

LEGISLATIVE SUMMARY SHEET
Tracking No. 0471-17

DATE: November 29, 2017

TITLE OF RESOLUTION: AN ACTION RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE COMPLETION AND REPLACEMENT GUARANTY AND THE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT BETWEEN NAVAJO TRIBAL UTILITY AUTHORITY AND ECOTRUST SUB-CDE XXV, LLC

PURPOSE: This legislation approves the Completion and Replacement Guaranty between the Navajo Tribal Utility Authority and Ecotrust Sub-CDE XXV, LLC., and approves the Subordination, Non-Disturbance and Attornment Agreement between the entities.

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

5-DAY BILL HOLD PERIOD: None
Website Posting Time/Date: 10:09am 11/30/17
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PROPOSED STANDING COMMITTEE RESOLUTION
23rd NAVAJO NATION COUNCIL -- Third Year, 2017

INTRODUCED BY

ALTON JOE SHESHERO
(Prime Sponsor)

TRACKING NO. 0471-17

AN ACTION

RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING
THE COMPLETION AND REPLACEMENT GUARANTY AND THE
SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT
BETWEEN NAVAJO TRIBAL UTILITY AUTHORITY AND ECOTRUST SUB-CDE
XXV, LLC

BE IT ENACTED:

Section One. Authority

The Resources and Development Committee is a standing committee of the Navajo Nation Council and oversees utilities and public utilities to establish Navajo Nation policy with respect to optimum utilization of all Navajo Nation resources. 2 N.N.C. §500 (A) and §500(C)(1).

Section Two. Findings

A. The Navajo Tribal Utility Authority (NTUA) is created for the purpose of operating, maintaining, and promoting existing utility systems furnishing electric, gas, water sewer utility services, generation, and telecommunications and information services for the benefit of residents of the Navajo Nation, including the establishment, ownership,

1 operation and maintenance of electric generating, telecommunications and information
2 services on or off the Navajo Reservation. 21 N.N.C. § 5(A)(1).

3 B. The NTUA Management Board power includes, “[T]o make any guaranty respecting
4 indebtedness, interest, contracts or other obligations lawfully entered into by or on
5 behalf of the enterprise, to the extent that such guaranty is made in pursuance of the
6 purposes set forth in 21 N.N.C. § 5, provided, that no such guaranty in excess of two
7 hundred thousand dollars (\$200,000.00) shall be made without the prior written
8 approval of the Resources and Development Committee of the Navajo Nation Council.”
9 21 N.N.C. § 7(B)(8).

10 C. The NTUA Management Board power includes, “[T]o bring suit in its name and,
11 notwithstanding any legal limitations under the Navajo Sovereign Immunity Act, to
12 participate in enforceable arbitration proceedings and to contractually waive immunity
13 to suit in the courts of the Navajo Nation and any state or federal court having
14 jurisdiction, provided that notwithstanding any other provision of law, including but not
15 limited to the Navajo Sovereign Immunity Act, the Management Board, upon thirty
16 (30) days' written notice to the Speaker of the Navajo Nation Council of the intention of
17 the Management Board to waive the Authority's sovereign immunity, may by resolution
18 duly adopted waive the Authority's immunity from suit. Any such waiver shall be
19 limited to the assets, revenue and income of the Authority, and shall not waive the
20 sovereign immunity of the Navajo Nation nor extend liability to any assets, revenue, or
21 income of the Navajo Nation.” 21 N.N.C. § 7(B)(14).

22 D. NTUA is working to finalize a \$10,000,000 new markets tax credit transaction that is
23 expected to provide approximately \$2,300,000 in net benefits. This new markets tax
24 credit transaction will provide a portion of the funding for the utility infrastructure
25 needed to connect the Kayenta solar farm to the grid. The project consists of the electric
26 sub-station, water line, waste water line, internet connection and certain site costs
27 related to the solar farm. Additionally, proceeds from the transaction will be used to
28 connect homes in the area to the power grid.

29 E. The new markets allocation is being provided by Ecotrust, a Community Development
30 Entity out of Portland, Oregon. Ecotrust is specifically interested in projects that

1 provide environmental benefits and services to underserved areas. Ecotrust is
2 particularly drawn to this project for both the solar aspects and the connection of new
3 homes to the power grid.

4 F. Capital One is the tax credit investor for this new markets transaction. Ecotrust and
5 Capital One have requested a guarantee from NTUA to support the payments due under
6 the loans for the project as well as an indemnification for any loss of the federal tax
7 credit should the project fail to perform.

8 G. NTUA has approved providing the guarantee to the parties, subject to approval from
9 the Navajo Nation pursuant to Navajo law. Completion and Repayment Guaranty
10 attached as **Exhibit A**.

11 H. NTUA has structured the new markets transaction to minimize any risk of failure and
12 wishes to move forward with the transaction. Pursuant to the Subordination, Non-
13 Disturbance and Attornment Agreement (SNDA), NTUA and the Navajo Nation will
14 provide assurance that the right of way upon which the substation is built will not be
15 terminated or impinged upon during the term of the tax compliance period.
16 Subordination, Non-Disturbance and Attornment Agreement attached as **Exhibit B**.

17 I. The NTUA Management Board approved the Completion and Repayment Guaranty
18 through Resolution NTUA-51-17. NTUA-51-17 attached as **Exhibit C**.

19 J. The NTUA Management Board approved a limited waiver of sovereign immunity
20 relative to the Ecotrust Completion and Repayment Guaranty. NTUA-49-17 attached
21 as **Exhibit D**.

22 K. The NTUA Management Board approved a limited waiver of sovereign immunity
23 relative to the Subordination, Non-Disturbance and Attornment Agreement. NTUA-50-
24 17 attached as **Exhibit E**.

25 26 **Section Three. Approval**

27 The Resources and Development Committee approves the Completion and Repayment
28 Guaranty and the Subordination, Non-Disturbance and Attornment Agreement between
29 the Navajo Tribal Utility Authority and Ecotrust Sub-CDE XXV, LLC.
30



COMPLETION AND REPAYMENT GUARANTY

THIS COMPLETION AND REPAYMENT GUARANTY (this "Guaranty") is made as of this ___ day of _____, 2017, in favor of ECOTRUST SUB-CDE XXV, LLC, a Delaware limited liability company (together with its successors and assigns "Lender") by the NAVAJO TRIBAL UTILITY AUTHORITY, a public agency and enterprise of the Navajo Nation, a federally recognized, sovereign and self-governing American Indian Tribe ("Guarantor").

A. NTUA New Markets V, Inc., a corporation wholly owned by the Guarantor and formed under the laws of the Navajo Nation ("Borrower") and Lender are entering into a certain Loan Agreement of even date herewith ("Loan Agreement") pursuant to which Lender will make loans (collectively, the "Loan") to Borrower in the aggregate principal amount of \$9,700,000. The Loan will also be evidenced by Borrower's promissory notes to Lender of even date herewith; a promissory note in the original principal amount of \$6,568,000 ("Note A") and a promissory note in the original principal amount of \$3,132,000 ("Note B", together with Note A referred to collectively herein as the "Promissory Notes") and secured by, among other things, an Assignment of Utility System Management Agreement, an Assignment of Master Agreement, an Assignment of Build-to-Suit Purchase Agreement, and a Security Agreement, or similar security instrument(s) made by Borrower to Lender each of even date herewith (collectively, the "Security Instrument"), which grants to Lender, all right, title and interest of Borrower in and to that certain Build-to-Suit Purchase Agreement, Master Agreement and Utility System Management Agreement, each entered into between Guarantor and Borrower dated of even date herewith, with respect to certain property located in Kayenta, Arizona (the "Property").

B. Borrower intends to finance the purchase and construction of infrastructure and a substation servicing the Kayenta Solar Facility owned by [NGI_Kayenta, Inc., a wholly-owned subsidiary of Guarantor organized under the laws of the Navajo Nation] [*Confirm name.*] at the Property, and to finance the cost of connecting households to the electric grid (the "Project").

C. Guarantor owns a [direct interest] in Borrower and will derive substantial benefit from Lender's making of the Loan to Borrower.

D. Guarantor's entry into the guaranty will further its purpose of planning for, providing and furnishing utility generation.

E. Lender requires as a condition to making the Loan that Guarantor agree to guaranty for the benefit of Lender, and its successors and assignees, all obligations and liabilities of Borrower with respect to the Loan for which Borrower is personally liable.

NOW, THEREFORE, to induce Lender to make the Loan to Borrower, and in consideration of the substantial benefit Guarantor will derive from the Loan, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound hereby, Guarantor hereby agrees as follows:

Article 1 Definitions

1.01. Definitions. Capitalized terms used in this Guaranty and not specifically defined in this Guaranty have the meaning provided in the Loan Agreement.

Article 2 Obligation Guaranteed

2.01. Guaranty of Loan Obligations. Guarantor irrevocably, absolutely and unconditionally, guarantees to Lender the prompt payment when due, whether at stated maturity, by acceleration or otherwise, of all obligations and liabilities of Borrower for which Borrower is, or shall become, personally liable pursuant to the Loan Agreement and other Loan Documents, excluding principal payments, as further described in Section 2.02 of this Guaranty (collectively, the “Guaranteed Obligations”).

2.02. Guaranty of Construction Completion. Guarantor absolutely, unconditionally, and irrevocably guarantees to Lender:

(a) the full, complete and punctual observance, performance and satisfaction of all of the obligations, duties, covenants and agreements of Borrower under the Loan Agreement and the other Loan Documents (as defined in the Loan Agreement) with respect to the construction and completion of the Project free of any claim for mechanics’, materialmen’s or any other liens, and in accordance with (1) all applicable legal requirements and other requirements of any governmental authority having jurisdiction over the Project, (2) any documents of record setting forth covenants, conditions, easements or restriction in the official records of the Navajo Nation, (3) the Plans and Specifications of the Project, and (4) the time periods and other requirements set forth in the Loan Documents, including, without limitation, and subject to, the following:

(i) To perform, complete and pay for (or cause to be performed, completed and paid for) all construction work required to complete and equip the Project (the “Construction Work”) and to pay all costs of said Construction Work (including any and all cost overruns) and all other costs associated with the Project, if Borrower shall fail to perform, complete or pay for such Construction Work or costs beyond all applicable grace or cure periods under the Loan Documents, including any sums expended in excess of the amount of indebtedness incurred by Borrower under the Loan Agreement or with respect to the Loan, whether or not the Construction Work is actually completed;

(ii) If the Lender exercises its rights under the Loan Agreement to take possession of the Project and complete the Construction Work, to reimburse the Lender for all actual out-of-pocket costs and expenses incurred by Lender in excess of the applicable line items contained in the Project budget, and in so taking possession of the Project, to complete the Construction Work pursuant to the Plans and Specifications;

(iii) If any mechanics’ or materialmen’s lien, judgments or stop notices should be filed, or should attach, with respect to the Project by reason of the Construction Work, to cause the removal of such liens, judgments or stop notices or post security against the consequences of their possible foreclosure in accordance with the terms of the Loan Agreement;

(iv) If any chattel mortgages, conditional vendor's liens or any liens, encumbrances or security interests whatsoever should be filed, or should attach, with respect to the personal property, fixtures, attachments and equipment delivered upon the Project and owned by Borrower, attached to the Project or used in connection with the Construction Work, to promptly cause the removal of such lien(s) or post security against the consequences of their possible foreclosure in accordance with the Loan Agreement; and

(v) To pay all real estate taxes, other taxes and assessments, municipal and local charges of any subdivision of the Navajo Nation, utility charges, system development charges, building permits, insurance premiums for all policies of insurance required to be furnished by Borrower pursuant to the Loan Agreement, if such costs are not paid by Borrower;

(b) the prompt, full and complete performance and payment of interest and other amounts due on the Loan (other than principal) as and when the same shall become due and payable under the Promissory Notes, whether at stated maturity, by acceleration or otherwise, and any and all other sums of money payable by Borrower to Lender under the provisions of the Loan Agreement or any other Loan Document, including without limitation, the payment or reimbursement, as applicable, of fees and expenses of Lender, Lender's members and/or Lender's affiliates, as applicable, under the Loan Agreement;

(c) the payment in full of all actual losses, costs, expenses, claims or damages arising out of Borrower's or Guarantor's fraud, gross negligence, willful misrepresentation, willful misconduct, physical waste, misappropriation and misapplication of funds, voluntary bankruptcy filings or other actions intended to cause or result in an event described in Section [] of the Loan Agreement (incorporated herein by reference and made a part hereof);

(d) the prompt, full and complete performance and payment of Borrower's obligation to indemnify, protect, hold harmless and defend the [Covered Persons] in accordance with Section [] of the Loan Agreement (incorporated herein by reference and made a part hereof); and

(e) the payment in full of any and all reasonable third party expenses, including, without limitation, (i) all reasonable attorneys', accountants, experts, consultants fees and expenses and (ii) all disbursements, arbitration and court costs prior to trial, incurred by Lender (whether at arbitration, court proceeding or on appeal) in the collection of all or any portion of Guarantor's obligations under this Guaranty or the exercise or enforcement of any one or more of the rights, powers, privileges, remedies and interests of Lender under the Loan Documents or under this Guaranty, whether or not such expenses constitute part of Borrower's obligations.

2.03. Continuing Obligation. This Guaranty is a continuing guaranty and in full force and effect and will be discharged only if and when the Loan has been paid in full, and all obligations under the Loan Agreement and other Loan Documents have been fully performed; provided, however, that notwithstanding any of the foregoing to the contrary, this Guaranty shall

remain in full force and effect for so long as any payment hereunder may be voided in bankruptcy proceedings as a preference or for any other reason.

2.04. Direct Action Against Guarantor. Guarantor's liability under this Guaranty is a guaranty of payment and performance and not of collection. Lender has the right to require Guarantor to pay, comply with and satisfy its obligations and liabilities under this Guaranty, and shall have the right to proceed immediately against Guarantor with respect thereto, without being required to attempt recovery first from Borrower or any other party, without first suing on the Promissory Notes or any other Loan Document and without demonstrating that the collateral for the Loan is inadequate security or that Lender has exercised (to any degree) or exhausted any of Lender's other rights and remedies with respect to Borrower or any collateral for the Loan.¹

Article 3 General Terms and Conditions

3.01. Payments; Interest on Amounts Payable Hereunder. Amounts payable to Lender under this Guaranty shall be immediately due and payable on Lender's written demand and shall be paid without reduction by set-off, defense, counterclaim or cross-claim. Interest at the Default Rate (or the maximum interest rate permitted by applicable law) shall accrue on any judgment obtained by Lender in connection with the enforcement or collection of amounts due under this Guaranty until such judgment is paid in full. Lender may apply all money received by Lender to payment or reduction of the Loan or reimbursement of Lender's expenses and costs of enforcement of this Guaranty, in such priority and proportions, and at such time or times as Lender may elect.

3.02. Cumulative Remedies. Guarantor acknowledges that, following an Event of Default with respect to the Loan, Lender is entitled to accelerate the Loan and exercise all other rights and remedies as have been provided to Lender under the other Loan Documents, by law or in equity, including, without limitation, enforcement of this Guaranty. All rights and remedies of Lender are cumulative and may be exercised independently, concurrently or successively in Lender's sole discretion and as often as occasion therefor shall arise and no choice of remedy by Lender shall preclude Lender from subsequently electing to exercise a different remedy. Lender's delay or failure to accelerate the Loan or exercise any other remedy upon the occurrence of an Event of Default with respect to the Loan shall not be deemed a waiver of such right or remedy. No partial exercise by Lender of any right or remedy will preclude further exercise thereof. Notice or demand given to Guarantor in any instance will not entitle Guarantor to notice or demand in similar or other circumstances nor constitute Lender's waiver of its right to take any future action in any circumstance without notice or demand (except where expressly required by this Guaranty to be given). Lender may release other security for the Loan, may release any party liable for the Loan, may grant extensions, renewals

¹ The Utility Act has a provision that prohibits levy and execution against Utility property except for the rights of noteholders and bondholders. It appears this provision will need to be waived in order to permit Lenders to exercise rights under this guaranty. [*Please confirm.*]

or forbearances with respect thereto, may accept a partial or past due payment or grant other indulgences, or may apply any other security held by it to payment of the Loan, in each case without prejudice to its rights under this Guaranty and without such action being deemed an accord and satisfaction or a reinstatement of the Loan. Lender will not be deemed as a consequence of its delay or failure to act, or any forbearances granted, or by any course of dealing on the part of Lender or its officers, employees, consultants or agents, to have waived or be estopped from exercising any of its rights or remedies.

3.03. Lender's Right to Cure. Lender shall have the right, at its option, but without any obligation to do so, either before, during or after commencing foreclosure or sale proceedings, as the case may be, and before, during or after pursuing any other right or remedy against Borrower or Guarantor, to perform any and all of the obligations of Borrower and/or Guarantor by or through any agent, contractor or subcontractor of its selection, all as Lender in its sole discretion deems proper, subject to any notice requirements set forth in the other Loan Documents, and Guarantor shall indemnify and hold Lender free and harmless from and against any and all loss, damage, reasonable out-of-pocket cost and expense, injury, or liability Lender may suffer or incur in connection with the exercise of its rights under this Guaranty or the performance of the Guaranteed Obligations except to the extent such loss, damage, cost, expense, injury or liability results solely from the fraud, gross negligence, or willful misconduct of Lender. Furthermore, Lender shall not have any obligation to protect or insure any collateral for the Loan, nor shall Lender have any obligation to perfect its security interest in any collateral for the Loan.

3.04. Enforcement Costs. Guarantor hereby agrees to pay, on written demand by Lender, all costs incurred by Lender in collecting any amount payable under this Guaranty or enforcing or protecting its rights under the Guaranty, in each case whether or not legal proceedings are commenced. Such fees and expenses include, without limitation, reasonable fees for attorneys, paralegals and other hired professionals, a reasonable assessment of the cost of services performed by Lender's default management staff, court fees, costs incurred in connection with arbitration and related court proceedings, pre-trial, trial and appellate level proceedings (including discovery and expert witnesses), costs incurred in post-judgment collection efforts or in any bankruptcy proceeding. Amounts incurred by Lender shall be immediately due and payable, and shall bear interest at the Default Rate from the date of disbursement until paid in full, if not paid in full within thirty (30) calendar days after Lender's written demand for payment.

3.05. Unimpaired Liability. Guarantor acknowledges and agrees that all obligations hereunder are and shall be absolute and unconditional under any and all circumstances without regard to the validity, regularity or enforceability of any or all of the Loan Documents or the existence of any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety. Without limiting the foregoing, Guarantor acknowledges and agrees that its liability hereunder shall in no way be released, terminated, discharged, limited or impaired by reason of any of the following (whether or not Guarantor has any knowledge or notice thereof): (a) Borrower's lack of authority or lawful right to enter into any of the Loan Documents; (b) any modification, supplement, extension, consolidation, restatement, waiver or consent provided by Lender with respect to any of the Loan Documents including, without limitation, approval of a [Transfer] or the grant of extensions of time for

payment or performance; (c) failure to record any Loan Document or to perfect any security interest intended to be provided thereby or otherwise to protect, secure or insure any collateral for the Loan; (d) Lender's failure to exercise, or delay in exercising, any rights or remedies Lender may have under the Loan Documents or under this Guaranty; (e) the release or substitution, in whole or in part, of any collateral for the Loan or acceptance of additional collateral for the Loan; (f) the release of Guarantor from performance, in whole or in part, under this Guaranty or the release of Borrower from performance, in whole or in part, under any of the Loan Documents, in each case whether by operation of law, Lender's voluntary act, or otherwise; (g) any bankruptcy, insolvency, reorganization, adjustment, dissolution, liquidation or other like proceeding involving or affecting Borrower, Guarantor or Lender; (h) the termination or discharge of the Security Instrument; (i) the existence of any claim, setoff, counterclaim, defense or other rights which Guarantor may have against Borrower, Guarantor or Lender, whether in connection with the Loan or any other transaction; (j) the accuracy or inaccuracy of the representations and warranties made by Borrower in any of the Loan Documents; or (k) except to the extent prohibited by applicable law, any other action or circumstance whatsoever that constitutes, or might be construed to constitute, a legal or equitable discharge or defense (except full payment and satisfaction) of Borrower for its obligations under any of the Loan Documents or of Guarantor under this Guaranty; and, in any such case, whether with or without notice to Guarantor and with or without consideration.

3.06. Waivers. Guarantor hereby waives and relinquishes, to the fullest extent permitted by law: (a) all rights or claims of right to cause a marshalling of assets or to cause Lender to proceed against any of the collateral for the Loan before proceeding under this Guaranty against it or any other Guarantor; (b) all rights and remedies accorded by applicable law to sureties or guarantors, except any rights of subrogation and contribution (the exercise of which are subject to the terms of this Guaranty); (c) the right to assert a counterclaim, other than a mandatory or compulsory counterclaim, in any action or proceeding brought by or against it; (d) notice of acceptance of this Guaranty and of any action taken or omitted in reliance hereon; (e) presentment for payment, demand, protest, notice of nonpayment or failure to perform or observe, or any other proof, notice or demand to which it might otherwise be entitled with respect to its obligations hereunder; and (f) all homestead or exemption rights against the obligations hereunder and the benefits of any statutes of limitation or repose.

3.07. Guarantor Bound by Judgment Against Borrower. Guarantor agrees that it shall be bound conclusively, in any jurisdiction, by the judgment in any action by Lender against Borrower in connection with the Loan Documents (wherever instituted) as if it were a party to such action even if not so joined as a party.

3.08. Certain Consequences of Borrower's Bankruptcy.

(a) If Borrower shall be subject to the protection of the United States Bankruptcy Code (the "Bankruptcy Code") or any insolvency law the effect of which is to prevent or delay Lender from taking any remedial action against Borrower, including the exercise of any option Lender has to accelerate and declare the Loan immediately due and payable, Lender may, as against Guarantor, nevertheless declare the Loan due and payable and enforce any or all of its rights and remedies against Guarantor as provided herein.

(b) Any payment made on the Loan, whether made by Borrower or Guarantor or any other Person, that is required to be refunded or recovered from Lender as a preference or a fraudulent transfer or is otherwise set-aside pursuant to the Bankruptcy Code or any insolvency or other debtor relief law shall not be considered as a payment made on the Loan or under this Guaranty. Guarantor's liability under this Guaranty shall continue with respect to any such payment, or be deemed reinstated, with the same effect as if such payment had not been received by Lender, notwithstanding any notice of revocation of this Guaranty prior to such avoidance or recovery or payment in full of the Loan, until such time as all periods have expired within which Lender could be required to return any amount paid at any time on account of the Guaranteed Obligations. Guarantor further agrees that in the event any such payment is rescinded or must be restored or returned, all costs and reasonable expenses (including without limitation all reasonable attorneys', accountants', experts', consultants' fees and expenses) incurred by or on behalf of Lender in defending or enforcing such continuance or reinstatement, as the case may be, shall constitute costs of enforcement, included in the Guaranteed Obligations.

(c) Until payment in full of the Loan (including interest accruing on the Promissory Notes after the commencement of a proceeding by or against Borrower under the Bankruptcy Code, which interest the parties agree remains a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in cases under the Bankruptcy Code generally), Guarantor agrees not to accept any payment or satisfaction of any kind of indebtedness of Borrower to Guarantor and hereby assigns such indebtedness to Lender, including the right (but not the obligation) to file proof of claim and to vote in any other bankruptcy or insolvency action, including the right to vote on any plan of reorganization, liquidation or other proposal for debt adjustment under Federal or state law.

3.09. Subrogation and Contribution. Guarantor agrees that no payment by it under this Guaranty shall give rise to (a) any rights of subrogation against Borrower or the collateral for the Loan, or (b) any rights of contribution against any other Guarantor, in each case unless and until Lender has received full and indefeasible payment of the Loan. If the deferral of such rights shall be unenforceable for any reason, Guarantor agrees that (a) its rights of subrogation shall be junior and subordinate to Lender's rights against Borrower and the collateral for the Loan, and (b) its rights of contribution against any other Guarantor shall be junior and subordinate to Lender's rights against each other Guarantor.

3.10. Subordination of Borrower's Obligations to Guarantor. Any indebtedness of Borrower to Guarantor, now or hereafter existing, together with any interest thereon, shall be and hereby is deferred, postponed and subordinated to the prior payment in full of the Loan. Further, Guarantor agrees that should it receive any payment, satisfaction or security for any indebtedness owed by Borrower to it, the same shall be delivered to Lender in the form received (endorsed or assigned as may be appropriate) for application on account of, or as security for, the Loan and until so delivered to Lender, shall be held in trust for Lender as security for the Loan.

3.11. Lender Transferees; Secondary Market Activities. Guarantor acknowledges and agrees that Lender, without notice to Guarantor or Guarantor's prior consent, may assign all or any portion of its rights hereunder in connection with any sale or assignment of the Loan or servicing rights related to the Loan, each grant of participations in the Loan, a transfer of the Loan as part of a securitization in which Lender assigns its rights to a securitization trustee, or a

contract for the servicing of the Loan, and that each such assignee, participant or servicer shall be entitled to exercise all of Lender's rights and remedies hereunder. Guarantor further acknowledges that Lender may provide to third parties with an existing or prospective interest in the servicing, enforcement, ownership, purchase, participation or securitization of the Loan, including, without limitation, any rating agency rating the securities issued in respect of a securitization or participation of the Loan, and any entity maintaining databases on the underwriting and performance of commercial mortgage loans, any and all information which Lender now has or may hereafter acquire relating to the Loan, the Property or with respect to Borrower or Guarantor, as Lender determines necessary or desirable. Guarantor irrevocably waives all rights it may have under applicable law, if any, to prohibit such disclosure, including, without limitation, any right of privacy.

3.12. Financial Reports, Inspection of Records.

(a) *Financial Statements.* Guarantor shall furnish the following financial information to Lender:

(i) *Guarantor's Quarterly Financial Statements.* As soon as available and in any event within forty-five (45) calendar days after the end of each of the first 3 fiscal calendar quarters of Guarantor, Guarantor's internally prepared statements of financial position and related statements of activities and cash flows for that quarter and year-to-date;

(ii) *Guarantor's Annual Financial Statements.* (i) As soon as available and in any event within one hundred twenty (120) calendar days after the end of each fiscal year of Guarantor (which fiscal year ends December 31), Guarantor's audited statement of financial position and related statements of activities and cash flows as of the end of and for such year, together with an unqualified opinion of an independent public accountant of nationally recognized standing; and (ii) as soon as available and in any event within [ninety (90)] calendar days after the end of each fiscal year of Guarantor, Guarantor's internally prepared annual statements of financial position and related statements of activities and cash flows as of the end of and for such year; and

(iii) *Operating Budget.* An operating budget for each fiscal year of Guarantor with respect to the Project, within thirty (30) days prior to the beginning of each calendar year.

(b) Guarantor shall, simultaneously with the delivery of each set of financial statements referred to in subsection (i) – (ii) above, deliver a certificate of an authorized officer of Guarantor certifying that such financial statements fairly present the financial condition and the results of operations of the Guarantor on the dates and for the periods indicated, on the basis of general accepted accounting principles, subject, in the case of interim financial statements, to year-end adjustments.

(c) *NMTC Reports.* Promptly upon the reasonable request of Lender and in any event within 15 Business Days of such request, all information, reports and certifications required from Guarantor from time to time by Lender as Lender deems reasonably necessary to

demonstrate compliance with any law, regulation or other guidance applicable to the New Markets Tax Credit Program, as such reporting requirements may change from time to time, including without limitation, (i) Section 45D of the Code and the Treasury Regulations and guidance issued pursuant to Section 45D of the Code and (ii) all information as specified in Section [] of the Loan Agreement.

(d) *Litigation and Disputes.* Not later than 120 calendar days after the end of each fiscal year of Guarantor, a status report of any and all litigation or disputes threatened or instituted against or affecting Guarantor or its Affiliates.

(e) *Additional Information.* Promptly upon the reasonable request of Lender and in any event within 15 Business Days of such request, such other information regarding the business and affairs and financial condition of Guarantor or the Project as Lender may reasonably request.

3.13. Additional Covenants.

(a) *[Financial covenants, if any TBD]*

(b) *Accounts and Records.* Guarantor will keep books of record and accounts in which true and correct entries will be made as to all material matters of all dealings or transactions in relation to its business and activities, in accordance with generally accepted accounting principles, consistently applied except for changes in accounting principles or practices with which the independent certified public accountants for Guarantor concur.

(c) *Right of Inspection.* If an Event of Default occurs and is continuing, upon reasonable request by Lender, Guarantor will permit any officer, employee or agent of Lender to visit and inspect the Property, examine the books of record and accounts of Guarantor solely relating to the Loan, the Property and the Project, take copies and extracts therefrom, and discuss the affairs, finances and accounts of Guarantor with Guarantor's officers, accountants and/or auditors, all at such reasonable times and on reasonable prior notice and as often as Lender may reasonably request.

(d) *Compliance with Laws and Covenants.* Guarantor will observe and comply in all material respects with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, certificates, franchises, permits, licenses, authorizations, directions and requirements (including without limitation any of the foregoing relating to environmental standards or controls) of all Governmental Authorities applicable to Guarantor.

(e) *Non-Interference.* Guarantor covenants and agrees that so long as Borrower has obligations outstanding to Lender under the Loan Documents, not to: (i) dissolve the Borrower or take action to impair the Borrower's obligations or the Lender's remedies under the Loan Documents; (ii) receive distributions from the Borrower in contravention of any Loan Document; (iii) seek to abrogate or support or advocate for any action of the Navajo Nation that would abrogate the limited waivers of sovereign immunity, consents to jurisdiction or any other dispute resolution provision given by the Guarantor or Borrower; (iv) impose any fee or charge on the operations of the Borrower or its assets or related revenues, other than charges for actual services rendered in an amount substantially similar to the amount the Borrower would pay in an

arm's length transaction; (v) permit any lien or encumbrance to exist or be imposed upon real property owned by the Guarantor and used by the Borrower or its patrons, clients or customers in connection with the Borrower's operations (other than liens or encumbrances permitted by the Loan Documents).

Article 4 Representations and Warranties

4.01. Guarantor Due Diligence and Benefit. Guarantor represents and warrants to Lender that (a) the Loan and this Guaranty are for commercial purposes, (b) it has had adequate opportunity to review the Loan Documents, (c) it is fully aware of obligations of Borrower thereunder and of the financial condition, assets and prospects of Borrower, and (d) it is executing and delivering this Guaranty based solely upon Guarantor's own independent investigation of the matters contemplated by clauses (a)-(c) above and in no part upon any representation, warranty or statement of Lender with respect thereto.

4.02. General. Guarantor represents and warrants that:

(a) *Authority.* (i) Guarantor is a public agency and enterprise of the Navajo Nation, duly organized and validly existing under Title 21, Chapter 1 of the Navajo Nation Code and in good standing under the laws of the Navajo Nation and each jurisdiction in which it operates; (ii) subject to prior written approval of the Navajo Nation Council's Economic Development Committee, Guarantor has the full power and authority to execute and deliver this Guaranty and to perform its obligations hereunder; (iii) Guarantor has the full power and authority under its organizational act to establish and own the Borrower; (iv) Guarantor has the full power and authority under its organizational act to establish and own NGI Kayenta Inc.; (v) after giving effect to this Guaranty, the Guarantor's long-term debt outstanding is less than \$200,000,000; (vi) the Borrower is wholly owned by the Guarantor and formed under the laws of the Navajo Nation; (vii) the execution, delivery and performance of this Guaranty by Guarantor has been duly and validly authorized by the Guarantor's Management Board; and (viii) the person(s) signing this Guaranty on Guarantor's behalf has been validly authorized and directed to sign this Guaranty.

(b) *Valid and Binding Obligation.* This Guaranty constitutes Guarantor's legal, valid and binding obligation, enforceable against it in accordance with its terms, except to the extent enforceability may be limited under applicable bankruptcy and insolvency laws and similar laws affecting creditors' rights generally and to general principles of equity and does not require the approval of any other Governmental Authority except as set forth in subsection (a) of this Section 4.02.

(c) *No Conflicts.* Guarantor's execution, delivery and performance of this Guaranty will not (i) violate Guarantor's organizational documents, (ii) result in the breach of, or conflict with, or result in the acceleration of, any obligation under any guaranty, indenture, credit facility or other instrument to which Guarantor or any of its assets may be subject, or (iii) violate any law, regulation, injunction, order, judgment or decree to which Guarantor or any of its assets is subject. Further, the Loan Documents will not result in or require the creation or imposition of

any [Lien] upon any property now owned or hereafter acquired by Guarantor other than [Permitted Liens] and as contemplated by the Loan Documents.

(d) *No Pending Litigation.* No action, suit, proceeding or investigation, judicial, administrative or otherwise (including without limitation any reorganization, bankruptcy, insolvency or similar proceeding), currently is pending or, to the best of Guarantor's knowledge, threatened against Guarantor which, either in any one instance or in the aggregate, may have a material, adverse effect on Guarantor's ability to perform its obligations under this Guaranty. Guarantor has provided Lender a complete list of current litigation and proceedings to which it is a party, including an explanation thereof, [attached hereto as Schedule 1]. Without limiting the foregoing, there are no pending or, to the best of Guarantor's knowledge, threatened proceedings or actions to revoke, invalidate, rescind or modify any permits heretofore issued with respect to the Property.

(e) *Consideration.* Guarantor owns a direct interest in Borrower and will derive substantial benefit from the Loan to Borrower.

(f) *Financial Condition.* Guarantor currently is solvent and will not be rendered insolvent by providing this Guaranty. All financial statements of Guarantor delivered to Lender: (A) are true, correct and complete in all material respects and (B) fairly and accurately present the financial condition of Guarantor as of the date of such financial statements, and there are no contingent liabilities not disclosed thereby that had or could reasonably be expected to have a Material Adverse Effect (as defined in the Loan Agreement) on Guarantor. All financial projections given to Lender by Guarantor were prepared in good faith based on facts and circumstances existing at the time of preparation and were accurate in all material respects. No information, exhibit or report furnished by Guarantor to Lender in connection with the negotiation of the Loan Documents contains any material misstatement of fact or fails to state a material fact or any fact necessary to make the statements contained therein not materially misleading. Except as previously disclosed to Lender, Guarantor owes no outstanding [Debt] other than the indebtedness reflected in the financial statements provided to Lender in accordance with this Agreement. No change that would have a Material Adverse Effect has occurred in the financial condition of Guarantor since the date of its most recent financial statements submitted to Lender, other than has been disclosed in writing to Lender and acknowledged by Lender. Promptly after learning thereof, Guarantor shall give Lender written notice of the following:

(i) the occurrence of any Default or Event of Default, including a description of the same in reasonable detail;

(ii) the commencement (or written threatened commencement) of any legal or arbitral proceedings, and of all proceedings by or before any Governmental Authority that have or may reasonably be expected to have a material adverse effect on Borrower or Guarantor or the Project;

(iii) copies of any notices or documents sent to or received by Guarantor from any Governmental Authority that have or may reasonably be expected to have a material adverse effect on Borrower, Guarantor or the Project; and

(iv) any other development that results in, or could reasonably be expected to result in, a material adverse effect on Borrower, Guarantor or the Project.

(g) *Taxes and Governmental Charges.* Guarantor has filed all federal, state, Navajo Nation and any other tax returns and reports required to be filed, if any, and has paid all taxes, assessments, fees and other governmental charges levied upon it or upon its property or income, if any, which are due and payable, including interest and penalties, or has provided adequate reserves for the payment thereof.

(h) *Defaults.* Guarantor is not in default under any indenture, mortgage, deed of trust, agreement or other instrument to which it is a party or by which it is bound, which default had or could reasonably be expected to have a Material Adverse Effect on or to it.

(i) *Compliance with the Law.* Guarantor (i) is not in violation of any law, judgment, decree, order, ordinance, or governmental rule or regulation to which it or its property is subject, which violation or failure had or could reasonably be expected to have a Material Adverse Effect on or to it, or (ii) except as otherwise set forth in this Agreement, has obtained each license, permit, franchise and/or other governmental authorization necessary to the ownership of any of its property or the conduct of its business.

(j) *Environmental Matters.* Guarantor represents and warrants the following to Lender: (i) to the best of its knowledge, information and belief no part of the Property constitutes "wetlands", as such term is defined by applicable federal law and no permit is needed for the Project from the U.S. Army Corps of Engineers or any other Governmental Authority not disclosed in writing to Lender; (ii) except as disclosed in the Environmental Reports, it has no knowledge of any deposit, storage, disposal, burial, discharge, spillage, uncontrolled loss, seepage or filtration of Hazardous Substances at, upon, under or within the Property; and (iii) it has not caused or permitted to occur, and shall not permit to exist, any condition which may cause a Release of any Hazardous Substances at, upon, under or within the Property or on any contiguous real estate.

(k) No Licensing. No licensing or registration of any Lender is required under any law of the Navajo Nation by reason of the execution, delivery, performance or enforcement of this Guaranty or the Loan Documents.

(l) Sovereign Immunity. The waivers of sovereign immunity and consents to the jurisdiction of specified courts made by the Guarantor in this Guaranty and by each of the Guarantor and the Borrower in the other Loan Documents to which each is a party (i) have been duly authorized by all necessary action of the Management Board and the Borrower's board, respectively; (ii) comport in all respects with applicable laws; (iii) with respect to this Guaranty, the Guarantor has provided the Speaker of the Navajo Nation Council with 30 days' notice of its intent to waive its sovereign immunity to state and federal courts and arbitrate disputes as set forth in this Agreement; (iv) upon execution of this Guaranty and each of the other Loan Documents to which the Guarantor and Borrower are a party, such documents will effectively waive the sovereign immunity of each of the Guarantor and Borrower in accordance with their terms, constitute valid consents to the jurisdiction of the specified courts, will be irrevocable, validly and legally binding on the Guarantor and Borrower, will be enforceable against each of

the Borrower and Guarantor in accordance with their terms, and after giving effect to the notice and approval set forth in Section 5.02(l)(iii), no further action will be required to make each such waiver effective.

(m) Nation Approvals. The Guarantor has obtained all consents and approvals and provided all written notices of this Guaranty and the provisions of Section 5.07 that are required under the laws of the Navajo Nation and the Guarantor's organizational documents.

Article 5
Miscellaneous

5.01. Notices. All notices and other communications under this Guaranty are to be in writing and sent to the addresses set forth below. Default or demand notices shall be deemed to have been duly given upon the earlier of: (a) actual receipt; (b) one (1) business day after having been timely deposited for overnight delivery, fee prepaid, with a reputable overnight courier service, having a reliable tracking system; (c) one (1) business day after having been sent by telecopier (with answer back acknowledged) provided an additional notice is given pursuant to (b); (d) upon confirmation of receipt by the intended recipient after having been sent by electronic mail; or (e) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by certified mail, postage prepaid, return receipt requested, and in the case of clauses (b) and (e) irrespective of whether delivery is accepted. A new address for notice may be established by written notice to the other parties; provided, however, that no address change will be effective until written notice thereof actually is received by the party to whom such address change is sent.

If to Guarantor:	Navajo Tribal Utility Authority P.O. Box 170 Fort Defiance, Arizona 86504 Attn: Walter W. Hasse, P.E. Facsimile: (928) 729-2135
with a copy to:	Law Office of Warren Denetsosie P. O. Box 2544 Window Rock, Arizona 86515 Attn: Warren Denetsosie, Esq. Facsimile: (602) 926-0349
And to:	Ginsberg Jacobs LLC 300 South Wacker Drive, Suite 2750 Chicago, Illinois 60606 Attn: Darryl P. Jacobs Facsimile: (312) 660-9612
If to Lender:	Ecotrust Sub-CDE XXV, LLC c/o Ecotrust CDE, LLC

721 NW 9th Avenue, Suite 200
Portland, Oregon 97209
Attn: Adam Lane, CFO
Facsimile: (503) 222-1517

with a copy to:

Future Unlimited Law PC
P.O. Box 2776
Yelm, Washington 98597
Attn: Ruth Sparrow
Facsimile: (360) 458-2509

5.02. Entire Agreement; Modification; Governing Law. This Guaranty is the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes and replaces all prior discussions, representations, communications and agreements (oral or written). This Guaranty shall not be modified, supplemented, or terminated, nor any provision hereof waived, except by a written instrument signed by the party against whom enforcement thereof is sought, and then only to the extent expressly set forth in such writing. This Guaranty shall be governed by the laws of the State of Arizona and shall be construed in accordance with and governed by the laws of the State of Arizona, without regard to the choice of law rules of that State, except to the extent that any laws of the State of Arizona may now or hereafter be preempted by Federal Law, provided, however, that in the event the Lender initiates legal proceedings in the courts of the Navajo Nation, such legal proceedings shall be governed by the procedural law of the courts of the Navajo Nation.

5.03. Binding Effect; Joint and Several Obligations. This Guaranty is binding upon and inures to the benefit of Guarantor, Lender and their respective heirs, executors, legal representatives, successors, and assigns, whether by voluntary action of the parties or by operation of law. Guarantor may not delegate or transfer its obligations under this Guaranty.

5.04. Unenforceable Provisions. Any provision of this Guaranty which is determined by a court of competent jurisdiction or government body to be invalid, unenforceable or illegal shall be ineffective only to the extent of such determination and shall not affect the validity, enforceability or legality of any other provision, nor shall such determination apply in any circumstance or to any party not controlled by such determination.

5.05. Duplicate Originals; Counterparts. This Guaranty may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Guaranty (and each duplicate original) also may be executed in any number of counterparts, each of which shall be deemed an original and all of which together constitute a fully executed Guaranty even though all signatures do not appear on the same document. A faxed, scanned or photocopied signature to this Guaranty shall be deemed equivalent to an original signature.

5.06. Construction of Certain Terms. Defined terms used in this Guaranty may be used interchangeably in singular or plural form, and pronouns shall be construed to cover all genders. Article and section headings are for convenience only and shall not be used in interpretation of this Guaranty. The words "herein," "hereof" and "hereunder" and other words of similar import

refer to this Guaranty as a whole and not to any particular section, paragraph or other subdivision; and the word “section” refers to the entire section and not to any particular subsection, paragraph of other subdivision; and “Guaranty” and each of the Loan Documents referred to herein mean the agreement as originally executed and as hereafter modified, supplemented, extended, consolidated, or restated from time to time.

5.07. Sovereign Immunity, Jurisdiction and Enforcement.

(a) *Limited Waiver of Sovereign Immunity.* Pursuant to and in accordance with Resolution No. CAP-180-10 adopted by the Navajo Nation Council on April 10, 2010, the Guarantor hereby expressly, unequivocally and irrevocably grants this limited waiver of its sovereign immunity to suit, arbitration, service of process and other legal proceedings for claims arising from or related to this Guaranty and the obligations of the parties (including any permitted successors of the parties) under this Agreement, provided that the satisfaction of any monetary judgments against the Guarantor resulting from any legal proceedings brought pursuant to this limited waiver shall be limited to the assets, revenues and income of Guarantor. For the avoidance of doubt: (i) Guarantor’s waiver of sovereign immunity is not subject to or limited by the Navajo Sovereign Immunity Act, 1 N.N.C. §§ 551 *et seq.*, as amended, and (ii) this waiver shall not and does not waive the sovereign immunity of the Navajo Nation nor extend any liability to the assets, revenues or income of the Navajo Nation. With respect to the Guarantor’s foregoing limited waiver, Guarantor represents and warrants that all notices and other actions required to authorize such waiver under its organizational documents and the laws of the Navajo Nation have been given and done.

(b) *Jurisdiction/Enforcement.* The Guarantor acknowledges and agrees that this Agreement and the duties and obligations of the Guarantor hereunder shall be enforceable against Guarantor in any of the following forums: (i) the United States District Court for the District of Arizona, and all appellate courts with jurisdiction over appeals therefrom (the “Federal Courts”); (ii) the Superior Court of Arizona in Apache County, Arizona and all appellate courts with jurisdiction over appeals therefrom (the “State Courts”); and (iii) at the election of the Lender and in its sole discretion, the courts of the Navajo Nation (the “Nation Courts” and with the Federal Courts and State Courts the “Permitted Courts”).

(c) *Permitted Courts.* If a party hereto seeks enforcement of any duty or obligation hereunder by suit or injunction or other legal proceeding, the following provisions shall apply:

(i) actions filed in any of the Permitted Courts shall be governed by the procedural laws of the forum in which they are initiated and the substantive laws governing this Agreement;

(ii) the Guarantor hereby submits to the jurisdiction of the Permitted Courts, waives any objection, including, without limitation, any objection to the laying of venue on the grounds of forum non conveniens, which it may have or hereafter have to the bringing of any action or proceeding in the Permitted Courts, waives any right to the exhaustion of tribal remedies or requirement that the foregoing must be brought in the courts of the Navajo Nation, agrees that all claims in respect of this Agreement or any Loan Document or related transaction

may only be heard and determined in the Permitted Courts and agrees not to initiate any action against Lender in the Nation Courts; and

(iii) Guarantor irrevocably consents to the service of process of any of the Permitted Courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to Guarantor at its address provided herein. Nothing contained in this Section shall affect the right of Lender to serve process in any other manner permitted by law. Guarantor hereby explicitly consents to the jurisdiction of each of the Permitted Court systems for proceedings brought pursuant to this Section.

(iv) *Arbitration.* The Lender (may, in its sole discretion), elect to resolve disputes through arbitration conducted pursuant to the American Arbitration Association's Commercial Rules ("Arbitration"), and the Guarantor agrees its limited waiver of sovereign immunity set forth herein extends to arbitration. The Lender also may consent in writing to the Guarantor's request for Arbitration. The parties agree that the American Arbitration Association's Commercial Rules may be modified and supplemented as follows:

(v) unless otherwise agreed to in writing by the parties hereto, all arbitration procedures shall be held in Apache County, Arizona;

(vi) the arbitration shall be conducted by an arbitration panel consisting of three (3) AAA available arbitrators, with at least one arbitrator possessing at least ten (10) years of experience in federal Indian law, with each party choosing one arbitrator and the two arbitrators choosing a third;

(vii) actions to compel arbitration, seek preliminary or injunctive relief, or enforce awards resulting from arbitration shall proceed as provided in subparagraph (b) hereof and Section 5.02;

(viii) Guarantor expressly consents to submit to the Permitted Courts (including all courts to which decisions may be appealed) with regard to actions to compel Guarantor's participation in an arbitration proceeding, actions for injunctive relief and to enforce an award resulting from such arbitration. Such actions shall be governed by the procedural laws of the forum in which they are initiated and the governing law of this Agreement; and

(ix) Commencement of arbitration in accordance with the foregoing provisions of this Section shall be a complete defense to any suit, action or proceeding instituted in any Permitted Court with respect to any dispute or controversy arising out of this Agreement that is arbitrated as set forth herein.

(d) **Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO

THIS AGREEMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(e) *Survival.* The provisions of this Section 5.07 shall, with respect to such any dispute or controversy arising out of this Agreement, survive the termination or expiration of this Agreement.

(f) *Relationship Between the Parties.* The relationship between Lender, on the one hand, and Guarantor, on the other, will be solely that of lender and guarantor, and such relationship will not, under any circumstances whatsoever, be construed to be a joint venture, joint adventure, or partnership.

(g) *Section 81 Compliance.* For the avoidance of any doubt, it is acknowledged that the Guaranty is not intended to “encumber Indian land” within the meaning of 25 U.S.C. § 81, and no interpretation shall be given to the Guaranty which would have the effect of such an encumbrance. Notwithstanding any right of Lender in the Guaranty, any right, requirement or restriction that “encumbers Indian land” within the meaning of 25 U.S.C. § 81, shall not be effective for longer than six years, 364 days.

(h) *Legal Opinion.* It shall be a condition precedent to the disbursement of the Loan that Lender shall have been provided with an opinion of counsel to Guarantor that the provisions of Section 5.02 and this Section 5.07 and all legal prerequisites to validity thereto have been duly authorized, executed and delivered, (ii) are valid and binding obligations of Guarantor, subject only to the effect of bankruptcy and similar laws and general principals and equity, and (iii) are not subject to the approval of the Bureau of Indian Affairs in order for the foregoing provisions to be valid and binding obligations of Guarantor.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned hereby signs, seals and delivers this Completion and Repayment Guaranty as of the date first written above.

GUARANTOR:

NAVAJO TRIBAL UTILITY AUTHORITY

By: _____

Name: Walter W. Hasse, P.E.

Its: General Manager



**NON-DISTURBANCE, ATTORNMENT,
ESTOPPEL AND SUBORDINATION AGREEMENT**

[Navajo Nation]

THIS NON-DISTURBANCE, ATTORNMENT, ESTOPPEL AND SUBORDINATION AGREEMENT (this "**Agreement**") is made and entered into as of the ____ day of _____, 2017, by, between and among **Ecotrust Sub-CDE XXV, LLC**, a Delaware limited liability company ("**Beneficiary**"), **Navajo Tribal Utility Authority**, an enterprise organized and duly formed under the laws of, and owned entirely and exclusively by, the Navajo Nation, a federally recognized tribe ("**NTUA**"), **NTUA New Markets V, Inc.**, a corporation formed under the laws of the Navajo Nation ("**NNM V**"), and **Navajo Nation [also known as the Navajo Tribe of Indians]**, a federally recognized tribe ("**Navajo Nation**"). Sometimes herein Beneficiary, NTUA, NNM V and Navajo Nation are collectively referred to hereinafter as the "**Parties**" or individually as a "**Party**."

RECITALS:

A. Beneficiary is the owner and holder of those certain promissory notes dated as of November____, 2017 (the "**Note**") in the principal sum of Nine Million Seven Hundred Thousand Dollars (\$9,700,000.00) (the "**Loan**"), secured by a "Security Agreement," an "Assignment of Conveyances, Rents and Profits" instrument (the "**Assignment**"), a "Pledge Agreement," and a "Guaranty" each of even date with the Note, which Security Agreement and Assignment constitute liens or encumbrances on, among other things, the secured property held by NNM V, pursuant to a license more particularly described in a "Master Agreement."

B. NTUA is the holder of a Right of Way, a copy of which is attached hereto as Exhibit A, within which is the secured property. NTUA is conveying a license to NNM V, pursuant to that certain Master Agreement by and between NNM V and NTUA, dated as of the date hereof, in order for NNM V to have the ability to operate the Utility System, including without limitation, making necessary repairs and changes, on the Right of Way.

C. A copy of the Right of Way and the License, each certified as true and correct by NTUA, has previously been delivered to Beneficiary and has not been amended, modified or terminated as of the date hereof.

D. The Right of Way and the License are hereby referred to herein as the "Conveyances".

E. Navajo Nation agrees that, with respect to NNM V, at all times, and, with respect to Beneficiary, in the Event of Default under Transaction Documents or in the event that Beneficiary obtains possession of the Secured Property pursuant to the Security Agreement and any other security instruments executed in connection herewith, the terms and conditions of this Agreement shall apply.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Full Force And Effect of Conveyances; Non-Disturbance.** Whether or not Beneficiary may succeed to the interest of the NTUA under the Conveyances by reason of judicial foreclosure, power-of-sale foreclosure or other proceedings brought by Beneficiary, or by any other manner, including, but not limited to, the institution of a receiver for the Secured Property or Beneficiary's exercise of its rights under any of the Transaction Documents, Beneficiary shall, subject to and so long as Beneficiary is not in default (beyond any period given the NTUA to cure such default under the Conveyances or otherwise) in the payment of rent or in the performance of any of the terms, covenants or conditions of the Conveyances on NTUA's part to be performed, Navajo Nation agrees, for the benefit of Beneficiary, on behalf of its successors-in-interest, assigns and for any other person acquiring title to the Real Estate, that:

(i) Beneficiary's possession and occupancy of the premises set forth in the Conveyances shall not be interfered with or disturbed by Navajo Nation during the term of the Conveyances or any extension thereof duly exercised thereunder; and

(ii) The Conveyances shall continue in full force and effect as direct Conveyances between NNM V and Navajo Nation and NNM V and NTUA, and between Beneficiary and Navajo Nation and Beneficiary and NTUA, as applicable, upon and subject to the terms, covenants and conditions of the Conveyances, for the balance of the term of each such instrument.

2. **Consent To Leasehold Mortgage And Assignment.**

2.1 Navajo Nation and NTUA hereby consent to the assignment and pledge by NNM V to Beneficiary of: (i) the Conveyances, as set out in the Security Agreement and (ii) any of the Other Agreements, as defined and as set out in the Assignment. For purposes of this Agreement, the term Conveyances shall also include any of the Other Agreements.

2.2 Subject to the non-disturbance provisions of Section 1. above, if the interests of NTUA shall be transferred to and/or owned by Beneficiary by reason of judicial foreclosure, power-of-sale foreclosure or other proceedings brought by Beneficiary, or by any other manner, including, but not limited to, the institution of a receiver for the Secured Property or Beneficiary's exercise of its rights under the Assignment, Navajo Nation shall be bound to Beneficiary under all of the terms, covenants and conditions of the Conveyances for the balance of the remaining term thereof and any extension, with the same force and effect as if Beneficiary were the NTUA under the applicable of the Conveyances, and Beneficiary does hereby attorn to Navajo Nation as its Navajo Nation, such attornment to be effective and self-operative without the execution of any further instruments on the part of any of the Parties immediately upon Beneficiary's succeeding to the interest of the NTUA under the Conveyances.

2.3 Provided, however, that Beneficiary shall be under no obligation to direct its payment of rent to Navajo Nation until Beneficiary receives written notice from Navajo Nation to do so.

The respective rights and obligations of NTUA and Beneficiary upon such attornment, to the extent of the then remaining balance of the term of the applicable of the Conveyances and any such extension, shall be and are the same as now set forth therein, as modified hereby, it being the intention of the Parties for this purpose to incorporate the Conveyances in this Agreement by reference with the same force and effect as if set forth in full herein.

3. Attornment; Exceptions.

3.1 If Beneficiary shall succeed to the interest of NNM V under any of the Conveyances by reason of judicial foreclosure, power-of-sale foreclosure or other proceedings brought by Beneficiary, or by any other manner, including, but not limited to, the institution of a receiver for the Secured Property or Beneficiary's exercise of its rights under the Assignment, Beneficiary shall, subject to this Section 3, be bound to Navajo Nation under all of the terms, covenants and conditions of the applicable of the Conveyances.

3.2 Notwithstanding the foregoing, Beneficiary shall not be:

(i) Liable for any act or omission of any prior licensee (including NTUA and NNM V) or for any monetary damages incurred by Navajo Nation in connection therewith or liable for any act or omission prior to Beneficiary's succession to NNM V's licensee interest in the Secured Property; or

(ii) Subject to any offsets or counterclaims which Navajo Nation might have against any prior licensee (including NTUA) or accruing prior to Beneficiary's succession to the NTUA's interest in the Secured Property; or

(iii) Liable for any past due rent or other financial obligation arising out of the Conveyances, additional rent or any other financial obligation arising out of the Conveyances, prior to Beneficiary's succession to title; or

(iv) Bound by any amendment or modification of the Conveyances made without Beneficiary's consent and written approval; provided, however, such amendment or modification shall be deemed consented to by Beneficiary if Beneficiary does not disapprove the amendment or modification within ten (10) days after receipt from Navajo Nation or NTUA, the amendment or modification executed by both Parties.

4. Subordination. Subject to the terms of this Agreement (including, but not limited to, those in Section 2 hereof, the Conveyances and the terms thereof are, and shall at all times continue to be, subject and subordinate in each and every respect, to the Security Agreement and the terms thereof, and to any and all renewals, modifications, extensions, substitutions, replacements and/or consolidations of the Security Agreement. Nothing herein contained shall be deemed or construed as limiting or restricting the enforcement by Beneficiary of any of the terms, covenants, provisions or remedies of the Security Agreement or the Assignment, whether or not consistent with the Conveyances.

5. **No Contingency Liability Or Responsibility.** Neither Beneficiary nor any other party who, from time to time, shall be included in the definition of the term "Beneficiary" hereunder shall have any liability or responsibility under or pursuant to the terms of this Agreement after it ceases to hold a leasehold interest in the Secured Property.

6. **Definition Of Beneficiary.** The term "Beneficiary" shall be deemed to include Beneficiary and all of its successors and assigns, including anyone who shall have succeeded to NTUA's interest by, through or under judicial or power-of-sale foreclosure or other proceedings brought pursuant to the Security Agreement or otherwise.

7. **Representations And Warranties.** Navajo Nation and NTUA represent and warrant to Beneficiary as follows:

(i) that the Conveyances are presently in full force and effect and unmodified or changed;

(ii) that the term of the Right of Way commenced on June 24, 2016;

(iii) that all conditions required under the Conveyances that could have been satisfied as of the date hereof have been met;

(iv) that no default or event, which with the giving of notice, passage of time, or both, would constitute a default, exists under the Conveyances;

(v) that the Navajo Nation, as of this date, has no charge, lien or claim under the Conveyances or otherwise, against rents or other charges due or to become due thereunder;

(vi) that the Conveyances constitutes the entire agreement between Navajo Nation and NTUA, and that Beneficiary shall have no liability or responsibility with respect to any security deposit of NTUA; and

(vii) that the only persons, firms or corporations in possession of the leased premises described in the Conveyances or having any right to the possession or use of such premises (other than the record owner) are those holding under the Conveyances.

8. **Negative Covenants.** In the absence of the prior written consent of Beneficiary, NTUA agrees not to do any of the following:

(i) enter into any agreement with the Navajo Nation to amend or modify the Conveyances;

(ii) voluntarily surrender the Right of Way or terminate the Conveyances prior to the expiration date thereof set forth in the applicable of the Conveyances; and

(iii) sublease or assign the Right of Way, except in connection with the Master Agreement.

9. Required Notice To Beneficiary.

9.1 In the event NTUA shall fail to perform or observe any of the terms, conditions or agreements in the Conveyances (a “Default”), Navajo Nation shall give prompt written notice thereof to Beneficiary and Beneficiary shall have the right (but not the obligation) to cure such failure. Navajo Nation shall not take any action with respect to such failure under the Conveyances, including, without limitation, any action in order to terminate, rescind or avoid the Conveyances, for a period of sixty (60) days after Beneficiary’s receipt of written notice of such Default by Lender.

9.2 So long as the Loan is outstanding, NTUA and Navajo Nation covenant to provide Beneficiary, upon its written request, with all documents and information, including, but not limited to evidence of payment of all Tax Obligations and insurance as well as any documents and information regarding the imposition of any condemnation proceedings regarding the Secured Property.

10. Inspection Rights. So long as the Loan is outstanding, Beneficiary or its designee may enter upon the Secured Property at all reasonable times to visit or inspect the Secured Property and discuss the affairs, finances and accounts of NTUA applicable to the Secured Property or of the Conveyances at such reasonable times as Beneficiary or its designee may request. Beneficiary agrees to indemnify, defend and hold Navajo Nation and NTUA harmless from all cost, expense, claim, liability, injury or damages to persons or property arising out of Beneficiary’s gross negligence in the exercise of such rights of entry onto the Secured Property.

11. Sovereign Immunity, Jurisdiction and Enforcement.

(a) *Limited Waiver of Sovereign Immunity.* Nothing in this Agreement shall be deemed a waiver of NTUA or NNM V’s sovereign immunity pursuant to the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§551 et. seq. If a court of competent jurisdiction should find or conclude that NTUA or NNM V’s does enjoy sovereign immunity, NTUA and NNM V hereby irrevocably waives its sovereign immunity on a limited basis and consents to be sued should an action be commenced to determine and enforce the obligations of the parties (including any permitted successors of the parties) under this Agreement pursuant to and in accordance with that Resolution No. CAP-18-10 adopted by the Navajo Nation Council on April 10, 2010, and by Resolution No. NTUA-28-10 of the Management Board of the Navajo Tribal Utility Authority dated June 25, 2010; and provided further that such limited waiver shall be limited to the assets, revenues and income of NTUA and NNM V, and shall not waive the sovereign immunity of the Navajo Nation nor extend any liability to the assets, revenues or income of the Navajo Nation. With respect to the foregoing limited waiver, NTUA and NNM V represent and warrant that all notices and other actions required to authorize such waiver have been given and done.

(b) *Jurisdiction/Enforcement.* The parties hereto acknowledge and agree that this Agreement and the duties and obligations of the parties hereto shall be enforceable against NTUA or NNM V in any of the following forums: (a) the United States District Court for the District of Arizona, the Superior Court for Apache County, Arizona, or, if and only if elected or consented to in writing by both parties and by Lender, the courts of the Navajo Nation (“Permitted Courts”), or (b) if and only if

elected or consented to in writing by both parties, and by Lender, arbitration pursuant to and in accordance with arbitration procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. § 554 J and § 554 K, and as set forth in the Navajo Nation Arbitration Act, as amended, at 7 N.N.C. §§ 1101 et seq. ("Arbitration").

(c) *Permitted Courts.* If a party hereto seeks enforcement of any duty or obligation hereunder by suit or injunction or other legal proceeding, the following provisions shall apply:

(i) actions filed in any of the Permitted Courts shall be governed by the laws of the forum in which they are initiated;

(ii) each of NTUA and NNM V hereby submits to the jurisdiction of the Permitted Courts, waives its rights to bring any action or proceeding against the other in any court except the Permitted Courts, waives any objection, including, without limitation, any objection to the laying of venue on the grounds of forum non conveniens, which either may have or hereafter have to the bringing of any action or proceeding in the Permitted Courts, waives any requirement of exhaustion of tribal remedies or that the foregoing must be brought in the tribal courts of the Navajo Nation, and agrees that all claims in respect of this Agreement or related transaction may only be heard and determined in the Permitted Courts; and

(iii) NTUA and NNM V irrevocably consent to the service of process of any of the Permitted Courts in any such action or proceeding by the mailing of copies thereof by registered or certified mail, postage prepaid, to NTUA and NNM V at their address provided herein. Nothing contained in this Section shall affect the right of Lender or Indemnitor to serve process in any other manner permitted by law. The parties hereby explicitly consent to the jurisdiction of each of the Permitted Court systems for proceedings brought pursuant to this Section.

(iv) *Arbitration.* If either NTUA or NNM V seeks enforcement of any duty or obligation or resolution of any dispute hereunder by Arbitration, or if NTUA or NNM V shall consent (in its sole discretion) to other party's enforcement of any duty or obligation or resolution of any dispute hereunder by Arbitration (if the Lender shall have consented thereto), the Arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:

(v) unless otherwise agreed to in writing by the parties hereto, all arbitration procedures shall be held in Apache County, Arizona;

(vi) the arbitration shall be conducted by an arbitration panel consisting of three (3) AAA available arbitrators, with at least one arbitrator possessing at least ten (10) years of experience in federal Indian law, with each party choosing one arbitrator and the two arbitrators choosing a third;

(vii) notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. § 555;

(viii) the result of any arbitration award provided for herein shall be in strict conformance with the provisions of 1 N.N.C. § 554 K 1-6;

(ix) notwithstanding the provisions herein, the laws of the Navajo Nation shall exclusively govern the arbitration provisions set forth herein and the arbitration procedures conducted pursuant thereto (but actions to enforce this Agreement pursuant to a waiver of sovereign immunity described herein and to actions to compel arbitration and enforce awards resulting from arbitration as provided in subparagraph (b)(vi) shall be subject to the provisions herein);

(x) NTUA and NNM V expressly consents to submit to the Permitted Courts (including all courts to which decisions of the federal court may be appealed) with regard to actions to compel the other party and/or the Navajo Nation's participation in an arbitration proceeding and to enforce

an award resulting from such arbitration. Such actions shall be governed by laws of the forum in which they are initiated; and

(xi) Commencement of arbitration in accordance with the foregoing provisions of this Section shall be a complete defense to any suit, action or proceeding instituted in any federal, state, or tribal court or any administrative tribunal, with respect to any dispute or controversy arising out of this Agreement that is arbitrated as set forth herein.

(d) *Survival.* The provisions of this Section 8 shall, with respect to such any dispute or controversy arising out of this Agreement, survive the termination or expiration of this Agreement

12. Reserved.

13. Reserved.

14. Miscellaneous.

14.1 Navajo Nation and NTUA hereby represent and warrant to Beneficiary that the Conveyances and this Agreement have been duly authorized, executed and delivered by each of the applicable of Navajo Nation and NTUA and that such instruments constitute legal, valid and binding agreements, enforceable against each of Navajo Nation and NTUA in accordance with their respective terms, except as such terms may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally.

14.2 This Agreement may not be modified orally or in any other manner than by an agreement in writing signed by the Parties and their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the Parties, their successors and assigns. In the event of a conflict between the provisions of this Agreement and the provisions of the Conveyances, the provisions of this Agreement shall control.

14.3 This Agreement may be executed in several counterparts, and all so executed shall constitute one agreement, binding on each of the Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart.

14.4 All notices or other communications required or permitted to be given pursuant to the provisions hereof shall be in writing and shall be considered as properly given: (i) if mailed by first class United States mail, postage prepaid, registered or certified with return receipt requested; or (ii) by delivering same in person to the intended addressee; or (iii) by prepaid telegram. Notice so given in person or by telegram shall be effective upon its deposit. Notice so given by mail shall be effective two (2) days after deposit in the United States mail. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the addresses of the Parties shall be:

If To Navajo Nation:

Navajo Nation
P.O. Box 9000
Window Rock, AZ 86515

With a Required Copy To: Law Office of Warren Denetsosie
P.O. Box 2544
Window Rock, Arizona 86515
Attn: Warren Denetsosie, Esq.
Facsimile: (602) 926-0349

If To NTUA: Navajo Tribal Utility Authority
P.O. Box 170
Fort Defiance, Arizona 86504
Attn: Walter W. Haase, P.E.
Facsimile: (928) 729-2135

With a Required Copy To: Law Office of Warren Denetsosie
P.O. Box 2544
Window Rock, Arizona 86515
Attn: Warren Denetsosie, Esq.
Facsimile: (602) 926-0349

If to NNM V: NTUA New Markest V, Inc.
P.O. Box 170
Fort Defiance, Arizona 86504
Attn: Walter W. Haase, P.E.
Facsimile: (928) 729-2135

With a Required Copy To: Ginsberg Jacobs, LLC
300 South Wacker Drive, Suite 2750
Chicago, Illinois 60606
Attn: Darryl P. Jacobs, Esq.
Facsimile: (312) 660-9612

and Law Office of Warren Denetsosie
P.O. Box 2544
Window Rock, Arizona 86515
Attn: Warren Denetsosie, Esq.
Facsimile: (602) 926-0349

If To Beneficiary: Ecotrust Sub-CDE XXV, LLC
% Ecotrust CDE, LLC
721 NW 9th Street, Suite 200
Portland, Oregon 97209-3448
Attn: Adam Lane, CFO
Facsimile: (503) 222-1517

With a Required Copy To:

Future Unlimited Law PC
P.O. Box 2776
Yelm, WA 98597
Attn: Ruth Sparrow
Facsimile: (360) 458-2509

And

Capital One, N.A.
201 St. Charles Ave., 29th Floor
New Orleans, LA 70170

And

Jones Day
150 W. Jefferson, Suite 2100
Detroit, MI 48226-4438
Attn: Brian Hern, Esq.

provided, however, that any Party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the other Parties in the manner set forth hereinabove.

14.5 Capitalized terms, not otherwise defined in this Agreement, shall have the meaning ascribed to such term in that certain Loan Agreement and/or Assignment dated of even date herewith and executed by and between NTUA and Beneficiary (among others).

14.6 Navajo Nation, NTUA and NNM V each agree to perform any and all such further and additional acts and execute and deliver any and all such further and additional instruments and documents as may be reasonably necessary in order to carry out the provisions and effectuate the intent of this Agreement.

14.7 The statements and definitions set forth in the "Whereas" clauses above are incorporated herein word for word and made a part of this Agreement for all purposes.

THIS AGREEMENT CONTAINS AN ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES.

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

NTUA:

NAVAJO TRIBAL UTILITY AUTHORITY,
an enterprise organized and formed under the laws
of, and owned entirely and exclusively by, the
Navajo Nation [also known as the Navajo Tribe of Indians],
a federally recognized tribe

By: _____
Walter W. Haase, P.E., General Manager

NNM V:

NTUA New Markets V, Inc., a corporation organized,
and formed under the laws of the Navajo Nation

By: _____
Walter W. Haase, P.E., Manager

Navajo Nation:

NAVAJO NATION [ALSO KNOWN AS THE NAVAJO
TRIBE OF INDIANS],
a federally recognized tribe

By: _____
Printed Name: Russell Begaye
Title: President

BENEFICIARY:

ECOTRUST SUB-CDE XXV, LLC,

By: _____

ACKNOWLEDGMENTS

COUNTY OF _____)
) ss.
STATE OF ARIZONA)

On _____, 2017, before me, personally appeared Walter W. Haase,, General Manager of **Navajo Tribal Utility Authority**, an enterprise organized and duly formed under the laws of the Navajo Nation and owned entirely and exclusively by the Navajo Nation [also known as the Navajo Tribe of Indians], who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(This area for official notarial seal)

COUNTY OF _____)
) ss.
STATE OF ARIZONA)

On _____, 2016, before me, personally appeared Russell Begaye, President of **the Navajo Nation** [also known as the Navajo Tribe of Indians], a federally recognized tribe, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(This area for official notarial seal)

COUNTY OF DENVER)
) ss.
STATE OF COLORADO)

On _____, 2016, before me, personally appeared _____ of **Ecotrust Sub-CDE XXV, LLC**, a Delaware limited liability company,, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature

(This area for official notarial seal)

EXHIBIT “A”

**LEGAL DESCRIPTION OF THE REAL ESTATE
ASSOCIATED WITH THE SECURED PROPERTY**

**RESOLUTION
OF THE MANAGEMENT BOARD
OF THE NAVAJO TRIBAL UTILITY AUTHORITY**



NTUA-51-17

**Approving a Guaranty with Respect to the New Markets Tax Credit for Kayenta Solar
Project and Connection of Homes to the Grid**

WHEREAS:

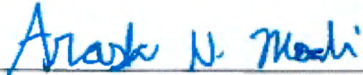
1. The Management Board of the Navajo Tribal Utility Authority ("NTUA" or "Authority") is delegated authority and responsibility for the management and operation of NTUA pursuant to 21 N.N.C. § 7(A)(1); and
2. NTUA is negotiating time-sensitive agreements with Capital One, National Association, a national banking association, COCRF Investor 115, LLC, a Delaware limited liability company, Ecotrust CDE and/or its subsidiaries, as well as its affiliates and agents and Ecotrust Sub-CDE XXV LLC and/or its subsidiaries, as well as its affiliates and agents in furtherance of facilitating a new markets tax credit financing to NTUA for construction and operation of the Kayenta Solar Project and connection of existing homes on the Nation to the grid; and
3. The transaction will require approval of a Completion and Repayment Guaranty for the benefit of Ecotrust Sub-CDE XXV LLC and/or its subsidiaries, as well as its affiliates and agents by the NTUA Management Board and the Resources and Development Committee of the Navajo Nation Council; and
4. NTUA Management deems it appropriate for the NTUA Management Board to approve a Completion and Repayment Guaranty for the benefit of Ecotrust Sub-CDE XXV LLC and/or its subsidiaries, as well as its affiliates and agents in order to complete the transaction described above; and
5. The Completion and Repayment Guaranty has been fully explained prior to consideration of this Resolution and a copy of the Completion and Repayment Guaranty is deposited with the minutes of this meeting.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Management Board of NTUA hereby approves the attached Completion and Repayment Guaranty for the benefit of Ecotrust Sub-CDE XXV LLC and/or its subsidiaries, as well as its affiliates and agents, subject to non-substantive modifications to the draft Completion and Repayment Guaranty as may be approved by the General Manager and legal counsel.
2. The Management Board of NTUA hereby authorizes NTUA to present the Completion and Repayment Guaranty to the Resources and Development Committee for approval.
3. The Management Board of NTUA further authorizes the General Manager of NTUA, or appropriate Staff Member, to take the necessary actions to comply with and carry out the terms and conditions outlined in the transaction described above.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Management Board of the Navajo Tribal Utility Authority at a duly called teleconference meeting at which a quorum was present and that the same was passed by a vote of 5 in favor, 0 opposed, 0 abstaining this 20th day of October, 2017.



Arash N. Moalemi, Secretary

**RESOLUTION
OF THE MANAGEMENT BOARD
OF THE NAVAJO TRIBAL UTILITY AUTHORITY**



NTUA-49-17

Approving a Limited Waiver of Sovereign Immunity to Ecotrust CDE LLC and Ecotrust Sub-CDE XXV LLC in Furtherance of New Markets Tax Credit for Kayenta Solar Project and Connection of Homes to the Grid

WHEREAS:

1. The Management Board of the Navajo Tribal Utility Authority ("NTUA" or "Authority") is delegated authority and responsibility for the management and operation of NTUA pursuant to 21 N.N.C. § 7(A)(1); and
2. The Management Board of NTUA has the power to contractually waive NTUA's sovereign immunity on a limited basis pursuant to 21 N.N.C. §7(14); and
3. Ecotrust CDE LLC and Ecotrust Sub-CDE XXV LLC are considering committing up to \$10 million of Ecotrust federal NMTC allocation to facilitate a new markets tax credit financing to NTUA for construction and operation of the Kayenta Solar Project and connection of existing homes on the Nation to the grid; and
4. NTUA has been informed that a limited waiver of sovereign immunity may be required in order to secure this potential new markets tax credit transaction; and
5. NTUA Management deems it appropriate for the NTUA Management Board to grant a limited waiver of sovereign immunity pursuant to 21 N.N.C. §7(14) in favor of Ecotrust CDE and/or its subsidiaries, as well as its affiliates and agents and Ecotrust Sub-CDE XXV LLC and/or its subsidiaries, as well as its affiliates and agents in order to complete the transaction described above.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Management Board of NTUA hereby grants and approves a limited waiver of sovereign immunity pursuant to 21 N.N.C. §7(14) in favor of Ecotrust CDE and/or its subsidiaries, as well as its affiliates and agents and Ecotrust Sub-CDE XXV LLC and/or its subsidiaries, as well as its affiliates and agents in order to secure the potential new markets tax credit transaction described above.
2. The Management Board of NTUA hereby approves the General Manager of NTUA's notification to the Speaker of the Navajo Nation Council of the Management Board's intention to waive NTUA's sovereign immunity pursuant to 21 N.N.C. §7(14) in favor of Ecotrust CDE and/or its subsidiaries, as well as its affiliates and agents and Ecotrust Sub-CDE XXV LLC and/or its subsidiaries, as well as its affiliates and agents.
3. The Management Board of NTUA further authorizes the General Manager of NTUA, or appropriate Staff Member, to take the necessary actions to comply with and carry out the terms and conditions outlined in the transaction described above.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Management Board of the Navajo Tribal Utility Authority at a duly called teleconference meeting at which a quorum was present and that the same was passed by a vote of 5 in favor, 0 opposed, 0 abstaining this 20th day of October, 2017.



Arash N. Moalemi, Secretary

**RESOLUTION
OF THE MANAGEMENT BOARD
OF THE NAVAJO TRIBAL UTILITY AUTHORITY**



NTUA-50-17

**Approving a Limited Waiver of Sovereign Immunity to Capital One and COCRF, LLC in
Furtherance of New Markets Tax Credit for Kayenta Solar Project and Connection of
Homes to the Grid**

WHEREAS:

1. The Management Board of the Navajo Tribal Utility Authority ("NTUA" or "Authority") is delegated authority and responsibility for the management and operation of NTUA pursuant to 21 N.N.C. § 7(A)(1); and
2. The Management Board of NTUA has the power to contractually waive NTUA's sovereign immunity on a limited basis pursuant to 21 N.N.C. §7(14); and
3. Capital One, National Association, a national banking association, and COCRF Investor 115, LLC, a Delaware limited liability company are considering participating as the investors to facilitate a new markets tax credit financing to NTUA for construction and operation of the Kayenta Solar Project and connection of existing homes on the Nation to the grid; and
4. NTUA has been informed that a limited waiver of sovereign immunity may be required in order to secure this potential new markets tax credit transaction; and
5. NTUA Management deems it appropriate for the NTUA Management Board to grant a limited waiver of sovereign immunity pursuant to 21 N.N.C. §7(14) in favor of Capital One, a national banking association and/or its subsidiaries, as well as its affiliates and agents and COCRF Investor 115, LLC, a Delaware limited liability company and/or its subsidiaries, as well as its affiliates and agents in order to complete the transaction described above.

NOW THEREFORE BE IT RESOLVED THAT:

1. The Management Board of NTUA hereby grants and approves a limited waiver of sovereign immunity pursuant to 21 N.N.C. §7(14) in favor of Capital One, a national banking association and/or its subsidiaries, as well as its affiliates and agents and COCRF Investor 115, LLC, a Delaware limited liability company and/or its subsidiaries, as well as its affiliates and agents in order to secure the potential new markets tax credit transaction described above.
2. The Management Board of NTUA hereby approves the General Manager of NTUA's notification to the Speaker of the Navajo Nation Council of the Management Board's intention to waive NTUA's sovereign immunity pursuant to 21 N.N.C. §7(14) in favor of Capital One, a national banking association and/or its subsidiaries, as well as its affiliates and agents and COCRF Investor 115, LLC, a Delaware limited liability company and/or its subsidiaries, as well as its affiliates and agents.

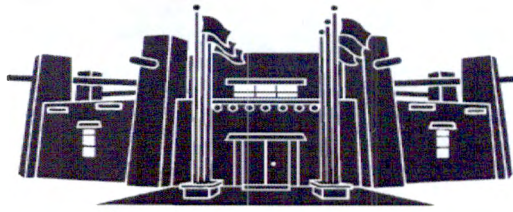
3. The Management Board of NTUA further authorizes the General Manager of NTUA, or appropriate Staff Member, to take the necessary actions to comply with and carry out the terms and conditions outlined in the transaction described above.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Management Board of the Navajo Tribal Utility Authority at a duly called teleconference meeting at which a quorum was present and that the same was passed by a vote of 5 in favor, 0 opposed, 0 abstaining this 20th day of October, 2017.




Arash N. Moalemi, Secretary



MEMORANDUM

TO: Hon. Alton Joe Shepherd
23rd Navajo Nation Council

FROM:


Levon B. Henry, Chief Legislative Counsel
Office of Legislative Counsel

DATE: November 29, 2017

SUBJECT: AN ACTION RELATING TO THE RESOURCES AND DEVELOPMENT COMMITTEE; APPROVING THE COMPLETION AND REPLACEMENT GUARANTY AND THE SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT BETWEEN NAVAJO TRIBAL UTILITY AUTHORITY AND ECOTRUST SUB-CDE XXV, LLC

Pursuant to your request, attached is the above-referenced proposed resolution and associated legislative summary sheet. Based on existing law, the resolution as drafted is legally sufficient. However, as with all legislation, it is subject to review by the courts in the event of a challenge.

The Office of Legislative Council confirms the appropriate standing committee review based on the standing committees powers outlined in 2 N.N.C. § 500. Nevertheless, "the Speaker of the Navajo Nation Council shall introduce [the proposed resolution] into the legislative process by assigning it to the respective oversight committee(s) of the Navajo Nation Council having authority over the matters for proper consideration." 2 N.N.C. § 164(A)(5).

Please review the proposed resolution to ensure it is drafted to your satisfaction. If this proposed resolution is acceptable to you, please sign it where it indicates "Prime Sponsor", and submit it to the Office of Legislative Services for the assignment of a tracking number and referral to the Speaker.

If the proposed resolution is unacceptable to you, or if you have further questions, please contact me at the Office of Legislative Counsel and advise me of changes you would like made to the proposed resolution. You may contact me at (928) 871-7166. Thank you.

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0471-17_____

SPONSOR: Alton Joe Shepherd

TITLE: An Action Relating to Resources and Development Committee; Approving the Completion and Replacement Guaranty and the Subordination, Non- Disturbance and Attornment Agreement between Navajo Tribal Utility Authority and Ecotrust Sub-CDE XXV, LLC

Date posted: November 30, 2017 at 10:09am

Digital comments may be e-mailed to comments@navajo-nsn.gov

Written comments may be mailed to:

Executive Director
Office of Legislative Services
P.O. Box 3390
Window Rock, AZ 86515
(928) 871-7590

Comments may be made in the form of chapter resolutions, letters, position papers, etc. Please include your name, position title, address for written comments; a valid e-mail address is required. Anonymous comments will not be included in the Legislation packet.

Please note: This digital copy is being provided for the benefit of the Navajo Nation chapters and public use. Any political use is prohibited. All written comments received become the property of the Navajo Nation and will be forwarded to the assigned Navajo Nation Council standing committee(s) and/or the Navajo Nation Council for review. Any tampering with public records are punishable by Navajo Nation law pursuant to 17 N.N.C. §374 *et. seq.*

**THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW SUMMARY**

LEGISLATION NO.: 0471-17

SPONSOR: Honorable Alton Joe Shepherd

TITLE: An Action Relating To Resources and Development Committee; Approving the Completion and Replacement Guaranty and the Subordination, Non- Disturbance and Attornment Agreement between Navajo Tribal Utility Authority and Ecotrust Sub-CDE XXV, LLC.

Posted: November 30, 2017 at 10:09am

5 DAY Comment Period Ended: December 5, 2017

Digital Comments received:

Comments Supporting	<i>None</i>
Comments Opposing	<i>None</i>
Inclusive Comments	<i>None</i>



Legislative Secretary II
Office of Legislative Services

12/6/2017 8:15am

Date/Time