

**DESERT WINDS III POWER PURCHASE
TRUST AGREEMENT AND DECLARATION OF TRUST**

This Desert Winds III Power Purchase Trust Agreement and Declaration of Trust ("Trust Agreement") is made and entered into as of September 1, 1989 by and among U.S. Trust Company of California, N.A., not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of September 1, 1989, with CIBC Inc. ("Mojave 17 Owner"), Bankers Trust Company of California, N.A., not in its individual capacity, but solely as Owner Trustee under an Owner Trust Agreement, dated as of October 1, 1989, with EDS Financial Corporation ("Mojave 16/18 EFC Owner"), Bankers Trust Company of California, N.A., not in its individual capacity, but solely as Owner Trustee under an Owner Trust Agreement, dated as of October 1, 1989, with ESI Energy, Inc. ("Mojave 16/18 ESI Owner") (collectively "Mojave 16/18 Owners"), and SeaWest Industries, Inc., a California corporation ("SeaWest"), as grantors, and City National Bank, a national banking association ("Bank"), trustee, and, when acting as trustee, not in its individual capacity but solely as trustee of the trust created hereby ("Bank Trustee"), with respect to the following facts and circumstances:

A. Mojave 17 Owner, Mojave 16/18 Owners and SeaWest, or their successors or assigns, for their own separate respective accounts and not as co-owners or partners, plan to acquire, to own and to operate wind turbine generators ("WTGs") and related equipment, or undivided interests therein, for the purpose of producing electrical energy from wind energy.

B. The WTGs and related assets of Mojave 16/18 Owners, of Mojave 17 Owner and of SeaWest, which shall deliver up to, respectively, 30 megawatts ("Mws"), 7 Mws and 3.5 Mws of capacity hereby (respectively, "Project 16/18", "Project 17" and "SeaWest Project" and together, the "Projects") (being hereinafter collectively referred to, including their respective permitted successors and assigns hereunder, as the "Owners" and separately as an "Owner") will be located on portions of Section 16 and/or Section 17 of Township 11 North, Range 13 West, San Bernadino Base and Meridian, in Kern County, California ("Project Site").

C. The electrical power generated by the Projects will be sold to Southern California Edison Company, a public utility organized under the laws of the State of California ("SCE"), pursuant to that certain Power Purchase Contract dated August 20, 1985, and originally by and between SCE and Energy Distribution Company, a California corporation ("EDC"), and which Contract bears the number QFID No. 6114, as further amended by that certain Amendment No. 1 to Power Purchase Contract dated November 18, 1988 between SCE and SeaWest ("Power Purchase Agreement"). The Power Purchase Agreement was assigned by EDC to SeaWest on September 24 1987, and this assignment was consented to by SCE on May 6, 1988. The Power

Purchase Agreement includes the Interconnection Facilities Agreement attached thereto as Appendix A as the same has been modified by that certain Interconnection Facilities Agreement by and between SCE and SeaWest dated October 4, 1988 (Document No. RDG/V66).

D. The Power Purchase Agreement contemplates the sale of electricity from WTGs with a Nameplate Rating, as that term is defined in the Power Purchase Agreement, that do not exceed a total of 40.5 Mws. Accordingly, the maximum, cumulative Nameplate Rating ("Maximum Nameplate Capacity") of the Project 16/18 WTGs that will sell wind generated electricity through the Power Purchase Agreement is 30.0 Mws, the Maximum Nameplate Capacity of the Project 17 WTGs that will sell wind generated electricity through the Power Purchase Agreement is 7.0 Mws and the Maximum Nameplate Capacity of the SeaWest Project WTGs that will sell wind generated electricity through the Power Purchase Agreement is 3.5 Mws.

E. EDC and SeaWest entered into that certain First Amended And Restated Development Agreement dated as of September 24, 1987 ("Development Agreement") pursuant to which SeaWest undertook to develop wind energy projects to utilize the 40.5 Mw capacity of the Power Purchase Agreement. Under Section 11 of the Development Agreement, SeaWest is obligated to make certain continuing payments ("Royalty Payments") to EDC (in such capacity, including its permitted successors and assigns hereunder, hereinafter referred to as "Royalty Holder"). Pursuant to and in accordance with that certain Partial Delegation of First Amended Development Agreement (Desert Winds III Trust) dated as of October 1, 1989 by and among SeaWest, Toyo Construction Company, a California corporation ("TCC"), Toyo Power Corporation, a California corporation ("TPC"), Owners, EDC and Bank Trustee on behalf of the Trust ("Partial Delegation"), SeaWest wishes to transfer and delegate to TCC and TPC, TCC and TPC wish to transfer and delegate to the Mojave 17 Owner and the Mojave 16/18 Owners, and the Mojave 17 Owner, the Mojave 16/18 Owners and SeaWest wish to transfer and delegate to the Bank Trustee, as hereinafter defined, acting on behalf of the Trust, SeaWest's obligation to make Royalty Payments to Royalty Holder under Section 11 of the Development Agreement. The Bank Trustee wishes to assume the duties imposed upon it hereby on behalf of Mojave 17 Owner, Mojave 16/18 EFC Owner, Mojave 16/18 ESI Owner, and SeaWest, the beneficiaries hereof. EDC is willing to consent to the formation of the Trust for the purposes set forth in this Trust Agreement upon the terms hereinafter provided and to have the Trust, acting through Bank Trustee, pay the obligations of the Owners under Section 11 of the Development Agreement.

F. Subject to the consent of SCE, SeaWest shall transfer to TCC and to TPC its undivided interest in the Power Purchase Agreement corresponding to an aggregate of 37 Mws as contemplated by the Assignment and Delegation of Power Purchase Agreement dated as of October 1, 1989, by and among SeaWest, TCC, TPC, Mojave 17 Owner, Mojave 16/18 Owners and Bank Trustee, whereupon TCC shall immediately assign an undivided interest in its right, title and interest in and to the Power Purchase Agreement to Mojave 17 Owner, and TPC shall immediately assign a separate undivided interest to each of Mojave 16/18 EFC Owner and to Mojave 16/18 ESI Owner, whereupon Mojave 16/18 Owners, Mojave 17 Owner and SeaWest shall immediately assign all of their right, title and interest in and to their respective interests in the Power Purchase Agreement to the Bank Trustee for the benefit of themselves, and their respective successors and assigns, subject to the obligations to Royalty Holder. The Bank Trustee shall accept such assignment and delegation for the Trust, subject to and in accordance with this Agreement.

G. Mojave 16/18 Owners, Mojave 17 Owner and SeaWest anticipate that they will each own a separate undivided interest in certain electrical wiring, meters, transformers, and other equipment (collectively "Interconnection Facilities") through which the electrical power generated by the Projects will be transmitted to the high voltage transmission line being developed for and to be owned by Sagebrush, a California general partnership ("Transmission Line"), through which Transmission Line said electrical power will be delivered to SCE at SCE's Antelope or Vincent substations. The Interconnection Facilities will be operated pursuant to a shared use agreement ("Desert Winds III Collector Substation Facilities Use Agreement", hereinafter referred to as the "Shared Use Agreement").

H. Mojave 16/18 Owners, Mojave 17 Owner and SeaWest, as grantors to and beneficiaries of the Trust, wish to form the Trust (as hereinafter defined) solely as a convenient means of administering certain rights and obligations with respect to the Power Purchase Agreement and the Royalty Payments by protecting and conserving the SCE payments distributable to the Owners (including amounts distributable on behalf of Owners to Royalty Holder) in accordance with the provisions of Treasury Regulation 301.7701-4(a) and for holding the Power Purchase Agreement and fulfilling the other purposes set forth in this Trust Agreement.

I. It is the intent of the parties hereto that the trust created pursuant to this Trust Agreement be a grantor trust under Section 671 of the Internal Revenue Code of 1986, as amended.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which are hereby

acknowledged, Mojave 16/18 Owners, Mojave 17 Owner, SeaWest and Bank do hereby agree as follows:

1. Creation of Trust.

Mojave 17 Owner, Mojave 16/18 Owners and SeaWest do hereby form and create a grantor trust (the "Trust") for the sole purposes of (i) holding and administering, pursuant to the terms of this Trust Agreement, the Power Purchase Agreement, (ii) protecting, conserving, allocating and distributing the payments received from SCE pursuant to the Power Purchase Agreement to Mojave 17 Owner, Mojave 16/18 Owners and SeaWest, and their respective successors and assigns as Owners, (iii) making certain Royalty Payments to Royalty Holder on behalf of Owners with respect to the Development Agreement, and (iv) distributing all net income of the Trust, as hereinafter provided. The Bank Trustee is authorized solely to and shall protect and conserve the Trust property for the benefit of the beneficiaries of the Trust and is expressly prohibited from varying the Trust corpus, or, as Bank Trustee, from engaging in business of any kind.

2. Name of Trust.

The Trust shall be known as the Desert Winds III Power Purchase Contract Trust.

3. Assignments to Trust.

3.1. Power Purchase Agreement. By execution of this Trust Agreement, each Owner does hereby agree to assign, transfer, convey, grant and delegate to the Bank Trustee of the Trust named in Section 4 hereof, in trust, pursuant to the Assignment and Delegation of Power Purchase Agreement to be executed simultaneously herewith, all of its right, title, and interest in, to and under the Power Purchase Agreement, to be held by said Bank Trustee in accordance with the terms of this Trust Agreement. The Bank Trustee does hereby accept the foregoing assignments and delegations for and on behalf of the Trust.

3.2. Development Agreement. By execution of the Partial Delegation of the First Amended Development Agreement, Owners delegate to the Bank Trustee of the Trust named in Section 4 hereof, as an obligation of the Trust in satisfaction of Owners' obligations to Royalty Holder, all of the Owners' duties and obligations under Section 11 of the Development Agreement, to be performed by said Bank Trustee for the Trust on the Owners' behalf in accordance with the terms of this Trust Agreement. The Bank Trustee does hereby accept

the foregoing delegation for and on behalf of the Trust and agrees that it, as Bank Trustee of the Trust, shall assume, keep, perform and be bound by each and every duty and obligation of Owners' under said Section 11 of the Development Agreement in satisfaction of Owners' obligations to Royalty Holder.

4. Bank Trustee; Duties and Obligations; Hold Harmless.

(a) The Trust shall have one trustee, a Bank Trustee, with such duties and obligations as set forth in this Trust Agreement.

(b) The Bank shall be the initial Bank Trustee, and the term "Bank Trustee" as used herein shall include the Bank and the Bank's successors, if any, as Bank Trustee. In all respects under and pursuant to this Trust Agreement, when the Bank is acting as Bank Trustee it shall be acting not in its individual capacity but solely as trustee of this Trust. Subject to the provisions of this Section 4, the Bank Trustee shall have the following duties and obligations in order to protect and conserve the Trust assets and no other:

(1) To establish and maintain an interest-bearing account for the Trust (the "DWIII Trust Account") and separate interest-bearing accounts for each Owner to be designated the "Mojave 17 Account", the "Mojave 16/18 EFC Account", the "Mojave 16/18 ESI Account" and the "SeaWest Project Account" (each an "Owner Account", together the "Owner Accounts" and, collectively, with the DWIII Trust Account, the "Trust Accounts"), and into which shall be deposited all revenues received from SCE or otherwise in connection with the Power Purchase Agreement. Each payment received from SCE or otherwise shall initially be deposited in the DWIII Trust Account and, thereafter, once allocated among the different Owners' Projects in accordance herewith, deposited into the respective and appropriate account of each respective Owner. The Trust Accounts shall be maintained with the Bank itself, or with such other financial institution as the Owners shall designate in writing to the Bank Trustee, and shall be accounts insured by an agency of the United States Government. Any funds on deposit in the Trust Accounts shall be invested in direct obligations of the United States Government, or any agency thereof whose obligations are supported by the full faith and credit of the United States, or in certificates of deposit or other instruments fully insured by an agency of the United States Government in accordance with written instructions approved by the Owners in the case of the DWIII Trust Account, by each respective Owner with respect to its particular Owner Account, or their respective successors or assigns. Except as provided in this Section 4(b)(1), the Trustee shall have no ability to invest such funds in any other manner. Any interest earned on the DWIII Trust

Account shall be transferred each month to the different Owner Accounts in proportion to the amount of the SCE Payment, as defined below, that is allocated to each Owner pursuant to Section 8 hereof.

(2) To enter into the Contract Administration Agreement (as defined below) in the form approved by the Owners with a Contract Administrator (as defined below) name therein.

(3) To notify promptly the Contract Administrator, the Owners and, on behalf of the Owners, the Royalty Holder, upon receipt of any payment from SCE ("SCE Payment"), transmitting to each a copy of any and all information provided by SCE with respect to such SCE Payment.

(4) To notify promptly the Contract Administrator, and the Owners upon receipt of any bill or statement from SCE, Royalty Holder, or any other party showing that a sum is owed by the Trust, or by one or more of the Owners, to SCE, to Royalty Holder or to some other party with respect to the Power Purchase Agreement.

(5) To disburse funds held in the Trust Accounts to SCE, to Royalty Holder as creditor of the Owners, to or for the account of the Owners, or to other persons as directed in writing by the Contract Administrator, all in accordance with the Owner Notices as described in the Contract Administration Agreement.

(6) To provide monthly statements to the Contract Administrator, to the Owners, and, on behalf of Owners to the Royalty Holder, showing each deposit into, and each disbursement from, the Trust Accounts for the relevant month.

(7) Bank Trustee, as assignee of the Power Purchase Agreement, agrees to assume the rights, duties, and obligations set forth in the Power Purchase Agreement, including those that accrued prior to this Assignment. Bank Trustee agrees to be bound by all duties and obligations of "Seller" under the Power Purchase Agreement.

(c) Notwithstanding any provision to the contrary contained in this Trust Agreement, the Bank Trustee shall not take any action other than in connection with receiving revenue and paying obligations contained in the Power Purchase Agreement or the disbursement of funds, as required hereunder, except at the written direction of the Owner or Owners of a Project or Owner Account affected by such action.

(d) The Bank shall not be liable to Owners or to Royalty Holder (as creditor of the Owners) in connection with the performance of its duties hereunder except for gross negligence or willful

misconduct. Notwithstanding any other provision herein to the contrary, the Bank Trustee shall be under no duty to take any action or to refrain from taking any action under this Trust Agreement unless it shall be satisfied that it shall be indemnified against any and all liability, cost or expense, including attorneys' fees, which may be incurred in connection with such action or inaction. No provision of this Trust Agreement shall require the Bank to risk any of its own funds or to risk incurring any financial liability.

(e) The Owners, severally in accordance with the Maximum Nameplate Capacities of their respective Projects, and not jointly or jointly and severally, shall defend, indemnify and hold harmless the Bank Trustee from and against any and all claims, liabilities, losses, damages and expenses, including reasonable attorneys' fees and expenses, which the Bank Trustee, or its respective officers, directors, employees, agents, successors or assigns, may suffer or incur as a result of, or in any way relating to, this Trust Agreement or the performance of its duties hereunder, the Power Purchase Agreement, or the Projects or the operation of the Projects by the different Owners; provided, however, that the foregoing indemnity and hold harmless shall not apply to any such claims, liabilities, losses, damages and expenses that are caused (i) by the negligence or willful misconduct of the Bank Trustee or (ii) by the failure to distribute monies to, or on behalf of the Owners in accordance with the terms of this Trust Agreement.

5. Contract Administrator As Project Manager.

The Owners shall select and the Trust shall engage a contract administrator ("Contract Administrator") under and pursuant to a contract administration agreement in such form as the Owners shall approve ("Contract Administration Agreement") with such duties and responsibilities, as agent of and pursuant to the instructions of the Owners, as set forth therein. SeaWest-Tehachapi, Inc., a California corporation and an affiliate of SeaWest ("SeaWest-Tehachapi") shall be the initial Contract Administrator, and the term "Contract Administrator" as used herein shall include SeaWest-Tehachapi and any successors acting in the capacity of Contract Administrator under and pursuant to the Contract Administration Agreement. As part of the duties and responsibilities as Contract Administrator under the Contract Administration Agreement, the Contract Administrator shall serve as "Project Manager" under the Power Purchase Agreement and perform all of the duties and obligations of Project Manager under the Power Purchase Agreement. Notwithstanding any other provisions of this Agreement or of the Contract Administration Agreement, the Contract Administrator as Project Manager under the Power Purchase Agreement may not be replaced with a different Project Manager without the prior written consent of SCE and approval by SCE of any

replacement Project Manager. Moreover, under no circumstances shall the Bank Trustee have any right or obligation, without the Owners' and the Bank's prior written consent, to perform any of the duties and obligations of the Contract Administrator.

6. Beneficiaries; Ownership Interests.

6.1. The only beneficiaries of this Trust are the Owners. The respective beneficial interest of each Owner in the Trust (each, an "Ownership Interest" collectively, the "Ownership Interests") is the right to receive the revenue from the sales of electricity to SCE under the Power Purchase Agreement, where the sold electricity is generated by the WTGs in the Owner's Project and where the total nameplate capacity rating of the WTGs in the Project, determined in accordance with the Power Purchase Agreement, does not exceed the Maximum Nameplate Capacity for the Project as follows:

<u>Owner</u>	<u>Project</u>	<u>Maximum Nameplate Capacity</u> (In Megawatts)
Mojave 17 Owner	Project 17	7.00 Mw
Mojave 16/18 EFC Owner	Project 16/18	15.6 Mw
Mojave 16/18 ESI Owner	Project 16/18	14.4 Mw
SeaWest	SeaWest Project	<u>3.5</u> Mw
	Total:	40.5 Mw

6.2. The Royalty Holder is a creditor of this Trust only to the extent it is entitled to receive, and to enforce its right to receive, Royalty Payments as performance of the Trust's obligations, assumed from and on behalf of the Owners under Section 11 of the Development Agreement, payment of which is provided for in Section 10 of this Agreement.

7. Joint and Several Liability of Owners to SCE.

Each Owner shall be jointly and severally liable to SCE, and not to any other party, for the performance of each and every duty and obligation of Seller under and pursuant to the Power Purchase Agreement.

8. Gross Revenues, Line and Transformer Losses, SCE Fee, and Royalty Payment.

The Bank Trustee, pursuant solely to information received from the Contract Administrator, is hereby instructed by the Owners to make the following determinations:

(a) the portion, if any, of the SCE Payment that is attributable to gross deliveries of electrical power from each of the Projects basing such determination on (i) the electrical power produced by each during the relevant time period by the reading of its time-of-day meter, and (ii) the distribution of the SCE Payment into the time-of-day periods as shown on the SCE statement accompanying the SCE Payment;

(b) the portions (i) of the fee to be paid to SCE under the Interconnection Facilities Agreement attached as Exhibit A to the Power Purchase Agreement (the "SCE Fee") and (ii) of any additional expenses relating to the interconnection of the transmission lines from the substation of the Projects to the SCE electrical system (the "SCE Interconnect Expenses") that are allocable to each Project, based on the Maximum Nameplate Capacity of the WTGs of each Project;

(c) each Project's share of the amount due to SCE for the consumption of electrical power supplied by SCE (the "Power Consumption Liability"), basing such determination on (i) the electrical power consumed by each Owner and each Owner's Project as evidenced by the readings of their respective usage meters and (ii) the rates payable to SCE for power consumed during the relevant time period;

(d) the amount of the Royalty Payment due Royalty Holder, and the allocation of the burden of said Royalty Payment to each Owner for each Owner's respective Project, calculated in accordance with the formulas for Minimum Payment and Gross Revenue Payment set forth in Section 11 of the Development Agreement; and

(e) for purposes of the foregoing, revenues and obligations of Project 16/18 shall be divided between Project 16/18 EFC Owner and Project 16/18 ESI Owner in proportion to their respective Maximum Nameplate Capacities.

9. Notices to and on Behalf of Owners.

The Bank Trustee, acting through the Contract Administrator, shall notify each Owner (and, on behalf of the Owners, the Royalty Holder) and any lender to any of them as the Bank Trustee

may be requested in writing ("Owner Notices") of the following with respect to each SCE Payment:

(a) The portion of the gross revenues represented by each SCE Payment that is attributable to each Project, setting forth in reasonable detail the basis of the calculation thereof;

(b) The amount of each Project's allocable share of gross revenues to be applied towards the payment of each Project's allocable share of the SCE Fee, the SCE Interconnect Expenses, and the Power Consumption Liability, setting forth in reasonable detail the basis of the calculation thereof;

(c) The amount of the Owners' obligation to make the Royalty Payment, and the portion of the burden of said Royalty Payment allocable to each Project, setting forth the calculation of the Royalty Payment and the calculation of its allocation;

(d) The amount of each Project's allocable share of gross revenues to be applied towards the payment of certain liabilities of such Project required to be paid under the terms of the Shared Use Agreement (the "Shared Use Expenses") when and if directed by the Contract Administrator;

(e) Any adjustments required to correct errors with respect to the allocation or disposition of previous SCE Payments or any other errors in prior allocations; and,

(f) The net revenues payable to each Owner after deduction of said Owner's allocable share of line and transformer losses, the SCE Fee, the SCE Interconnect Expenses, Power Consumption Liability, the Royalty Payment, and the Shared Use Expenses when and if directed by the Contract Administrator.

Each Owner and the Royalty Holder shall promptly review each Owner Notice upon receipt. Any disagreement or dispute with respect to the information set forth on the Owner Notices shall be handled as set forth in the Contract Administration Agreement.

10. Disbursements by Bank Trustee.

Within fifteen (15) days following receipt of each Owner Notice by each Owner and Royalty Holder, Bank Trustee shall make the following payments in respect of each Project as set forth in each such Owner Notice in the following order of priority:

(a) any and all sums due and owing SCE;

(b) Royalty Payments due Royalty Holder;

(c) When and if directed by the Contract Administrator, Shared Use Expenses due under the Shared Use Agreement;

(d) sums due Bank and Bank Trustee for fees, expenses and indemnities in accordance with the terms of this Trust Agreement; and,

(e) distributions to the Owner Accounts of the net revenues.

Each payment made by Bank Trustee in accordance with this Section 10 that relates to (i) Project 16/18 shall be made only out of funds in the Owner Accounts of Mojave 16/18 EFC Owner and of Mojave 16/18 ESI Owner, and in proportion to each of their respective Maximum Nameplate Capacities, (ii) each payment that relates to Project 17 shall be made only out of funds in the Mojave 17 Owner Account and (iii) each payment that relates to the SeaWest Project shall be made only out of funds in the SeaWest Project Account. Each such payment to be made by the Bank Trustee shall be made by check or wire transfer to such address or with such wiring instructions as the person entitled to such payment shall specify in writing to Bank Trustee. Bank Trustee shall be entitled to rely on the written instructions from any such person as it shall have most recently received until such time as it shall receive new instructions from such person. Notwithstanding the foregoing, in the event that Bank Trustee shall receive a Dispute Notice (as hereinafter defined) from any Owner or from the Royalty Holder in respect of any Owner Notice, Bank Trustee shall not make any payments in said Owner Notice that are disputed in said Dispute Notice until such time as (i) it has received from the Contract Administrator a written notice confirming the Owner Notice previously delivered or (ii) the dispute has been resolved pursuant to the provisions of the Contract Administration Agreement and the Bank Trustee has received written notice of said resolution. Payments set forth in any such Owner Notice that are not disputed in the Dispute Notice shall be made as set forth in the Owner Notice.

11. Limitation of Use of Power Purchase Agreement.

Each Owner, in order that all Owners enjoy the benefits of the Power Purchase Agreement and of this Trust Agreement, shall not install WTGs in its Project whose total Nameplate Rating, as Nameplate Rating is defined in Section 3.6 of the Interconnection Facilities Agreement dated October 4, 1988 (Document RDG/V66), and thereby made a part of the Power Purchase Agreement, exceeds the Maximum Nameplate Capacity permitted for said Project in connection

with the Power Purchase Agreement as set forth in Section 6.1 of this Agreement.

12. Transfer of an Owner's Ownership Interest.

An Owner may transfer and convey all or part of its beneficial interest in the Trust provided that the Owner, and the Owner's transferee, comply with all of the terms and conditions of this Section 12. In the event that the transferring Owner ("Transferor") and the Transferor's transferee ("Transferee") comply with all of the terms and conditions of this Section 12, the consent of the other Owners shall not be required.

(a) The Transferee shall simultaneously acquire from the Transferor the same proportion of the Transferor's Project as it is acquiring of the Transferor's beneficial interest.

(b) The Transferee shall agree in writing to be bound by all of the terms and conditions of this Trust Agreement and of the Contract Administration Agreement.

(c) The Transferee shall provide an opinion of counsel, reasonably acceptable to the other Owners, or such other evidence reasonably acceptable to the other Owners, to establish that Transferee's ownership of all or part of Transferor's Project ("Transferee's Project") shall not cause Transferee's Project to no longer be a Qualifying Small Power Production Facility, as that term is defined in Title 18, Code of Federal Regulations, Sections 292.201 through 292.207 or any successor thereto ("Qualifying Facility").

(d) The Transferee shall enter into a separate fee agreement with the Bank for serving as Bank Trustee that is acceptable to the Bank.

Any Owner may assign its beneficial interest in the Trust pursuant to, or in connection with, a lease (a "Lease") of such Owner's Project pursuant to which the lessee agrees, among other things, to operate the Owner's Project (or interest therein) obtained in connection with the Lease in a manner such that the Owner's Project will retain its character as a Qualifying Facility, and to assume and discharge all of the Owner's obligations under this Trust Agreement and the Contract Administration Agreement. Such assignment shall be for a term coextensive with the term of the Lease. During the term of any Lease, the lessee shall be considered for all purposes an Owner under this Trust Agreement, entitled to all of the rights and subject to all of the obligations incident to such designation. Upon the termination or expiration of any such Lease, the beneficial interest will automatically revert to the Owner. An

Owner shall give prompt written notice to the Bank Trustee and to SCE of the making and any termination or expiration of any Lease.

Notwithstanding the foregoing, any Owner that has leased its Project as provided above shall at all times retain (i) its rights under Section 14 hereof, (ii) the right to cure any default of such Owner's lessee hereunder within the cure period available to such lessee as measured from the date when such Owner receives notice of such default, (iii) be entitled, together with such Owner's lessee, to all indemnities and notices provided to such Owner under this Trust Agreement and the Contract Administration Agreement; and (iv) not be responsible or liable in any way for the performance of, or failure to perform, any covenant or obligation under this Trust Agreement by such Owner's lessee unless such Owner elects to do so.

Any transfer or conveyance of an Owner's beneficial interest not made in accordance with this Section 12 shall be void and of no force or effect; provided, however, an Owner may assign its beneficial interest as security for financing in connection with the acquisition or ownership of the Owner's Project and may fully assign its interest to the Lessee under the Lease.

Upon completion of any transfer in accordance herewith, Contract Administrator shall provide written notice to Bank Trustee of the name, address and beneficial interest of the Transferee and new Owner.

Immediately following the transfer of an Owner's beneficial interest, the Bank Trustee shall advise SCE of the name, address and beneficial interest of the Transferee and new Owner.

13. Transfer of Interest of Royalty Holder.

The Royalty Holder may transfer its interest, as Royalty Holder and creditor of the Trust at any time by an instrument in writing, a copy of which shall be provided to the Bank Trustee who, in turn, shall provide a copy to the Contract Administrator. The Royalty Holder may only transfer its entire interest. Partial transfers or assignments are not allowed and shall not be recognized as valid by the Bank Trustee. Until such time as the Bank Trustee and the Contract Administrator receive written notice of a transfer of the Royalty Holder's interest in payments from the Trust, the Bank Trustee and the Contract Administrator shall be entitled to presume conclusively that the Royalty Holder's interest continues to be held by the Royalty Holder.

14. Transfer of Beneficial Interest.

If the Project owned or operated by an Owner shall cease to be a Qualifying Facility (a "Non-Qualifying Project"), and, notwithstanding any disconnection of such Owner's Non-Qualifying Project pursuant to Section 6.2 of the Sagebrush Management and Maintenance Agreement, Section 10 of the Contract Administration Agreement, Section 5.3 of the Desert Winds III Collector Substation Facilities Use Agreement, or otherwise, SCE informs the Bank Trustee and the Owners that, if the Owner of the Non-Qualifying Project continues as a beneficiary of the Trust, it nevertheless will (a) terminate the Power Purchase Agreement, or (b) otherwise refuse to accept electricity generated by the other beneficiaries of the Trust under the terms of, and at the prices established in, the Power Purchase Agreement, then the Owner of the Non-Qualifying Project shall with reasonable promptness sell or otherwise transfer its beneficial interest in the Trust to an entity that will not cause the Power Purchase Agreement to be terminated or otherwise adversely affected, provided that such transfer shall be without prejudice to any claims the Owner may have against SCE with respect to SCE taking the positions referred to above.

15. Resignation and Removal of Bank Trustee; Appointment of Successor Bank Trustee.

(a) The Bank Trustee may resign at any time upon sixty (60) days prior written notice to the Owners and, on behalf of the Owners, to the Royalty Holder, and upon the appointment of a successor Bank Trustee. The Bank Trustee may be removed at any time upon the written request of the Owners; provided, however, that no such removal of the Bank Trustee shall be effective unless and until a successor Bank Trustee is appointed. Upon the resignation or removal of the Bank Trustee, a successor Bank Trustee shall be appointed by the Owners, provided that any such Bank Trustee shall be a bank or other financial institution, located in California and organized under the laws of the United States or of the State of California, that is authorized to serve as the Bank Trustee of this Trust and that has a combined capital and surplus of at least Fifty Million Dollars. If, following the resignation or removal of Bank Trustee, no successor Bank Trustee is appointed within sixty (60) days of the date of such resignation or removal, then the Bank Trustee, at the expense of the Trust, may petition a court of competent jurisdiction to appoint a successor Bank Trustee, which successor Bank Trustee need not be a bank or trust company but may be an individual.

(b) The Bank Trustee may not assign, transfer or convey its rights, title, interests, duties or obligations under this Trust

Agreement except to a duly appointed successor Bank Trustee of this Trust.

16. Bank Trustee Fees and Expenses.

(a) The Bank Trustee shall be entitled to receive such fees as may be agreed upon from time to time by the Owners and the Bank in separate fee agreements. The Bank Trustee shall be reimbursed for any and all of its reasonable expenses directly incurred in connection with the performance of its duties as the Bank Trustee. The Bank Trustee's fees and expenses shall be paid when due and owing out of the Project Accounts as provided in Section 10.

(b) The Owners shall be severally, but not jointly or jointly and severally, liable for the fees and expenses of the Bank Trustee ratably in accordance with the Maximum Nameplate Capacities of the Owners' respective Projects. These expenses shall be allocated among the Owners in proportion to the Maximum Nameplate Capacity, in megawatts, of the Projects they own.

(c) Royalty Holder shall not be liable for any fees or expenses of the Bank Trustee.

17. Payments Out of Project Accounts.

Each of the Owners may notify the Bank Trustee to disburse the balance of or amounts in such Owner's Project Account to any person in accordance with written instructions submitted to the Bank Trustee by such Owner. Bank Trustee shall honor said instructions, and said instructions to Bank Trustee shall continue in full force and effect and shall not be revoked until Bank Trustee is advised otherwise by written communication duly executed by the respective Owner and such other person or persons.

18. Curtailement.

In the event that a curtailement is necessary under the Power Purchase Agreement for any reason, then said curtailement shall be accomplished by the Contract Administrator pursuant to the terms of the Contract Administration Agreement.

19. Term of Trust.

The term of this Trust and of the Trust Agreement shall commence on the date hereof and shall continue in effect until the expiration or earlier termination of the Power Purchase Agreement.

In addition, the Trust and this Trust Agreement shall terminate and the Power Purchase Agreement and any amounts remaining in the Trust Accounts shall be distributed to the Mojave 17 Owner, the Mojave 16/18 Owners and SeaWest as the grantors of the Trust (in accordance with their undivided interests in the Power Purchase Agreement at the time of the termination of the Power Purchase Agreement) upon the election of all of such grantors by notice to the Bank Trustee, the Contract Administrator, the Royalty Holder and SCE, provided such notice shall be accompanied by the written agreement of such grantors assuming all the obligations of the Bank Trustee incurred by it as trustee hereunder (other than obligations attributable to any negligence or willful misconduct of the Bank Trustee); provided, however, that no such election shall be effective (i) without the consent of SCE so long as the Power Purchase Agreement shall then be in effect, and (ii) without the consent of the Royalty Holder prior to the satisfaction in full of the obligations of the Owners to the Royalty Holder under Section 11 of the Development Agreement. Upon any such termination, all revenues relating to Project 17 shall be paid to the Mojave 17 Owner or as the Mojave 17 Owner may otherwise direct, all revenues relating to Project 16/18 shall be paid to each of the Mojave 16/18 Owners or as the Mojave 16/18 Owners may respectively otherwise direct, and all revenues relating to the SeaWest Project shall be paid to SeaWest or as SeaWest may otherwise direct.

20. Notice.

All notices, notifications and other communications required or permitted by this Trust Agreement shall be in writing and shall be delivered by hand, sent by telecopy, or mailed by prepaid first class mail to the parties at the following addresses (or such

Notices delivered by hand, or sent by telecopy shall be deemed given the day so delivered or sent, and notices mailed as provided herein shall be deemed given on the third business day following the date so mailed or on the date of actual receipt, whichever is earlier; provided, however, that no notice delivered to Bank Trustee shall be deemed delivered to Bank Trustee absent actual receipt by Bank Trustee.

21. General Provisions.

(a) Waiver. Unless otherwise expressly provided herein, no delay or omission by the parties hereto in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy and shall not be construed as a bar to or a waiver of any such right or remedy on any future occasion.

(b) Governing Law. This Trust Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California applicable to agreements made and to be performed wholly within the State of California.

(c) Jurisdiction and Venue. The parties agree that any action that may be instituted relating to this Trust Agreement shall be prosecuted in the courts of the State of California, in and for the City of Los Angeles, and that each party hereby waives the right to change venue to any other state or county.

(d) Counterparts. This Trust Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

(e) Effect of Section Headings. Section headings appearing in this Trust Agreement are inserted for convenience or reference only, and shall not be construed to be interpretations of the text.

(f) Amendments. This Trust Agreement may only be modified or amended by an instrument in writing duly executed and delivered by all of the Owners and the Bank Trustee; provided, however, that any amendment that in any way modifies or affects the rights, benefits, or duties of the Royalty Holder shall not be made, and shall not be effective, unless and until it is consented to in writing by the Royalty Holder.

(g) Corporate or Partnership Authorization and Compliance. Each party hereto represents and warrants that the individual or individuals executing and delivering this Trust Agreement on its

behalf is or are duly authorized to do so, and to bind the party thereby, all in accordance with the party's charter documents.

(h) Attorneys' Fees. In the event of any litigation to enforce the provisions of this Trust Agreement, the prevailing party or parties in such litigation shall be entitled to reasonable attorneys' fees and costs as fixed by the court.

(i) Entire Agreement. The terms and conditions set forth herein constitute the complete and exclusive statement of the agreement between the parties hereto relating to the subject matter of this Trust Agreement, superseding all previous negotiations and understandings, and may not be contradicted by evidence of any prior or contemporaneous agreement. The parties further intend that this Trust Agreement constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or arbitral proceeding, if any, involving this Trust Agreement.

(j) Time of Essence. Time is of the essence in each and every provision of this Trust Agreement.

(k) No Third Party Beneficiaries. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto, and SCE and the Royalty Holder and other permitted assigns which shall be express third party beneficiaries hereof.

(l) Further Assurances. The parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence or confirm the agreements contained herein in the manner contemplated hereby.

(m) Partial Invalidity. If any provision of this Trust Agreement is found to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions hereof.

(n) Cross Indemnity. Each Owner shall indemnify each other Owner, and shall defend, save and hold each other Owner harmless from and against all liabilities, losses, damages, penalties, claims, demands, actions, and related costs and expenses, incurred by or asserted against an Owner as a result of the negligence or willful misconduct of such Owner or such Owner's breach of any of its duties or obligations under this Agreement and the Contract Administration Agreement. Any obligation to an Owner pursuant to Section 10(a) through (d) of this Agreement or Section 4 of the Contract Administration Agreement that is paid by an indemnitee pursuant to

this Section shall be repaid to such indemnity from monies distributable to such Owner pursuant to the Trust Agreement in the same priority applicable to the obligation so paid; provided that the foregoing shall not prejudice the indemnitee from pursuing any other rights or remedies against such Owner.

other address for a party as shall be specified by notice given pursuant hereto):

If to Mojave 17
Owner:

U.S. Trust Company of
California, N.A.
555 South Flower Street
Los Angeles, California 90071
Attn: Corporate Trust
Department
Telecopier: (213) 489-3317

If to Mojave 16/18
EFC Owner:

Bankers Trust Company of
California, N.A.
50 Fremont Street
10th Floor
San Francisco, California 94105
Attn: Corporate Trust and
Agency Group
Telecopier: (415) 979-3076

If to Mojave 16/18
ESI Owner:

Bankers Trust Company of
California, N.A.
50 Fremont Street
10th Floor
San Francisco, California 94105
Attn: Corporate Trust and
Agency Group
Telecopier: (415) 979-3076

with a copy to:

ESI Energy
100 Australian Avenue
Suite 304
West Palm Beach, Florida 33406
Attn: Kenneth W. Oberg
Telecopier: (407) 687-4932

additional copy to:

Dewey, Ballantine, Bushby,
Palmer & Wood
140 Broadway
New York, New York 10005
Attn: Thomas C. Mazza
Telecopier: (212) 820-1403

If to SeaWest:

SeaWest Industries, Inc.
1455 Frazee Road
San Diego, California 92108
Attn: President
Telecopier: (619) 293-3347

If to EDC/Royalty
Holder:

Energy Distribution Company
RR 2, Box 21
Ramona, South Dakota 57054
Attn: President
Telecopier No.: (605) 482-8429

with a copy to:

Weinberg, Zipser, Arbiter,
Heller & Quinn
1901 Avenue of the Stars,
16th Floor
Los Angeles, CA 90067-6080
Attn: Lawrence Heller, Esq.
Telecopier No.: (213) 201-6044

If to Bank Trustee:

City National Bank, N.A.
120 South Spalding Drive
Beverly Hills, CA 90213
Attn: Trust Department
Telecopier No.: (213) 550-5875

IN WITNESS WHEREOF, Mojave 17 Owner, Mojave 16/18 EFC Owner, Mojave 16/18 ESI Owner and Bank have executed this Trust Agreement as of the date and year first written above.

MOJAVE 17 OWNER

U.S. Trust Company of California, N.A., not in its individual capacity, but solely as Owner Trustee under a Trust Agreement, dated as of September 1, 1989, with CIBC Inc.

By: *Kerry Chang*
Its: *A.V.P.*

MOJAVE 16/18 ESI OWNER

Bankers Trust Company of California, N.A., not in its individual capacity but solely as Owner Trustee under an Owner Trust Agreement, dated as of October 1, 1989 with ESI Energy, Inc.

By: *James Storm*
Its: *Assistant Vice President*

MOJAVE 16/18 EFC OWNER

Bankers Trust Company of California, N.A., not in its individual capacity but solely as Owner Trustee under an Owner Trust Agreement, dated as of

October 1, 1989 with EDS Financial Corporation

By: *James Storm*
Its: *Assistant Vice President*

CITY NATIONAL BANK,
a national banking association in its individual capacity except that as Bank Trustee hereunder, only as trustee of this Trust and not in its individual capacity

By: *Tom Whit*
Its: VICE PRESIDENT & TRUST OFFICER

SEAWEST INDUSTRIES, INC.,
a California corporation

By: *John A. Johansen*
Its: *President*