

GUARANTY

This Guaranty (this "**Guaranty**") is made to be effective as of June 17, 2008 by CIM FUND III, L.P., a Delaware limited partnership (the "**Guarantor**") in favor of THE CITY OF AUSTIN, a Texas home rule city and municipal corporation (the "**City**").

RECITALS:

A. SEAHOLM POWER DEVELOPMENT, LLC, a Delaware limited liability company ("**Seaholm**") has entered into that certain Master Development Agreement with the City dated of even date herewith (the "**MDA**") and will enter into a Special Warranty Deed (the "**Deed**") and one or more Ground Leases with the City (collectively the "**Ground Lease**") as contemplated in the MDA.

B. Guarantor will benefit by the execution of each of the MDA and the Ground Lease.

C. As a condition to entering into each of the MDA and the Ground Lease, the City requires Guarantor to guaranty certain obligations of Seaholm to the City.

D. Capitalized terms used herein but not defined shall have the meanings assigned to such terms in the MDA.

For good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, Guarantor agrees as follows:

1. Guarantor unconditionally guarantees unto the City the prompt and complete payment when due of:

(a) any and all liabilities, losses, costs, damages, expenses, claims, reasonable attorneys' fees, experts' fees, and consultants' fees incurred by the City as a result of:

(i) Seaholm's generation, handling, treatment, transportation, manufacture, processing, distribution, use, storage or disposal of any material classified by an environmental law as a "hazardous substance," "hazardous material," "hazardous waste," "acutely hazardous", "extremely hazardous waste," "infectious waste," "toxic substance," "toxic pollutant" or any other formulation intended to define, list, or classify substances by reason of deleterious properties (excluding, however, the environmental obligations that are the obligation of the City as specifically set forth in MDA, the Ground Lease and/or the Deed);

(ii) Seaholm's commission of any criminal act, fraud or misrepresentation by, or for the benefit of, Seaholm in connection with the MDA or the Ground Lease;

(iii) insurance proceeds which are received by or on behalf of Seaholm and which are not applied as required under the terms of the MDA or the Ground Lease;

(iv) Seaholm's failure to maintain the insurance required by the provisions of the MDA and the Ground Lease;

(v) the existence of any mechanic's, materialman's, tax or other similar lien filed against the Property as the result of an act or omission of Seaholm;

(vi) Seaholm's failure to pay any taxes or assessments concerning the Property;

(vii) the Property, or any part thereof, becoming an asset in a bankruptcy or insolvency proceeding regarding Seaholm; provided, however, that the guaranty obligation of Guarantor under this subsection shall only extend to reasonable attorneys' fees, expert witness fees and consultants' fees incurred by the City as a result thereof (and no other liabilities, losses, costs, damages, expenses or claims of any kind), and provided, further, that, this subsection shall not apply if an involuntary bankruptcy is filed by the City;

and, following the occurrence of a Major Event of Default, the performance of the following obligations:

(b) following Commencement of Construction by Seaholm, to complete and to pay the cost of Completion of Construction of the Improvements;

(c) following Commencement of Construction by Seaholm, to pay all expenses, charges, costs and fees of or relating to the requirements of (b) above, including, without limitation, all permitting fees, licensing fees, utility expenses, insurance expenses, penalties, charges and amounts payable to all architects, engineers, construction managers, contractors, subcontractors, tenants and material suppliers engaged in connection with any of the foregoing;

each in accordance with the terms of the MDA and the Ground Lease (the obligations in (b) and (c) above, collectively, the "**Completion Obligations**" and the obligations in (a), (b) and (c) above, collectively, the "**Guaranteed Obligations**"); provided, that, notwithstanding the foregoing or any provision express or implied of this Guaranty to the contrary, in no event may the City enforce the Completion Obligations at any time prior to the Commencement of Construction by Seaholm.

2. If a Major Event of Default occurs (taking into account any applicable grace, notice or cure period), then upon the earlier to occur of a written request of the City or at the written election of the Guarantor, the Guarantor shall have the right to elect by written notice to the City (the "**Completion Election Notice**") within 30 days following such written request to either:

(a) Perform the Completion Obligations. If, in the reasonable judgment of the Guarantor, the Dry-In Condition (as defined in the Deed and the Ground Lease, as applicable) cannot be achieved by the Guarantor on or before the Dry-In Condition Date (as defined in the Deed and the Ground Lease, as applicable), the Guarantor shall propose in writing to City a new Dry-In Condition Date (together with evidence reasonably

substantiating such new date). If the proposed replacement Dry-In Condition Date is not approved by City (in its reasonable discretion) within 10 days following such written request, Guarantor and City shall work together during the following 10 days to agree upon the Dry-In Condition Date. If at the expiration of such second 10 day period, the parties still do not agree on the Dry-In Condition Date, Guarantor or City may make an Arbitration Demand that such Issue be resolved by an Arbitrator through a binding arbitration process (as the terms "Arbitration Demand" and "Issue" and as the arbitration process is provided for in the Deed and the Ground Lease, as applicable).

If Guarantor shall elect to perform the Completion Obligations pursuant to such Completion Election Notice, then the City shall not have the right to enforce (and shall be barred from enforcing) its remedy or right to:

(i) repurchase the Property under the MDA or the Deed;

(ii) seek to or to enforce its rights or remedies under MDA Sections 10.2(a), 10.2(e), 10.2(f), 10.2(g) (limited solely to construction/reimbursement obligations) and 10.2(h), or

(iii) enforce the corresponding similar rights under the Deed and the Ground Lease,

notwithstanding the prior occurrence or continuance of any Event of Default or Major Event of Default under the MDA or any of the Exhibits to the MDA, provided, however, that:

(x) the City shall have and retain all other rights and remedies against Seaholm under MDA Sections 10.2(b), 10.2(c), 10.2(d), 10.2(g) (limited to nonconstruction/nonreimbursement obligations) and the exhibits to the MDA concerning any past and future Event of Default thereunder (excluding, however, rights and remedies attendant to any Major Event of Default that resulted in the Completion Election Notice), with the foregoing limitation and exclusion equally applicable to the rights of the City under MDA Section 9.2 solely with respect to the other provisions listed in this paragraph (e.g., the City may not enforce liquidated damages under MDA Sections 10.2(d) or 9.2 of the MDA), and

(xi) if Guarantor shall default in the performance of the Completion Obligations in accordance with the applicable terms of the MDA and the Exhibits to the MDA (subject to all grace periods, and notice and cure rights therein contained with respect to such terms), then the right of the City to so enforce such barred rights and remedies thereupon shall be reinstated (and no remedy will be limited) with respect to any such Event of Default, or

(xii) if Guarantor shall Transfer its interest in the Property, then the right of the City to so enforce such barred rights and remedies thereupon shall be reinstated (and no remedy will be limited) with respect to any such Event of Default.

In furtherance and not in limitation of the foregoing, Guarantor shall have the right by any suit or action at law or in equity to stay any effort by the City to enforce any right or remedy barred by operation of this Section 2(a).

(b) Pay to the City a liquidated damages payment (the “**Liquidated Damages Payment**”) equal to the sum of: (i) the aggregate amount of all Incentives paid by the City to Seaholm or Guarantor, *plus* (ii) \$1,000,000. The Liquidated Damages Payment shall be paid to the City within 10 days following the date of the Completion Election Notice. The Liquidated Damages Payment shall be retained by the City as liquidated damages, and not as a penalty, the parties agreeing the estimation of the damages concerning a failure to complete construction would be difficult to compute. If Guarantor elects to pay the Liquidated Damages Payment, neither Seaholm nor Guarantor shall have any claim, right, title or interest to the value of any work completed on the Property (except for any Repurchase Price payable by the City under a repurchase of the Property as provided for in the Deed or the Termination Price payable by the City under a termination of the Ground Lease as provided in the Ground Lease).

If Guarantor fails to deliver the Completion Election Notice, Guarantor will be deemed to have elected option 2(b) and the Completion Election Notice will be deemed to be given on the date which the Completion Election Notice was due.

If Guarantor elects, or is deemed to elect, option 2(b) above and title to the Property is held by Seaholm or Guarantor, in lieu of receiving the \$1,000,000 payment in subsection 2(b)(ii) above, the City may elect in writing within 30 days following the date of the Completion Election Notice to have Guarantor raze (or caused to be razed) all existing improvements on the Property (other than the Power Plant Improvements) and level, clear, clean, and otherwise put the applicable portion of the Property in good order and in a safe condition, all of which must be completed within 180 days following the date of the Completion Election Notice. If the City fails to deliver the election required by this paragraph, the City will be deemed to elect NOT to have Guarantor raze the improvements.

If Guarantor elects or is deemed to elect option 2(b) above, then, upon full payment of the Liquidated Damages Payment (and, if applicable, the razing of such improvements):

(aa) the obligation of the Guarantor hereunder to perform the Completion Obligations thereupon shall terminate and expire, and

(bb) the City thereupon shall have no further rights or remedies against Seaholm under:

(i) Sections 9.2 (except with respect to Pending Claims) and 10.2 of the MDA, but specifically excluding the rights of indemnity/hold harmless with respect to Pending Claims, reconveyance, termination and assignment contained therein (and specific performance in connection with such rights),

(ii) the Deed, but specifically excluding the right of reconveyance (and specific performance in connection with such right), and

(iii) the Ground Lease but specifically excluding the rights of

termination and indemnity/hold harmless with respect to Pending Claims (and specific performance in connection with such right).

The City expressly retains its rights and remedies under Section 1(a) hereof. As used in this Section 2(bb), the term "Pending Claims" means a third party "Claim" (i.e., a claim by a third party against "Indemnitee" for which Seaholm is obligated to indemnify and hold harmless such Indemnitee) under Section 9.2 of the MDA or Section 12.4 of a Ground Lease of which the City has received notification either by notice of a filed Claim or written notice of a threatened Claim on or before the payment date of the Liquidated Damages Payment.

The foregoing provisions of this Section 2 shall supersede any provision express or implied to the contrary of this Guaranty, the MDA (other than the Mortgagee protections and seniority provisions of the MDA Section 12.5), the Declaration, the Ground Lease or the Deed.

3. Subject to the limitations set forth in Sections 1 and 2 above, the obligations under this Guaranty are unconditional and absolute, and if for any reason all or any portion of the Guaranteed Obligations is not paid or performed promptly when due (follow the expiration of any applicable grace, notice or cure period), Guarantor will immediately pay the same to the City or commence performance, as the case may be, regardless of any defense, right of setoff or counterclaim which Seaholm may have or assert, and regardless of whether the City has taken any steps to enforce any rights against Seaholm or any other entity to collect such sum, and regardless of any other condition or contingency.

4. Subject to the limitations set forth in Sections 1 and 2 above, the obligations, covenants, agreements and duties of Guarantor under this Guaranty will in no way be affected or impaired by reason of: (a) the release or waiver, by operation of law or otherwise, of the performance or observance by Seaholm or any co-guarantor, surety, endorser or other obligor of any express or implied agreement, covenant, term or condition to be performed or observed by such party, (b) the extension of the time for the payment or performance of all or any portion of the Guaranteed Obligations, (c) the supplementing, modification or amendment (whether material or otherwise) of the obligations of Seaholm, Guarantor or any surety for Seaholm, (d) any failure, omission, delay or lack of diligence on the part of the City, or any other person or entity, to enforce, assert or exercise any right, privilege, power or remedy conferred on the City or any other person or entity, or any action on the part of the City or such other person or entity granting indulgence or extension of kind, (e) the release, modification, waiver or failure to enforce any guaranty, surety or indemnity agreement whatsoever, (f) the release, modification, waiver or failure to enforce any right, benefit, privilege or interest under any contract or agreement at any time when Seaholm is the developer under the MDA, (g) the voluntary or involuntary liquidation, dissolution, sale of any collateral, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or deficiency readjustment of debt of, or other similar proceedings affecting Seaholm or any other surety for Seaholm or any of the assets of Seaholm, (h) any invalidity of or defect or deficiency in the MDA or a Ground Lease, (i) the settlement, compromise or subordination of any obligation guaranteed hereby or hereby incurred, (j) the bankruptcy, insolvency or dissolution of Seaholm (even though the same shall render the Guaranteed Obligations void or unenforceable or uncollectible, in whole or in part, as against Seaholm), or (k) any other circumstance that might otherwise constitute a defense available to, or

discharge of Seaholm or Guarantor, except a City Event of Default and/or payment and performance of the Guaranteed Obligations.

5. This is an absolute guaranty of payment and not of collection, and Guarantor waives any right to require that any action be brought against Seaholm or any other person or entity. This Guaranty is an absolute and unconditional guaranty of the payment and performance of the Guaranteed Obligations, is irrevocable and will continue in full force and effect until payment and performance in full of the Guaranteed Obligations.

6. Guarantor represents and warrants to the City that: (a) Guarantor is duly organized, legally existing and in good standing under the laws of the state of its organization, (b) this Guaranty has been duly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor enforceable in accordance with its terms (subject to applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws and equitable principles generally affecting creditors' rights); (c) the execution, delivery and performance of this Guaranty (i) do not and will not violate any agreement, certificate or instrument by which Guarantor or its property may be bound, (ii) to the knowledge of Guarantor, do not and will not violate or conflict with any law, governmental rule or regulation or any judgment, writ, order, injunction, award or decree of any court, arbitrator, administrative agency or other governmental authority applicable to Guarantor or any indenture, mortgage, contract, agreement or other undertaking to which Guarantor is a party, and (iii) do not and will not require any consent of any other person or entity or any consent, license, permit, authorization or other approval of, registration with, any giving of notice to or any exemption by, any court, arbitrator, administrative agency or other governmental authority, which has not been obtained, (d) there is no action, suit or proceeding pending or, to the knowledge of Guarantor, in writing threatened against or affecting Guarantor before any court or administrative agency which might result in any material adverse change in the business or financial condition of Guarantor, (e) all financial statements supplied to the City by or on behalf of Guarantor prior to the execution of this Guaranty are true and complete in all material respects and fairly represent the financial condition of the subject thereof as of the dates thereof and for the periods then ended, (f) all financial statements furnished to the City by or on behalf of Guarantor will be true and complete in all material respects and fairly represent the financial condition of the subject thereof as of the dates thereof and for the periods then ended, (g) no material adverse change has occurred in the financial condition reflected in such financial statements since the respective dates thereof, (h) Guarantor is not in default with respect to any order, writ, injunction, decree or demand of any court or other governmental authority, or in the payment of any indebtedness for borrowed money or under the terms or provisions of any agreement or instrument evidencing or securing any such indebtedness, and (i) the execution and delivery of this Guaranty to the City will directly or indirectly benefit Guarantor.

7. At the request of the City, Guarantor shall deliver to an advisor designated by the City in writing ("**Advisor**"), the annual audited financial statement of Guarantor for any fiscal year of the Guarantor, provided, that the foregoing delivery obligation is subject to the condition precedent that such Advisor first enter into a confidentiality agreement respecting its receipt of any such financial statement, which confidentiality agreement shall prohibit further disclosure to any person (including without limitation the City) and otherwise shall be upon terms acceptable to the Guarantor in the exercise of its reasonable judgment.

8. The City shall provide Guarantor notice of an Event of Default under the MDA contemporaneously with providing such notice to Seaholm. Without limitation of Section 2(a) hereof, Guarantor shall have the same period of time as is given to Seaholm under the MDA to cure such Event of Default. The City shall accept any timely cure of such Event of Default by Guarantor as the cure of Seaholm.

9. Guarantor expressly subordinates its rights to payment of any indebtedness owing from Seaholm to Guarantor, whether now existing or arising at any time in the future, to the prior right of the City to receive or require payment or performance in full of the Guaranteed Obligations and until payment and performance in full of the Guaranteed Obligations (and including interest accruing after any petition under the Bankruptcy Code, which post-petition interest Guarantor agrees shall remain a claim that is prior and superior to any claim of Guarantor notwithstanding any contrary practice, custom or ruling in proceedings under the Bankruptcy Code generally).

10. No delay on the part of the City in exercising any right hereunder or failure to exercise the same will operate as a waiver of such right, nor will any single or partial exercise of any right, power or privilege bar any further or subsequent exercise of the same or any other right, power or privilege.

11. This Guaranty will not be changed orally, but shall be changed only by agreement in writing signed by the person against whom enforcement of such change is sought.

12. Any notice, request or other communication required or permitted to be given hereunder will be given in accordance with the notice provisions of the MDA or the Ground Lease, as applicable. Guarantor's address is set forth on the signature page hereof.

13. The masculine and neuter genders used herein will each include the masculine, feminine and neuter genders and the singular number used herein will include the plural number. The words "person" and "entity" will include individuals, corporations, partnerships, joint ventures, associations, joint stock companies, trusts, unincorporated organizations, and governments and any agency or political subdivision thereof.

14. This Guaranty will be binding upon and will inure to the benefit of, and be enforceable by, Guarantor and its trustees, receivers, successors and assigns, and will be binding upon and will inure to the benefit of, and be enforceable by, the City and its successors and assigns. Guarantor shall not assign its obligations hereunder without the prior written consent of the City. This Guaranty may be executed in multiple counterparts, and each counterpart executed by any party shall be deemed an original and shall be binding upon the person or entity executing the same, irrespective of whether any other Guarantor has executed that or any other counterpart of this Guaranty. Production of any counterpart other than the one to be enforced shall not be required.

15. This Guaranty and the rights and obligations of the parties hereunder will in all respects be governed by, and construed and enforced in accordance with, the laws of the State of Texas. Guarantor hereby irrevocably submits to the non-exclusive jurisdiction of any State or federal court sitting in the County of Travis, State of Texas, over any suit, action or proceeding arising out of or relating to this Guaranty.

16. If any other person or entity will, with respect to any of the Guaranteed Obligations at any time, execute and deliver any guaranty, or any other agreement or document with substantially the same effect as this Guaranty, then the obligations of the Guarantor hereunder shall not thereby be limited or impaired, but instead shall be deemed to be joint and several obligations with such other guaranty to the extent of the Guaranteed Obligations hereunder.

17. Nothing herein shall be construed to cancel, amend, discharge or limit any other guaranty or similar obligation executed by Guarantor (in the capacity as a guarantor) in favor of the City.

[END OF TEXT-SIGNATURE ON FOLLOWING PAGE]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

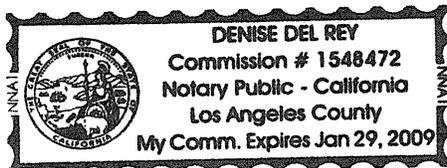
State of California

County of Los Angeles

On June 3rd, 2008 before me, Denise del Rey, a Notary Public

personally appeared Nicholas V. Morosoff

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



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

WITNESS my hand and official seal.

Signature Denise del Rey
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Guaranty

Document Date: June 3rd, 2008 Number of Pages: 9

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Nicholas V. Morosoff

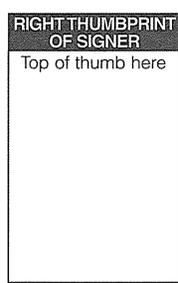
- Individual
- Corporate Officer — Title(s): Secretary
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____



Signer Is Representing: _____