

# LOAN AGREEMENT

between

SANTA CRUZ POWER & LIGHT S.A.

and

WCL BANK, N.A.

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Dated \_\_\_\_\_, 2012

# TABLE OF CONTENTS

	<u>Page</u>
<b>ARTICLE I</b> <b>DEFINITIONS</b>	
SECTION 1.01	DEFINITIONSYYYYYYYYYYYYYYYYYYYYYYYY...1
<b>ARTICLE II</b> <b>ISSUANCE OF NOTES; TERMS</b>	
SECTION 2.01	Amount and DisbursementYYYYYYYYYYYYYYYY...3
2.02	Commitment FeeYYYYYYYYYYYYYYYYYYYY...4
2.03	Cancellation of the CommitmentYYYYYYYYYYYY... 4
2.04	Interest .....YY4
2.05	Repayment of the Loan.....YYY...4
2.06	Voluntary Prepayment.....YYY..4
2.07	Mandatory Prepayment.....YYY..4
2.08	Facility Fee.....YYY..5
2.09	Taxes.....YYY...5
2.10	Miscellaneous.....YYY..5
<b>ARTICLE III</b> <b>REPRESENTATIONS AND WARRANTIES</b>	
SECTION 3.01	Existence of Power of the Company YYYYYYYY...6
3.02	Authority of the Company.....YYYYYYYY...6
3.03	Financial Condition.....YYYYYYYYYYYY...6
3.04	Subsidiaries.....YYYYYYYYYYYYYYYYYYYY...7
3.05	Liens.....YYYYYYYYYYYYYYYYYYYY...7
3.06	Taxes and Reports.....YYYYYYYYYYYYYYYY...7
3.07	Defaults.....YYYYYYYYYYYYYYYYYYYY...7
3.08	Litigation.....YYYYYYYYYYYYYYYYYYYY...7
3.09	Compliance with Law.....YYYYYYYYYYYYYYYY...7
3.10	Disclosure.....YYYYYYYYYYYYYYYY...7
<b>ARTICLE IV</b> <b>CONDITIONS PRECEDENT FOR INITIAL ISSUANCE OF NOTES</b>	
SECTION 4.01	Corporate Authorizations.....YYYYYYYYYYYYYYYY...8
4.02	Subordinated Loan AgreementYYYYYYYYYYYY..YYYY8
4.03	Project Completion Agreement.YYYYYYYYYYYYY...8
4.04	Security Arrangements.....YYYYYYYYYYYYYYYY...8
4.05	Sponsor Investment.....YYYYYYYYYYYYYYYY...8
4.06	Government Approvals.....YYYYYYYYYYYYYYYY...8
4.07	Land.....YYYYYYYYYYYYYYYY...9

4.08	Insurance.....YYYYYYYYYYYYYYYYYYYY...9
4.09	Certain Appointments.....YYYYYYYYYYYYYYYY..9
4.10	Legal Opinions.....YYYYYYYYYYYYYYYY...9

## ARTICLE V CONDITIONS PRECEDENT TO DISBURSEMENTS

SECTION 5.01	Representations and Defaults.....YY.9
5.02	Change in Circumstances.....YYYYYYYYYYYYYYYY....9
5.03	Certification.....YYYYYYYYYYYYYYYYYYYY.9
5.04	Notes.....YYYYYYYYYYYYYYYYYYYY9

## ARTICLE VI AFFIRMATIVE COVENANTS

SECTION 6.01	Project Completion.....YYYYYYYYYYYYYYYYYY..10
6.02	Company Operations.....YYYYYYYYYYYYYYYYYY11
6.03	Maintenance of Rights and Compliance with Laws...YY.Y.11
6.04	Insurance.....YYYYYYYYYYYYYYYYYYYY.11
6.05	Accounting.....YYYYYYYYYYYYYYYYYYYY...11
6.06	Financial Statements and Other Information.....YYYYYY..11
6.07	Access to Books; Inspection; MeetingsYYYYYYYYYYYYYY12
6.08	Notice of Default and Other MatterYYYYYYYYYYYYYYYY.12
6.09	Security Documents.....YYYYYYYYYYYYYYYYYY.12
6.10	Working Capital.....YYYYYYYYYYYYYYYYYY12

## ARTICLE VII NEGATIVE COVENANTS

SECTION 7.01	Mortgages and Liens.....YYYYYYYYYYYYYYYYYY13
7.02	Indebtedness.....YYYYYYYYYYYYYYYYYY.13
7.03	No Alteration of Agreements.....YYYYYYYYYYYYYYYYYY13
7.04	Dividends.....YYYYYYYYYYYYYYYYYYYYYY14
7.05	Compensation to Sponsors.....YYYYYYYYYYYYYYYYYY.14
7.06	Sale of Assets, Mergers.....YYYYYYYYYYYYYYYYYY.14
7.07	Ordinary Conduct of Business.....YYYYYYYYYYYYYYYYYY..14

## ARTICLE VIII DEFAULTS AND REMEDIES

SECTION 8.01	Events of Default.....YYYYYYYYYYYYYYYYYY.14
8.02	Remedies Upon Event of Default.....YYYYYYYYYYYYYYYYYY15
8.03	Jurisdiction and Consent to Suit.....YYYYYYYYYYYYYYYYYY16

## ARTICLE IX MISCELLANEOUS

SECTION	9.01	Notices.....YYYYYYYYYYYYYYYYYYYY..17
	9.02	Governing Law; Descriptive Headings....YYYYYYYYYYYYYYYY..17
	9.03	Succession.....YYYYYYYYYYYYYYYY..17
	9.04	Survival of Agreements.....YYYYYYYYYYYYYYYY..17
	9.05	Integration and Amendments.....YYYYYYYYYYYYYYYY..18
	9.06	No Waiver.....YYYYYYYYYYYYYYYY..18

EXHIBIT A

Form of Promissory Note

## LOAN AGREEMENT

This Agreement dated \_\_\_\_\_, 2012 by and among Santa Cruz Power & Light S.A., a corporation organized under the laws of Bolivia (the **ACompany@**), and WCL Bank, N.A., a national bank association organized under the laws of the United States of America (the **ALender@**)

### WITNESSETH:

WHEREAS, the Company intends to establish a facility to construct and operate a power plant, as more fully described in the Application defined below (the **AProject@**);

WHEREAS, the Company has requested that Lender make a loan to the Company for the Project which Lender are is willing to do on the terms and conditions hereof;

NOW, THEREFORE, in consideration of the premises and of the agreements contained herein, it is hereby agreed as follows:

### ARTICLE I DEFINITIONS

SECTION 1.01. **Definitions.** Unless otherwise provided, capitalized terms used herein shall have the definitions specified below:

**AAgreement@** means this Loan Agreement between the Company and the Lender.

**AAplication@** means the Company's application to for the Loan, consisting of US\$ 378.0 million.

**AAuthorized Officer@** means, with respect to the Company, the President, Vice President, Secretary or Treasurer thereof.

**ABusiness Day@** means any day other than a Saturday, Sunday or day on which commercial banks are authorized by law to close in New York or London.

**ACommitment@** means, as of any date during the Commitment Period, the amount of US\$ 378.0 million less the portion thereof which has expired or been cancelled pursuant to Section 2.03 hereof.

**ACommitment Period@** means the period commencing on the date hereof and ending on the earlier of (i) the first date on which the amount of the Loan outstanding equals the Commitment or (ii) two years from the date hereof.

**ACompletion Date@** means the date the Company satisfies the conditions set forth in Section 6.01 hereof.

**ACurrent Assets@** means assets treated as current assets under generally accepted United States accounting principles applied on a consistent basis.

**ACurrent Liabilities@** means all debts and liabilities due on demand or to become due within one year and other liabilities treated as current liabilities under generally accepted United States accounting principles applied on a consistent basis.

**ADisbursement@** means each disbursement of the Loan, whether occurring in connection with an issuance of Notes or otherwise.

**ADisbursement Date@** means any Business Day on which a Disbursement is made.

**AEvent of Default@** has the meaning ascribed to it in Section 8.01 hereof.

Engineering Procurement Construction Agreement- Contractor agrees to design the installation, procure the necessary materials, and build the Project for a fixed price.

**AFinal Disbursement Date** shall have the meaning stated in Section 2.05 of this Agreement.

**AFinancial Statements@** means an entity's quarterly or annual balance sheet and statements of income, retained earnings, and sources and application of funds for such fiscal period, with comparable figures for the corresponding periods of its previous fiscal year.

**AFinancing Documents@** means, collectively, this Agreement, the Notes, the Security Documents and all documents, approvals or certificates required by the Loan Agreement.

**AIndebtedness@** means, with respect to any entity, any obligation created, issued, incurred or assumed by such entity for borrowed money or arising out of any credit facility or financial accommodation or for the deferred purchase price of goods or services, including, without limitation, any credit to such entity under any conditional sale or other title retention agreement, all guaranties by such entity of liabilities or indebtedness of any other party, liabilities or indebtedness of any other party secured by any assets of such entity, and the net aggregate rentals under any lease by such entity as lessee which under accounting principles generally accepted in the United States of America would be capitalized on the books of the lessee or which is the substantial equivalent of the financing of the property so leased.

Input Agreement- Fuel supply agreement

**ALIBOR@** shall mean the rate of interest per annum (rounded upward, if necessary, to the nearest 1/16 of 1%) quoted by the principal London office of the Lender or an affiliate of the Lender designated by the Lender at approximately 11:00 am London time two Business Days prior to a Payment Date for the offering to leading banks in the London interbank market of U.S. Dollar deposits for a six month period

**ALoan@** means the outstanding amount of up to US\$ 378.0 million disbursed by the Lender hereunder.

**ANet Income@** means, for any fiscal year of the Company, the net income of the Company after taxes but before extraordinary items, determined in accordance with generally accepted accounting principles applied on a consistent basis.

**ANote@** or **ANotes@** means any promissory note issued by the Company pursuant hereto in form and substance similar to Exhibit A attached hereto.

**Off-Take Agreement-** Purchaser agrees to purchase the power produced by the Project.

**Operations and Maintenance Agreement-** Management, operation, and maintenance agreement between the operating subsidiary and a contractor.

**AProject Completion Agreement@** means the agreement to be executed among the Sponsors, the Company and the Lender substantially in the form of Exhibit B hereto.

**ASecurity Documents@** means the agreements between the Company and the Lender in form and substance satisfactory to the Lender whereby the payment of all amounts due or to become due hereunder and under the Notes are secured by a valid and enforceable first lien and charge on all of the Company's real property, fixtures and equipment, both now owned and hereafter acquired and in the proceeds thereof and all of the Company's inventory and accounts receivable, both now or hereafter existing.

**ASponsor@** means Veksel Inc. or Bolivia Energy Development Company S.A.; collectively the **ASponsors@**.

**ASubordinated Loan Agreement@** means the loan agreement to be executed between the Company and Veksel Inc. providing for a loan of US\$ 52.0 million by Veksel Inc. to the Company on terms and conditions satisfactory to the Lender.

**ATangible Net Worth@** means, as of any date for any entity, the total stockholders' equity (including capital stock, paid-in capital and retained earnings, after deducting treasury stock and reserves) which would appear on such entity's Financial Statements prepared as of that date, less the aggregate book value of all intangible assets shown on such entity's Financial Statements as of that date (including, without limitation, good will, patents, trademarks, trade names, copyrights franchises and unrealized appreciation of assets).

**A\$@** means United States dollars.

Reference to and the definition of any document (including this Agreement) shall be deemed a reference to such document as it may be amended or modified from time to time.

## ARTICLE II ISSUANCE OF NOTES; TERMS

**SECTION 2.01. Amount and Disbursement.** (a) Subject to the terms and conditions hereof, the Lender agrees to lend to the Company up to US\$378.0 million for the Project.

(b) After satisfaction of the relevant conditions of Articles IV and V hereof, the Lender shall make each Disbursement of the Loan by check at its office on each Disbursement Date during the Commitment Period. The Company shall request the amount of each Disbursement by giving written notice, minimally specifying the intended use of the Disbursement, to the Lender at least seven days prior to the Disbursement Date requested in such notice. Each Disbursement shall be evidenced by one or more (as the Lender may specify) Notes aggregating the principal amount of the Disbursement and dated the Disbursement Date.

**SECTION 2.02. Commitment Fee.** Commencing from the date of this Agreement and continuing through the Commitment Period, a commitment fee shall accrue on a daily basis at the rate of 1% per annum on the difference, calculated for each day during such period, between (i) the Commitment, and (ii) the aggregate uncancelled amount of the Loan outstanding on such day. The commitment fee shall be payable in arrears to the Lender quarterly commencing on the earlier of March 15 or September 15 following the date of this agreement and upon the termination of the Commitment, each of such quarterly payments constituting Payment Date(s).

**SECTION 2.03. Cancellation of the Commitment.** The Company may cancel all or any part of the Commitment at any time upon payment of a fee to the Lender equal to 1.0% of the amount of the Commitment then cancelled. Any part of the Commitment not disbursed at the end of the Commitment Period shall be deemed to have been cancelled, and the cancellation fee should apply.

**SECTION 2.04. Interest** (a) The Company shall pay interest to the order of the Lender for each disbursement of the Note(s) at the rate of (i) 2.35% per annum and (ii) LIBOR, accruing from and including the Final Disbursement Date and due on the Payment Dates of each year.

(b) If the Company shall default on any payment of principal and/or interest on any Note when due, the Company shall pay interest on such unpaid amount (in addition to the interest rate referred to above) at the rate of (i) 2.00% (to the extent permitted by applicable law) on the last day of each month succeeding such due date and on the date when such defaulted amount is paid in full.

**SECTION 2.05. Repayment of the Loan.** The Company shall repay the principal amount of the Loan in 24 equal quarterly installments due commencing on earliest Payment Date following the earlier of (a) 24 months after the date of the first disbursement of the Senior Loan and (b) 6 months following the date of Project Completion.

**SECTION 2.06. Voluntary Prepayment.** The Company may prepay any part of the Loan at any time, following the end of the commitment period, in the inverse order of its maturity at the following prepayment prices, expressed in percentages of the principal amount so prepaid:

<u>If Prepaid During the Twelve-Month Period Beginning:</u>	<u>Premium as a percent of amount prepaid</u>
On the Last Day of Commitment Period	5 %
On the first anniversary of thereof	3 %
On the second anniversary of thereof	1 %

**SECTION 2.07. Mandatory Prepayment.** The Company shall be obligated to make prepayments of the Loan in the inverse order of its maturity, without penalty or premium but together with interest accrued on the amount prepaid through the date of such prepayment, in the following amounts:

- (a) any amount which the Company becomes obligated to prepay pursuant to Section 7.04, and
- (b) the amount by which the aggregate proceeds from insurance received by the Company in any of its fiscal areas (to the extent not applied or committed within 60 days after receipt thereof to the repair or replacement of equipment or facilities).

**SECTION 2.08. Facility Fee.** The Company agrees to pay to the Lender a facility fee in the amount of US\$ 1 million which shall be due and payable on the date of execution and delivery of this Agreement.

**SECTION 2.09. Taxes.** (a) All sums payable by the Company hereunder or under the Notes, whether of principal, interest, fees, expenses or otherwise, shall be paid in full, free of any deductions or withholdings for any and all present and future taxes, levies, imposts, stamps duties, fees, deductions, charges, withholdings, and all liabilities with respect thereto (herein, collectively referred to as ATaxes@). In the event that the Company is prohibited by law from making payments hereunder or under the Notes free of such deductions or withholdings, then the Company shall pay such additional amount as may be necessary in order that the actual amount received by the Lender after deduction or withholding shall equal the full amount stated to be payable hereunder or under the Notes.

(b) The Lender shall notify the Company of any payment of Taxes to be made by the Lender, and the Company shall pay or reimburse the Lender therefor within 30 days. The Lender=s good faith calculations of the amount owed by the Company pursuant to the preceding sentence shall be supplied to the Company in reasonable detail and shall be conclusive and binding on the Company.

#### **SECTION 2.10. Miscellaneous.**

(a) **Reimbursement of Expenses.** The Company shall pay or reimburse the Lender, upon request, the Lender=s reasonable out-of-pocket costs and expenses incurred in connection with the negotiation, preparation, execution and implementation of this Agreement, the Notes and the other Financing Documents, including, without limitation, the reasonable expenses of business advisers, consultants, travels expenses, outside legal counsel, communications, and the authentication, registration and recordation of any of the Financing Documents; provided, however, that to the extent of any portion of the Facility Fee that has been paid to the Lender travel expenses incurred by the Lender shall be reimbursed out of such fee. The Company shall also reimburse the Lender upon demand for all costs and expenses (including, without limitation, reasonable attorneys'

fees and expenses) incurred by the Lender in preserving in full force and effect or enforcing its rights hereunder or under any of the Financing Documents or incurred in connection with the modification, amendment or waiver of any provision of any such document. Such payment or reimbursement shall be due whether or not this Agreement is executed or disbursement of the Senior Loan is made hereunder.

(b) Currency and Place of Payment. All payments required hereunder or under any Note shall be made in United States dollars in immediately available funds without any offset or deduction for Taxes or otherwise at the address of the Lender stated in Section 9.01 hereof. If any payment date is not a Business Day, payment shall be made on the last preceding Business Day.

(c) Computation of Interest on Notes and Fees. Except as otherwise provided herein or any Note, interest and commitment fees shall be computed on the basis of 360-day years of twelve 30-day months.

(d) Application of Payments to the Lender. Payments received by the Lender under this Agreement or any Note shall be applied to the payment of: first, amounts then due under Section(s) 2.02, 2.03, 2.06, 2.09, and 2.10(a) hereof; second, any past due and unpaid interest on such Note; third, any current interest then due on such Note; fourth, past due and unpaid principal on such Note; fifth, principal then due on such Note; and sixth, prepayment of principal on such Note.

(e) Replacement Notes. The Company shall issue at its cost upon receipt of certification of the loss, theft, destruction or mutilation of any Note (and of indemnity satisfactory to the Company in the case of lost, stolen or destroyed Notes), or upon the surrender of other outstanding Note(s), new Note(s) of like tenor and aggregate principal amount in replacement thereof, in such denominations as the holder thereof may request and dated (and bearing interest from) the date to which interest has been paid on the Note(s) so surrendered or certified as lost, stolen or destroyed.

### ARTICLE III REPRESENTATIONS AND WARRANTIES

The Company represents, covenants and warrants to the Lender that:

SECTION 3.01. Existence of Power of the Company. The Company is a corporation duly organized, validly existing, and in good standing under the laws of Bolivia and has only one class of capital stock. The Company is duly authorized to do business in each jurisdiction in which its business makes such authorization necessary, has the corporate power to own and operate its properties, to carry on its business and the Project, to borrow money and create a charge on its properties and to make and perform this Agreement, the Notes and each of the other Financing Documents to which it is or will be a party.

SECTION 3.02. Authority of the Company. The Company's execution, delivery and performance of this Agreement, the Notes and each of the other Financing Documents to which it is or will be a party: (i) have been duly authorized by all

necessary corporate action; (ii) will not violate any applicable regulation or ruling of any governmental authority; and (iii) will not breach, or result in the imposition of any encumbrance upon any of its assets (except as permitted by Section 7.01 hereof) under, any agreement or other requirement to which it or any of its properties may be bound or affected. The execution and delivery by the Company of this Agreement, the Notes and each of the other Financing Documents to which it is or will be a party will cause each such respective instrument to constitute a legal, valid and binding obligation of the Company enforceable in accordance with its terms. The Company's obligations hereunder and under the Notes will rank not less than pari passu with all of the Company's other debts and obligations.

SECTION 3.03. Financial Condition. The Company's Financial Statements dated from December 30, 1999, which have been furnished to the Lender, are complete and correct and fairly present its financial condition and results of its operations for the period then ended. It has no contingent obligation, liability for taxes, material or long-term commitment, or outstanding debt of any kind except as disclosed in such statements. There has been no material adverse change in its financial condition or prospects from that set forth in such Financial Statements, and since the date thereof no dividend or other distribution has been declared or paid to its shareholders, except as disclosed to the Lender in writing.

SECTION 3.04. Subsidiaries. The Company does not own or otherwise control any voting stock of, or have any ownership interest in, nor is it contractually bound to create, any other corporation or partnership, except as disclosed to the Lender in writing.

SECTION 3.05. Liens. The Company does not have outstanding, nor is it contractually bound to create, any mortgage, pledge, encumbrance or any other kind of security interest on or with respect to any of its properties or revenues, except as permitted in Section 7.01 hereof.

SECTION 3.06. Taxes and Reports. All tax returns and reports of the Company and Sponsors required by law to be filed in Bolivia, and each governmental subdivision thereof, have been duly filed, and all taxes, assessments, fees and other governmental charges due upon the Company, or upon any of its assets, income or franchises have been duly paid.

SECTION 3.07. Defaults. Neither the Company nor any other party is in breach of any provision of any contract to which the Company is a party which would have a materially adverse effect upon the Company's financial condition or ability to perform its obligations under this Agreement, any Note or any other Financing Document.

SECTION 3.08. Litigation. No action, suit, proceeding or investigation is pending by or before any domestic or foreign court or governmental authority or, to the knowledge of the Company after due inquiry is threatened, against the Company, or any of its properties or rights that, if adversely determined, is likely to materially adversely affect its financial condition or its ability to perform its obligations under this Agreement, any Note or any other Financing Document.

SECTION 3.09. Compliance with Law. The Company and Sponsors are conducting its business in compliance in all material respects with all applicable laws, regulations and authorizations of all relevant governmental authorities. The Company

has duly obtained all material consents, licenses, approvals and authorizations and has effected all declarations, filings and registrations necessary for the due execution, delivery and performance by the Company of this Agreement, the Notes and each of the other Financing Documents to which it is or will be a party, except for those relating to future operations and transactions which are expected to be obtained as a matter of course and those referred to in Section 4.06 hereof.

**SECTION 3.10. Disclosure.** All documents, reports or other written information pertaining to the Project (including, without limitation, this Agreement) which have been furnished to the Lender are true and correct and do not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained herein or therein not materially misleading.

#### ARTICLE IV CONDITIONS PRECEDENT FOR INITIAL ISSUANCE OF NOTES

Unless the Lender otherwise agrees in writing, the obligation of the Lender to make the first Disbursement of the Loan is subject to the prior fulfillment, to the Lender=satisfaction in its sole discretion, of the following conditions precedent and to their continued fulfillment on the first Disbursement Date:

**SECTION 4.01. Corporate Authorizations.** The Lender shall have received, in form and substance satisfactory to it, the following:

- (a) a copy of the Articles of Association as amended to date, of the Company certified as being a true copy by an Authorized Officer of the Company;
- (b) a certificate of an Authorized Officer certifying as true and in full force and effect a copy of the resolutions of the Board of Directors of the Company authorizing it to execute, deliver and perform this Agreement, the Notes and each of the other Financing Documents to which it is a party and to engage in the transactions herein contemplated and certifying the authority of the persons executing each of the Financing Documents; and
- (c) a certificate of an Authorized Officer of the Company, certifying the names, titles and specimen signatures of the persons who are authorized to execute and deliver on behalf of the Company this Agreement, the Notes, each of the other Financing Documents to which it is a party and all other notices or instruments contemplated hereunder.

**SECTION 4.02. Subordinated Loan Agreement Documents.** The Lender shall have received copies of each of the Subordinated Loan Agreement which shall have been duly executed by the parties to such agreement and which shall have been certified by an Authorized Officer of the Company as being true and complete and in full force and effect in accordance with its terms without default:

**SECTION 4.03. Project Completion Agreement.** The Lender shall have received a duly executed original copy of the Project Completion Agreement which is in full force and effect.

SECTION 4.04. Off-Take Agreement. The Lender shall have received a duly executed original copy of a satisfactory Off-Take Agreement with a credit-worth entity(ies) that has a letter of credit and a corporate guarantee in place.

SECTION 4.05. Operations and Maintenance Agreement. The Lender shall have received a duly executed original copy of a satisfactory Operations and Maintenance Agreement.

SECTION 4.06. Input Agreement. The Lender shall have received a duly executed original copy of a satisfactory Input Agreement.

SECTION 4.07. Security Arrangements. The Lender shall have received a duly executed original copy of each of the Security Documents, each of which shall be in full force and effect and have been duly filed and registered in every jurisdiction in which such filing and recording is necessary to make valid and effective the liens or security interests intended to be created thereby, and the rights of the Lender thereunder.

SECTION 4.08. Sponsor Investment. The Lender shall have received satisfactory evidence, including certificates of the Company's independent accountants and certified copies of relevant stock certificates, that the Veksel. Inc. has made fully paid-in capital contributions to the Company of at least US\$ 50.0 million and owns at least 50% of the Company's capital stock and has advanced funds to the Company of at least \$US 52.0 million under the Subordinated Loan Agreement.

SECTION 4.09. Government Approvals. The Lender shall have received copies certified by an Authorized Officer of the Company as true copies and in full force and effect of any registration, governmental consent or approval required or obtained in compliance with Section 3.09 or necessary for (i) registration of the Loan by the Central Bank of Bolivia; (ii) this Agreement, the Loan and the Note(s) and the payment of all amounts due or to become due with respect thereto not to be subject to any Taxes; and (iii) foreign exchange consents permitting the remittance of all amounts payable under this Agreement and approving the escrow arrangements referred to herein Section 6.11.

SECTION 4.10. Land. The Lender shall have received evidence satisfactory to it that the Company has acquired complete marketable title, subject to encumbrances permitted hereunder to land and the facilities therein necessary for the conduct of its business and the Project.

SECTION 4.11. Insurance. The Lender shall have received evidence in form and substance satisfactory to the Lender that the insurance required by Section 6.04 hereof is in full force and effect without default.

SECTION 4.12. Certain Appointments. The Lender shall have received evidence that the agents for service of process referred to in Section 8.03 hereof have been duly appointed and hold such appointments without reservation.

SECTION 4.13. Legal Opinions. The Lender shall have received written opinions dated the date of the initial issuance of Notes, each of which shall be in form and substance satisfactory to, (i) of their special legal counsel in Bolivia, and (ii) of the Company's legal counsel, each substantially in the form of Exhibit C hereto and (iii) of the Sponsors= legal counsel.

SECTION 4.14. Fixed Price Construction Contract. The Lender shall have received the fixed price contract for the construction of the Project between a contractor satisfactory to the Lender and the Company with detailed construction specifications in a satisfactory Engineering, Procurement, and Construction Agreement. This will include a satisfactory technical description and a satisfactory outlined scheduled, complete with Construction Milestones.

SECTION 4.15. Engineer Certification. The Lender shall have received a certification from an independent engineer satisfactory to the Lender that the Project has reached Mechanical Completion by satisfying the Physical Completion test specified herein Section 6.01(b).

SECTION 4.16. Escrow Arrangement. The Lender shall have received a duly executed original copy of the Escrow Account details of the Company within a financial institution in the U.S. satisfactory to the Lender.

## ARTICLE V CONDITIONS PRECEDENT TO DISBURSEMENTS

Unless otherwise agrees in writing, it shall be a condition precedent to the Company's right to each Disbursement (including the initial Disbursement), that each of the following conditions be satisfied on the date of any such Disbursement.

SECTION 5.01. Representations and Defaults. The representations and warranties set forth in Article IV hereof shall be true and correct on the date of such Disbursement, as if made on such date, and on such date, no Event of Default (as hereinafter defined), and no event or condition which with lapse of time or the giving of notice, or both, would constitute an Event of Default, shall exist.

SECTION 5.02. Change in Circumstances. At the time of each Disbursement, no circumstance or change of law or regulation of any governmental authority shall have occurred which in the Lender's reasonable judgment shall materially adversely affect the Company's financial condition or its ability to fulfill its obligations hereunder or under any Note.

SECTION 5.03. Certification. The Company shall have furnished the Lender with a certificate, in form and substance satisfactory to the Lender, signed by an Authorized Officer of the Company certifying the satisfaction of each of the conditions set forth in Section 5.01 hereof effective as of the requested date of such Disbursement and certifying that the proceeds of the Disbursement are presently needed for purposes of the Project, together with evidence satisfactory to the Lender indicating the purposes to which the funds to be disbursed will be applied.

SECTION 5.04. Notes. The Lender shall have received one or more duly executed Notes (as the Lender shall have requested) dated each Disbursement Date in the aggregate principal amount of the Loan disbursed on such Disbursement Date.

## ARTICLE VI AFFIRMATIVE COVENANTS

Unless the Lender otherwise agrees in writing, so long as the Commitment shall remain outstanding and until payment in full of all amounts due and to become due hereunder and under the Notes, the Company covenants and agrees as follows:

**SECTION 6.01. Project Completion.** (a) The Company shall construct and implement the Project promptly, apply the proceeds of the Loan exclusively to the Project and use its best efforts to cause the Completion Date to be achieved on or prior to November 30, 2012. The Company shall promptly, but no more than two business days, notify the Lender if the Company becomes unable to cause the Completion Date to occur by November 30, 2012 or meet its other obligations prior thereto. Following each disbursement of the Loan, the Company shall promptly cause such disbursed portion of the Loan to be duly registered with the Central Bank of Bolivia and furnish the Lender with a copy of each such registration.]

(b) The **ACompletion Date@** shall be deemed to mean and to occur on the date on which all of the following requirements have been satisfied:

(1) all buildings, equipment and facilities for the Project shall have been procured, constructed and installed, shall be in good working condition, and shall meet manufacturers' specifications and the terms of applicable construction agreements; and

(2) the Company shall have title free and clear of all liens and encumbrances (except for security interests permitted by the Loan Agreement) to all of the land and all buildings, equipment and facilities referred to above, and to all other facilities now or then known to be required for the Project; and

(3) the ratio of the Company's Current Assets to Current Liabilities shall then be no less than 2 to 1 and the Company's Current Assets shall exceed its Current Liabilities by at least US\$ 1.0 million; and, and shall then have a ratio of debt to equity not exceeding 1 to 1 without giving effect to any amount contributed as equity under the Project Completion Agreement.

(4) as of the date of the certificate no Event of Default or condition or event that, with the giving of notice or lapse of time, or both, would become an Event of Default, has occurred and is continuing; and

(5) the Company and an operator satisfactory to the Lender shall have duly executed a management agreement which is in full force and effect and the operator shall have certified its acceptance of the Project's physical structure; and

(6) the Company shall have furnished the Lender with a certificate in form and substance satisfactory to the Lender certifying that each of the requirements set forth in clauses (1) through (5) above have been satisfied; and

(7) following receipt of the certificate referred to in clause (6) above, the Lender shall have determined that the requirements set forth in clauses (1) through (5) above have been satisfied and shall have so notified the Company and the Sponsors in writing; provided, however, that the Lender shall have the right to make reasonable requests for additional information or documents from the Company or the Sponsors to substantiate the accuracy or completeness of such certificate referred to in clause (6); and provided, further, that, unless within 90 days following the Lender receipt of such certificate, the Lender notifies the Sponsors and the Company that such certificate is inaccurate or incomplete and sets forth the basis for such determination, the Completion Date shall be deemed to have occurred on the last day of such 90-day period.

**SECTION 6.02. Company Operations.** The Company shall perform its obligations under this Agreement, the Notes, and each other Financing Document to which it is a party. The Company shall, repair, replace and protect each of its assets so that its business can be conducted properly at all times.

**SECTION 6.03. Maintenance of Rights and Compliance with Laws.** The Company shall (i) maintain its corporate existence and its right to carry on its operations; (ii) whenever in its power to do so, acquire, maintain and renew all rights, contracts, powers, privileges, leases, lands, sanctions and franchises necessary for the conduct of its business and the performance of its obligations hereunder and under the other Financing Documents; (iii) conduct its business in compliance in all material respects with all applicable laws and directives of governmental authorities having force of law, including applicable environmental standards; and (iv) duly pay before they become overdue all taxes, assessments and other government charges levied or imposed in any jurisdiction upon its property, earnings or business, except amounts being contested in good faith by appropriate proceedings diligently pursued for which adequate reserves have been established.

**SECTION 6.04. Insurance.** The Company shall obtain from insurance companies satisfactory to the Lender and at all times maintain in force such political risk, marine, fire and property insurance, and public liability, worker's compensation and other insurance on its property and business as is in accordance with good commercial practice in the United States and Bolivia; shall name the Lender as the sole loss payee in such insurance policies; shall furnish, or cause to be furnished, to the Lender a certificate as to each such insurance policy within 30 days after its execution and evidence of each renewal thereof within 30 days prior to its expiration date; and promptly shall reimburse the Lender in United States.

**SECTION 6.05. Accounting.** The Company shall maintain a system of accounting and prepare its annual Financial Statements in accordance with accounting principles generally accepted in the United States and consistently applied, shall engage \_\_\_\_\_ or other independent internationally-recognized accountants satisfactory to the Lender and, upon the Lender's reasonable requests to the Company, shall instruct them to communicate directly with the Lender regarding the Company's accounts and operations.

**SECTION 6.06. Financial Statements and Other Information.** At its cost the Company shall furnish to the Lender each of the following documents:

- (a) Within 15 days after the end of each of its first three fiscal quarters of each fiscal year, its unaudited Financial Statements, certified by its principal financial officer together with his certificate that his review has not disclosed the existence of an Event of Default, or an event which with the passage of time or the giving of notice, or both, would constitute an Event of Default, or, if any such event then exists, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto;
- (b) Within 30 days after the end of each fiscal year, its audited Financial Statements together with a certificate by the independent accountants reporting thereon describing briefly the scope of their examination (which shall include a review of the relevant terms of this Agreement) and certifying whether their examination has disclosed the existence of an Event of Default, or an event which with the passage of time or the giving of notice, or both, would constitute an Event of Default, and if so, specifying the nature and period of existence thereof;
- (c) Until the occurrence of the Completion Date, a report within 30 days after the end of each fiscal quarter certified by an Authorized Officer and the Independent Engineer satisfactory to the lender setting forth in reasonable detail the progress of the Project including expenditures of funds, estimated future costs, unexpended funds available to the Company, the progress and percentage of completion of major phases of and the total construction work and the acquisition of fixtures and equipment;
- (d) Not later than 30 days prior to the beginning of each fiscal year, an annual operating forecast including its projected quarterly Financial Statements for such year together with a statement of the assumptions on which such forecast is based;
- (e) Copies of all other annual or interim audit reports submitted to the Company by its independent accountants and such other information and data with respect to its operations (including supporting information as to compliance with this Agreement) as the Lender may request from time to time.

**SECTION 6.07. Access to Books; Inspection; Meetings.** The Company shall, upon request of the Lender, give, or cause to be given to, any representatives of the Lender access during normal business hours within the U.S. and Bolivia, to, and permit them to examine, copy and make extracts from, any and all records and documents in the possession or subject to the control of the Company relating to its operations and financial affairs, and to inspect any of its facilities or properties. Subject to all applicable law, the Lender shall treat the information contained in such records and documents or otherwise received from the Company, as confidential information not to be disclosed to other parties.

**SECTION 6.08. Notice of Default and Other Matters.** The Company shall immediately notify the Lender of (i) the occurrence of each Event of Default and of each event known to any of its officers which, upon the giving of notice, the lapse of time or both, would become an Event of Default, (ii) any lawsuits against the Company which involve claims aggregating more than the equivalent of \$500,000.00, and (iii) the occurrence of any other condition or event (including government action) which is likely

to materially adversely affect the Company's financial condition or its ability to perform its obligations under any of the Financing Documents.

SECTION 6.09. Security Documents. The Company at its cost shall take all actions necessary to maintain each of the Security Documents in full force and effect and enforceable in accordance with its terms, including all (i) filings and recordations, (ii) payments of fees and other charges, (iii) issuance of supplemental documentation, (iv) discharge of all claims or other liens adversely affecting rights of the Lender in the property subject to any Security Document, (v) publication or other delivery of notice to third parties, and (vi) deposit of title documents.

SECTION 6.10. Working Capital. After the Completion Date, the Company shall maintain as of the last day of each fiscal quarter the ratio of its Current Assets to Current Liabilities of not less than 1.5 to 1.

SECTION 6.11. Escrow Account. The Company shall maintain an escrow account in a financial institution in the U.S. satisfactory to the Lender into which all foreign exchange revenues of the Company shall be paid and shall maintain on deposit in such account at all times an amount equal to debt service due on the Senior Loan during the following six-month period.

SECTION 6.12. Offtaker Assignment. The Company shall assign all rights under the Offtaker agreement and letter of credit arising thereunder to the Lender and shall maintain an account (the Revenue Account) in a financial institution in the U.S. (the Security Agent) satisfactory to the Lender into which all payments under the Offtaker Sales Agreement are made.

SECTION 6.13. Cash flow Waterfall. The Company shall direct the Security Agent on each payment arising under the Offtaker Sales Agreement to cause the following transfers from the Revenue Account:

- 1 Whenever sufficient funds exist within the Revenue Account all payments must initially be made to the Security Agent for fees incurred for services related to the Revenue Account; and
- 2 If sufficient funds to pay fee to the Security Agent and such payment is made from the Revenue Account, all funds sufficient to pay operating expenses of the company, including but not limited to expenses incurred under the management agreement, engineering, procurement and construction contracts and insurance premiums, shall be made immediately; and
- 3 if sufficient funds to pay the operating expenses of the Company and such payment is made from the Revenue Account, all funds sufficient to pay all fees, interests and payments owing to the Lender under this Agreement shall be made immediately into the respective accounts; and
- 4 if sufficient funds to pay the fees, interests and payments owing to the Lender and such payment is made such that the debt service account has on deposit an amount equal to the debt service due on the Senior Loan during the following twelve-month period, all funds sufficient to pay for all reasonably foreseeable extraordinary maintenance and repairs of capital equipment as determined by the operator satisfactory to the lender on a yearly basis; and
- 5 if sufficient funds to pay for all reasonably foreseeable extraordinary maintenance and repairs of capital equipment as determined by the operator as denoted above are in the Revenue Account, any amount above such funds shall be utilized to

make interest and principal payments for the subordinated loan for the following twelve-month period; and

6 if sufficient funds to pay for the interest and principal payments of the subordinated loan for the following twelve month period are in the Revenue Account, any amount above such funds may be utilized for equity distributions in accordance with Section 7.04 of this Agreement.

## ARTICLE VII NEGATIVE COVENANTS

Unless the Lender otherwise agree in writing, so long as the Commitment shall remain outstanding and until payment in full of amounts due or to become due hereunder and under the Notes, the Company covenants and agrees as follows:

**SECTION 7.01. Mortgages and Liens.** The Company shall not create, assume or otherwise permit to exist any mortgage, encumbrance, or lien on, or other security interest in, any of its properties or assets, whether now owned or hereafter acquired, or in any proceeds or income therefrom, except for (i) the liens and encumbrances created under the Security Documents or pursuant to any of the other Financing Documents; (ii) liens or encumbrances for taxes or other statutory liens which are being contested or litigated in good faith; (iii) any mechanic's, workmen's or other like liens arising by mandatory provision of law securing obligations incurred in the ordinary course of business which are not yet overdue or which are being contested or litigated in good faith; and (iv) liens or encumbrances not ranking prior to or pari passu with the liens and encumbrances arising under the Security Documents which secure Indebtedness allowed under Section 7.02(c) hereof incurred in the ordinary course of business.

**SECTION 7.02 Indebtedness.** The Company shall not incur, assume, guarantee, or permit to exist or otherwise become liable for Indebtedness except:

- (a) the Loan;
- (b) Indebtedness subordinated to the Loan arising under the Project Completion Agreement;
- (c) Indebtedness consisting of trade credit from suppliers of goods or services incurred in the ordinary course of business and on terms requiring payment in full in not more than 90 days; and in the amount of no more than \$500,000.
- (d) Indebtedness which, when incurred, will not cause the Company's ratio of Indebtedness, excluding Indebtedness referred to in clause (b) of this Section, to Tangible Net Worth to exceed 2 to 1.

**SECTION 7.03. No Alteration of Agreements.** The Company shall not terminate, amend or grant any waiver of, or assign any of their respective duties or obligations under, any provision of any of the Financing Documents to which it is a party (other than amendments or waivers to correct manifest error or which are of a formal, minor or technical nature and do not change materially any party's rights or obligations).

**SECTION 7.04. Dividends.** The Company shall not declare or pay any dividends or make any other distributions on any shares of any class of its capital stock (other than dividends payable solely in shares of its capital stock), or purchase, acquire, redeem or retire (directly or indirectly through any subsidiary of the Company) any of such shares; provided, however, that following the Completion Date the Company may pay cash dividends on such shares in any of its fiscal years if, (i) after giving effect to each such dividend (x) the ratio of the Company's Indebtedness to its Tangible Net Worth does not exceed 1.5 to 1, (y) its Tangible Net Worth is not less than \$100.0 million; and (z) the aggregate amount of all such dividends paid in such fiscal year does not exceed 50% of Net Income for the preceding fiscal year, unless the Company shall have made a mandatory prepayment of the Loan in an amount equal to such excess as provided for in Section 2.07(i) hereof; and (ii) no Event of Default, or event which, with the passage of time or giving of notice or both, would constitute an Event of Default, exists or would be caused by the distribution of any such cash dividend.

**SECTION 7.06. Sale of Assets, Mergers.** The Company shall not (a) sell, assign, convey, lease or otherwise dispose of any of its assets or any part of its assets or properties, unless with the written consent of the Lender whether now owned or hereafter acquired, except for the replacement of a capital asset with an asset of equal or greater value; (b) dissolve, liquidate or otherwise cease to do business; (c) acquire by purchase or otherwise all or substantially all of the shares of capital stock or assets of another entity; (d) merge or consolidate with any entity.

**SECTION 7.08. Ordinary Conduct of Business.** The Company shall not:

- (a) engage in any business other than its present business activities, those related to the Project and other activities similar thereto;
- (b) materially change the nature or scope of the Project;
- (c) change its Articles of Association, in a manner which would be inconsistent with the provisions of any of the Financing Documents;
- (d) enter into any partnership, profit-sharing or royalty agreement or other similar arrangement whereby the Company's income or profits are, or might be, shared with any other person; or
- (e) purchase any equity securities of, make or permit to exist any loans or advances to, invest or acquire any interest whatsoever in, or assume, guarantee, endorse or otherwise become directly or contingently liable for any obligation or Indebtedness of any person or entity, other than the endorsement of negotiable instruments for collection in the ordinary course of business and the secure investment of idle surplus funds in readily marketable U.S. dollar-denominated debt securities.

## ARTICLE VIII DEFAULTS AND REMEDIES

**SECTION 8.01. Events of Default.** The occurrence and continuation of any of the following events or circumstances shall constitute an **AEvent of Default@** hereunder:

- (a) The Company fails to pay when due any principal or interest payable pursuant to any Note or any other amount payable pursuant to this Agreement;
- (b) The Company fails to pay when due any principal of or interest on any of its Indebtedness, for borrowed money or guarantees of borrowed money, and such failure shall continue beyond the grace period, if any, applicable thereto; or a default occurs under any agreement or instrument evidencing or under which the Company has outstanding at the time any such Indebtedness and such default shall continue beyond the grace period, if any, applicable thereto, if the effect of such default is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness; or
- (c) Any representation or warranty made by or on behalf of the Company in this Agreement, or in any notice or other certificate, document or financial or other statement delivered pursuant hereto shall prove to have been incorrect in any respect when made; or
- (d) The Company fails to comply with any covenant or provision set forth in Article VII hereof, or the Sponsor fails to perform their obligations under the Project Completion Agreement; or
- (e) The Company fails to comply with or perform any agreement or covenant contained herein other than those referred to in Sections 8.01(a), (b), (c) and (d) above, and such failure continues for 15 days after the Lender has notified the Company thereof; or
- (f) Any authorization, consent or approval of any governmental agency or public authority necessary for the execution, delivery or performance of this Agreement, the Notes, or any of the other Financing Documents or for the validity or enforceability of any of the Company's obligations under this Agreement, the Notes or the other Financing Documents, shall not be effected or given or shall be withdrawn or cease to remain in full force and effect; or
- (g) This Agreement, the Notes or any of the other Financing Documents at any time for any reason ceases to be in full force and effect or is declared to be void or is repudiated or the validity or enforceability hereof or thereof is at any time contested by the Company, or, in the case of the Security Documents, ceases to give or provide the respective liens, security interest, rights, titles, remedies, powers or privileges intended to be created thereby; or
- (h) Any governmental authority condemns, nationalizes, seizes or otherwise expropriates any substantial portion of the assets or the capital stock of the Company or takes any action that would prevent the Company from carrying on any material part of its business or operations or reaching project completion; or
- (i) The Company or any other party fails to comply with or perform any of its material obligations or undertakings set forth in any Financing Document (other than this Agreement and the Project Completion Agreement) and such failure continues for 30 days after the Lender has notified the Company therefore

(j) The Company, or, any Sponsor or any successor in interest thereto shall (i) apply for or consent to the appointment of a receiver, trustee, custodian, intervenor or liquidator of itself or of all or a substantial part of its assets, (ii) file a voluntary petition in bankruptcy, admit in writing that it is unable to pay its debts as they become due or generally not pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) file a petition or answer seeking reorganization or arrangement with creditors or to take advantage of any bankruptcy or insolvency laws, (v) file an answer admitting the material allegations of, or consent to, or default in answering, a petition filed against it in any bankruptcy, reorganization or insolvency proceeding where such action or failure to act will result in a determination of bankruptcy or insolvency against such entity; or

(k) Without its application, approval or consent, a proceeding shall be instituted in any court of competent jurisdiction or by or before any government or governmental agency of competent jurisdiction, seeking in respect of the Company or, prior to the Completion Date, any Sponsor or any successor in interest thereto: adjudication in bankruptcy, reorganization, dissolution, winding up, liquidation, a composition or arrangement with creditors, a readjustment of debt, the appointment of a trustee, receiver, liquidator or the like of it or of all or any substantial part of its property or assets, or other like relief in respect of it under any bankruptcy, reorganization or insolvency law; and, if such proceeding is being contested by it in good faith, the same shall continue undismissed for a period of 60 days; or

(l) Any final judgment(s) for the payment of money in excess of the sum of \$ US 1.0 million or its equivalent in another currency in the aggregate shall be rendered against Company, and such judgment or judgments shall not be satisfied or discharged within 60 days of entry; or

(m) Any sponsor ceases to own at least 50% of the issued and outstanding shares of the capital stock of the Company or ceases to retain management control of the Company.

**SECTION 8.02. Remedies upon Event of Default.** If any Event of Default has occurred and is continuing, the Lender may at any time in its sole discretion, (i) suspend or terminate the Commitment, (ii) declare, by written demand for payment to the Company, any portion or all of the outstanding principal amount of the Loan to be due and payable whereupon such portion of the Loan shall immediately mature and become due and payable together with interest accrued thereon, without any other presentment, demand, diligence, protest, notice of acceleration, or other notice of any kind, all of which the Company hereby expressly waives, and/or (iii) without notice of default or demand, proceed to protect and enforce its rights and remedies by appropriate proceedings, whether for damages or the specific performance of any provision of this Agreement or any Note, or in aid of the exercise of any power granted in this Agreement, any Note or by law, or may proceed to enforce the payment of any Note.

**SECTION 8.03. Jurisdiction and Consent to Suit.** Without prejudice to the rights of the Noteholders or the Lender to bring suit in the courts of Bolivia or any other jurisdiction, any proceeding to enforce this Agreement or any Note may be brought in the any court of competent jurisdiction in the State of New York. The Company hereby irrevocably waives any present or future objection to such venue and irrevocably

consents and submits unconditionally to the non-exclusive jurisdiction for itself and in respect of any of its property of any such court. The Company further irrevocably waives any claim that any such court is not a convenient forum for any such proceeding. The Company agrees that any service of process, writ, judgment or other notice of legal process shall be deemed and held in every respect to be effectively served upon it in connection with proceedings in New York if delivered to CT Corporation System in New York, New York, which it irrevocably designates and appoints as its authorized agent for the service of process in New York. Nothing herein shall affect the right of any Noteholder or the Lender to serve process in any other manner permitted by applicable law. The Company further agrees that final judgment against it in any such action or proceeding arising out of or relating to this Agreement or any Note, shall be conclusive and may be enforced in any other jurisdiction within or outside the United States of America by suit on the judgment, a certified or exemplified copy of which shall be conclusive evidence of the fact and of the amount of its indebtedness.

## ARTICLE IX MISCELLANEOUS

SECTION 9.01. Notices. Each report, notice and other communication to be given under this Agreement or the Notes shall be in writing in the English language, be delivered by hand, mail, telegram, or telex, postage prepaid, and be deemed to have been duly given when received by the addressee as follows:

To the Company:

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To Lender:

(Attn: Treasurer)

Any party by written notice to the others may change the address to which such communications should be sent to it.

SECTION 9.02. Governing Law; Descriptive Headings. This Agreement and the Notes shall be construed and enforced in accordance with the laws of New York without regard to its conflict of laws provisions. The headings in this Agreement are for the purpose of reference only and do not limit or affect its meaning.

SECTION 9.03. Succession. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto, provided that the Company shall not, without the prior written consent of the Lender assign or delegate all or any part of its interest or obligations hereunder.

SECTION 9.04. Survival of Agreements. Each agreement, representation and warranty contained or referred to in this Agreement shall survive any investigation at any time

made by the Lender and the disbursement of the Loan, except for changes permitted hereby, and shall terminate only when all amounts due or to become due under this Agreement and the Notes are paid in full.

SECTION 9.05. Integration, Amendments. This Agreement embodies the entire understanding of the parties hereto, and supersedes all prior negotiations, understandings and agreements between them with respect to the subject matter hereof. The provisions of this Agreement may be waived, supplemented or amended only by an instrument in writing signed by duly authorized representatives of the Company and the Lender

SECTION 9.06. No Waiver. No course of dealing and no failure or delay by the Lender in exercising any right, power or remedy hereunder shall operate as a waiver thereof or otherwise prejudice the Lender= rights, powers or remedies. No right, power or remedy conferred upon the Lender hereby or by any Note shall be exclusive of any other right, power or remedy referred to herein or therein or now or hereafter available at law, in equity, by statute or otherwise.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and delivered on its behalf by its duly authorized representative on the date first above written.

SANTA CRUZ POWER & LIGHT S.A.

By

Name:  
Title:

WCL BANK, N.A.

By

Name:  
Title:

## EXHIBIT A

No.

### PROMISSORY NOTE

U.S. \$378.0M      October 23, 2012

FOR VALUE received, Santa Cruz Power & Light S.A.(the ACompany@), a corporation organized and existing under the laws of Bolivia, hereby promises to pay to the order of WCL Bank, N.A., an agency of the United States of America, the principal sum of Three hundred and Seventy Eight Million United States dollars (U.S. \$378.0) in the following installments and at the following times:

<u>Payment Date</u>	<u>Amount</u>	<u>Payment Date</u>	<u>Amount</u>
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The Company shall pay interest to the order of on the principal amount hereof outstanding and unpaid from and including the date hereof until payment in full (i) on each day following the three months the preceding of each year, commencing with the first such date after the date hereof, at the rate of two point thirty-five percent (2.35%) per annum; and (ii) with respect to any principal and/or interest not paid when due, on the last day of each month succeeding such due date and on the date when such defaulted amount is paid in full, at the rate of one percent (2%) per annum (in lieu of the interest rate referred to above), accruing from the date on which such amount became due and payable (whether at stated maturity, by acceleration, or otherwise).

Interest shall accrue and be computed on the basis of 360-day years consisting of twelve 30-day months. Principal, interest and premium are payable in United States dollars, without offset or deduction of any kind for taxes or otherwise, at the office of, New York, New York 10019 U.S.A., or at such other place as the holder hereof shall designate to the Company in writing.

This Promissory Note is one of a series of promissory notes issued or to be issued in the principal amount of up to U.S. \$378.0 pursuant to a loan agreement dated October 23, 2012 between the Company and the Lender (the ALoan Agreement@), and is entitled to the benefits thereof. The holder of this Promissory Note may enforce the agreements of the Company contained in the Loan Agreement and may exercise the remedies provided for therein or otherwise available at law or in equity.

The Company at its option and subject to the terms of the Loan Agreement and the payment of a premium may prepay, and upon the occurrence of certain events shall

prepay, all or part of the principal of this Promissory Note in the inverse order of its maturity, together with interest accrued thereon, as set forth in the Loan Agreement.

Upon the occurrence of an Event of Default as defined in the Loan Agreement, the principal of this Promissory Note and interest then accrued hereon may be declared to be forthwith due and payable as provided in the Loan Agreement. This Promissory Note may be enforced in any court or other tribunal having jurisdiction hereof, and the Company shall pay to the holder hereof on demand such amount in United States dollars as shall be sufficient to pay the enforcement costs and expenses of such holder, including without limitation attorneys' fees and expenses.

No reference herein to the Loan Agreement and no provision of this Promissory Note or the Loan Agreement shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of (and the premium, if any) and interest on this Promissory Note as provided herein.

Without prejudice to the rights to bring suit in the courts of Bolivia or any other jurisdiction, any proceeding to enforce the Loan Agreement, this Promissory Note or related rights may be brought in any court in the State of New York; provided, however, that any such proceeding against may be brought only in the State of New York in the United States District Court. The Company hereby waives any present or future objection to such venue, and irrevocably consents and submits to the non-exclusive jurisdiction in personam of any such court. The Company has irrevocably designated and appointed CT Corporation System as its authorized agent to receive, accept and acknowledge on its behalf service of process in any such proceeding, and it agrees that service of process upon said agent shall be deemed and held in every respect to be valid personal service upon it. The Company shall maintain such appointment (or that of a successor satisfactory to the Lender) continuously in effect at all times while the Company is indebted hereunder.

This Promissory Note shall be construed and enforced in accordance with the laws of New York without regard to its conflict of laws provisions.

IN WITNESS WHEREOF, the Company acting by its duly authorized representative has caused this Promissory Note to be executed and delivered to the Lender on the date first above written.

SANTA CRUZ POWER & LIGHT, S.A.

By

Name:  
Title: