall release Purchaser from any obligation or liability hereunder, including, without limitation, the obligation to pay the Purchase Price under Section 2.4.

12.5. Governing Law. This Agreement shall be governed by and construed under the laws of the State of New York without reference to the conflict of laws provisions thereof.

12.6. Entire Agreement. This Agreement, and the Confidentiality Agreement, contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all other prior understandings, correspondence and agreements, oral or written, between them.

12.7. Severability. If any provision of this Agreement is void or unenforceable under the governing law, (a) such provision shall be deemed severed from this Agreement and the validity and enforceability of the remainder of this Agreement shall not be affected thereby, and (b) the Parties shall negotiate in good faith an equitable amendment to any such provision with the view to effecting, to the extent legally possible, the original purpose and intent of this Agreement.

12.8. Survival. Notwithstanding other provisions hereof to the contrary, Section 7.3, Article 10, Sections 11.2 and 11.3 and Article 12 hereof, shall survive any expiration, termination of, or withdrawal from, this Agreement.

12.9. Non-Waiver. The failure of either Party to this Agreement at any time or times to require the performance of any provision of this Agreement shall in no manner affect the right to enforce the same; and no waiver by either Party to this Agreement of any provision (or of a breach of any provision) of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed or construed either as a further or continuing waiver of any such provision or breach or as a waiver of any other provision (or of a breach of any other provision) of this Agreement.

12.10. Bulk Sales. Purchaser hereby waives compliance by Seller with the requirements and provisions of any "bulk transfer" laws of any jurisdiction that may be applicable with respect to the sale of Seller's Interest to Purchaser.

12.11. No Implied Warranties. All warranties not expressly set forth herein, including any warranty of merchantability and fitness for any particular purpose, and all other warranties arising under the Uniform Commercial Code (or similar foreign laws), are hereby waived by Purchaser. Purchaser acknowledges that, except for the representations and warranties of Seller contained herein, Purchaser takes Seller's Interest and the Assumed Liabilities "as is" "where is" and "with all faults."

12.12. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

12.13. Headings. The Section and other headings in this Agreement are inserted solely as a matter of convenience and for reference, and are not and shall not be deemed to be a part of this Agreement.

12.14. Exhibits and Schedules Incorporated. All Exhibits and Schedules attached hereto are incorporated herein by reference.

12.15. Costs and Expenses. Except as otherwise provided in Sections 3.3, 7.4 and 11.3, each Party shall be responsible for its own expenses associated with the transactions contemplated by this Agreement and any costs and expenses of Coyote Springs 2, LLC associated with this Agreement or the transactions contemplated hereby (including, without limitation, the reasonable fees and expenses of counsel) shall be borne by Coyote Springs 2, LLC, and funded 50% by Purchaser and 50% by Seller.

12.16. No Reliance. Each Party agrees that (a) the other Party (including its agents and representatives) has made no representation, warranty, covenant or agreement to or with such Party relating to the transactions contemplated hereby, other than those expressly set forth in the Agreement, the Schedules and Exhibits hereto, or in any document or instrument executed and delivered pursuant hereto, and (b) such Party has not relied upon any representation, warranty, covenant or agreement relating to the transactions contemplated hereby, other than those expressly set forth in this Agreement, the Schedules and Exhibits hereto, or in any document or

instrument executed and delivered pursuant hereto; provided, that in no event shall this provision be construed as releasing any Person not a party to this Agreement from any obligations such Person may have to the releasing Party under agreements (a) entered into after the Closing Date, or (b) not related to the Project, the Assets or the transactions contemplated hereby.

12.17. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Any signature page of any such counterpart, or any facsimile thereof, may be attached or appended to any other counterpart to complete a fully extended counterpart to this Agreement, and any facsimile transmission of any Party's signature to any counterpart shall be deemed an original and shall bind such Party.

12.18. Exclusive Remedy. Each of Seller and Purchaser acknowledge and agree that after the Closing the rights set forth in Article 10 shall be each of Seller's and Purchaser's sole and exclusive remedies against Purchaser or Seller, respectively, for monetary damages for misrepresentations or breaches of covenants in this Agreement, except with respect to any claims or causes of action based upon criminal activity, fraud or intentional misrepresentation and with respect to equitable remedies for specific performance or injunctions relating to breaches of any covenants contained in this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, each Party hereto has executed or caused this Agreement to be executed on its behalf, all on the day and year first above written.

SELLER:

MIRANT OREGON, LLC,
a Delaware limited liability company

By: Anne Mc Cleary
Name: Anne Cleary
Title: President

PURCHASER:

AVISTA CORPORATION,
a Washington corporation

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, each Party hereto has executed or caused this Agreement to be executed on its behalf, all on the day and year first above written.

SELLER:

MIRANT OREGON, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

PURCHASER:

AVISTA CORPORATION,
a Washington corporation

By: Ronald R. Peterson
Name: Ronald R. Peterson
Title: Vice President

EXHIBIT A

EXHIBIT A

BIDDING PROCEDURES

Initial Requirements

1. In order to participate in the bidding process, each person (a "Potential Bidder") must deliver (unless previously delivered) to Seller an executed confidentiality agreement in form and substance satisfactory to Seller. A "Qualified Bidder" is a Potential Bidder that delivers the document described above and who demonstrates the financial capability (including through delivery of audited financial statements, if available) of the Potential Bidder to consummate the purchase of Seller's Interest, that Seller determines is reasonably likely (based on availability of financing, experience and other considerations) to be able to consummate a purchase of Seller's Interest and who demonstrates that it meets the qualifications of a "Third Person Purchaser" (as defined in the Co-Tenancy Agreement). Seller shall determine whether any person, other than the Purchaser, is a Qualified Bidder.

Information and Due Diligence

2. Within two business days after the Potential Bidder delivers all of the materials required above, Seller shall determine, and shall notify a Potential Bidder in writing (with a copy to Purchaser), whether the Potential Bidder is a Qualified Bidder. At the same time that Seller notifies a Potential Bidder that it is a Qualified Bidder, Seller shall deliver (unless previously delivered) to the Qualified Bidder (i) a confidential memorandum containing information and financial data relative to Seller's Interest (the "Confidential Memorandum"), and (ii) a copy of this Agreement.

3. To obtain due diligence access or additional information from Seller, a Qualified Bidder (other than Purchaser) must first advise Seller in writing of its preliminary (non-binding) proposal regarding (i) the assets sought to be acquired, (ii) purchase price range, (iii) the structure and financing of the transaction (including sources of financing), (iv) any additional conditions to closing that it may wish to impose, and (v) the nature and extent of additional due diligence it may wish to conduct. If, based on the preliminary proposal and such additional factors as Seller determines are relevant, and Seller, in its business judgment, determines that the preliminary proposal is reasonably likely to result in a bona fide and serious higher or better offer for Seller's Interest, or will produce greater value to Seller, than the Agreement, Seller shall afford the Qualified Bidder due diligence access to Seller. Any additional due diligence shall not continue after the Bid Deadline (as defined herein). If any Qualified Bidder receives any information not theretofore given or freely available to Purchaser by Seller, Seller shall forthwith provide Purchaser with such information.

Bid Deadline and Bid Requirement

4. All bids (each, a "Competing Bid") must be submitted to Seller or its agent by a date and time to be determined by Seller and disclosed to each Qualified Bidder no less than 10 days prior to such date (the "Bid Deadline"); provided, that in no event shall such date be after December 17, 2004. A Competing Bid is a letter from a Qualified Bidder stating that (i) the Bidder offers

to purchase Seller's Interest upon the terms and conditions set forth in a copy of the Agreement, marked to show those amendments and modifications to the Agreement (the "Marked Agreement"), including, but not limited to price, any escrow or indemnities and the time of closing, that the Qualified Bidder proposes and (ii) the Bidder's offer is irrevocable (subject to any applicable conditions precedent to closing or termination provisions) until the closing of a purchase of Seller's Interest.

Good Faith Deposit

5. A Qualified Bidder shall accompany its bid with a good faith deposit (the "Good Faith Deposit") in an amount equal to 8% of its bid. The Good Faith Deposit shall be by (i) wire transfer to the account of an escrow agent selected by Seller (the "Escrow Agent"), pursuant to instructions to be provided upon request, or (ii) issuance, by a money center bank having capital of at least \$100 million, of an irrevocable letter of credit for the benefit of Seller in a form satisfactory to Seller in all respects. In the case of a wire transfer, the Good Faith Deposit shall be held by the Escrow Agent in an escrow account pursuant to the terms of an escrow agreement to be provided to all Qualified Bidders. The Good Faith Deposit, together with any interest earned thereon, shall be returned to any Qualified Bidder whose Bid is not accepted by Seller within three business days from the consummation of a sale of Seller's Interest. The Good Faith Deposit of the successful Qualified Bidder together, with any interest earned thereon, shall be treated in accordance with the terms of the escrow agreement (the "Deposit Escrow") in the form to be mutually agreed upon by Seller and such Qualified Bidder.

6. Seller will consider a bid only if the bid is from a Qualified Bidder and: (a) provides for consideration having a readily ascertainable fair market value of not less than \$500,000 in excess of the sum of the unadjusted Purchase Price plus the Break-Up Fee and maximum Expense Reimbursement payable to the Purchaser as described in the Agreement; (b) is on terms that are not materially more burdensome than the terms of the Agreement; (c) is not conditioned on obtaining financing or on the outcome of unperformed due diligence by the Qualified Bidder; (d) does not request or entitle the Qualified Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment; and (e) is likely to receive all Required Approvals. A Bid received from a Qualified Bidder that meets the above requirements is a "Qualified Bid." A Qualified Bid will be valued based upon factors such as (a) the amount of the Qualified Bid, (b) the value of Seller's Interest (if any) not being purchased, (c) the amount of Seller's liabilities to be assumed and (d) the net value provided to Seller. For purposes hereof, the Agreement executed by Purchaser shall constitute a Qualified Bid.

Auction, Bidding Increments, and Bids Remaining Open

7. If Seller receives a Qualified Bid, Seller will conduct an auction (the "Auction") at the offices of White & Case LLP, in New York, New York or at such other location as Seller may determine in its discretion, no later than December 17, 2004, beginning at 10:00 a.m. (EST) or such later time or other place as Seller shall notify all Qualified Bidders who have submitted Qualified Bids. Only Purchaser, Seller, any representative of any official committee appointed in MAI's Chapter 11 Case and any Qualified Bidders who have timely submitted Qualified Bids shall be entitled to attend the Auction, and only Purchaser and such Qualified Bidders will be entitled to make any additional bids at the Auction. The opening bid at the Auction shall be a Qualified Bid. All offers subsequent to the opening Qualified Bid at the Auction must exceed the prior

offer by not less than \$500,000. Seller may adopt rules for the bidding process that, in its judgment, will better promote the goals of the bidding process and that are not inconsistent with any of the provisions of the Purchase Agreement or hereof. Upon conclusion of the Auction, Seller shall review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale with respect to Seller's Interest, shall select a Qualified Bid not later than 11:59 p.m. (New York time) on December 17, 2004 and shall promptly notify all Qualified Bidders of such selection. MAI will request Bankruptcy Court approval of MAI's consent to the sale of Seller's Interest and all other actions as may be necessary to complete the sale of Seller's Interest. Bids (other than Purchaser's) submitted by the Bid Deadline as modified by a Bidder at the Auction shall remain open and irrevocable through the consummation of the sale of Seller's Interest, except as otherwise provided in this Agreement. Upon failure to consummate the sale of Seller's Interest because of a breach or failure on the part of the successful Qualified Bidder, Seller may select in its business judgment the next highest or otherwise best Qualified Bidder to be the successful bidder. If Seller does not receive any competing offers, Seller will proceed with a sale and assignment of Seller's Interest to Purchaser.

EXHIBIT B

TERMINATION AGREEMENT

THIS TERMINATION AGREEMENT (this "Termination Agreement") is made and entered into this ___ day of _____, 2004, by and between MIRANT AMERICAS ENERGY MARKETING, LP, a Delaware limited partnership ("MAEM"), MIRANT OREGON, LLC a Delaware limited liability company ("Mirant Oregon"), and AVISTA CORPORATION, a Washington corporation ("Avista"). MAEM, Mirant Oregon and Avista are sometimes referred to herein collectively as the "Parties" and each individually a "Party".

WHEREAS, MAEM or Mirant Oregon, on the one hand, and Avista, on the other hand, are parties to the agreements set forth on Exhibit A concerning the development, construction and operation of the approximately 280 MW gas-fired combined-cycle electric generating power plant located in the City of Boardman, Oregon (the "Agreements"); and

WHEREAS, the Parties wish to terminate the Agreements.

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual agreements contained in this Termination Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Termination. This Termination Agreement shall be effective on the date first written above. To the extent any of the Agreements have previously been terminated, the Parties hereby confirm the termination of such Agreements, and, to the extent any of the Agreements have not previously been terminated, the Parties hereby agree that such Agreements are fully and finally terminated and shall be of no further force or effect whatsoever. Except as otherwise set forth in that certain Asset Purchase and Sale Agreement, dated as of October __, 2004, between Mirant Oregon and Avista, Avista hereby fully and unconditionally releases MAEM and Mirant Oregon from any and all liabilities or obligations under the Agreements, whether arising prior to or after the date hereof, and hereby irrevocably waives, effective as of the date hereof, any and all claims, causes of action or other rights against MAEM and Mirant Oregon or any of its affiliates, whether at law or in equity, arising under or relating to the Agreements.
2. Further Assurances. The Parties hereby agree, each at its own expense, to perform all such further acts and execute and deliver all such further agreements, instruments and other documents as the other Party or Parties shall reasonably request to evidence more effectively the termination of the Agreements by the Parties under this Termination Agreement.
3. Legal Authority. Each Party to this Termination Agreement represents to the other Party that it has the full legal right, power and authority to enter into this Termination Agreement and that this Termination Agreement shall constitute a valid and legally binding obligation of the Parties enforceable against such individual Party in accordance with its terms.
4. Counterparts; Signatures. This Termination Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one

instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Termination Agreement. Any electronic facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.

5. Governing Law. This Termination Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon, without regard to provisions relating to conflict of laws.

(signatures on the following page)

IN WITNESS WHEREOF, the Parties have caused this Termination Agreement to be executed as of the date first written above.

MAEM:

MIRANT AMERICAS ENERGY MARKETING, LP,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

MIRANT OREGON:

MIRANT OREGON, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

AVISTA:

AVISTA CORPORATION,
a Washington corporation

By: _____
Name: _____
Title: _____

EXHIBIT A
(List of Agreements)

1. Test Energy Agreement, dated as of May 1, 2003, among MAEM and Avista.
2. Administrative Services Agreement, dated as of June 1, 2003, between MAEM and Avista.
3. Transaction Record, Avista Corp Contract No. E03-01005, between MAEM and Avista.
4. Consent and Contribution Agreement, dated as of July 1, 2003, between Mirant Oregon and Avista.

**FILED FOR RECORD AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:**

HELLER EHRMAN WHITE & McAULIFFE LLP
701 Fifth Avenue, Suite 6100
Seattle, Washington 98104-7098
Attention: Scott W. MacCormack

**TERMINATION OF CO-TENANCY AND JOINT OPERATING AGREEMENT
AND
MEMORANDUM OF AGREEMENT
(Co-Tenancy and Joint Operating Agreement)**

RELEASE

Effective as of _____, 2004, MIRANT OREGON, LLC, a Delaware limited liability company ("Mirant"), and AVISTA CORPORATION, a Washington corporation ("Avista"), by mutual agreement, hereby terminate all rights, covenants, terms, conditions, reservations restrictions and agreements created under (A) that certain Co-Tenancy and Joint Operating Agreement dated as of January 1, 2003, and any amendments thereto; and (B) that certain Memorandum of Agreement (Co-Tenancy and Joint Operating Agreement) dated as of January 1, 2003, recorded as Document No. 2002-6430 in the records of Morrow County, Oregon, and any amendments thereto, which among other things, established their respective rights, obligations and interests with respect to (i) their ownership, as tenants-in-common, under that certain ground lease dated August 9, 1993, a memorandum of which is recorded as Microfilm No. M-42775 in the records of Morrow County, Oregon, Microfilm Records, and any amendments thereto (the "Ground Lease"), and under that certain Common Ownership and Services Agreement dated as of July 21, 2000 recorded as Document No. 2000-1606 in the records of Morrow County, Oregon, and any amendments thereto (the "COSA"), all recorded in the real property records of Morrow County, Oregon, and (ii) that certain facility, being a gas-fired electric generating plant located in Boardman, Oregon, on the site that is the subject of the Ground Lease and the COSA, and commonly known as Coyote Springs Unit 2. The agreements described in (A) and (B) above are referred to herein as the "Agreements".

Except as otherwise set forth in that certain Asset Purchase and Sale Agreement, dated as of October __, 2004, between Mirant and Avista, Avista hereby fully and unconditionally releases Mirant from any and all liabilities or obligations under the Agreements, whether arising prior to or after the date hereof, and hereby irrevocably waives, effective as of the date hereof, any and all claims, causes of action or other rights against Mirant or any of its affiliates, whether at law or in equity, arising under or relating to the Agreements.

This instrument may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

[signature page follows]

IN WITNESS WHEREOF, Mirant and Avista execute this instrument this _____ day of _____, 2004.

MIRANT:

MIRANT OREGON, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

AVISTA:

AVISTA CORPORATION,
a Washington corporation

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the authorized member of MIRANT OREGON, LLC, a Delaware limited liability company, to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____.

(Signature)

(Typed or Printed Name)

NOTARY PUBLIC in and for the State
of _____, residing at _____

My appointment expires _____

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the authorized member of AVISTA CORPORATION, a Washington corporation, to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of _____.

(Signature)

(Typed or Printed Name)

NOTARY PUBLIC in and for the State of
Washington, residing at _____

My appointment expires _____

EXHIBIT C

BILL OF SALE

THIS BILL OF SALE is made and effective as of this ___ day of _____, 2004, by **MIRANT OREGON, LLC**, a Delaware limited liability company ("Seller"), in favor of **AVISTA CORPORATION**, a Washington corporation ("Buyer").

Pursuant to that certain Asset Purchase and Sale Agreement, dated as of October __, 2004 (the "Agreement"), between Buyer and Seller, Buyer will acquire from Seller all of Seller's right, title and interest in and to Seller's Interest. Capitalized terms used and not otherwise defined herein shall have their respective meanings as defined in the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Seller does hereby absolutely and unconditionally give, grant, bargain, sell, transfer, set over, assign, convey, release, confirm and deliver to Buyer, all of Seller's right, title and interest in and to Seller's Interest.

This Bill of Sale may be executed in counterparts and by facsimile.

[Signature page follows]

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the date first above written.

MIRANT:

**MIRANT OREGON, LLC,
a Delaware limited liability company**

By: _____
Name: _____
Title: _____

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EXHIBIT D

**ASSIGNMENT AND ASSUMPTION AGREEMENT
(General Assignment)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Assignment") is made and entered into this ___ day of _____, 2004, by and between AVISTA CORPORATION, a Washington corporation ("Avista") and MIRANT OREGON, LLC, a Delaware limited liability company ("Mirant"). Avista and Mirant are sometimes referred to herein collectively as the "Parties" and each individually a "Party".

WHEREAS, Mirant, as a party, successor-in-interest, or assignee, has rights, limitations, liabilities and obligations in, to and under the agreements set forth on Exhibit A concerning the development, construction and operation of the approximately 280 MW gas-fired combined-cycle electric generating power plant located in the City of Boardman, Oregon (the "Agreements"); and

WHEREAS, pursuant to that certain Asset Purchase and Sale Agreement, dated as of October __, 2004 (the "Purchase Agreement"), between Mirant and Avista, Avista will acquire from Mirant all of Mirant's right, title and interest in and to Seller's Interest. Capitalized terms used and not otherwise defined herein shall have their respective meanings as defined in the Purchase Agreement.

NOW THEREFORE, FOR AND IN CONSIDERATION of the mutual agreements contained in this Assignment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Assignment.** Mirant hereby irrevocably assigns, conveys and transfers all of Mirant's right, title and interest in and to the Agreements to Avista.
2. **Acceptance; Assumption.** Avista hereby accepts the assignment and transfer of such rights and interests of Mirant under the Agreements, and hereby assumes and undertakes to perform, in accordance with and subject to the respective terms of the Agreements, any and all of Mirant's obligations and liabilities thereunder.
3. **Ratification.** Except as provided herein, the terms and conditions of the Agreements shall continue in full force and effect and are hereby ratified in their entirety. To the extent, if any, that the terms and conditions of this Assignment conflict with the terms and conditions of the Agreements, the Agreements are amended accordingly, and the terms and conditions of this Assignment shall control.
4. **Legal Authority.** Each Party to this Assignment represents to the other Party that it has the full legal right, power and authority to enter into this Assignment and that this Assignment shall constitute a valid and legally binding obligation of the Parties enforceable against such individual Party in accordance with its terms.

5. Counterparts; Signatures. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument. Any signature page of any such counterpart, or any electronic facsimile thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Assignment. Any electronic facsimile transmission of any signature of a Party shall be deemed an original and shall bind such Party.

6. Governing Law. This Assignment shall be governed by, and construed and enforced in accordance with, the laws of the State of Oregon, without regard to provisions relating to conflict of laws.

(signatures on the following page)

IN WITNESS WHEREOF, the Parties have caused this Assignment and Assumption Agreement to be executed as of the date first written above.

AVISTA:

AVISTA CORPORATION,
a Washington corporation

By: _____
Name: _____
Title: _____

MIRANT:

MIRANT OREGON, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A
(List of Agreements)

1. Securities Purchase Agreement between Enron North America Corp. and Avista Power, LLC dated as of July 21, 2000
2. Assignment of Interest between Enron North America Corp. and Avista Power, LLC
3. Letter of Avista Power, LLC dated July 21, 2000 regarding ratification of existing contracts
4. Reliance Letter Agreement between Coyote Springs 2, LLC, CH2M Hill, Inc. and Portland General Electric dated April 18, 2000
5. Water Agreement between the City of Boardman, Lamb-Weston, Inc., Oregon Potato Company and Portland General Electric Company, dated January 15, 1996
6. Letter Agreement dated March 29, 2001 re Work Scope and Letter of Understanding for Coyote Springs #2 Station Service between Umatilla Electric Cooperative and Avista
7. Agreement to Implement City of Boardman Annexation of Coyote Springs Power Generation Project between the City of Boardman and Portland General Electric Company, dated as of January 15, 1996
8. Agreement For Payments In Lieu of Ad Valorem Taxes between the City of Boardman and Coyote Springs 2, LLC, dated as of February 16, 2000
9. Addendum to Agreement For Payments In Lieu of Ad Valorem Taxes between the City of Boardman and Coyote Springs 2, LLC, dated as of April 5, 2000
10. Second Addendum to Agreement For Payments In Lieu of Ad Valorem Taxes among the City of Boardman, Coyote Springs 2, LLC, Avista Corporation and Mirant Oregon, LLC, dated January 1, 2003
11. Oregon Enterprise Zone Precertification Approval granted to Coyote Springs 2, LLC, dated June 22, 2000
12. Oregon Office of Energy Letter dated July 6, 2000, regarding approval of Coyote Springs Unit 2 Cooling System Study and Design
13. Memorandum of Understanding the Climate Trust and Coyote Springs 2, LLC Monetary Path Carbon Dioxide Standard Implementation between Coyote Springs 2, LLC, and Oregon Climate Trust dated December 31, 2000

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